

## WATER SYSTEM IMPROVEMENT AND FIRE SUPPRESSION AGREEMENT

THIS AGREEMENT is entered into this 1 day of DECEMBER 2009, between SOUTH BAINBRIDGE WATER SYSTEMS, INC., a Washington corporation, hereinafter referred to as the "Owner," and ROMERKOFF, LLC, a Washington limited liability company, hereinafter referred to as "Customer."

### RECITALS

1. Customer desires to connect a fire suppression system to Owner's water system.
2. Customer is remodeling and adding onto an existing mixed use building that now requires fire suppression where there was previously no fire suppression.
3. Owner's water system must be improved if Owner is to serve Customer with fire suppression.
4. Owner is willing to accommodate Customer's request to improve Owner's existing water main if such improvement is constructed to Owner's standards and specifications and to provide for suppression service under the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and benefits to be derived, Owner and Customer agree as follows:

### AGREEMENT

1. Customer shall perform the following to Owner's standards and specifications as approved by the Washington State Department of Health ("DOH"): replace an existing six inch (6") water main with an eight inch (8") ductile iron water main at the location described in the attached Exhibit A. All work shall be at Customer's sole cost and expense, according to specifications and at the location as described on Exhibit A, which exhibit is incorporated by this reference. For convenience, the work to be done under this Agreement is referred to in this Agreement as the "Main Improvement."
2. In addition to the cost of construction of the Main Improvement, Customer will pay all fees incurred by Owner for engineering for the Main Improvement and related development as charged to Owner by ADA Engineering, which fees shall be paid in full by Customer to Owner by the start of the construction of the Main Improvement.
3. Customer shall construct, at its own discretion, its own fire suppression system on Customer's property. Customer is providing and constructing such system based upon Customer's own knowledge and for Customer's own purposes. Customer will retain ownership and be responsible for the maintenance and operation of the fire suppression system.

Owner shall provide to Customer a service connection at Customer's cost, appropriate for the size of the Customer's lines serving the fire flow suppression system constructed by Customer.

Fire suppression service will be provided by Owner to begin as of the date that the fire suppression system is installed in Customer's property. It is estimated that the remodel with the addition will produce a structure of twenty seven thousand three hundred (27,300) square feet. The monthly fee for fire suppression is twenty-five cents (\$0.25) per one hundred (100) square feet for a monthly recurring charge of sixty-eight and 25/100 dollars (\$68.25).

4. Customer covenants and agrees that it shall be responsible for maintaining the back flow prevention and leak detection device in working order. The back flow prevention and leak detection device shall be inspected and tested at Customer's expense by Washington Certified Back Flow Assembly Tester as required under WAC 246-290-490. The Customer may contract for the back flow certification with any Washington Certified Back Flow Assembly Tester. A copy of satisfactory certification will be provided to Owner prior to the date of providing service under this Agreement and on an ongoing basis as testing certifications are required by state law and regulation. The back flow prevention and leak detection device shall be accessible to the Owner and its employees and agents at all times.
5. TO THE EXTENT ALLOWED BY LAW, CUSTOMER SHALL INDEMNIFY AND HOLD OWNER AND OWNER'S DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS HARMLESS FROM ANY CLAIM FOR DAMAGE TO PROPERTY OR PERSONAL INJURY OR DEATH RESULTING FROM OR IN CONNECTION WITH CUSTOMER'S PERFORMANCE OF THE WORK DONE UNDER THIS AGREEMENT OR THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING ATTORNEY'S FEES AND COURT COSTS, EXCEPT THAT WHICH IS THE RESULT OF THE GROSS NEGLIGENCE OF OWNER OR A VIOLATION OF CHAPTER 19.122 RCW BY THE OWNER, PROVIDED HOWEVER, THAT FOLLOWING OWNER'S ACCEPTANCE OF A BILL OF SALE CONVEYING THE MAIN IMPROVEMENT TO OWNER, CUSTOMER'S OBLIGATIONS HEREUNDER SHALL APPLY ONLY TO CLAIMS AND LIABILITIES BASED ON ACTIONS WHICH OCCURRED PRIOR TO SUCH CONVEYANCE.
6. Customer understands and agrees that Owner is not acting as an insurer of Customer or Customer's property or property of others on the property. To the extent allowed by law, Owner shall not be liable for any loss of life, personal injury or loss or damage to property of Customer, its employees, agents, guests or invitees caused by failure of the water and fire suppression services and Customer shall hold Owner and Owner's directors, officers, employees and agents harmless from any such claim. Owner makes no warranties or representations as to performance of the services provided under this Agreement.

7. THE PARTIES AGREE THAT THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS TRANSACTION AND SHALL NOT APPLY TO ANY SERVICES PROVIDED. SECTIONS 5, 6 AND 7 ALL FORM THE BASIS UPON WHICH OWNER IS WILLING TO PROVIDE THE SERVICES AND OWNER WOULD NOT ENTER INTO THIS AGREEMENT EXCEPT ON THE BASIS OF THE ENFORCEABILITY OF THESE SECTIONS 5, 6 AND 7.
  
8. The price for the Services is set expressly on the disclaimer of warranties and limitation on liability set out in this Agreement and the disclaimer of warranties and limitations on liability are essential parts of the bargain and this Agreement.
  
9. Customer shall provide a construction performance and maintenance bond which Owner holds harmless from the negligence of Customer, its agents, liens, third party liability, and defective materials or equipment. A copy of said bond is attached hereto as Exhibit B and by this reference incorporated herein; provided however that Owner shall agree to inclusion under the Customer's bond agreement covering the City of Bainbridge Island's property if that bond provides equivalent protection of Owner's interests.
  
10. Customer or Customer's contractor shall procure and maintain for the duration of the contract, which extends until Owner accepts from Customer a bill of sale conveying the Main Improvement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Customer, its agents, representatives, employees or contractors.

The insurance required shall include the specific coverages and be written for not less than the limits of liability and coverages listed below or required by law, whichever is greater.

Worker's Compensation, etc. should have the following minimum limits:

- |    |  |             |
|----|--|-------------|
| A. | State                                    | Statutory   |
| B. | Applicable Federal (e.g. longshoremen's) | Statutory   |
| C. | Employer's Liability                     | \$1,000,000 |

Comprehensive General Liability shall have the following minimum limits:

- |    |  |               |
|----|--|---------------|
| A. | Bodily Injury (including completed operations and products liability): |               |
|    | \$1,000,000  | Each Person   |
|    | \$1,000,000  | Each Accident |

- B. Property Damage:  
\$1,000,000 Each Occurrence  
or a combined single limit of \$1,000,000

Property damage liability insurance will provide Explosion, collapse and Underground coverages where applicable.

- Personal injury, with employment exclusion deleted  
\$1,000,000 Annual Aggregate

All of the policies of insurance are required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage for it will not be cancelled, materially changed or renewal refused until at least forty-five (45) days prior to written notice has been given to the Owner by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when Customer may be correcting, removing or replacing defective work. In addition, Customer shall maintain completed operations insurance for at least one (1) year after the final payment and furnish Owner with the evidence of continuation of such insurance. The original policy or a signed certificate of insurance shall be filed with the Owner.

11. Prior to the commencement of work, the Customer shall furnish Owner with acceptable proof of insurance in a form acceptable to the Owner.

All insurance certificates must name the project title and address.

All insurance certificates shall specifically require forty-five (45) days prior notice to the Owner of cancellation or any material change.

Owner shall be named as an additional insured on all certificates of insurance.

12. All construction of the Main Improvement will be subject to oversight of the project by an employee of Owner or a representative of Owner's engineer, ADA Engineering. Fees for such oversight shall be paid by Customer within ten (10) days of invoice. All work by Customer shall be subject to passing inspection by Owner's engineer for compliance with Owner's standards and specifications and DOH rules. Customer shall pay the cost of inspection within ten (10) days from the date of inspection at Owners engineer's normal rates for such work.

13. Customer shall furnish all necessary conveyances in form to be approved by the Owner, including, if so needed, duly executed easements for access to the area around said Main Improvement for purposes of maintaining and repairing if necessary, the Main Improvement, a copy of which easements are attached hereto as Exhibit C.

14. From the Date of Acceptance of the Main Improvement, the Owner shall, subject to the approval by the Washington Utilities and Transportation Commission ("WUTC"), maintain and operate the Main Improvement. Owner has no duty to accept the Main Improvement, or any portion thereof if the Main Improvement does not pass inspection by Owner's engineer or does not conform strictly to the Owner's Conditions and Standards.

As used in this Agreement the Date of Acceptance is the date that the last of the following events occur:

- A. Payment by Customer of all sums owed by Customer under this Agreement;
  - B. Delivery of all documents required hereunder; or
  - C. Main Improvement passes inspection by Owner's Engineer.
15. Customer shall convey the Main Improvement by a Bill of Sale in the form attached as Exhibit D, and incorporated herein by this reference.
  16. Nothing in this Agreement entitles Customer or Customer's successors or assigns to connect to Owner's water system, including Main Improvement, except in accordance with the terms, conditions and charges and under tariff filed with the Washington Utilities and Transportation Commission ("WUTC"), which terms and conditions include, but are not limited to, the ability to limit use of water for irrigation under conditions of high demand.
  17. **Owner does not warrant delivery of any specific quantity of water, and Owner's standards and conditions are designed to produce only the minimum DOH standards in effect at the time of this Agreement. Such standards may not be sufficient for large lots or agricultural use.**
  18. Customer shall pay the costs of Owner's attorney to develop this Agreement and seek approval of the WUTC, not to exceed Five Hundred Dollars (\$500.00), which payment is due upon execution of this Agreement by Customer.
  19. To the extent allowed by law, the Customer shall hold Owner and its officers, agents, and employees, harmless from all suits, claims or liabilities of any nature, including attorneys' fees, costs, and expenses for or on account of injuries or damages sustained by any persons or property resulting from willful or negligent activities or omissions of the Customer, its agents, employees, or on account of any unpaid wages or other remuneration for services, or on account of Customer's failure to comply with Chapter 19.122 RCW ("dig-up laws") or any violation of county franchise requirements; and if judgment be rendered or settlement made requiring payment of damages by Owner, which damages are based in whole or in part on the negligent activities or omissions of the Customer, its agent or employees, or on account of any unpaid wages or other remuneration for services or for a violation of Chapter 19.122 RCW or county franchise

requirements, the Customer shall pay the same. Following Owner's acceptance of a Bill of Sale conveying the Main Improvement to Owner, Customer's obligations hereunder shall apply only to suits, claims and liabilities based on actions which occurred prior to such conveyance.

20. This Agreement is subject to prior approval of the WUTC and shall not take effect until thirty-one (31) days after filing with the WUTC, or if suspended by the WUTC, at such date as this Agreement is approved by the WUTC. WUTC approval is not warranted or guaranteed by Owner.
21. The Main Improvement may be subject to approval by the Department of Health, and Bainbridge Fire Department and City of Bainbridge Island. If approval is required, Owner's performance hereunder is conditioned upon such approval. Owner does not warrant or guarantee such approval.
22. Customer warrants that all work done by Customer on the Main Improvement shall conform to Owners Standards and Conditions and, in addition, shall have been performed in a workman-like manner and meet standards generally accepted in the industry.
23. Miscellaneous.
  - A. Jurisdiction. This Agreement is made with reference to and is intended to be construed in accordance with the laws of the State of Washington. The parties agree that the venue for any suit brought hereunder shall be laid exclusively in Kitsap County, Washington.
  - B. Successors in Interest. This Agreement shall be binding upon and inure to the benefits of the successors, heirs, assigns and personal representatives of the parties.
  - C. Execution of Counterpart. This Agreement will be executed separately or independently in any number of counterparts, each and all of which shall be deemed to have executed simultaneously and for all purposes be one Agreement.
  - D. Construction. This Agreement shall not be construed more favorably to one party over another notwithstanding the fact that one party or its attorney, may have been more responsible for the preparation of the document.
  - E. Attorneys' Fees. In the event that any party hereto retains an attorney to enforce any of the provisions hereof, then the substantially prevailing party shall be entitled to reasonable attorney's fees incurred in both trial and appellate courts, or fees incurred without suit and all court and accounting costs.

- F. **Time.** Time is expressly declared to be of the essence in this Agreement.
- G. **Survival.** All of the obligations (except to be to the extent performed), warranties and representations in this Agreement shall survive the closing.
- H. **Amendment.** No modification, amendment, addition to or termination of this Agreement nor waiver of any of its provisions shall be valid or enforceable unless in writing and signed by all of the parties, and further, no modification or amendments of specifications or approval of "approved equal" material shall be valid or enforceable unless approved in writing by Owner's engineer.
- I. **Waiver.** No failure on the part of either party to exercise, and no delay in exercising, any rights hereunder shall operate as a waiver thereof; nor shall any waiver or acceptance of a partial, single or delayed performance of any term or condition of this Agreement operate as a continuing waiver or a waiver of any subsequent breach thereof.
- J. **Entire Agreement.** This Agreement constitutes the entire Agreement among the parties, integrates the understanding of the parties, and supersedes and replaces any prior statements and representations, written or oral. Any prior written statements, written or oral, not contained herein are void and in no force or effect. This Agreement supersedes and cancels all prior obligations and negotiations, correspondence and communications between the parties with respect to the terms and conditions of this Agreement.
- K. **Notices.** Any notice provided for in this Agreement shall be deemed effective as if it is in writing and is personally delivered or sent by certified mail, postage prepaid, return receipt requested, and delivered or addressed as set forth below or to other such address as the parties may hereafter designate by notice given in the same manner:

To Owner:  
South Bainbridge Water Systems, Inc.  
4573 Point White Drive  
Bainbridge Island, WA 98110

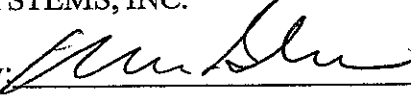
To Customer:  
Romerhoff, LLC  
265 MAIDEN LANE E  
SEATTLE, WA 98112

L. Survival of Warranties and Representations. All warranties and representations made by any party hereto shall survive the conveyance and transfer of the Main Improvement to Owner.

Entered into the date first set forth above.

OWNER:

SOUTH BAINBRIDGE WATER  
SYSTEMS, INC.

By: 

Its: President

CUSTOMER:

ROMERKOFF, LLC

By: 

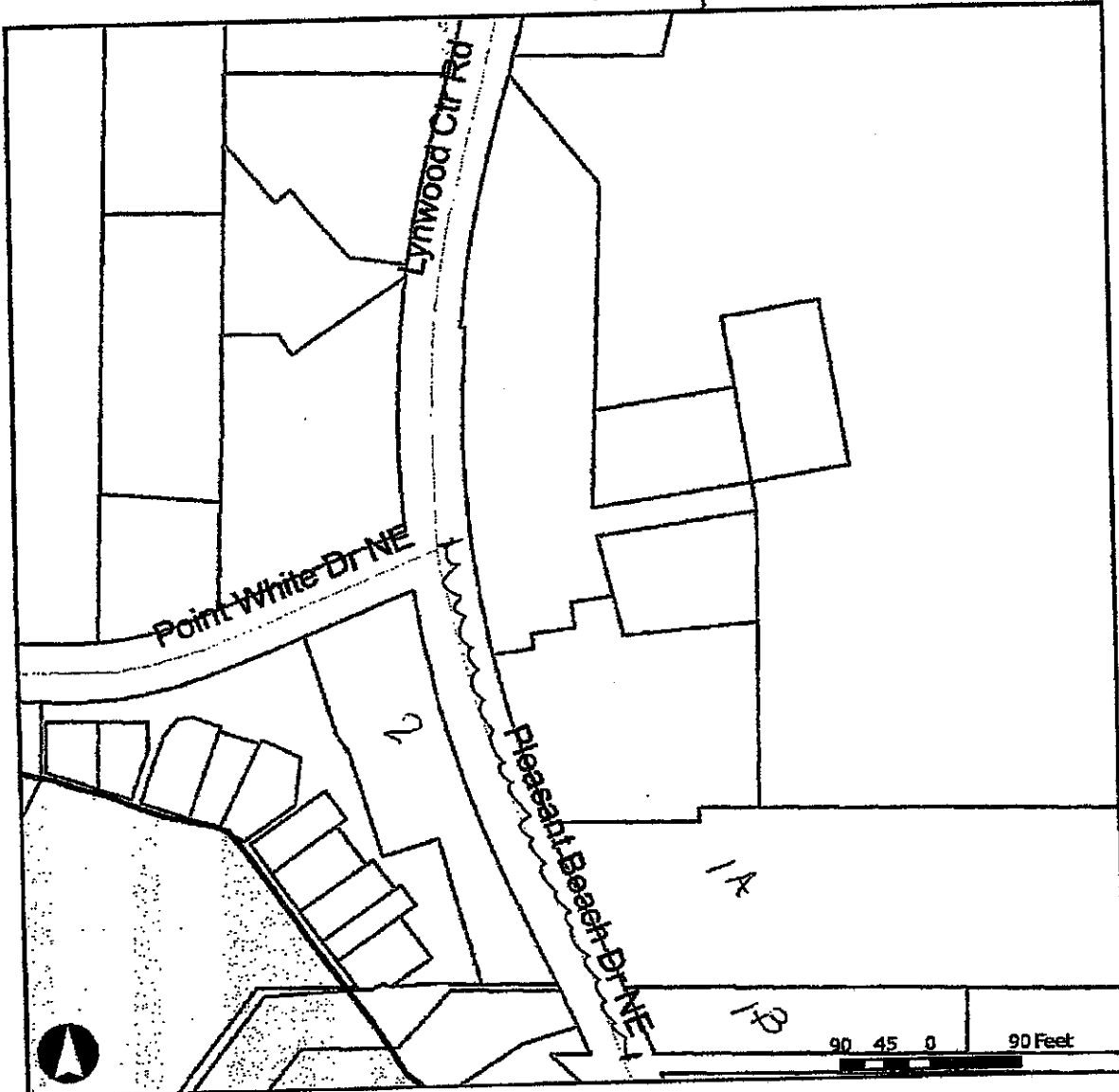
Its: MEMBER



**EXHIBIT A**

P. 2  
SOUTH SAINKRIDGE WMA page 1 of 1  
1A/1B Romerkoff Serenity LLC  
2 - Romerkoff, LLC  
Mun 8" DI and Fire suppression to 2

# Map



- |           |         |                         |
|-----------|---------|-------------------------|
| Streams   | Streets | BI_Background-Shoreline |
| Wetlands  | Highway | BI_Background-Land      |
| Shoreline | Parcels | BI_Background-Water     |

### GIS Data Disclaimer

This data should be used for informational purposes only. This map does not represent a survey. Every effort has been made to ensure the accuracy of these data; however, the data may be dated, which would have an impact on its accuracy. The maps are provided without warranty or guarantee of any kind, expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The parcel lines, and right of ways shown on these maps are for illustration purposes only and are not intended to be used as a survey product. User accepts all responsibility of the user's unauthorized use or transmission of any such data or information from its actual or altered form.