

SALLAL WATER ASSOCIATION

MINUTES FOR FEBRUARY 6, 2023, SPECIAL MEETING OF THE BOARD OF TRUSTEES (In Person)

Notice distributed to the Board members on January 26, 2023, and placed on the Sallal Website on February 3, 2023.

CALL TO ORDER (QUORUM PRESENT)

6:00PM

Board members present: Ms. Denise Smutny (President), Ms. Daylin Baker (Vice President), Ms. Joyce Hibma (Treasurer), Mr. Shawn McKone, Mr. Eric O'Brien, Mr. Larry Costello and Mr. Richard Formisano (Secretary).

Consultants present: Mr. Richard Jonson, Attorney, Mr. Mike Johnson, G&O

Employees present: Ms. Kristina Parker, Director of Finance & Administration

Guests present: Ms. Ann Bailey, Sallal & MAC member; Mr. Don Wise, Sallal & MAC member; Mr. Marcus Morrisette, Sallal member; Ms. Jean Buckner, Sallal Member (via telephone); and Mr. Michael Thomas, Sallal member (via telephone)

Ms. Smutny explained to the guests the purpose of the Special meeting and provided an overview for each agenda item. She explained that an Executive Session will be convened at the end of the meeting in order for the Board to discuss confidential matters. While not on the meeting agenda, she invited the guests to speak.

VISTOR COMMENTS (Limit time to 3 minutes)

- Ms. Ann Bailey: Was concerned that North Bend City Council has no intent of signing a Supply-Mitigation contract with Sallal and instead intends to pursue condemnation.
- Mr. Don Wise: Would like to see the latest draft of the Supply-Mitigation contract. Thought that North Bend City Council would not pursue buying or condemning Sallal if a supply-mitigation contract was agreed to.
- Michael Thomas: Was glad to see G&O cost estimate updates. He was concerned how Sallal would recover costs associated the National Guard project if it is returned to our service area. Was in agreement that the Board pushed back on rate parity and future merger. Expressed concern about possible cost increases and impacts to water availability to Sallal members due to a Water Agreement with North Bend. Advised the Board to proceed with caution while working with North Bend.
- Mr. Marcus Morrisette: Was concerned about Board of Trustees being transparent with the Supply-Mitigation contract. Would like to see the Board and staff do a better job getting meeting notices out in a timely manner. Recommended that staff reach out to members to provide their emails and sign up for email notification of meetings and other important topics. He would like to know when members will see the latest draft Supply-Mitigation contract. How long will members have to review the draft; and has the Board thought about when the members meetings will be held?

- Ms. Jean Buckner; Would like to see more transparency from the Board as previously voiced by Mr. Morrisette. Attended the February 6, 2023 Public Hearing for Senate Agriculture/Water/Natural Resources & Parks committee. Ms. Buckner is opposed to Senate Bill 5517 - 2023-24 and noted that of the comments received by the Senate committee were 580 against and 35 for the bill.

SPECIAL MEETING AGENDA:

1. Review Draft Water Supply/Mitigation Contract draft submitted by the Association negotiating team to City; consider and possibly vote on next steps with respect to this draft.

- Ms. Baker provided an update on the progress being made on the draft contract. We have been able to remove language by the City that required water rate parity and future merger in the current draft contract. Senator Mullet has helped ensure both parties are acting in good faith. If a contract is signed, Senator Mullet will put forth a bill in the legislature to provide funding to pay for the costs of implementing the contract. He has also drafted a bill to change a law that would make it easier for a City to condemn a non-profit water utility and provide funding for the City to acquire Sallal but is holding off on submitting it to the Legislature to see if the parties are making progress toward signing a supply-mitigation contract. If Senator Mullet believes we are not making adequate progress on the contract, he will proceed with the bill. Therefore, the goal for tonight's meeting is to review, comment and make changes to the draft contract that the Board will find generally acceptable. Once the Board indicates general acceptability, we will provide the draft to our members, the Mayor and Senator Mullet as evidence of Sallal's progress.
- Ms. Hibma provided additional information affecting Sallal. She commented on the live session of the February 6, 2023 Public Hearing for Senate Agriculture/Water/Natural Resources & Parks committee for Senate Bills 5517 - 2023-24 and 5622 - 2023-24. She commented on two agenda items that will be discussed by North Bend City Council at their February 7, 2023 meeting which are of interest to Sallal:
 - AB23-018: "The purpose of this bill is to provide an Amendment to the City's existing WSP in order for the City to expand its retail Water Service Area (WSA) to include a portion of the current City limits now served by Sallal Water Association (Sallal)."
 - AB23-019: Contract for appraisal services "In order to calculate a fair and reasonable offer amount, the City also needs an appraisal of Sallal's financial conditions. Sallal has other assets (loans, liabilities, accounts receivable, etc.) that also need to be considered." Raftelis is the appraisal company selected to perform the appraisal and specializes in the financial elements of a company, including water utility companies.

- Follow-up questions by members were discussed and answered. Some members expressed concern about being pushed into an unfavorable agreement with the City due to the City's threats of condemnation.
 - Remaining discussion for this agenda item was deferred to executive session.
2. **Update on recent meeting with DOH/DOE/UTRC:** Update provided by Mr. Johnson and Mr. Formisano.
- The meeting was called by Richard Rodriguez (DOH NWRO - Planning) and held on January 24, 2023, via videoconference. The purpose of the meeting was to discuss a water system plan amendment that will clarify and establish Sallal's ability to support future growth.
 - Mr. Johnson explained to DOH the efforts Sallal has undertaken to reassess production, consumption and DSL for 2019 - 2022. Sallal is still working on 2022 data. He mentioned the ~ 9% error in Well meter #1 and discussed growth projections used in the 2020 WSP. He stated that actual growth has outpaced those projections.
 - DOH discussed the need for a WSP amendment due to the capacity and forecast analysis in the 2020 WSP as no longer accurate as demonstrated by Sallal entering into an emergency interim moratorium. Therefore, a WSP amendment with updated capacity & forecast analyses is needed. DOH stated that the WSP amendment can include options to improve confidence in the analyses.
 - There was discussion about the need for a WSP amendment if Sallal and NB signed a supply-mitigation contract. DOH said if a contract was signed in the next few weeks, then an amendment wouldn't be needed. Otherwise include in the WSP amendment the supply-mitigation contract as an option to restore water capacity and meet forecasted growth as described in the current 2020 WSP.
 - DOH reinforced that Sallal is a valued customer, does an excellent job providing water service to its members and understood it was a difficult decision but the responsible decision to invoke an emergency interim moratorium.
 - G&O has submitted a proposal to develop a WSP amendment that will be reviewed at the February Board meeting.
 - Follow-up questions by members were discussed and answered. Some members again emphasized their concern about the proposed commitments of mitigation water to the City and water supply from the City do not seem viable. Lack of information is frustrating to members. Board member Costello advised that sufficient analysis has not yet been done to assess what the overall City/Sallal water demand is relative to available mitigation supplies in order to project what impacts there may be to Sallal members under terms of a Water Agreement with the City.
3. **Review of updated costs and analysis from G&O for connection to the City's water system and for the Association to serve the proposed National Guard project:** Update provided by Mr. Johnson.
- Costs for two key infrastructure projects were discussed.

- The supply water intertie (NB provides drinking water to Sallal) - estimated cost between \$1.2M to \$1.5M. It would be rated to deliver up to a 1000 gpm of drinking water from North Bend's distribution system. The higher cost includes placing the intertie components in a building for ease of operations, maintenance and repairs. Using a building to house the intertie is recommended.
- An additional reservoir located in the Edgewick area will also be needed if Sallal is serve the National Guard site at a cost of approximately \$1.3M. The reservoir would be capable of storing approximately 130,00 gallons of water.
- Ms. Baker repeated for the benefit of the members that Senator Mullet promised to obtain funds to pay for these infrastructure changes.
- Follow-up questions by members were discussed and answered. Including a reminder that the Board will perform a rate study to compare future rates for a no growth scenario and a growth scenario based on a Supply-Mitigation contract with NB that will be made available for member review.

4. **Consider possible actions if wholesale water is not available from the City; vote on possible engineering engagement to evaluate Board selected options.** The Board postponed discussion on agenda item 4 to the February 21, 2023 monthly Board meeting.

EXECUTIVE SESSION

Ms. Smutny called the Board into Executive Session at 7:06 pm for the purpose of conducting confidential discussions among themselves, counsel and engineer regarding the draft Water Supply-Mitigation Contract with North Bend including legal issues. All guests exited the meeting. Ms. Smutny closed the executive session and returned to regular session at 9:34 pm.

Upon exiting Executive Session, the following motions were made:

Motion 2023-007: Motion by Ms. Baker and seconded by Ms. Hibma to approve the draft water supply contract as modified during executive session as being generally acceptable to the Board with minor edits remaining and more negotiation to come, and allow for making this draft public and noted as "Work in Progress".

Motion 2023-008: A subsidiary motion by Mr. Costello and seconded by Mr. Formisano to amend Motion 2023-007 to strike the words "generally acceptable to the Board with minor edits". Motion did not carry: 2 voting for and 5 opposed (by Ms. Baker, Ms. Hibma, Mr. McKone, Mr. O'Brien and Ms. Smutny).

Voting on the **Motion 2023-007** then took place. Motion carried: 5 voting for and 2 opposed (by Mr. Costello and Mr. Formisano).

Motion 2023-009: Motion by Mr. Costello and seconded by Mr. Formisano to approve revising the draft contract to include Mr. Costello's written comments and edits as submitted in dropbox. He began reading his edits. Mr. O'Brien submitted a friendly amendment that was

accepted by Mr. Costello to incorporate all comments contained in Mr. Costello's draft. Motion did not carry: 2 voting for, 5 opposed (by Ms. Baker, Ms. Hibma, Mr. McKone, Mr. O'Brien and Ms. Smutny).

Motion 2023-010: Motion by Mr. Formisano and seconded by Mr. Costello to include in the meeting record Mr. Formisano's written edits and comments as submitted in dropbox and that his and Mr. Costello's edits and comments be made part of the meeting record. Motion passed unanimously. See Attachment A.

MOTION TO ADJOURN: Motion to adjourn meeting at 9:50 pm was made by Ms. Hibma and seconded by Mr. McKone. Motion carried.

Next scheduled meeting:

Board Meeting: Tuesday, February 21, 2023 at 6 pm

ATTACHMENT A

Mr. Formisano's and Mr. Costello's written comments and edits to the draft contract.

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”).

Commented [RF1]: NB also supplies water to properties in unincorporated King County outside the 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 ~~initial primary~~ source of Mitigation Water for the City 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.

Commented [L2]: Recommend to use terms from the ROE rather than create new ones.

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, ~~particularly in dry late summers after droughts that diminish SPU’s available water supply.~~ In the Permit, ~~Ecology identified North Bend’s mitigation plan proposed~~ that up to 35% of Sallal’s water right, 243.6 acre feet per year (AFY) is available as a backup mitigation source from the Rattlesnake Lake Wellfield ~~to supplement when the mitigation capacity of the Hobo Springs Source when that source is unavailable, insufficient.~~ The Permit also provides the City may seek Mitigation Water from other sources subject to additional approvals. ~~After approval of the Permit, however, the state Supreme Court issued a decision materially changing the legal standard for mitigating instream flow impacts. As a result of that Supreme Court decision, other potential Mitigation Water sources are not currently available to the City.~~ 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 backup Mitigation Water from the Rattlesnake Lake Wellfield.

Commented [L3]: This is not necessary to say. In fact, per the ROE, Hobo Springs water is at its lowest between November and March.

Commented [L4]: Ecology did not identify these values. The ROE states that these values were proposed by North Bend.

Commented [RF5]: What’s the purpose of including this quantity. It seems like a precursor for NB wanting more water.

Commented [RF6]: If we are going to the trouble of referencing the Permit, then we should say specifically include what sources are currently not available – Tolt pipeline, deep aquifer?

Commented [L7]: This seems unnecessary to say since Sallal does not have sufficient information to qualify what potential other sources may exist or not.

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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 surplus water ~~Mitigation Water~~ from Sallal for purposes of assuring a reliable supply of mitigation water for operation of ~~expanding its usable water supply from~~ 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 Sallal’s groundwater sources at its Rattlesnake Lake Wellfield west of Cedar Falls Road SE and Sallal’s distribution main from those wells to the City’s existing mitigation line from Hobo Springs to Boxley Creek, as further described in Section 4.8 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 5.5 of this Agreement and shown on Exhibit B.

2.3 “Mitigation Water” shall mean untreated ground water supplied by Sallal from its Rattlesnake Lake Wellfield (per Exhibit A) to the City through the Boxley Creek Intertie to Boxley Creek for mitigation purposes.

2.4 “Municipal Water” shall mean water treated by the City for public consumption and fire protection delivered by the City to Sallal through the North Bend Way Intertie- (per Exhibit B).

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

Commented [L8]: This is how it is characterized in the ROE – suggest to use the same terms. The ROE also requires that the SPU contract for mitigation water is for the entire quantity of mitigation supply needed for a worst case scenario over a 51 year projection to 2060+/- . There is no means for the City to expand its usable water supply from Centennial Well by obtaining backup, supplementary mitigation water from Sallal.

Commented [RF9]: Should include definitions for General Emergency, Localized emergency and Weather Related Emergency
Not convinced yet that this contract should include provisions for weather emergency

Commented [L10]: Need to provide Exhibit A. Agreement is not ready for approval without it.

Commented [L11]: Need to provide Exhibit B. Agreement is not ready for approval without it.

Commented [L12]: At present, the Sallal system is configured to provide mitigation water only from Well #2. By suggesting here (and in other sections of the agreement) that the other wells could also be utilized for this purpose needs to be examined to determine what additional modifications would be needed to accomplish that. Let’s not make the suggestion unless we are certain the arrangement is possible and how the work and costs would be setup and managed.

3.1 Intertie Management Committee. ~~Within two weeks of mutual execution of this Agreement, the~~ 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.

Commented [L13]: Since the committee has no authority, what is the process for making authoritative decisions concerning water exchanges between the parties? How will decisions be made if there is disagreement between the parties?

3.2 Water Usage Plan. Intertie Committee members shall meet within thirty (30) days ~~of its formation of mutual execution of this Agreement~~ 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 for potable purposes and fire protection 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.

Commented [L14]: Suggest to revisit this section. Details of the water usage plan should be defined prior to execution of the water agreement to assure that the mechanics and administration of the water exchange are understood and agreed upon. Currently, there are many unanswered questions about if and how the process will work.

Commented [RF15]: How does a lack of a Water Usage Plan allow the contract to be executed?

Commented [RF16]: What? Then, why have a water usage plan?

Commented [L17]: Since this provision appears to override committee recommendations, the terms expressed in this agreement need to be iron clad to assure that Sallal members are not negatively impacted by water shortages resulting from this agreement.

Commented [RF18]: This seems to be a fatal flaw to wait until after a contract is signed to figure this out. As a minimum a draft Water Usage Plan which includes a coordination of water usage needs to be written prior to contract signing to determine if there are any operating, monitoring and reporting requirements that are unacceptable.

If I remember correctly the Centennial Well water right permit was not approved until the operation, monitoring and reporting requirements were reviewed and approved by Ecology. Why should we expect any less.

Commented [RF19]: Let’s take a page out of the SPU -NB contract see Section VI.A.1. Every year each NB must forecast their yearly demand for the start of the ensuing year.

Let’s ask NB to provide a copy of what they give to SPU every year to see if this would satisfy what is needed for water usage. For our contract. Likewise it may help decide what Sallal must provide to NB for drinking water.

Commented [RF20]: What is meant by “such records”? Is it the water system schematics and maps mentioned in the sentence above? Why is access needed to overall pumping and usage data? Why not simply state that each party shall provide water system pumping and usage data to the other on a timetable (eg. annually, semi-annual, monthly, etc.

Actually why does the NB need access to Sallal’s overall pumping and usage data. Shouldn’t it only be consumption data for those members that the City provides sewer service? Also as written this implies the individual members outside of City limits

Commented [L21]: Individual account data should not be provided – only aggregate totals. All of this is also conditioned on development of a Water Usage Plan.

Commented [L22]: The water provided by Sallal to the City is characterized in the ROE as “surplus” water. Suggest to use the same language in the agreement.

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 Access to Books and Records. In order to implement best management practices associated with water use by the parties, it will be necessary for staff and consultants to have access to each utility’s water system schematics and maps. The parties agree to authorize and approve each respective party’s staff and ~~consultant~~ consultants access to such records and overall (aggregated) 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 surplus water ~~Mitigation Water~~ to the City for Mitigation Water subject to the limitations, terms and conditions set forth below.

4.1.1 -Whenever Mitigation Water is not available to the City from Hobo Springs or other sources of Mitigation Water authorized by the Permit to satisfy the City’s Mitigation

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Water obligations under the Permit and after both interties described in this Agreement are in operation, Sallal shall provide untreated well water from its Rattlesnake Lake Wellfield to the Boxley Creek Intertie. Sallal shall have no obligation to provide Mitigation Water at other times. ~~All Mitigation Water provided to the City shall be replaced by the City and returned to Sallal at the 436th Intertie at a time and instantaneous quantity determined by Sallal pursuant to Section V of this Agreement. The quantity of all Mitigation Water provided by Sallal to the City shall not exceed the quantity of prior purchases of Municipal Water by Sallal from the City measured on a cumulative or periodic basis as determined by Sallal, up to the annual quantity of 100AF. Alternatively, at Sallal's option, the quantity of Mitigation Water provided by Sallal to the City may be replaced gallon for gallon in the form of Municipal Water provided by the City to Sallal.~~ The parties may also forecast the City's need for Mitigation Water for a duration not to exceed twelve months and Sallal may acquire Municipal Water during such duration in anticipation of supplying Mitigation Water.

Commented [L23]: As noted above, we need to evaluate how this is being represented since the current configuration is setup for only Well #2 to provide the mitigation water.

Commented [L24]: Utilize the "banking" language previously established in August 2021 and September 2022. "Replacement" can be a discretionary provision at Sallal's choice (as provided in the proposed edit), but the "banking" methodology is superior and needs to be recognized as the default process.

4.1.2 ~~The instantaneous quantity of such Mitigation Water shall be at a rate determined by Sallal so as to not degrade or interrupt its water system operations. When the conditions allow, 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) 1,000 GPM when the City is simultaneously providing water to Sallal pursuant to Section V below.~~ The annual quantity of such Mitigation Water shall not exceed 100 AFY as measured by the City's meter, at times and amounts necessary to satisfy the City's mitigation requirements under the Permit.

Commented [RF25]: Not "shall", change to may.

Commented [RF26]: Why simultaneous? What happen to banking where we receive drinking water first before we deliver mitigation water? Why is 1000gpm needed? Remember that once we start pumping mitigation water the pump will run for at least 21 days. We shouldn't run pump 2 at that rate for that long without switching pumps. That in turn will require a at least a second well to be tied into the mitigation piping system. Did we include the cost of two pumps (one at a time) to provide mitigation water. We must reinstall the banking provisions

4.1.3. The supply of Mitigation Water shall be ~~from gravity 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:

Commented [L27]: This condition is not clear – how would it work? Provide a scenario demonstrating this condition based on current and projected operating parameters including City demand, Sallal demand, Hobo Springs water availability, and surplus water from Sallal that could be available for mitigation. When the City needs mitigation water from Sallal in order to pump water from Centennial Well, its ability to simultaneously provide water back to Sallal with a net benefit does not seem feasible (the revolving door). Recent ADD and MDD values the past two years have already demonstrated that the proposed mitigation instantaneous quantities are not viable. Add to that the additional demand from another 1120 ERUs (65 million gallons/year) from the UGA buildout and the results will likely be water shortages for Sallal members.

4.1.3.1 In the event of a general emergency or ~~weather-related 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.~~

Commented [L28]: Not clear why this needs to be said?

Commented [L29]: Same comment as noted above regarding current configuration for Well #2 only.

4.1.3.2 ~~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 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 and reduced deliveries of Mitigation Water to the City.~~

Commented [RF30]: What does this mean?

Commented [RF31]: To broad of a commitment.

Commented [L32]: Sallal members should not be subject to negative impacts to their supply of water due to mitigation water being provided to the City. This is a fundamental commitment that has been made to our members since the earliest days of these negotiations.

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Commented [RF33]: What does this mean?

4.1.3.3 ~~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.~~

Commented [L34]: This is a very good and important provision. Does it coordinate with all other provisions in the agreement such that there are no potential conflicts that can be construed by the City to negate what this provision is intended to address? A careful cross-check should be done to eliminate any potential conflicts.

4.1.4 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/or 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.~~

Commented [L35]: THIS NEEDS MORE WORK. Sallal must have operational control over the mitigation water provided including the valve separating our system from the City system. Water delivery through this intertie is ultimately controlled by way of the pumping (from Well #2 as currently envisioned and configured) which must be managed by Sallal – not the City.

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 owned by Sallal and 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.

Commented [RF36]: Let's rethink who should own this intertie. Maybe Sallal own the Mitigation intertie and the City should own the drinking water intertie

FYI: SPU – NB contract specifies that SPU owns the mitigation intertie (Hobo springs – Boxley creek)

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

Commented [RF37]: Why does the City provide not less than one day advance notice to Sallal for needing Mitigation water but per section 5.4 Water Flow. Through the Intertie Committee, Sallal shall give the City not less than four (4) weeks' written notice of its intent to commence any withdrawals of water from the North Bend Way Intertie. The notification requirements should be the same for normal planned usage of mitigation and drinking water.

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.

Commented [L38]: This should be reviewed with Denny and Tree to determine if this is a practical duration. It seems that a longer period would be doable given that a planned transition to Sallal as a supplement to Hobo Springs should be visible well in advance of the need becoming imminent.

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.

Commented [L39]: Verify with Denny and Tree if this is practical.

Commented [L40]: For consideration, changing the chlorinated "contact time" section of water main from Well #2 to unchlorinated mitigation water will require some amount of flushing and time to make the transition. We need to account for that with regard to timing for notices, and for any residual levels.

Prior versions of the contract terms placed the responsibility for abating chlorination on the City. Consider maintaining that language.

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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.

Commented [L41]: Sallal will need to have its own metering and SCADA monitoring to measure and control mitigation water being supplied to the City. Further, this supply will need to be balanced against Sallal's system demand to assure that water shortage to Sallal members is not created. The control scheme needed to manage this must be entirely within Sallal's purview.

Commented [RF42]: How about Sallal shall also receive daily SCADA readouts from the City's meter

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 potable water and fire water to Sallal in an amount reasonably determined by Sallal to meet such service needs and to replace Mitigation Water sold to the City in accordance with section 4.1 above at an instantaneous flow of water at the 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.

Commented [RF43]: Including the return of the National Guard to Sallal's service area and any new parcels that have been transferred to North Bend but water connection have not been made prior to this WSA becomes effective.

Commented [L44]: What is this value based on – how was it determined?

Commented [RF45]: What does this mean?

Commented [L46]: This is an impractical condition since there is no way to segregate Sallal's UGA customers from all other Sallal customers. As such, the entirety of Sallal's members will be negatively impacted by these arrangements. The City will not police the Sallal UGA customers, but it will regulate the water released to Sallal through the inter-tie. Sallal will be left with having to manage its system with a shortage of water. That will result in all Sallal members being subjected to water curtailments that they would not have otherwise experienced were it not for this agreement. Sallal's senior water rights will be subordinated to the City's junior water rights and mitigation requirements.

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 weather-related 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 XXX 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 shall be

THIS NEEDS MORE WORK. It may be possible to consider an arrangement where the City commits to supplying water at a rate determined from a time based average (several days) prior to the start of the water shortage event. Perhaps 10 days, 30 days, other? This would cap the water supply to Sallal at that point in time until the water shortage event is resolved, but would not force all Sallal members into drastic water curtailments they would not have otherwise experienced.

Commented [RF47]: What are these other factors?

Commented [RF48]: Disagree: The term of the agreement is 40 years. This says we are bound to whatever changes the City makes to their WCO/NBMC Ch 13.50

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developed and implemented by the City in consultation with Sallal. Sallal shall support all 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 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, ~~especially if Sallal is unable to fully supply Mitigation Water to the City under Section IV above.~~ Therefore, the City cannot and does not guarantee the quantity of Municipal Water that may be available for sale to Sallal in situations where ~~Sallal-the City~~ is unable to obtain a fully supply 100 ac-ft of Mitigation Water to the City and any such failure shall not be a violation of this Agreement.

Commented [L49]: Per the ROE, Sallal only provides "surplus" water for mitigation to "supplement" Hobo Springs. There is no expectation that Sallal is to fully supply Mitigation water to the City.

Commented [RF50]: This is a 40 year contract. Sallal is only guaranteeing 100 ac-ft. As originally written the City could withhold drinking water if Sallal can't provide more than 100ac-ft

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 consisting of, but not limited to, 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.

Commented [L51]: Generally OK, but since the facility has not yet been designed we don't want to box ourselves in if there are other features associated with the intertie.

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

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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 not less than four (4) weeks' written notice of its intent to commence any withdrawals of water from the North Bend Way Intertie. Prior to such notice, Sallal shall also provide a schedule for planned and/or estimated withdrawals of water. The City shall provide Sallal with flow up to the instantaneous rate identified above at the hydraulic gradient of XXXX provided by the City to its adjacent multifamily project customer. 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.

Commented [RF52]: Why would it need 4 weeks notice that we want drinking water.

Commented [RF53]: How long of time is this schedule for?

Commented [L54]: Suggest to make this a specific value otherwise the design parameters of the inter-tie and booster station may be too fluid, resulting in potential miss-operation of the intertie.

5.5 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:

Commented [L55]: Operating parameters and means for controlling water transfer through the intertie need to be defined by way of the Intertie Committee prior to execution of the agreement to assure that the basic control concepts are fleshed out. This would include development of the Exhibits A and B to depict the primary control elements and conceptual sequence of operations.

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.

Commented [RF56]: Maybe the City should own this Intertie

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 rate applied to water sold to the City by Sallal through the Boxley Creek Intertie and the 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 [] per hundred cubic feet meter for the year 2023. 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.

Commented [L57]: Recommend to utilize conclusions from the rate analysis of June 18, 2020 and related emails from the May/June 2020 timeline. That would peg pricing at 2020 levels to be somewhere in the vicinity of \$0.52/CCF (which is mid-way between the high cost (\$0.57) and low cost (\$0.47)).

Commented [L58]: Prior negotiations regarding rates and charges established CCF as the unit of measure.

Commented [RF59]: Why is ENR the appropriate cost index? How is Sallal thinking we are going to apply the wholesale water rate we pay to the City to our customers?

Commented [RF60]: Why is this needed if we continue to use a cost index to raise the rates?

Commented [RF61]: Strikes me as a easy way for the City to include capital improvement cost into the whole rate. We have 55% more pipe then the City but they have a larger DSL problem which exposes us a larger CIP budget to fix their problem resulting in a larger wholesale rate. I realize the simple answer is that we will pass the cost on to our members, that then begs the question will we do that for all members or only new members living in the UGA & City limits.

6.2.2 The Intertie Committee may recommend to the parties that a mutually

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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 rate applied to water sold to the City by Sallal through the Boxley Creek Intertie and the 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 reasonable 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.

Commented [RF62]: This is annual charge. This needs more thought and definition. I get new but what is meant by expanded connection in the UGA/Annexation area? How does this effect existing Sallal customers in the UGA/Annexation Area... it should not since these members are not needing SPU mitigation water. This facility charge should only be for new Sallal members in the UGA/Annexation area after a contract is signed. Need an example from NB to show how they currently collect this facility charge from their users and an example how the facility charge would be calculated and collected for Sallal members. It strikes me that the City should pay SPU and collect it from the appropriate Sallal members.

Commented [L63]: What is the amount of this charge and how is it calculated? The water rates and charges analysis from June 2020 did not consider any separate SPU Facility Charge as part of that analysis.

THIS SECTION MAY NEED MORE WORK. From the SPU and North Bend agreement, it appears that the FC is a recurring annual charge based on a 3 year rolling average of ERU quantity determined from the total amount of mitigation water purchased by the City. From the Exhibit C examples in that agreement, the FC can vary significantly from one year to the next. Let's be certain we are on the same page with the City with regard to this charge and how it is being addressed in this water supply agreement.

Commented [RF64]: Vehemently disagree! 1. the City has not provided us any proof that their WCO has reduced member usage so why should we agree to mandate their WCO on all our members. 2. the WCO uses the gauge at the Masonry Pool to implement levels of water conservation which is not an indicator for Sallal members, 3. the biggest conservation effort the City can undertake is to reduce their DSL under 10% per DOE regulation. Their 2021 Water Quality report states they won't achieve that until 2028. If we were going to mandate water conservation in the WSA it should be for both parties to meet the DOE 10% DSL requirement. There should be a penalty for any year the goal is not met. Eg. an additional fee for each gallon lost above the 10% DSL threshold. 4. Here is what I will agree to –
a. We will consider writing a water conservation policy after discussions with the MAC and our members at the annual meeting.
b. We will join either EPA Water Sense or Saving Water Partnership (need permission from SPU)
c. Would consider, after understanding the City's program and potential cost impacts, to partner with City on a rebate program for water saving devices. See NBMC 13.50.035 Water rebate program.
d. Would consider including parts of NBMC 13.50.080 New construction into our DEA for construction water.
e. Want the City to change NBMC 13.50.080 B.4 from "shall consider" to "shall install" vaults to collect rainwater for indoor and outdoor use for commercial projects. Examples of Outdoor use: drip irrigation, vehicle/building washing. Examples of Indoor use: flushing toilets & urinals, make-up water for heating & cooling systems.
4. As a precondition of signing this WSA the City must agree to remove all Sallal members in UGA and City limits from the WCO and further to remove the requirement for Sallal to supply month...

Commented [L65]: What does "reasonably comparable" mean and how is it determined?

THIS SECTION NEEDS MORE WORK. We need to include terms that obligate the City to improve its DSL to 10% or less. Otherwise, based on the current DSL of 20%, that amount of any mitigation water we provide will be wasted by the City. That could amount to 20AF if the full allotment of 100AF is used by the City.

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 Service Area/Amendment of Planning Documents. 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.

Commented [RF66]: This seems like the likely place to discuss transferring the National Guard from NB back to the Sallal.
Is it somewhere else?

8.3 Franchise Agreement to Use City Right of Way. ~~Nothing in this Agreement excuses Sallal from obtaining a franchise agreement with the City.~~

Commented [RF67]: What is the advantage of this paragraph to Sallal?

Formatted: Strikethrough

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.

Commented [RF68]: If we are going with a 40 year term, then I want the City to commit to using a new source(s) of mitigation water within 20 years of signing this WSA. That will allow the City to continue providing drinking water to Sallal in the quantities needed to support our members within the UGA & City limits.

a. We will need a hammer such as - If this third source(s) is not in place and functioning at the end of the 20year period then this contract will cease after 20 years, The City will transfer the quantity of drinking water required to sustain the Sallal members in the UGA & City limits from the Centennial well permit to Sallal.cannot be the Cascade Golf course water right The third source

b. We need a motivator such as this: Sallal shall sign a joint venture in developing and implementing this third water source.

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

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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 or Sallal 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

Last Updated 01/03/2023; edits provided by Sallal counsel on Jan. 19, 2023 (subject to full Sallal Board approval)

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 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.

Commented [RF69]: How about we just are relieved from paying a utility tax on mitigation water.

Commented [RJ70]: Is this what the City intended?

Commented [RJ71]: Is this what the City intended?

Commented [RF72]: I see no reason for giving the City a membership for this WSA

Commented [L73]: Why provide this? The City is already a member by virtue of the Cascade Golf course property. Suggest to delete granting a second membership.

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CITY OF NORTH BEND

SALLAL WATER ASSOCIATION

By: Rob McFarland, Mayor

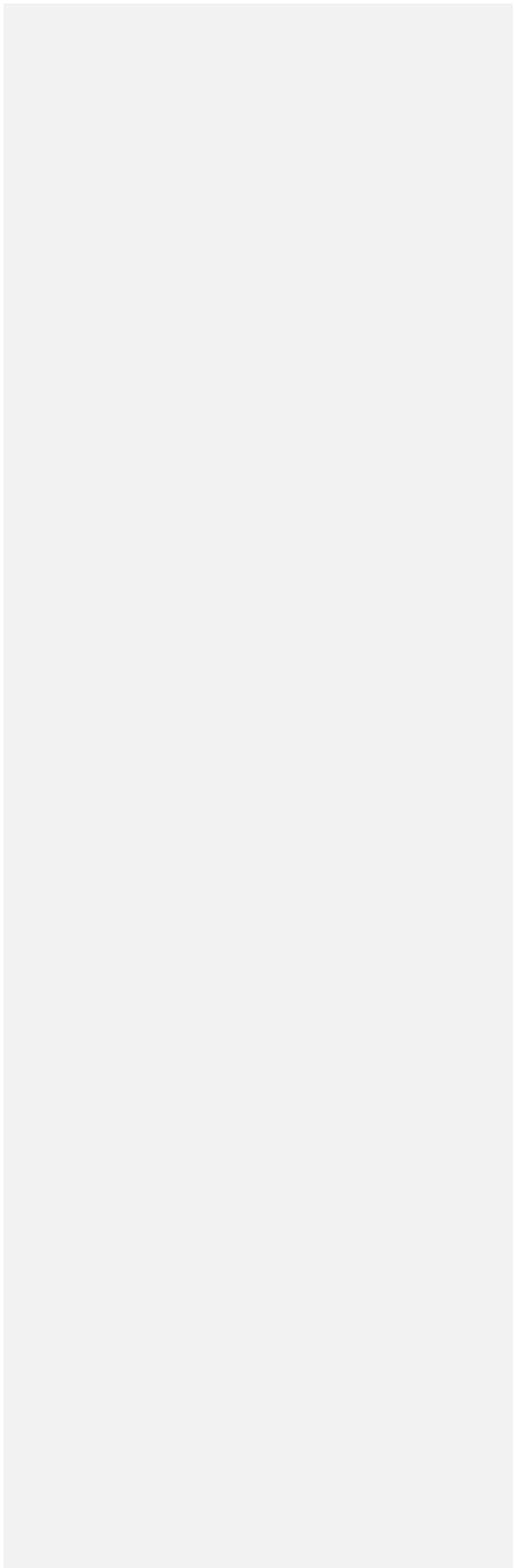
By, _____, Director

Attest/Authenticated:

Attest/Authenticated:

Susie Oppedal, City Clerk

DRAFT



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EXHIBIT A:
Boxley Creek Intertie Drawing

Commented [RF74]: Not willing to agree to this sign this contract until Exhibit A is provided and reviewed by the Board, Staff and G&O. The Intertie drawing should be a reference to a Conceptual Design approved by both parties. Expect conceptual design to represent 30% completion of a detailed design

Commented [L75]: Need to provide this Exhibit.

DRAFT

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EXHIBIT B:
North Bend Way Intertie Drawing

Commented [RF76]: Same comment may for Exhibit A

Commented [L77]: Need to provide this Exhibit

DRAFT

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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.

Commented [RF78]: Use of the same term confuses reader with Exhibit A Boxley Creek Intertie Drawing above. Can't we change this to EXHIBIT 1 Legal Description of Easement

2. Access. Grantor hereby grants to the Sallal Water 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.

Commented [RF79]: Use of the same term confuses reader with Exhibit B North Bend Way Intertie Drawing above. Can't we change this to EXHIBIT 2 Graphical depiction of Easement Area

Commented [RF80]: Change the term to Exhibit 1

Last Updated 01/03/2023; edits provided by Sallal counsel on Jan. 19, 2023 (subject to full Sallal Board approval)

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: _____

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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: _____

Last Updated 01/03/2023; edits provided by Sallal counsel on Jan. 19, 2023 (subject to full Sallal Board approval)

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 Sallal Water Association 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: _____

Last Updated 01/03/2023; edits provided by Sallal counsel on Jan. 19, 2023 (subject to full Sallal Board approval)

EXHIBIT A
(Legal Description of easement)

Commented [RF81]: Confusing can't we change the title to EXHIBIT 1

DRAFT

Last Updated 01/03/2023; edits provided by Sallal counsel on Jan. 19, 2023 (subject to full Sallal Board approval)

EXHIBIT B
(Graphical depiction of Easement Area)

Commented [RF82]: Can't we change this to EXHIBIT 2

DRAFT