

THIS AGREEMENT made this 16th day of May, 2019, by the Borough of Bay Head, a body Corporate and Politic of the State of New Jersey, whose address is 83 Bridge Avenue Bay Head New Jersey 08742 (hereinafter referred to as "Borough"), and the Bay Head Improvement Association, a New Jersey Non-Profit Corporation having an address of Post Office Box 42 Bay Head New Jersey 08742, (hereinafter referred to as the "BHIA").

WHEREAS, the Borough has entered into an agreement with the State of New Jersey Department of Environmental Protection in furtherance of the Construction of the Manasquan Inlet to Barnegat Inlet New Jersey Hurricane and Storm Drainage Management Project (hereinafter referred to as "State Aid Agreement"); and

WHEREAS, pursuant to paragraph 17 of the State Aid Agreement, the Borough is specifically responsible for the following:

- (1) The operation of the beach as a public beach including lifeguards, beach raking, and trash pickup during the traditional beach season.
- (2) The routine maintenance of the beach and dune between beach re-nourishments. Such routine maintenance includes:
 - (a) The repair and clearing of the eleven public access ways/dune crossovers to allow safe passage to and from the beach.
 - (b) Repair and replacement of snow fencing and split rail fencing along the dunes.
 - (c) The grading of any escarpments to the beach within a reasonable period of time depending upon the time of year; and

WHEREAS, pursuant to paragraph 17 of the State Aid Agreement, the Borough's responsibilities specifically exclude the following:

- (1) Any obligation to maintain the design template of the Construction of the Manasquan Inlet to Barnegat Inlet New Jersey Hurricane and Storm Drainage Management Project.
- (2) The construction of temporary winter berms or to pump, truck-in or otherwise provide any sand on the beach (except as may be necessary to maintain the access ways); and

WHEREAS, pursuant to the State Aid Agreement, the Borough may specifically assign its rights and obligations thereunder to the BHIA; and

WHEREAS, the BHIA was awarded \$2,300,711.00 for the taking of their property for this project, which award is currently on appeal and the subject of ongoing settlement negotiations; and

WHEREAS, the BHIA intends to establish a capitol fund with the bulk of the net proceeds to fund anticipated increased costs to maintain, repair, regrade and otherwise carry out obligations included within this agreement and obligations established by the BHIA Corporate Mission; and

WHEREAS, the BHIA has for many years provided lifeguard, security and beach cleaning services for the benefit of beach going patrons during the period of approximately mid-June through Labor Day and has otherwise generally maintained the beach area year round including the construction of access ways from the street end platforms to the beach; and

WHEREAS, the parties hereto acknowledge the mutual benefit to be derived both by the parties hereto as well as by members of the community at large for the BHIA to continue to perform the aforementioned services; and

WHEREAS, the Borough has agreed to convey and the BHIA has agreed to accept both the authority and the responsibility to perform such services; and

WHEREAS, the Borough and the BHIA recognize and acknowledge the need to establish the rights and responsibilities of each respective party hereto, and their heirs, successors and assigns with respect to the foregoing; and

WHEREAS, the Borough has full authority to enter into this agreement pursuant to N.J.S.A. 40:69A-1, et seq, as well as pursuant to applicable Borough ordinances and the Mayor of the Borough has been duly authorized to enter into such agreement; and

WHEREAS, the BHIA has full authority to enter into this agreement pursuant to N.J.S.A. 15A: 1-1, et seq, as well as pursuant to its corporate charter and by-laws and the President of the BHIA has been duly authorized to enter into such agreement.

NOW THEREFORE, for mutually good, beneficial and acceptable consideration and benefits received and acknowledged by the parties hereto, they hereby agree as follows:

1. The BHIA shall operate and maintain the beaches in Bay Head by providing lifeguards, badge checkers, beach maintenance personnel, beach cleaners, and off beach office administration staff. The BHIA may sell beach badges and shall set such fees and establish such rules, policies and regulations as the BHIA, in its sole discretion, shall see fit provided that they do not violate any applicable state, federal or local laws or regulations. All fees set shall be in accordance with the requirements of N.J.S.A. 40:61-22.20 and incorporated into local ordinance.
2. The BHIA shall maintain and repair the walkovers at all locations with the exception of that which is located at North Street. The area of BHIA responsibility shall commence at the eastern most edge of the current

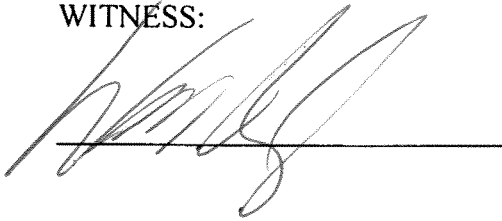
platforms and extend eastward to the full length and width of the walkovers including all necessary fencing. If the Borough is required after consultation with the State Department of Environmental Protection to provide additional sand necessary to maintain the access ways pursuant to the Borough's State Aid Agreement, the BHIA contribution to the cost of such sand shall be subject to a separate agreement between the Borough and the BHIA negotiated and entered into at the time the sand is required.

3. The BHIA shall perform off season maintenance of the walkovers, as described above, as well as cleaning and debris removal from the beach in accordance with normal off-season practice.
4. The BHIA shall erect appropriate signage for the beach.
5. The Borough shall not agree to any amendment to the State Aid Agreement or subsequent similar such agreement that would have an impact upon the responsibilities or authority of the BHIA without written notice to the BHIA. If the authority and responsibility of the Borough specified in the State Aid Agreement, as it relates to the terms of this agreement, shall be reduced through the pre-emptive action of a higher government authority, the BHIA's authority and responsibility hereunder shall be reduced accordingly. If the authority and responsibility of the Borough specified in the State Aid Agreement, as it relates to the terms of this agreement, shall be increased through agreement between the State and the Borough or the pre-emptive action of a higher government authority so as to increase the BHIA's authority and responsibility hereunder, such increase in BHIA's authority and responsibility shall be subject to - a separate agreement between the Borough and the BHIA negotiated and entered into at the time.
6. The BHIA shall have full and sole authority, using customary good business practices, to hire such employees, contractors, subcontractors, laborers, together with any other individuals, professionals or firms which the BHIA in the BHIA's discretion, deems necessary and appropriate for the purpose of performing the aforesaid functions. The BHIA shall have sole responsibility for ensuring compliance with all state employment requirements including, but not limited to, the Wage and Hour Law. The BHIA shall indemnify and defend the Borough in any claim of any kind arising from its hiring and employment practices.
7. The cost for performing the aforesaid functions shall be solely that of the BHIA and not of the Borough.
8. The term of this Agreement shall run from the date of this Agreement through December 31, 2028. The Agreement is terminable by either party upon eight months' written notice, with such notice to be provided no later than October 31st of the year preceding the year for which services will terminate.
9. The terms of this agreement shall be governed under and pursuant to the laws of the State of New Jersey. If any term shall be deemed unenforceable or contrary to applicable law, the remainder of the provisions of the Agreement shall survive and be enforced as best as possible so as to comply with the purposes expressed herein.

10. The BHIA shall purchase and maintain through the Contract period adequate comprehensive general liability insurance on which the Borough shall be named as an additional insured. The Comprehensive General Liability Coverage must provide no less than \$1,000,000.00 combined limit per occurrence for bodily injury, personal injury and property damage. The policy must be endorsed to provide the Borough with ten (10) days' written notice of cancellation and/or restriction.
11. The waiver of a failure to perform any term under this agreement shall not constitute a waiver of any subsequent failure to perform a term under this agreement.
12. Any and all notices provided for herein or to be deemed necessary and appropriate in the future shall be sent to the respective parties at the addresses specified above or such other address as may be requested.
13. This agreement shall take effect upon the execution thereof by the appropriate representatives of each party and may not be altered, amended or changed unless in writing, signed by authorized representatives of both the Borough and the BHIA.

IN WITNESS WHEREOF, the parties hereto, hereby agree to the foregoing terms and conditions.

WITNESS:




Bay Head Improvement Association
By: Thomas P. Gage – President



Borough of Bay Head
By: William W. Curtis – Mayor




Borough of Bay Head Witness *Mun. Clerk*