

SALLAL WATER ASSOCIATION

DEVELOPER EXTENSION AGREEMENT

2/16/21

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APPLICATION AND AGREEMENT TO CONSTRUCT WATER SYSTEM EXTENSION

1. INTRODUCTION

The undersigned (“Owner”) hereby makes application to Sallal Water Association (“Association”) of King County, Washington, for permission to construct and install a water system extension and appurtenances (“Extension”) and to connect the same to Association’s water distribution system in accordance with Association's standards, specifications and construction conditions as set forth herein (collectively the “Work”).

Upon acceptance by motion of the Board of Trustees of Association and due execution hereof on behalf of the Association, this Application and Agreement shall become a binding contract between the parties hereto.

2. LOCATION OF EXTENSION

The Extension shall be designed to serve the property described herein. A general description of the property including the proposed routing of any offsite portion of the Extension shall be set forth in Exhibit A. A legal description of the property shall be set forth in Exhibit B. These exhibits are attached hereto and incorporated by reference. Owner shall obtain all necessary easements in the name of the Association utilizing Association's easement forms.

3. FEES, COSTS AND DEPOSITS

- a. Owner shall pay to Association an administrative fee of \$500 to make this application. Once this application is approved by Association, Owner shall pay all of Association’s costs incurred in administering this Agreement including but not limited to legal, engineering, and inspection costs (including extra costs for any overtime inspection). Association may bill these costs from time to time to Owner, or Association may require Owner to maintain a deposit balance with Association as set forth below.
- b. The Association shall maintain an accounting of all costs and fees charged to the Extension project and all payments and deposits paid by Owner. Association may comingle deposited funds with any other funds of the Association but may for internal accounting purposes treat the deposited funds, less charges, as an account (“Deposit Account”) for the project. The Association may charge the Deposit Account (and Owner) with all costs related to the Extension including final acceptance and warranty period costs, repair and inspections. In the event that the Deposit Account balance becomes less than \$0 all work by Sallal on the project shall cease

until the account balance is brought back to a minimum of \$500. If the project is under construction, Sallal may issue a STOP WORK order until the balance of the Deposit Account is increased to an amount determined sufficient by the Association to pay for inspection costs but not less than \$500

Owner shall pay each such invoice in full no later than twenty (20) calendar days from the invoice date. If Owner fails to do so, Association may terminate all services with respect to the Extension until the amount is paid in full and pursue any other remedy authorized by law to collect the amount due. During the period of cessation of Association services, Owner's work on the Extension shall cease except for surface restoration and repair activities and maintaining workplace and public safety. No interest shall accrue on positive Deposit Account balances. Owner may review the Deposit Account on reasonable notice during regular business hours at the Association's main office.

4. DESIGN OF EXTENSION

The Owner shall cause its engineer to design the Extension. All design shall be in accordance with Association's Water System Design and Construction Standards, December, 2017, ("Standards"), unless changes to the Standards are approved by Sallal. The Standards are incorporated herein by this referenced as if set forth in full herein. The Association's engineer shall review and comment on the design and may require changes to comply with the terms of this Agreement. The Association may charge a plan review fee which shall include the fees charged by the Association's engineer. All plans shall be prepared in accordance with the Standards to include such modifications as may be required by the Association. The design and construction plans and specifications may also be subject to the approval of the State of Washington Department of Health, the King County Fire Marshal, King County (pursuant to King County Road Standards, King County Surface Water Design Manual, King County Clearing & Grading, and other provisions of the King County Code), the City of North Bend (if applicable) and other agencies. Once approved by the Association, the plans and specifications (collectively or individually "Plans and Specifications") for the Extension shall be deemed incorporated into to this Agreement and shall become an integral part hereof.

5. ADMINISTRATIVE REQUIREMENTS

- a. The following requirements shall be fulfilled prior to commencement of construction of the Extension.

- b. All deposits and charges due from Owner shall be paid in full.
- c. Owner shall procure all insurance as required herein and provide evidence thereof to Association including an insurance certificate with endorsements attached showing additional insured as required by such section.
- d. Owner shall pay for all permits. Permits for work in King County right-of-way shall be obtained by the Association. Permits for work in North Bend shall be obtained by the Developer.

All permits required by King County and/or North Bend shall be procured and be in effect and copies provided at the preconstruction conference.

- e. If not already in existence, all easements on land owned by third parties upon which the Extension is located shall be procured by the Owner utilizing a form approved by the Association Attorney and Engineer as to form and content. The easements shall be obtained at the cost of the Owner and shall name the Association as grantee and shall be duly executed, delivered to the Association and recorded with King County prior to the commencement of the Work. The Association may require title insurance or a title search on any easement.
- f. If Owner seeks final plat or subdivision approval of its development prior to completion of all infrastructure improvements, governmental agencies may require utility providers to assure water service to the development. Governmental authorities and grantors of easements may also require roadway and surface restoration after an area is disturbed. If Association is, becomes, or it reasonably believes it is or will become obligated to provide restoration, water service or other utility functions in advance of final acceptance of the Extension in accordance with this Agreement, Association may require Owner to furnish a Performance and Payment Bond upon forms approved by Association issued by duly licensed insurance or bonding company for the amount of the construction and restoration costs determined by the Association, naming the Association as Obligee. The Performance and Payment Bond shall obligate the Owner to unconditionally complete the Work and to pay all costs of labor performed, and materials and equipment furnished to complete the Work. Association's determination that a Performance and Payment Bond is required and the amounts thereof shall be final and binding on Owner. The Performance Bond shall be in an amount equal to 150% of the estimated costs to complete the Work. The Owner shall submit an engineer's cost estimate for the proposed work in the right-of-way. The amount of the Performance shall be approved by the Association's

Engineer. Owner may provide Association with a cash deposit held in a bank savings account or certificate of deposit pursuant to a duly executed assignment of funds form in lieu of the performance bond.

- g. The Owner shall file a materials and equipment list with the Association prior to proceeding with construction. This list shall include the quantity, manufacturer, and model number (if applicable) of materials and equipment to be installed under the Contract. This list will be checked with reasonable promptness by the Association regarding conformity with the Plans and Specifications. The Association's engineer shall be sole judge in the question of "or equal" of any materials and equipment proposed by the Owner. The Owner shall pay to the Association the cost of tests and evaluations by the Association to determine acceptability of any alternate proposed by the Owner, in accordance with the established rates of its engineer for time and expense work, the total cost of which may be charged by the Association as additional fees hereunder.
- h. At the request of the Association, the Owner's material suppliers may be required to furnish a certification, from a recognized testing laboratory, to certify that the material supplied, and for which the certification was requested, is in full compliance with the Association's specifications.

6. CONSTRUCTION REQUIREMENTS

- a. The Association shall be notified at least one week in advance of the start of construction. Following notification, Owner may proceed on the start date identified by Owner in the notification to install the Extension in accordance with the terms of this Agreement. All construction shall be performed by Owner at its sole expense using Owner's personnel, agents and contractors. Completion of the Extension in accordance with the terms of this Agreement is a condition precedent to Association accepting the Extension and providing water service to the Property. If Owner fails to complete the installation by the expiration date of this Agreement, the Agreement shall be null and void and have no further force or effect except that Owner shall restore, to its prior condition or better, any areas disturbed or altered by the construction contemplated by this agreement. This Agreement may be extended if agreed to in writing by both parties. In the case of public right of way, restoration shall be performed in accordance with the requirements of the general purpose government having jurisdiction over the right of way. The Association may, upon request, extend the expiration date of this Agreement for good cause.
- b. All Work shall be done in strict conformity to the Plans and Specifications, the Standards and to lines and grades shown on the

approved Plans. If field changes are needed, approval from both the Owner's engineer and Association's engineer are required.

- c. If final road grades differ from the approved Plans, the Owner shall grade all roads to the design grade elevation approved by governmental agencies having jurisdiction and shall advise the Association in writing during construction of any changes which may be contemplated or required. If the Owner changes the grade elevation of the road Owner agrees to raise or lower the water line and service connections as required by the new grade elevation at no cost to the Association. This obligation shall remain in full force and effect until the end of the warranty period for the roadway work or water utility work, whichever is longer.
- d. Temporary connections to the Association's water system shall not be allowed, except through approved backflow prevention systems, and only for the purposes of filling the new water main(s).
- e. The connection of the Extension to the Association's water system shall not be made except with the approval of and under the supervision of the Association.

7. AUTHORITY OF THE ASSOCIATION'S ENGINEER AND INSPECTOR

The Association's engineer or person or firm designated by the Association shall represent the Association in an advisory and consulting capacity in engineering matters relating to this Agreement. The Association's engineer or designee shall have the following authority:

- a. Determine the quality, acceptability, and fitness of the Work.
- b. Decide all questions relative to the true construction, meaning, and intent of this Agreement and the Plans and Specifications.
- c. Decide all questions relative to the classification of materials, and the fulfillment of this Contract.
- d. Have the power to reject or disapprove nonconforming Work.
- e. Have authority to stop the Work whenever, in its opinion, such stoppage may be necessary to ensure the proper execution of this Agreement.
- f. Decide the sequence of Work where such decision is for the purpose of avoiding conflict with other work being performed by the Association or by others in the same general locality.

The decision of the Association's engineer or designee in the matters described above shall be final. However, they shall not have the authority to waive any term, condition, or provision of this Agreement or the obligation of the Owner to fully perform this Agreement.

Nothing contained herein or elsewhere shall be construed as requiring or authorizing the Association's engineer or designee to direct the method or manner of performing any work by the Owner under this Agreement.

8. CONTRACTOR AND SUBCONTRACTORS

The Owner shall be fully responsible for all Work, and all acts and omissions, of its contractor and subcontractors and persons either directly or indirectly employed by them.

9. WORKMANSHIP AND MATERIALS

The Owner shall at all times supervise the work and shall not employ on the Work any unfit person nor anyone not skilled in the work assigned to him or her. The Owner shall use only competent contractors to perform the Work. The Owner shall provide and pay for all materials, labor, water, tools, equipment, light,

power, transportation, and all other facilities necessary for the execution and completion of the Work. All workmanship, equipment, materials, and articles incorporated in the Work shall be new, shall be the best available grade, and shall be of a quality equal to, or better than that specified.

10. MATERIALS AND EQUIPMENT FURNISHED BY ASSOCIATION

Owner shall receive, inspect, store, and accept all Association furnished items of material and equipment if applicable, subject only to latent defects. Claim shall be made in writing within 5 days after discovery of any latent defect. Damages or loss shall be limited to the cost of and labor for replacement of any such damaged item. In any event, the liability of Association for furnishing an item having a latent defect is limited to damage or loss resulting from use thereof, only to the extent that such loss or damage is recoverable by the Association against the supplier. Association shall include in its claim to the supplier the amount of damage claimed to the Owner or Owner's contractor or Association may assign to Owner any claim which Association would otherwise have against any such suppliers, and the sole remedy of Owner shall be by suit or action on such assigned claim. Association agrees to cooperate with Owner in furnishing facts or data to assist Owner in prosecuting any action on an assigned claim.

11. STORAGE OF MATERIALS AND EQUIPMENT

Materials and equipment shall be safely stored by the Owner to ensure the preservation of their quality and fitness for the Work. Stored equipment and materials shall be placed so as to facilitate inspection. The Owner shall be responsible for all loss or damage that may occur to all materials and equipment until final acceptance of the Work by the Association.

12. LOCATION, STAKING, BOUNDARIES (Omitted – See Standards)

13. ACCESS

The Association at all times shall have access to the Work and to the locations where the Work is in preparation. The Owner at all times shall maintain proper facilities for such access. Where applicable, the Owner shall also provide proper facilities for access to all Work sites for inspections by representatives of Federal, State, and local regulatory agencies.

14. INSPECTION AND TESTS

Inspection and test of Work and materials shall be in accordance with Association and other regulatory requirements and standards, and shall be strictly for the benefit of the Association. No approvals, comments or suggestions issued by the Association shall be construed to relieve the Owner of any obligations under the Contract. All construction shall be subject to full time inspection at the sole discretion of the Association and other regulatory agencies at the sole cost of Owner.

The following scheduled inspections and tests shall be conducted by the Association’s engineer or designee:

- a. Start of construction inspection.
- b. Scheduled inspections during the course of the work.
- c. Test inspections. (Note: The Association’s representative shall collect bacteriological samples after the extension has passed all pressure tests.)
- d. Final inspection.
- e. End of Warranty Period inspection (to be conducted at least two weeks prior to expiration of Warranty Period).

Other scheduled inspections and tests may be required to comply with Association standards, laws, or ordinances. Some inspections and tests may be conducted by a person or firm designated by the Association who has special expertise in the kind of work to be inspected.

The Owner's engineer shall conduct inspections sufficient such that the Owner's engineer can complete the Washington Department of Health Construction Completion report.

The Owner shall give the Association timely notice when the state of the Work is such that a scheduled inspection and test can be conducted. When the inspection and test is to be conducted by authorities other than the Inspector or Engineer, the Owner shall coordinate all inspection arrangements through the Inspector or Engineer.

The Owner shall furnish such samples, testing, and labor as may be required for the Association to make a thorough inspection and examination of materials to be used in the Work. The neglect or failure on the part of the Association to condemn or reject inferior material or work shall not be construed to be acceptance of the materials or the Work.

The Association shall have the right to reject materials and workmanship which are defective, or to require their correction. Rejected workmanship shall be promptly corrected, and rejected materials shall be removed from the premises.

Should it be necessary for the Association, prior to final acceptance of the Work, to make an inspection or reinspection of Work already completed by removing or tearing out any portion thereof, the Owner shall on request, promptly furnish all necessary facilities, labor and materials to do so.

The Owner is responsible for all costs of inspection and testing for Association to determine that the installation of the Extension is performed in accordance with all Association standards and requirements.

15. CONNECTION TO SYSTEM

Physical connection of the Extension to the Association's water system shall not be made until:

- a. Satisfactory water quality and pressure tests of the Extension have been made.
- b. The Owner has applied in writing to the Association for permission to make the connection not less than 96 hours prior to the time requested.

- c. All work to date conforms to the terms of this Agreement.
- d. The Owner has received written approval from the Association.
- e. The connection must be made in the presence of the Association. Notwithstanding the foregoing, Association may shut the valve at the connection point of the Extension and withhold the flow of water to the property until final acceptance of the Extension is granted by Association.
- f. No connection shall be made on Fridays.

16. WATER QUALITY

It shall be the Owner's responsibility to maintain acceptable water quality standards within the Extension until Association acceptance of Extension and during any period for correction of work under Agreement Section 24. In connection with this obligation, the Association may require:

- a. An adequate number of connections to the Extension are in service to ensure water system turnover; or
- b. A mutually agreed upon flushing program is in place to ensure water system turnover in which case the following shall apply:
 - (1) All flushing water must be metered.
 - (2) All flushed water must be disposed of using accepted best management practices.
 - (3) Flushing may be done by Owner's staff with Association Inspector on site or by Association staff at Owner expense.

17. COMPLIANCE WITH LAWS AND OTHER REQUIREMENTS

- a. The Owner shall fully comply with all Federal, State, and local laws, regulations, and ordinances governing, controlling, or limiting in any way the Work or the persons engaged in the Work.
- b. Owner shall comply with all pertinent requirements of Federal, State, and local environmental laws and regulations including, but not limited to, the Federal Clean Air Act, Federal Clean Water Act, State and local noise ordinances, construction site erosion control regulations, Sensitive Areas Ordinances, trench excavation safety systems and if applicable, shoreline construction requirements.

- c. Owner shall at all times during the term hereof perform the requirements of and comply with the terms and provisions of the following:
- (1) Association's written rules, regulations and policies;
 - (2) Any utility or access easements that presently encumber Owner's real property described herein and any adjacent parcels owned directly or indirectly by Owner;
 - (3) Any contracts, other than this agreement, between Association and Owner or its affiliates;
 - (4) The requirements of any City or State issued franchise agreement.

18. PUBLIC SAFETY AND CONVENIENCE

The Owner shall conduct the Work with proper consideration for public safety and convenience. This requirement shall include, but is not limited to, the maintenance of traffic, access to fire hydrants, use of sidewalks and public and private driveways, and the proper functioning of existing private and public facilities such as gutters, drains, ditches, natural water courses and the like.

Where construction consists of replacement of, or modification to, existing facilities such as existing sewer or water lines, pumping facility or treatment works, the Owner shall provide for the normal maintenance and operation of such facilities during construction.

The Owner shall obtain prior approval from the Association, the affected owners and the proper governmental authority to obstruct traffic or to disturb any existing private or public facility.

19. PROTECTION OF PUBLIC AND PRIVATE PROPERTY

The Owner shall adequately protect public and private property adjoining or affected by the Work including lawns, trees, shrubs, sidewalks, curbs, pavements, utilities, vehicles and structures. Owner shall repair and restore all property damaged by the Owner's operations, at the sole expense of the Owner. The damaged property or improvements shall be replaced to a condition equal to or better than that existing prior to the damage. Notwithstanding any other provision thereof, Owner's obligations under this section shall survive the termination of this Agreement and shall apply in such event whether or not Owner has completed the Work.

20. PROTECTION OF WORK

The Owner shall be responsible for the care and protection of the Work including all materials delivered, all Work performed, and all loss or damage thereto, until final acceptance by the Association, provided, however, this section shall in no way limit Owner's warranty obligations hereunder that commence upon final acceptance of this Agreement. Work damaged during construction shall be repaired or replaced at the expense of the Owner to the satisfaction of the Association.

21. SAFETY AND HEALTH STANDARDS AND ACCIDENT PREVENTION

The Owner shall comply with the safety standards of applicable building and construction laws and codes including the "Manual of Accident Prevention in Construction" published by the Associated General Contractors of America; United States Department of Labor; "Safety and Health Regulations for

Construction" published by the Occupational Safety and Health Administration; as well as the Washington State Department of Labor and Industries General Safety and Health Standards, Safety Standards for Construction Work, Trench Excavation Safety Systems (WAC 296) and "The Manual on Uniform Traffic Control Devices." The Owner shall be solely and completely responsible for working conditions on or near the job site, including safety of all persons and property during the performance of work. These requirements shall apply continuously and shall not be limited to normal working hours.

The duty of the Association to review the Owner's construction performance does not include review of the adequacy of the Owner's safety measures. Owner shall take full responsibility for safety of all Work.

22. USE OF FACILITIES

The Extension may not be put into service prior to final acceptance of this Agreement without the prior written consent of Association.

23. CORRECTION OF DEFECTIVE WORK

The Owner shall promptly remove from the construction site all Work or materials listed by the Association as failing to conform to this Agreement, whether incorporated in the Work or not, including, but not limited to Work and facilities that have been mislocated due to inaccurate or incorrect surveys, survey controls, staking or installation. The Owner shall promptly replace and re execute all defective work in accordance with this Agreement and without expense to the Association and shall bear the expense of making good all work of others

destroyed or damaged by such removal or replacement. Failure or omission on the part of the Association to condemn unsuitable, inferior, or defective work and/or labor or material or equipment shall not release the Owner or its performance bond (if applicable) from performing the Work in accordance with this Agreement.

In the event the Owner does not accomplish corrections or repairs, after reasonable notice at or within the time specified, the Work may be otherwise accomplished by Association and the cost thereof shall be borne by the Owner.

If, as a result of the failure of the Owner to make corrections and repairs or in the event of an emergency and time does not permit the Association to give notice to the Owner before making corrections and repairs (such as where damage may result from delay in making of corrections and repairs or where loss of service to customers will result), temporary needed corrections and/or repairs may be made by the Association and the cost thereof shall be borne by the Owner.

When corrections and repairs of defects are made, the Owner shall warrant such corrections and repairs for 1 year after acceptance of the corrections and repairs by the Association, provided, that, the expiration of this repair warranty shall not be earlier than the 2-year warranty made on the Extension.

The Owner shall be responsible for any loss, damage, costs, and expenses incurred by the Association resulting from defects in the Work including actual damages, costs of materials and labor expended by the Association in making emergency corrections and/or repairs, costs of engineering, inspection, legal services, and Association's administrative overhead costs.

24. ACCEPTANCE OF EXTENSION

Final acceptance of the Extension ("final acceptance") and the eligibility of water service to Owner's project shall be subject to completion of the following by Owner:

- a. All work on the Extension has been completed in accordance with the terms and conditions of this Agreement.
- b. The Association has made final inspection and has approved the Extension as having been completed in accordance with the Plans and Specifications.
- c. All fees, charges and costs due hereunder have been fully paid, including a final acceptance deposit.
- d. All compaction reports have been filed and are complete.

- e. All pressure test(s) are satisfactory and complete.
- f. Water quality testing has been completed with results satisfactory to the Association.
- g. All easements and bill of sale have been approved by Association and have been duly executed and delivered to Association.
- h. The Owner's engineer has completed a Washington Dept. of Health Construction Completion Report and submitted to the Association.
- i. As-built locations and all appurtenances ("as-builts") have been delivered to Association via hard copy plans at the same scale and on the size Plan Sheets as the original drawings.
- j. Electronic design drawings delivered to the Association in both AutoCad and PDF format.
- k. Association locations of water system features, such as valves, hydrants, meter boxes, etc. have been verified by survey (at the discretion of the Association) and an electronic point plot has been provided to the Association.
- l. Association has been furnished with a Maintenance or Warranty Bond which shall continue in force for 2 years after title to the Extension has been received and accepted by the Association or 1 year after the final lift of asphalt is placed over the Extension or any part, whichever is longer. The bond shall be in a form approved by Association in an amount equal to 15 percent of the total construction costs incurred, and shall require the Owner and the bonding company to correct defects in workmanship and materials, including the final lift of asphalt and also to repair damage to the Extension caused by Owner or third parties, such as contractors or builders; provided, however, the first \$10,000 of such bond shall be in the form of an assigned savings account.
- m. A report of the status of the project pertaining to the status of all permits issued in relation to the work has been provided to and found acceptable by the Association.
- n. Written acceptance of restoration of public right of way and private property, if applicable, has been received.

- o. Owner is not in breach or violation of terms and conditions of any other contracts between Association and Owner, easements that benefit Association, and Association's rules and regulations.

Final acceptance of the Extension shall not occur until the Board of Trustees of the Association adopts a motion at a proper Board meeting expressly authorizing final acceptance of the Extension.

The warranty period set forth in Section 34 below shall commence upon final acceptance. Near the end of the warranty period the Association may reinspect the entire Extension. Following reinspection by the Association a written notification shall be sent to Owner that includes identification of corrections, Owner shall immediately make corrections, including, but not limited to repairing any damage to the Extension and any damage to other parts of the Association's facilities caused by the Owner, its agents and contractors and any third parties entering the property, except that this provision shall not apply to any damage caused by an intentional or negligent act of the Association. Upon request, the Association shall provide written verification that the corrective construction is complete. Any remaining deposit funds will be refunded and any shortages billed to and shall be paid by Owner after the corrective work is accepted by the Association.

25. FINAL ACCEPTANCE WHEN FINAL LIFT OF ASPHALT DEFERRED

In the event that Owner has completed all of the obligations under this Owner Extension Agreement except for the installation of the final lift of asphalt and making adjustments to the elevations of hydrants, valves, and other appurtenances to final grade, and Owner desires the property to be eligible for water service, then the Association may grant final acceptance subject to the terms and conditions listed below that are in addition to the terms and conditions listed in the subsection above.

- a. A written request is issued by the Owner to the Association for Final Acceptance prior to installation of final lift of asphalt.
- b. ATB/first lift of asphalt is installed.
- c. Association has received written notice from the governmental agency with jurisdiction over the project that it has received adequate assurance that all roads for which a Right-of-Way Permit has been issued will be completed in accordance with all applicable (city, county, and state) requirements which may include interim and final roadway striping and reflectors.

- d. Owner deposits with Association a cash deposit (US Dollars) as a completion guarantee for installation or grade adjustment of the following items:
- (1) Fire hydrants – \$500.00 each
 - (2) Fire hydrant guard posts – \$100.00 each
 - (3) Blue Hy-Lites reflector – \$50.00 each
 - (4) Valve box tops – \$100.00 each
 - (5) Asphalt patches around valve clusters – \$200.00 each
 - (6) Blow-off box in asphalt patch – \$200.00 each
 - (7) Vaults – Cost, determined case by case by Association
 - (8) Air vacuum devices – \$200.00 each
 - (9) Valve markers – \$50.00 each
 - (10) Asphalt patches in ROW – amount is determined by Association on a case by case basis
 - (11) Administrative cost – 15 percent of the total of the foregoing amounts.

Alternatively, Association may require a performance bond for 150% of the foregoing amounts.

- e. Within 30 days from the installation of the final lift of asphalt to the standards of the governmental body having jurisdiction over such work and adjustment of the elevation of all appurtenances to final asphalt grades as required by Association, Owner will notify Association and request inspection of the work. Upon acceptance of work the remaining unused amount of the cash deposit, if any, shall be refunded to the Owner if Owner is otherwise in compliance with the terms and conditions of this Agreement.
- f. If Owner does not complete the work satisfactorily within such 30-day period to Association's satisfaction, the work may be completed or corrections made by Association staff. Association labor and equipment costs based on Association's standard rates will be deducted from the deposit and the remaining balance, if any, shall be refunded to the Owner. If the deposit is inadequate the Owner will be billed for the shortfall and Owner shall pay such amount within 15 days.

26. MEMBERSHIP FEES AND WATER SERVICE

The owners of parcels that desire to obtain water service from the Association water system must apply for and be issued a membership in the Association and pay a meter installation fee as a condition to receiving water service. Memberships are subject to availability based on the Association's water rights capacity and Association's ability to otherwise provide water service. Membership fees include a share of the cost of Association facilities. Membership fees are adopted by the Association's Board of Trustees and may be revised from time to time without notice.

Payment of all membership fees attributable to a property owner's development are due at the time that a water meter is ordered for the parcels or the lots or buildings within a parcel. No water will be provided through the service meter setter until a meter is installed by the Association. The Association's membership fees are subject to change at any time at the discretion of the Board of Trustees of the Association. Changes in membership fees and all other fees and charges apply to the Owner's property. The Association may but shall have no obligation to notify Owner or any other party of any changes or intended changes to any of Association's rates and charges, including changes in membership fees.

At the time of final acceptance of under the terms of this Agreement, Association may record a document with King County Dept. of Records which imparts notice that Association's membership, meter installation and related fees are due and owing from the owners and prospective owners of the parcels, lots and structures within the Owner's property. Owner hereby consents to the recording of such notice against the Owner's property and all lots, parcels and structures within such property.

Water service will not be provided until final acceptance of the water system extension is accepted by Association and water meters and memberships in Association have been properly paid for and issued.

27. OWNER LIABILITY, INDEMNITY, DEFEND AND HOLD ASSOCIATION HARMLESS

Owner shall be responsible for all property, materials, equipment and personnel utilized in any manner in connection with the Work.

To the maximum extent permitted by law, the Owner shall defend, indemnify, and hold harmless the Association, its Board of Trustees, officers, employees, agents, contractors, consultants and the Association's engineer from any and all liabilities, claims, demands, fines, penalties, and judgments, made or entered against them or any of them, whatsoever for any injuries, loss, or damage, to

persons or property arising out of or in any way connected with this Agreement or any act or omission of Owner, its contractors, agents and consultants, other than that resulting solely from the negligence of the Association.

If a court of competent jurisdiction determines that this Agreement is subject to the provisions of RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of Owner and Association, Owner's liability hereunder shall be limited to the extent of Owner's negligence. Solely for purposes of this indemnification, Owner hereby waives its immunity under RCW Title 51 (State Industrial Insurance). The parties acknowledge and agree that such waiver has been mutually negotiated and bargained for.

The Owner shall assume the defense using counsel satisfactory to Association and shall bear all costs and expenses connected therewith of any claim, suit, recovery or judgment to which the foregoing indemnity applies that may be brought or obtained against the Association, its Board of Trustees, officers, employees, agents, contractors, consultants and engineers. In the event that any lien is placed upon the property of the Association or such other parties identified above, in connection with or as a result of such suits, the Owner shall at once cause the same to be discharged by giving bond or other security acceptable to Association.

28. OWNER'S INSURANCE

- a. Promptly upon Association's approval of this Agreement, the Owner shall purchase and maintain during the term hereof insurance policies meeting the requirements set forth herein. The Owner shall file with the Association either a certified copy of all insurance policies with endorsements attached, or a Certificate of Insurance with such endorsements attached as are necessary to comply with the requirements hereof. Failure of the Owner to fully comply with the requirements regarding insurance will be considered a material breach of this Agreement and shall be cause for termination of the Agreement and of any and all Association obligations hereunder.
- b. The Owner shall not begin work under the Agreement until all required insurance policies have been obtained and until such insurance has been approved by the Association. Said insurance shall provide coverage for the Owner, the Association and the Association's engineer. The coverage so provided shall protect against claims from bodily injuries, including accidental death, as well as claims for property damage which may arise from any act or omission of the Owner, its contractors, or by anyone directly or indirectly employed by either of them.

- c. The insurance policies shall specifically name the Association, its elected or appointed officials, officers, employees and its engineer as additional insureds. The insurance shall be maintained in full force and effect at the Owner's expense throughout the term of the Contract.
- d. The Association shall be given at least 45-days written notice of cancellation, nonrenewal, material reduction or modification of coverage. Such notice shall be by certified mail to the Association.
- e. The coverage provided by the Owner's insurance policies are to be primary to any insurance maintained by the Association. Any insurance that might cover this Agreement which is maintained by the Association shall be in excess of the Contractor's insurance and shall not contribute with the Contractor's insurance.
- f. The Owner's insurance policies shall protect each insured in the same manner as though a separate policy had been issued to each. The inclusion of more than one insured shall not affect the rights of any insured in respect to any claim, suit or judgment made or brought by or for any other Insured or by or for any employee of any other insured. However, this provision shall not increase the limits of the insurer's liability.
- h. The General Aggregate provision of the Owner's insurance policies shall be amended to show that the General Aggregate Limit of the policies applies separately to the Extension.
- i. The Owner's insurance policies shall not contain deductibles or self-insured retention in excess of \$10,000 unless approved by the Association.
- j. The Owner's insurance policies shall contain a provision that the Association has no obligation to report events which might give rise to a claim until a claim has been filed with the Association's Board of Trustees
- k. Type and Limits of Insurance Required:

Commercial General Liability

- \$1,000,000 each occurrence Bodily Injury and Property Damage liability (Coverage for removal of and disposal of asbestos containing materials, for Contracts dealing with asbestos containing materials.)
- \$2,000,000 annual aggregate

- Employees and volunteers as Additional Insured
- Premises and operations
- Broad form property damage including underground, explosion and collapse hazards (XCU)
- Builders All Risk – (applicable only if project includes equipment, facility, building, bridge, retaining wall, or tank extending 4 feet or more above adjacent grade; or any facility less than 4 feet above adjacent grade, designed for human access, and containing more than \$50,000 worth of electrical or mechanical equipment.)
- Products completed operations (through guaranty period)
- Blanket contractual
- Subcontractors
- Personal Injury with employee exclusion deleted
- Employers liability (Stop gap)

Automobile Liability

- \$1,000,000 per accident Bodily Injury and Property Damage Liability, including:
 - Any owned automobile
 - Hired automobiles
 - Non Owned automobile

Umbrella Liability

- \$2,000,000 per occurrence
- \$2,000,000 aggregate

1. As an alternative to the above indicated Commercial General Liability and Umbrella Liability insurance policies the Owner may provide the Association with an Owners and Contractors Protective (OCP) Policy with a limit of coverage of \$5,000,000.

- m. Providing of coverage in the stated amounts shall not be construed to relieve the Owner from liability in excess of such limits.
- n. The Owner shall have its insurance agent/representative complete an Insurance Coverage Questionnaire to be provided by Association and attach it to the certificate of insurance for Association's approval.
- o. The Owner shall maintain Workers Compensation insurance and/or Longshore and Harbor Workers insurance as required by state or federal statute for all of Owner's employees to be engaged in work on the project under this Agreement and, in case any such work is left to one or more Contractors, the Owner shall require the Contractors similarly to provide workers compensation insurance and/or Longshore and harbor workers insurance for all of their employees engaged in the Work.

In the event any class of employees engaged in the Work under this Agreement is not covered under Workers Compensation insurance or Longshore and Harbor Workers insurance as required by state and federal statute, the Owner shall maintain and cause each subcontractor to maintain Employers Liability insurance for limits of at least \$1,000,000 each employee for disease or accident, and shall furnish the Association with satisfactory evidence thereof.

- p. The contractual coverage of the Owner's policy shall be sufficiently broad enough to insure the provisions of the hold harmless and indemnification provisions of this Contract.

29. ATTORNEYS' FEES

In the event either party hereto commences legal action, including appeals, against the other to enforce the provisions of this Agreement or for damages for breach thereof, the prevailing party, as determined by the court, shall be entitled to recover its attorney fees and costs actually incurred from the other party. The amount incurred shall be presumed to be reasonable, but such presumption may be rebutted.

30. JURISDICTION AND VENUE

The parties agree that the Superior Court of the State of Washington shall have jurisdiction over any dispute that arises between them and that the venue shall be in King County.

31. NOTICES TO THE PARTIES

Any notice or other communication, given by a party to the other under this Contract, shall be considered properly served if personally delivered deposited in the U. S. Mail, postage prepaid in any post office and addressed to the Owner at the address set forth below.

32. ASSIGNMENT OF CONTRACT

The Owner shall not assign this Contract, or any part thereof, or any monies due, without the prior written consent of the Association and the Surety. Consent of the Surety will not be required if the Surety has waived its right to notice of assignment.

33. WARRANTIES OF OWNER

Owner warrants to Association, upon completion and final acceptance of the Work by resolution of the Association's Board of Trustees, as follows:

- a. The Owner has the right to construct and install the Extension in and upon the land area in which it is to be installed. The Owner owns without encumbrance the facilities and real property interests which constitute the Extension and that title to the Extension and all easements upon which the Extension is situated, shall be vested in Association upon final acceptance of this Agreement free and clear of encumbrances, liens or defects. The Owner will defend the title and right of possession of the Association against all third party claims.
- b. The Extension will be constructed in a good and workmanlike manner in accordance with the Plans and Specifications and this Agreement and is readily operable as an integral part of the Association's system.
- c. All copies of warranties or guarantees from the Owner's contractor, subcontractors and suppliers are fully enforceable. If such warranties extend beyond the warranty period as provided in this Agreement, Owner shall, upon request by Association, assign and deliver them to the Association.
- d. For a period of 2 years from the date of final acceptance by the Association of the Extension or 1 year after final lift of asphalt has been completed, whichever is longer, all parts of the Extension are guaranteed by the Owner to remain in good working order and condition pursuant to the terms hereof. Except in the event of emergencies in which case Owner

shall respond to a warranty claim as quickly as possible, the Owner shall start work to repair or replace, at his own expense, any defective Work discovered during the period of this guarantee within 7 days of mailing notice of discovery of a defect by Association. Repairs and replacement work shall be promptly completed in a good and workmanlike manner. Notwithstanding the foregoing, if Association repairs such defective work to abate an emergency or to continue or resume water service, Owner shall pay the cost thereof and such work by Association shall not be deemed to be a waiver of Association's rights hereunder. The warranty period for any corrective work may be extended for a reasonable time not to exceed one year to ensure that all corrections shall perform as required herein.

34. DURATION

This Agreement shall be valid and in force for 18 months from the date of approval by Association and for the term of any warranty period and indemnity obligations hereunder. If the Extension is not completed and Association has not issued final acceptance within such period, then the Owner's rights under this Agreement shall cease and the Agreement shall expire unless Association extends the term of the Agreement. The term of this Agreement may be extended for a period of up to 1 year by the Association's Board of Trustees upon application prior to the expiration of the term by Owner for good cause. The extension of the term hereof may only be granted by motion of Association's Board of Trustees and only if the Agreement has been actively prosecuted and all fees and charges due to Association have been paid.

This Agreement shall become null and void upon expiration or termination (except for warranty and indemnification obligations) and no further Work shall be performed on the Extension after that date except as expressly required herein relation to the restorative work. In order to perform any Work after expiration or termination of this Agreement, Owner shall submit to Association and obtain Association's approval of a new application for an Owner extension agreement for the Extension. Any such new agreement entered into between the Association and the Owner shall be subject to any new or amended resolutions, rates, rules and policies of Association which have taken effect since the execution of the original agreement.

35. MISCELLANEOUS

This Agreement shall be governed by and interpreted in accordance with the law of the State of Washington. This Agreement represents the entire agreement between the parties concerning the subject matter hereof. This agreement may only be amended by an addendum hereto, mutually executed and approved by motion or resolution of Association's Board of Trustees.

Executed at North Bend, WA, this _____ day of _____, 20____

OWNER: _____

By: _____

(Authorized Signature for Owner)

Address: _____

Accepted and Approved by the Board of Trustees by motion this

_____ day of _____, 20____

SALLAL WATER ASSOCIATION

By: _____

President

By: _____

Secretary

STANDARD FORMS

Form C1 - Performance Bond

Form C2 – Payment Bond

Form C3 – Bill of Sale

Bill of Sale – Exhibit A

Bill of Sale – Exhibit B

Form C4 – Water Extension Easement

Exhibit A – General Description of Property including existing and proposed right-of-way, easements and the proposed routing of any offsite portion of the Extension

Exhibit B – Legal Description to property

Form C5 – Maintenance Bond

Form C6 – Assignment of Funds