

AGREEMENT FOR THE WHOLESALE SUPPLY OF WATER

THIS AGREEMENT FOR THE 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 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 for the purposes of providing potable water for customers and to serve anticipated growth demands inside the City limits and within the City’s Urban Growth Area.

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. As required by the Permit, the City must contract for and develop supplies of 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. One source of such water 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 which flows through a pipeline (“Boxley Creek Pipeline”) into Boxley Creek and ultimately into the Snoqualmie River.

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. An additional approved source of water that may be used for stream flow mitigation purposes as identified in the Permit is Sallal’s wellfield located adjacent to Rattlesnake Lake. The Permit also provides the City may seek water for stream flow mitigation purposes from other sources subject to additional approvals.

1.4 Sallal supplies potable water to customers within its water service area. Sallal’s water service area includes property inside and outside the City limits, and also inside and outside the City’s Urban Growth Area which is larger than the City limits. The Permit authorizes the City to sell wholesale water to Sallal so that Sallal may continue to serve its water service area that is within the City’s Urban Growth Area.

1.5 Sallal currently lacks sufficient water availability to serve new development within its water service area. In order to ensure sufficient water availability for its customers in the future, Sallal desires to purchase water on a wholesale basis from the City for domestic water supply purposes for service within that portion of Sallal's water service area that is within the City Limits or the City's Urban Growth Area. The City likewise desires to purchase water from Sallal for purposes of instream flow mitigation to assure continued 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, and on such 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 "AFY" means acre feet per year.

2.2 "Boxley Creek Intertie" shall mean the facilities to connect the Rattlesnake Lake Wellfield (defined below) to the City's existing mitigation water line from Hobo Springs to Boxley Creek. A predesign graphical depiction of the Boxley Creek Intertie is shown on Exhibit A.

2.3 "GPM" means gallons per minute.

2.4 "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. A map showing two possible alternative locations on City-owned property or right of way for the North Bend Way Intertie is shown on Exhibit B.

2.5 "Mitigation Water" shall mean untreated ground water supplied by Sallal from the Rattlesnake Lake Wellfield to the City through the Boxley Creek Intertie to Boxley Creek for stream flow mitigation purposes identified in the Permit.

2.6 "Municipal Water" shall mean water treated by the City for potable consumption and delivered by the City to Sallal through the North Bend Way Intertie.

2.7 "Rattlesnake Lake Wellfield" shall mean well nos. 1, 2 and 4 collectively (or, respectively "Well No. 1," "Well No. 2" and "Well No. 4") as identified in Sallal's records that are situated upon an easement granted by SPU within SPU's Cedar River Watershed in the vicinity of Rattlesnake Lake.

2.8 “UGA/Annexation Area” shall mean that part of Sallal’s water service area that is inside the City’s municipal boundary or the North Bend Urban Growth Area at any time during the term of this Agreement.

2.9 “WSA” or “water service area” shall mean a water service area shown in a party’s water system plan prepared in accordance with WAC 246-290-100 as it may be adjusted from time to time.

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 under this Agreement of both Mitigation Water to be supplied to the City and Municipal Water to be supplied to Sallal for use 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, this Agreement shall remain in full force and effect. 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 and Access to Records. In order to implement best management practices associated with water use by the parties as set forth in this Agreement, each party shall provide the other a copy of its water system plan and water rate studies. Each party shall provide the other with such records during meetings of the Intertie Committee and otherwise as reasonably required to implement this Agreement. 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 up to and not more than 100 AFY of Mitigation Water to the City subject to the following terms, conditions and limitations:

4.1.1 Mitigation Water shall not be available until both the Boxley Creek Intertie and North Bend Way Intertie are complete and in operation.

4.1.2 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 in the amounts of 696 AFY and 1,691 GPM. In order that Sallal's water rights are not exceeded:

(a) The quantity of all Mitigation Water provided to or reserved for use by the City shall be replaced with Municipal Water at the North Bend Way Intertie pursuant to the subsections that follow but no later than the end of the same calendar year in which Mitigation Water is provided or reserved for City use. The Mitigation Water shall be provided or reserved not later than the end of each calendar year during the term of this Agreement;

(b) No later than January 30 of each calendar year that this Agreement is in effect, the Intertie Committee shall forecast the City's need for up to and including 100 AFY of Mitigation Water subject to reasonable adjustment during the course of the year;

(c) Unless doing so would violate Sallal's Rattlesnake Lake Wellfield water right or other law, Sallal shall reserve water rights capacity during each such calendar year in order to reasonably ensure that the forecasted quantity of Mitigation Water is available for use by the City during each such calendar year; and

(d) In addition to the Municipal Water supply provided to Sallal under Article V of this Agreement and in replacing Mitigation Water actually provided to the City, Sallal may utilize and consume Municipal Water in the amount forecasted or reserved pursuant to the above subsections in advance of or subsequent to providing Mitigation Water.

4.1.3 The instantaneous quantity of Mitigation Water shall be at the rate requested by the City up to the following maximum amounts:

(a) Maximum Pump Capacity: 700 GPM when only Well No. 2 in the Rattlesnake Lake Wellfield is connected to the Boxley Creek Intertie; 1,000 GPM when Well No. 1 is also connected.

(b) The maximum daily instantaneous GPM amount of available Mitigation Water shall be further limited by the following formula which Sallal shall calculate and promptly provide to the City each 24-hour period commencing at 8:00 a.m. when Mitigation Water is requested: Sallal's total existing instantaneous water rights of 1,691 GPM minus Sallal's total

instantaneous peak day demand from all of Sallal's members as estimated by Sallal for such 24-hour period.

4.1.4 The level of reliability of Mitigation Water shall reasonably approximate that which Sallal provides within its own distribution system subject to emergencies as set forth below and the understanding that water is transmitted directly from wellhead(s).

4.1.4.1 In the event of a general emergency or water shortage affecting the entire Sallal Water Supply System, Sallal may establish water use restrictions intended to address such emergency. For purposes of this Section, a water shortage shall mean a physical or legal limitation on Sallal's ability to withdraw water from its wells at the Rattlesnake Lake Wellfield. Any such restrictions shall be applied equally to Sallal's distribution system and its customers, including the sale of Mitigation Water under this Agreement. Sallal may develop and amend from time to time an emergency water shortage plan for such purpose. To the extent such plan applies to the City or to the purchase and sale of Mitigation Water, Sallal shall provide a written copy to the City at least thirty (30) days prior to implementation of such plan or any amendment thereto. The City shall support reasonable emergency curtailment measures included in such plan.

4.1.4.2 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 to deliveries of Mitigation Water to the City.

4.2 Notice of Changes. 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.

4.3 Work.

4.3.1 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. The Boxley Creek Intertie shall be designed and installed by the City at its sole cost and expense by June 30, 2025, or other mutually agreed date ("City Completion Date"). 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.

4.3.2 Sallal shall (a) design and construct modifications to Well No. 2 to install a variable speed drive and controls to allow Well No. 2 to supply a range of pumping to the Boxley Creek Intertie in quantities between 100 GPM and 1,000 GPM, and (b) use reasonable efforts to connect Well No. 1 to the system of mains that connect to the Boxley Creek Intertie. The modifications described in this Section 4.3.2 shall be completed by June 30, 2025, or other mutually agreed date. The City shall reimburse Sallal for its actual costs of design and construction of the modifications described in this Section 4.3.2 promptly after Sallal provides (a) receipts or other written proof of such actual costs and (b) certification that Sallal paid prevailing wages for the construction of such modifications pursuant to RCW 39.12.

4.4 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 supplied under this Agreement.

4.5 Notice of Mitigation Water Withdrawals. The City shall give Sallal reasonable notice of its intent to commence withdrawals of Mitigation Water through the Boxley Creek Intertie. In the event of planned, non-emergency usage, the notice shall be not less than three business days in advance. In the event of emergency usage, the notice shall be as prompt as possible under the exigent circumstances at the time. When periods of routine or daily needs for Mitigation Water commences, the parties may mutually agree on alternate notice.

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

4.6.1 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.

4.6.2 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.

4.6.3 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.

4.6.4 Sallal may require the Boxley Creek Intertie to have appropriate backflow prevention in order to prevent cross-contamination between the two systems, including but not limited to the City constructing a back-flow preventor vault beyond the new meter. The City shall test and maintain the backflow assembly in accordance with North Bend Municipal Code ("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.

4.6.5 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 as follows:

5.1.1 Municipal Water provided to Sallal combined with the City's operational water production needs shall not exceed the withdrawal quantities (both annual and instantaneous) authorized by the Permit in the amounts of 3,094 AFY and 2,646 GPM, or violate the mitigation terms of the Permit.

5.1.2 Municipal Water Source and Quantity. In recognition of Sallal's right and obligation to provide water service within that portion of it WSA that is within the UGA/Annexation Area and subject to Section 5.1.1, the City shall provide Municipal Water to Sallal in instantaneous and annual quantities reasonably determined by Sallal to meet such service needs and to replace Mitigation Water supplied to the City as set forth in Article IV of this Agreement. Municipal Water shall not be available until both the Boxley Creek Intertie and North Bend Way Intertie are complete and in operation.

5.1.3 Municipal Water shall be supplied through the North Bend Way Intertie at an instantaneous flow rate of up to 1,000 GPM. If growth in the UGA/Annexation Area results in increased requirements for instantaneous flows from the North Bend Way Intertie, then the Intertie Committee, or other representatives of the parties as may be necessary, shall confer and cooperate on upsizing the pump to a mutually agreeable size. In such case, the City shall provide receipts or other written proof of its actual costs of such upsizing, and Sallal shall reimburse the City for such actual costs of upsizing.

5.1.4 Municipal Water provided by the City to Sallal shall be supplied in the same manner as the City provides water to its customers and shall meet federal and State of Washington

drinking water standards.

5.1.5 The parties shall use reasonable efforts to forecast and plan withdrawals of Municipal Water through the Intertie Committee.

5.1.6 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:

5.1.6.1 In the event of a general emergency or water shortage affecting the entire North Bend Water Supply System including a shortage of Municipal 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/Annexation Area. 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 ("WCO") codified at NBMC Chapter 13.50 as now in effect or as may be amended during the term of this Agreement. To the extent that the City Council amends the WCO during the term of this Agreement and any such amendment applies to Sallal's purchase of Municipal Water, the City shall provide a written copy of the proposed amendment to Sallal at least thirty (30) days prior to final adoption of such amendment. Sallal shall support reasonable emergency curtailment measures that are implemented by the City.

5.1.6.2 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 to deliveries of Municipal Water to Sallal.

5.2 Improvements. The City reserves the right to operate and make improvements to its water supply and distribution system 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 approximately depicted on Exhibit B and agreed upon in writing.

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 June 30, 2025, or other mutually agreed upon date ("Sallal Completion Date"). 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 and read the meter.

5.3.2 The City may require that the North Bend Way Intertie 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 City property or City right-of-way 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 Notice of Municipal Water Withdrawals. Sallal shall give the City reasonable notice of its intent to commence withdrawals of Municipal Water through the North Bend Way Intertie. In the event of planned, non-emergency usage, the notice shall be not less than three business days in advance. In the event of emergency usage, the notice shall be as prompt as possible under the exigent circumstances at the time. When periods of routine or daily needs for Municipal Water commences, the parties may mutually agree on alternate notice.

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. The City may also measure deliveries of Municipal 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.

VI. RATES AND CHARGES

6.1 Mitigation and Municipal Water Exchange. There shall be no charge to either party to the extent that Mitigation Water is supplied and replenished (including advancements) with like quantities of Municipal Water within the same calendar year or such other period as the parties may mutually agree. To the extent that Mitigation Water is reserved for City use pursuant to Article IV of this Agreement but is not utilized by the City, Sallal shall not be charged. With respect to purchases by Sallal of Municipal Water in excess of annual quantities of Mitigation

Water supplied to or reserved for the City, the terms below shall apply.

6.2 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.

6.3 Rates for Additional Supply. For the supply of water other than as set forth in Section 6.1, each party may charge the other a wholesale rate for such water based on quantity usage and their respective actual cost to produce and transmit such water. Such actual costs shall consist of a reasonable allocation of amounts incurred for operations, repairs, replacements, and maintenance costs attributable to that portion of the selling party's water system facilities used to produce and transmit water to the other. Each party shall have the right to review and audit the other's calculations and backup materials used to generate the wholesale rate.

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 Mitigation 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. Consistent with the WUE rule, the City Council adopted a WCO, codified at NBMC Chapter 13.50. Sallal shall not oppose or object to the application of the WCO and future amendments to the WCO, if any, within the city limits of the City of North Bend as the city limits may exist at any time during the term of this Agreement, including to customers of Sallal's water system residing within the city limits at any time during the term of this Agreement.

7.2 Applicability of City Water Conservation Ordinance. Within 180 days of mutual execution of this Agreement, the Sallal Board of Trustees shall adopt a water conservation policy including material terms that are substantially similar to the WCO presently in effect. Such policy shall remain in place for the duration of this Agreement but may be amended from time to time in the reasonable discretion of Sallal's Board of Trustees.

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. Neither party shall serve or attempt to serve water to any project, parcel, firm, or person in the other party's water service area except by mutual written consent or as may otherwise be authorized by the King County Utilities Technical Review Committee ("UTRC") or other agency with jurisdiction. Each party shall seek to amend its water system plan and other applicable planning documents as necessary 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 40 years from the date of mutual execution of this Agreement.

8.6 Dispute Resolution. Any dispute arising out of the terms and conditions of this Agreement, except for a billing dispute, shall be first submitted for non-binding mediation to a mediator agreed to by the parties. If mediation is unsuccessful, the parties may exercise any applicable judicial remedies. 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 either party 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 hand-delivered to the then-current physical address of the receiving party or 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
920 SE Cedar Falls Way
North Bend, WA 98045

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

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

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 materially 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 retail customers located within the City. Sallal revenues derived from wholesale sales of Mitigation Water shall not be taxable under the City's public utility tax.

8.15 Non-Waiver. By executing and performing this Agreement, neither party waives any right available at any time during the term of this Agreement under any State or federal law pertaining to municipal powers of eminent domain or other municipal powers nor any 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.

8.17 Exhibits. Exhibits A and B attached hereto are incorporated by reference as if set forth in full herein.

CITY OF NORTH BEND

SALLAL WATER ASSOCIATION

By: Rob McFarland, Mayor

By: _____, President

Attest/Authenticated:

Attest/Authenticated:

Susie Oppedal, City Clerk

Secretary

EXHIBIT A: Boxley Creek Intertie Drawing

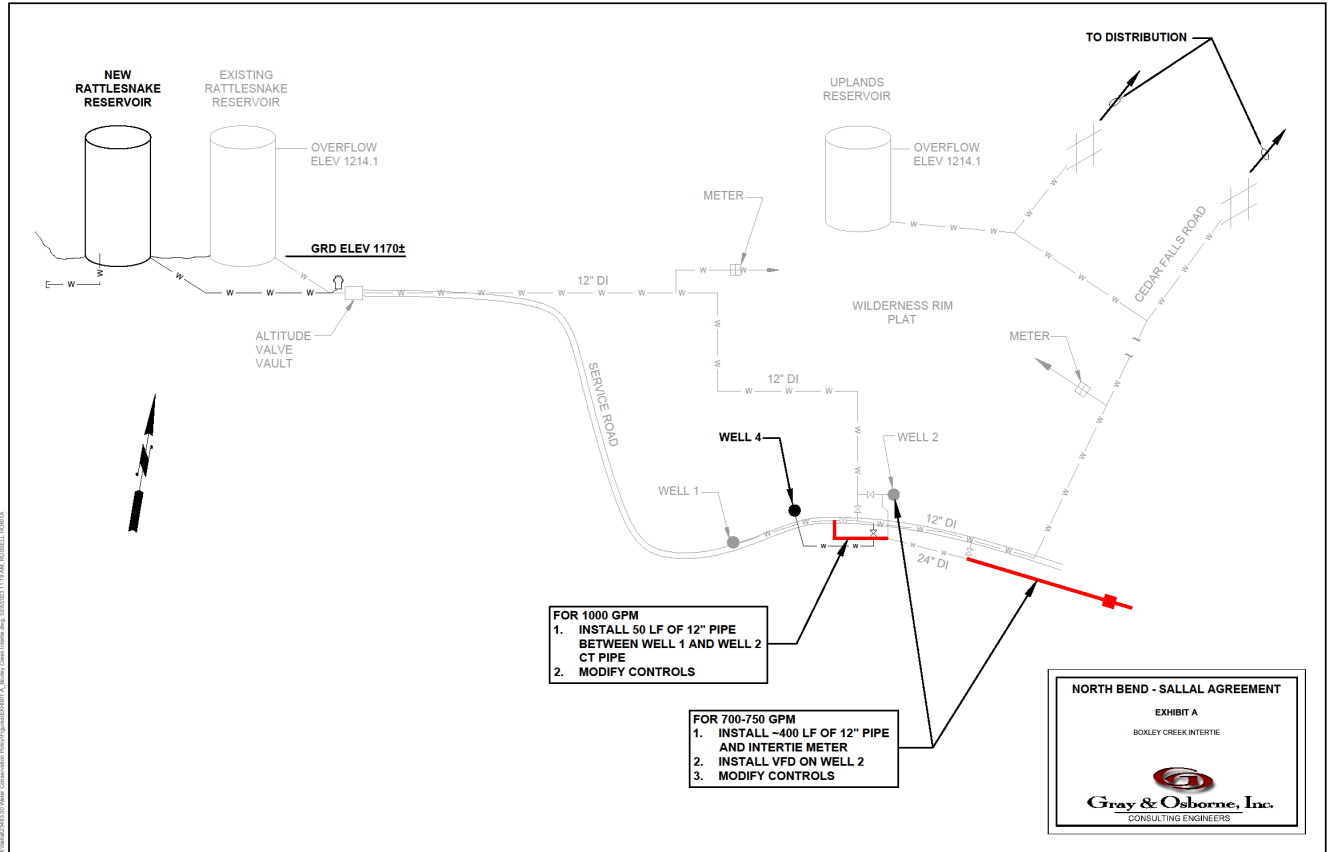


EXHIBIT B:
North Bend Way Intertie Drawing

