

AGREEMENT FOR THE WHOLESALE SUPPLY OF WATER

THIS AGREEMENT FOR WHOLESALE SUPPLY OF WATER (“Agreement”) is entered into by and between the City of North Bend, a municipal corporation of the state of Washington (the “City”), and Sallal Water Association, a member owned Washington non-profit corporation (“Sallal”), as of the date of last execution below.

I. RECITALS

1.1 The City supplies potable water to customers within its water service area (“WSA”) through a public water system. The City operates a production well (“Centennial Well”) on the City’s public works property located at 1155 E. North Bend Way, North Bend, WA (“Public Works Parcel”) for the purposes of providing potable water for customers and to serve anticipated growth demands of its WSA, both inside the City limits and within the Urban Growth Area (“UGA”).

1.2 The Centennial Well lies within the Snoqualmie River Basin which does not continuously meet minimum instream flows set forth in WAC 173-507. The Washington State Department of Ecology (“Ecology”) issued water right permit No. G1-26617(A) (“Permit”) for the Centennial Well which included a mitigation plan designed to ensure that the City meets the minimum instream flow requirements of the Permit. The Centennial Well has been operating to serve City customers since 2008. In order to provide mitigation required by the Permit, the City must contract for and develop supplies of mitigation water (“Mitigation Water”) for delivery to the Snoqualmie River in amounts required to offset the net stream depletion resulting from withdrawals of water under the Permit when flows are below minimum instream flow levels for control points on the Snoqualmie River. The primary source of Mitigation Water for the City as identified in the Permit is Seattle Public Utilities’ Hobo Springs source (“Hobo Springs Source”), which has been constructed and under contract with Seattle Public Utilities (“SPU”) since 2008 and provides Mitigation Water through the Boxley Creek Pipeline.

1.3 The Hobo Springs Source may not always be adequate to meet the total mitigation requirement of the Permit at all times of the year. In the Permit, the City’s mitigation plan proposed using a portion of Sallal’s water right as a backup mitigation source from the Rattlesnake Lake Wellfield when the mitigation capacity of the Hobo Springs Source is insufficient. The Permit also provides the City may seek Mitigation Water from other sources subject to additional approvals. In order to address the City’s potential deficiency in obtaining Mitigation Water from SPU, the City and Sallal have negotiated terms and conditions as set forth below for the City to acquire Mitigation Water from the Rattlesnake Lake Wellfield

1.4 Sallal’s WSA includes property inside and outside the City limits, and also inside and outside the UGA. The UGA is larger than the City Limits. The Permit authorizes the City to sell wholesale Municipal Water to Sallal so that Sallal may continue to serve the UGA.

1.5 Sallal desires to purchase wholesale Municipal Water from the City for domestic water supply purposes in order to ensure its ongoing ability to provide new water services in its WSA, including portions of its WSA within City Limits and UGA. The City desires to purchase Mitigation Water from Sallal for purposes of assuring a reliable source of Mitigation Water for operation of the Centennial Well.

1.6 The parties have negotiated terms for water supply as set forth herein in order to satisfy their respective water supply needs. The parties are willing to supply each other with wholesale water for the purposes and on the terms and conditions provided for herein, and each is willing to purchase wholesale water from the other for such purposes, terms and conditions.

Now, therefore, in consideration of the mutual covenants herein contained, the parties agree as follows.

II. DEFINITIONS

For purposes of this Agreement:

2.1 “Boxley Creek Intertie” shall mean the facilities to connect one of Sallal’s wells in its Rattlesnake Lake Wellfield to the City’s existing mitigation line from Hobo Springs to Boxley Creek, as further described in Section 4.2 of this Agreement and as shown on Exhibit A.

2.2 “North Bend Way Intertie” shall mean an intertie between the parties’ respective water systems located on City property at a point along East North Bend Way or as otherwise agreed in writing, and as further described in Section 5.3 of this Agreement and shown on Exhibit B.

2.3 “Mitigation Water” shall mean untreated ground water supplied by Sallal from a well within its Rattlesnake Lake Wellfield to the City through the Boxley Creek Intertie to Boxley Creek for mitigation purposes identified in the Permit.

2.4 “Municipal Water” shall mean water treated by the City for public consumption and also available for fire protection delivered by the City to Sallal through the North Bend Way Intertie.

2.5 “UGA/Annexation Area” shall mean that part of Sallal’s WSA that is inside the City’s current municipal boundary or the North Bend UGA.

III. INTERTIE MANAGEMENT COMMITTEE AND PLAN

3.1 Intertie Management Committee. Within two weeks of mutual execution of this Agreement, the parties shall each appoint one or more representatives to an Intertie Management Committee (“Intertie Committee”). The Intertie Committee shall be advisory in nature and shall have no legal authority to obligate the parties. The Intertie Committee members shall meet at least

once every six months and they may otherwise establish a meeting schedule and a system of governance.

3.2 Water Usage Plan. Intertie Committee members shall meet within thirty (30) days of its formation and commence development of a water usage plan (“Water Usage Plan”) to plan the usage of both Mitigation Water to be supplied to the City and Municipal Water to be supplied to Sallal within the UGA/Annexation Area. The Water Usage Plan may include such other provisions as the Intertie Committee deems appropriate. The parties shall use their best efforts to cause the Water Usage Plan to be in place prior to the provision of any water hereunder; provided, however, that the failure of the parties to implement the Water Usage Plan prior to the provision of any water hereunder shall not otherwise affect or excuse the parties’ rights and obligations hereunder. In the event of such failure, the terms of this Agreement shall remain in full effect, including but not limited to Sections IV and V. The Water Usage Plan shall be reviewed by the Intertie Committee at least once every year. Such review shall include a review of compliance with Permit requirements. The provisions of this Agreement shall prevail over the terms of the Water Usage Plan.

3.3 Coordination of Water Usage. A primary purpose of the Water Usage Plan shall be to forecast and coordinate the parties’ respective needs for water to maximize both parties’ capabilities to supply their respective customers and minimize the City’s mitigation requirements under the Permit. The Water Usage Plan shall contain guidelines for timing and amounts of withdrawals by both parties and be reviewed and adjusted from time to time as the Intertie Committee deems prudent.

3.4 Reporting. In order to implement best management practices associated with water use by the parties, each party shall at least annually report to the other its aggregate water system pumping and usage data.

IV. MITIGATION WATER SUPPLY AND PURCHASE

4.1 Mitigation Water Supply. In consideration of the benefits provided by this Agreement, Sallal shall sell Mitigation Water to the City subject to the limitations, terms and conditions set forth below.

4.1.1 After both interties described in this Agreement are complete and in operation, Sallal shall provide Mitigation Water from its Rattlesnake Lake Wellfield to the Boxley Creek Intertie subject to the following:

4.1.2 All Mitigation Water provided to the City shall be replaced by the City and returned to Sallal at the North Bend Way Intertie, gallon for gallon, instantaneously in time and at least the same flow rates and quantities except as Sallal may otherwise authorize in writing. Sallal may reduce deliveries of Mitigation Water to the extent that the City is unable to perform such replacement. Sallal may, as an option, acquire Municipal Water during any twelve month period in advance and anticipation of supplying the City with Mitigation Water or defer, reduce or

eliminate purchases of Municipal Water to replace Mitigation Water.

4.1.3 Mitigation Water provided to the City combined with Sallal’s operational water production needs shall not exceed the withdrawal quantities (both instantaneous and annual) authorized by Sallal’s water rights for its Rattlesnake Lake Wellfield.

4.1.4 Subject to other provisions in Section IV, the instantaneous quantity of such Mitigation Water shall be at the rate of (a) at least 450 gallons per minute (“GPM”) and not to exceed 865 GPM when the City is not simultaneously providing water to Sallal pursuant to Section V below, or (b) up to 1,000 GPM when the City is simultaneously providing water to Sallal pursuant to Section V below. The annual quantity of Mitigation Water provided by Sallal to the City shall not exceed 100 acre feet per year (“AFY”).

4.1.5. The supply of Mitigation Water shall be from ordinary pressure provided from a Sallal water main connected to one of its wells in the Rattlesnake Lake Wellfield at a level of service that reasonably approximates the level of service Sallal provides within its own distribution system subject to operational limits and capacities of Sallal’s wells, pumps and reservoirs except as follows:

4.1.5.1 In the event of a general emergency or water shortage affecting the entire Sallal Water Supply System, general restrictions placed upon Mitigation Water deliveries to the City may be imposed by Sallal and applied equally to Sallal’s distribution system and its retail customers. Sallal may develop and amend from time to time an emergency water shortage plan for such purpose. The City shall support all emergency measures that are implemented by Sallal.

4.1.5.2 In the event of localized emergency problems, Sallal may impose temporary, localized service interruptions for the duration of the emergency. A localized emergency shall consist of water system emergencies or the lawful demands of federal or state resource agencies to install equipment, make repairs and replacements, conduct investigations and inspections, or to perform other maintenance work on the Sallal Water Supply System. Except in cases of emergency, and in order that the City’s operations will not be unreasonably interrupted, Sallal shall give the City reasonable notice of any such interruption or reduction in deliveries, including the supporting rationale and probable duration. Sallal shall use reasonable efforts to minimize service interruptions resulting in reduced deliveries of Mitigation Water to the City.

4.1.5.3 Notwithstanding any other provision of this Agreement, the City acknowledges and agrees that Sallal may not have adequate daily capacity at all times of the year to meet North Bend’s Mitigation Water obligations under the Permit. Therefore, Sallal cannot and does not guarantee the quantity of Mitigation Water that may be available at its Rattlesnake Lake Wellfield when the City requires Mitigation Water from Sallal and any such failure shall not be a violation of this Agreement.

4.1.6 Sallal shall provide reasonable advance notice to the City of any proposed changes in operations or future improvements that would likely result in a reduction in the quantities of Mitigation Water available at Rattlesnake Lake Wellfield in order to allow the City

adequate time to propose operational changes and/or conservation measures. The City shall provide reasonable advance notice to Sallal of any known or reasonably foreseeable impending reduction in the quantities of Mitigation Water available from Hobo Springs in order to allow Sallal and the City adequate time to propose purchases and sales of water or other operational changes and conservation measures with a goal of minimizing the impact on the water users and ratepayers of both parties.

4.2 Work. The Boxley Creek Intertie shall be designed and constructed pursuant to sound engineering judgment and applicable law. The Boxley Creek Intertie shall be located within King County right of way. All work to design and install the Boxley Creek Intertie shall be performed by the City at its sole cost and expense by no later than **DATE**; provided that Sallal shall have the right to review all plans for the work and inspect the work. Upon completion, the Boxley Creek Intertie shall be owned, maintained, and operated by the City; however, Sallal may inspect and access the facilities and read the meter.

4.3 Ownership. Sallal shall own and operate all of its water system facilities on its side of the Boxley Creek Intertie and the City shall own and operate all of its water system facilities on its side of the Boxley Creek Intertie. The valve separating the two water systems shall be kept closed except pursuant to a mutually agreed upon maintenance and flushing schedule set forth in the Water Usage Plan established by the Intertie Committee and when Mitigation Water is needed as set forth herein.

4.4 Notice of Mitigation Water Withdrawals. The City shall give Sallal reasonable notice of its intent to withdraw Mitigation Water through the Boxley Creek Intertie. In the event of planned, non-emergency usage, the notice shall be not less than five business days in advance. In the event of emergency usage, the notice shall be not less than twenty-four hours in advance, if possible.

4.5 Conditions of Service Through the Boxley Creek Intertie. The following terms and conditions shall, in addition, apply to Mitigation Water supplied through the Boxley Creek Intertie.

4.5.1 The Mitigation Water supplied to the City shall not be altered or treated by Sallal in any way that would be inconsistent with the City's intended use of the water for direct discharge to Boxley Creek (which discharges into the South Fork of the Snoqualmie River) for instream flow augmentation.

4.5.2 Sallal shall give the City 120 days' notice of any substantial changes to water treatment, hydraulic gradient, or water pressure from its Rattlesnake Lake Wellfield. Sallal will send water quality testing information to the City as Sallal performs such testing.

4.5.3 The City, at its expense, shall install, own, and operate the City's meter at the Boxley Creek Intertie, including telemetry and SCADA needed to monitor Mitigation Water taken from Sallal's wells. The City's meter shall be calibrated at least once every three years at the City's expense by an independent representative of the meter manufacturer and shall be maintained to be accurate within the manufacturer specifications. Sallal shall have access to the

City's intertie meter for inspection and testing at Sallal's expense. Sallal shall read the City's intertie meter monthly and bill the City for water supplied according to the terms of this Agreement. Sallal may also measure deliveries of Mitigation Water through its own metering equipment. In the event that the parties' metering equipment provides different readings, in the absence of clear error on the part of one or both parties' equipment, the readings shall be averaged.

4.5.4 The parties shall each require that their respective water system operators work with the operators of the other water system to reasonably ensure that the purchase and sale of Mitigation Water and Municipal Water maximizes the availability of water for both Sallal customers and City customers.

V. MUNICIPAL WATER SUPPLY AND PURCHASE

5.1 Municipal Water Supply. In consideration of the benefits provided by this Agreement, the City shall sell Municipal Water to Sallal subject to the limitations, terms, and conditions set forth below.

5.1.1 Municipal Water Source and Quantity. In recognition of Sallal's right and obligation to provide water service to its customers within City boundaries and the City's adopted UGA, the City shall sell Municipal Water to Sallal in instantaneous and annual quantities reasonably determined by Sallal to meet such service needs and to replace Mitigation Water sold to the City at an instantaneous flow rate of up to 1,000 GPM. Municipal Water provided by the City to Sallal shall be supplied from the Centennial Well through the North Bend Way Intertie and shall at a minimum meet federal drinking water standards and contain a chlorine residual of **XXX**.

5.1.2 The supply of Municipal Water shall be subject to operational limits and capacities of the City's wells, pumps and reservoirs and at a level of service that reasonably approximates the level of service the City provides its own distribution system except as follows:

5.1.2.1 In the event of a general emergency or water shortage affecting the entire North Bend Water Supply System including a shortage of Mitigation Water, general restrictions placed upon Municipal Water deliveries to Sallal shall be determined by the City and applied equally to the City's distribution system, its retail customers and to Sallal's customers in the UGA. The procedures to be used in the event of a weather-related water shortage, or shortages caused by other factors, shall be as described in the City's Water Conservation Ordinance codified at North Bend Municipal Code ("NBMC") Chapter 13.50 as now in effect or as may be amended during the term of this Agreement. Successor contingency plans may be developed and implemented by the City subject to agreement by Sallal with regard to application to Sallal members. Sallal shall support reasonable emergency curtailment measures that are implemented by the City.

5.1.2.2 In the event of localized emergency problems, the City may impose localized service interruptions for the duration of the emergency. A localized emergency shall consist of system emergencies or the lawful demands of federal or state resource agencies, to install

equipment, make repairs and replacements, conduct investigations and inspections, or to perform other maintenance work on the North Bend Water Supply System. Except in cases of emergency, and in order that Sallal's operations will not be unreasonably interrupted, the City shall give Sallal reasonable notice of any such interruption or reduction, including the reasons for and the probable duration. The City shall use reasonable efforts to minimize service interruptions of Municipal Water to Sallal.

5.1.2.3 Notwithstanding any other provision of this Agreement, Sallal acknowledges and agrees that the City may not have adequate daily capacity at all times of the year to meet the City's full municipal water demand projections. Therefore, the City cannot and does not guarantee the quantity of Municipal Water that may be available for sale to Sallal in situations where the City is unable to fully obtain Mitigation Water from Sallal or other sources and any such failure shall not be a violation of this Agreement.

5.2 Improvements. The City reserves the right to operate and make improvements to its Water Supply System facilities for the benefit of all ratepayers including Sallal.

5.3 North Bend Way Intertie and Easement. The City shall grant Sallal an easement ("Easement") and access license at no charge for the term of this Agreement to install, operate, maintain, repair, and replace the North Bend Way Intertie generally consisting of a pump station, controls and underground piping located on City property at a location agreed upon in writing. The Easement shall be substantially in the form attached hereto as Exhibit C.

5.3.1 All work to design and install the North Bend Way Intertie (and possible piping relocation and future main to North Bend Way) shall be performed by Sallal at its sole cost and expense by no later than DATE; provided that the City shall have the right to review and approve all plans for the work and inspect the work and any modifications to ensure operational compatibilities. Upon completion, the North Bend Way Intertie shall be owned, maintained, and operated by Sallal but the City may access and inspect the facilities.

5.3.2 The North Bend Way Intertie must have appropriate backflow prevention in order to prevent cross-contamination between the two systems, including but not limited to Sallal constructing a back-flow preventor vault beyond the new meter. Sallal shall test and maintain the backflow assembly in accordance with NBMC Chapter 13.16 or other code provisions applicable at the time of such testing, and all other applicable state and federal laws and regulations.

5.3.3 If any North Bend Way Intertie facilities located on the City's property are abandoned by Sallal, Sallal shall, upon written demand by the City, promptly remove them at Sallal's sole cost and expense and repair the surface of the ground to as good or better condition than existed before the removal of the facilities.

5.4 Water Flow. Through the Intertie Committee, Sallal shall give the City written notice of its intent to commence any withdrawals of water from the North Bend Way Intertie. In

the event of planned, non-emergency usage, the notice shall be not less than five business days in advance. In the event of emergency usage, the notice shall be not less than twenty-four hours in advance, if possible. The City shall provide Sallal with flow up to the instantaneous rate identified above at the hydraulic gradient of XXXX. The parties shall use reasonable efforts to coordinate their respective withdrawal amounts, rates, and timing of pumping of the Centennial Well through the Intertie Committee.

5.5 Other Conditions of Service Through the North Bend Way Intertie. The following terms and conditions shall apply to the sale of Municipal Water from the City to Sallal:

5.5.1 Sallal, at its sole cost and expense, shall install, own, and operate the meter at the North Bend Way Intertie, including telemetry and SCADA. The meter shall be calibrated at least once every three years at Sallal's sole cost and expense by an independent representative of the meter manufacturer and shall be maintained to be accurate within the manufacturer's specification. The City shall have access to the intertie meter for reading, inspection, and testing at the City's expense. The City shall read the intertie meter monthly and bill Sallal for water supplied according to the terms of this Agreement.

VI. RATES AND CHARGES

6.1 Invoicing. Each party shall bill the other every two months for water supplied by invoice due and payable thirty (30) days after the date thereof. Each bill shall be comprised of the bi-monthly usage at the applicable water rate as set forth below. Delinquent and unpaid balances shall bear interest at the rate of 12 percent (12%) per annum.

6.2 Rates.

6.2.1 For a period of ten (10) years from the date of mutual execution of this Agreement, the wholesale rate applied to water sold to the City by Sallal through the Boxley Creek Intertie and the wholesale rate applied to water sold to Sallal by the City through the North Bend Way Intertie shall be the average cost of both parties' water production facilities to produce the water, which is hereby agreed to be \$.52 per 100 cubic feet. This cost shall be increased annually each January 1 starting in 2024 based on the Engineering News Record (ENR) construction cost index for Seattle. After the initial ten year period, the rate may be adjusted as set forth in the next section, but it shall remain equally applicable to water sales by either party unless the parties agree otherwise in writing.

6.2.2 The Intertie Committee may recommend to the parties that a mutually agreed upon adjustment to the rate be analyzed prior to the expiration of the ten-year period. After the initial ten (10) years, the parties shall re-examine the wholesale rate applied to water sold to the City by Sallal through the Boxley Creek Intertie and the wholesale rate applied to water sold to Sallal by the City through the North Bend Way Intertie, to ensure that the rate still accurately represents the cost of the respective parties to produce the water sold. The parties may revise the

water usage rate by mutual agreement or agree that the rate will be based upon a cost of service rate study; provided, however, if Sallal disputes the usage rate, it may prepare its own cost of service rate study and the City shall authorize Sallal's staff and rate consultant reasonable access to its records for such purpose. The parties shall then compare the rate studies and shall confer regarding the usage rate. If the parties are unable to agree on the usage rate, the dispute resolution provision set forth in Section 10.6 of this Agreement shall apply and be used to determine a mutually applicable and reasonable wholesale rate.

6.3 SPU Facility Charge. For any new or expanded connection to Sallal's water system in the UGA/Annexation Area after the effective date of this Agreement, Sallal shall also pay to the City the amount of SPU's wholesale regional facility charge then in effect and to the extent applicable under the City's contract with SPU based on the methodology imposed by SPU on the City for as long as it is applied to the City. This charge shall be imposed, collected, and remitted in the same manner as set forth in this Section VI.

6.4 Accounting Records. The City shall keep full and complete books of account for sale of Municipal Water described herein in the manner required by the State Auditor. Sallal shall keep full and complete books of account for sale of water described herein in compliance with generally accepted accounting standards as applied to non-profit corporations. Either party may request independent reviews or audits by in-house personnel or consultants at its own expense to review charges and credits made in accordance with or resulting from this Agreement.

VII. CONSERVATION OF WATER RESOURCE

7.1 Conservation of Water Resource. The parties agree that preservation of water, a limited natural resource, benefits both City customers and Sallal members, and that both parties' water systems are subject to the Water Use Efficiency ("WUE") rule at WAC 246-290-800 et seq., including the establishment of distribution system leakage standards, water use efficiency goals, and related requirements. Each party agrees to implement adopted conservation measures and WUE plans consistent with its authority as a municipal water supplier under RCW 90.03.386 and WAC 246-290-810 to govern its own water system operations and customer usage. Consistent with the WUE rule, the City adopted a WCO, codified at NBMC Chapter 13.50, applicable to all customers and residents of the City of North Bend.

7.2 Applicability of City Water Conservation Ordinance. Prior to sales of Mitigation Water and Municipal Water pursuant to this Agreement, the Sallal Board of Trustees shall adopt and leave in force during the term of this Agreement a resolution including material terms that are reasonably comparable to the WCO, which resolution shall apply to Sallal members who reside within the City limits and UGA.

VIII. GENERAL AND ADMINISTRATION

8.1 Authority. Each party warrants and represents to the other that the person signing this Agreement on the party's behalf has the requisite power and authority to do so and the party's respective governing bodies have duly authorized and approved this Agreement and that each has the right, title, power, and authority to carry out and perform the terms of this Agreement.

8.2 Eminent Domain/Service Area/Amendment of Planning Documents. In consideration of the mutual benefits provided by this Agreement and for the period set forth in Section 8.5 below, (a) the City hereby agrees to refrain from exercising its powers of eminent domain over any property of any kind, whether real, personal, tangible or intangible owned by Sallal; and (b) the parties shall not serve or attempt to serve water to any project, parcel, firm or person in the other parties' water service area except by mutual written consent. Each party shall amend its water system plan and other applicable planning documents to authorize the conveyances of water and interties described in this Agreement.

8.3 Franchise Agreement to Use City Right of Way. The provisions of any franchise agreement between Sallal and the City, if any, shall be subordinate to the provisions of this Agreement unless the parties agree otherwise in writing.

8.4 Force Majeure. In the event of loss, damage, or destruction of water system facilities described in this Agreement, the owner of the damaged facility shall use reasonable efforts to repair or replace it as soon as reasonably possible. A party's performance that is prevented by a natural catastrophe, act of terrorism, act of God, or similar unforeseen event not of the parties' own making, shall be excused until the event subsides and performance can be reasonably accomplished.

8.5 Term. This Agreement shall commence on the date of mutual execution hereof and shall remain in effect forty (40) years from the date of mutual execution of this Agreement.

8.6 Dispute Resolution. This Agreement shall be governed by the laws of the State of Washington without reference to its choice of law rules or conflicts of law provisions, unless limited or preempted by federal law. Any action relating to the Agreement shall be brought in King County Superior Court, or in the case of a federal cause of action or defense under federal law, in the United States District Court for the Western District of Washington at Seattle. The prevailing party shall be entitled to an award of its reasonable attorneys' fees, including expert witness costs and fees.

8.7 Remedies. The parties have the right to seek any and all of the following remedies, singly or in combination, in the event of breach of this Agreement:

8.7.1 Specific Performance. Each party shall be entitled to specific performance of each and every obligation of the other party under this Agreement without any requirement to prove or establish that such party does not have an adequate remedy at law. The parties hereby waive the requirement of any such proof and acknowledge that either party would not have an adequate remedy at law for a breach of this Agreement.

8.7.2 Injunction. Each party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of breach of this Agreement and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that such party does not have an adequate remedy at law. The parties hereby waive the requirement of any such proof and acknowledge that the other party would not have an adequate remedy at law for the commission of a material default under this Agreement.

8.7.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to commence an action for equitable or other relief, and/or proceed against the other party and any guarantor for all direct monetary damages, costs, and expenses arising from the breach and to recover all such damages, costs, and expenses, including reasonable attorneys' fees.

8.7.4 Damages. Except as otherwise provided or limited herein, this Agreement does not limit the right of either party to bring a legal action for damages and/or commence an action at law for monetary damages or impose liquidated damages as set forth below or seek other equitable relief.

8.7.5 Remedies Cumulative. The remedies provided in this Agreement are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Agreement shall be deemed to bar the City from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of either party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The parties specifically do not, by any provision of this Agreement, waive any right, immunity, limitation, or protection otherwise available to them, their officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

8.8 Binding on Successors/No Third-party Beneficiary/Entire Agreement. This Agreement shall inure to the benefit of and be binding upon successors of interest and assigns of the parties. Neither this Agreement nor obligations to perform hereunder may be assigned voluntarily by either party without the other party's written consent. The parties by this Agreement do not intend to confer, and do not confer, rights or benefits upon any third party. This Agreement represents the entire agreement of the parties concerning the subject matter.

8.9 Notice. All notices relating to this Agreement shall be sent to the following addresses, certified mail, return receipt requested, unless the other party is previously notified in writing of a different address:

To the City:
City Administrator

P.O. Box 896
North Bend, WA 98045

To Sallal:
General Manager
P.O. Box 378
North Bend, WA 98045

Provided, however, that monthly invoices and payments thereof may be delivered by regular mail.

8.10 Indemnification. Each party agrees to indemnify the other and hold it harmless from and against any loss, cost, damage, or expense of any kind and nature, including reasonable attorneys' fees and expert witness fees, arising out of injury to person or damage to property in any manner caused by the negligence, intentional act, or omission of the party in the performance of its work pursuant to or in connection with this Agreement.

8.11 No Joint Venture. This Agreement is intended to be and is a contract for the purchase and sale of a commodity and no provision hereof shall be construed to make the parties partners or joint ventures. Neither party is the agent of the other nor shall either party be held liable for the acts of the other on a theory of agency or any other representative capacity.

8.12 Mutually Dependent Provisions/Partial Invalidity. The obligation contained in this Agreement for one party to provide water service to the other is mutually dependent on the obligation and performance of the other party to provide water service. If any provision of this Agreement or its application is held by a court of competent jurisdiction to be illegal, invalid, or void, the validity of the remaining provisions shall not be affected; provided, however, if the invalid provision or its application is found to be substantive and to render performance of the remaining provisions infeasible or is found to seriously affect the consideration and is inseparably connected to the remainder of the Agreement (such as the obligation of one party to provide water service to the other), the entire Agreement shall be invalid.

8.13 Non-Exclusivity. The parties may pursue sources of water and water rights without restriction in order to supply their respective water supply needs from alternative sources.

8.14 City Public Utility Tax. The City's public utility tax applies to monthly base rates and water usage charges paid by customers located within the City. Sallal revenues derived from sales of Mitigation Water shall not be taxable under the City's public utility tax. For purposes of calculating Sallal's obligation to pay the tax, Sallal shall receive a credit against taxable revenues for sales of all Mitigation Water.

8.15 Non-Waiver. By executing and performing this Agreement, neither party waives any right available under any State or federal law pertaining to municipal powers of eminent domain and all defenses thereto including but not limited to defenses provided by and derived from

Last Updated 02/07/2023 after comments received at 2/6/23 Sallal Special Board Meeting; prior edits accepted for ease of review only; work in process and rights to further edit reserved; not binding until Sallal Board approval vote

7 USC 1926(b).

8.16 Membership. In consideration of the benefits provided by this Agreement, Sallal shall issue one membership to the City at no charge, in addition to the City’s existing membership resulting from City-owned meters, for use of Mitigation Water.

CITY OF NORTH BEND

SALLAL WATER ASSOCIATION

By: Rob McFarland, Mayor

By, _____, Director

Attest/Authenticated:

Attest/Authenticated:

Susie Oppedal, City Clerk

Last Updated 02/07/2023 after comments received at 2/6/23 Sallal Special Board Meeting; prior edits accepted for ease of review only; work in process and rights to further edit reserved; not binding until Sallal Board approval vote

EXHIBIT A:
Boxley Creek Intertie Drawing

Last Updated 02/07/2023 after comments received at 2/6/23 Sallal Special Board Meeting; prior edits accepted for ease of review only; work in process and rights to further edit reserved; not binding until Sallal Board approval vote

EXHIBIT B:
North Bend Way Intertie Drawing

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EXHIBIT C

After recording return to:
Sallal Water Association
P.O. Box 378
North Bend, WA 98045-0378

DOCUMENT TITLE	Easement for Water System Facilities
REFERENCE NO. OF DOCUMENTS ASSIGNED/ RELEASED	n/a
GRANTOR	City of North Bend
GRANTEE	Sallal Water Association
LEGAL DESCRIPTION (part)	
ASSESSOR'S PARCEL NO.	102308-9043

EASEMENT FOR WATER SYSTEM FACILITIES

1. Grant of Easement. City of North Bend (“Grantor”), a Washington municipal corporation, for valuable consideration, receipt of which is hereby acknowledged, hereby conveys and grants to Sallal Water Association (“Association”), a Washington non-profit corporation, a non-exclusive (except as provided herein) easement for the installation, operation, maintenance, replacement and repair of water system facilities under, across and along, in and over the property legally described on **Exhibit A** hereto, located in King County, Washington and known hereafter as “Easement Area.” The Easement Area is shown diagrammatically on **Exhibit B** attached hereto and incorporated herein by this reference.

2. Access. Grantor hereby grants to Association and its agents and contractors a license over driveways and parking areas within the parcel of real property described in Exhibit A for access to construct, maintain, operate, repair and replace Association’s water system facilities on the Easement. The license shall be for the duration of this easement.

3. Construction. When the work on the water system facilities commences, the work shall be performed continuously and be completed in a reasonable time and with reasonable dispatch, taking into account the nature of such work. Upon completion of the installation, repairs or replacements, the Association shall return the surface of the Easement Area and the surrounding property to a reasonable condition.

4. Purpose. The purpose of the easement is to allow the Association to use, maintain, operate, repair and replace water system lines and facilities including water mains, in the Easement Area to furnish water service to property within Association's water service area as it may be adjusted from time to time.

5. Grantor's Use of Easement. Grantor shall have the right to use the surface of the easement for all purposes so long as Grantor's use does not interfere with the installation, operation, repair or maintenance of the water system facilities. Grantor shall not dig, regrade the surface or perform other construction in the Easement Area that will disturb or endanger Association's water system facilities. Grantor shall not place a permanent building or structure on the Easement Area.

6. Duration. This easement shall remain in full force and effect for as long as Association operates the water system facilities on the Easement. This Easement is entered into in connection with that certain Agreement for the Wholesale Supply of Water (2023) of even date.

GRANTOR:

City of North Bend

By: _____

Title: _____

GRANTEE:

Sallal Water Association

By: _____

Title: _____

Last Updated 02/07/2023 after comments received at 2/6/23 Sallal Special Board Meeting; prior edits accepted for ease of review only; work in process and rights to further edit reserved; not binding until Sallal Board approval vote

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

THIS IS TO CERTIFY that on this ____ day of _____, 2023, before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, came _____, personally known or having presented satisfactory evidence to be the _____ of the City of North Bend the municipality that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipality for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument on behalf of said municipality.

WITNESS MY HAND and official seal the day and year in this certificate first above written.

(STAMP)

Print Name: _____
Notary Public in and for the State of Washington,
residing at _____
Expiration Date: _____

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EXHIBIT A
(Legal Description of easement)

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EXHIBIT B
(Graphical depiction of Easement Area)

