



Office of the Mayor

July 26, 2022

Daylin Baker
Board of Directors, Sallal Water Association
44021 SE Tanner Rd, Ste. E
North Bend WA 98045

Re: Water Supply Agreement Negotiations – Sallal’s Response

Dear Daylin:

Thank you for Sallal’s e-mail dated June 8, 2022, in response to the City’s latest water supply contract proposal. My team and I do recognize the time and effort that you and the other Sallal representatives expended to consider it. As you know, the City’s proposal provides for Sallal to sell mitigation water to the City, and obligates the City to sell municipal water to Sallal in order to replace that mitigation water - an arrangement that, once implemented, will increase the water supply capacity of both communities to serve new customers.

I’m sure it comes as no surprise to you that the City is deeply disappointed in the lack of a substantive response from Sallal. The City and Sallal have been discussing a reciprocal water supply agreement for many years, including regular group meetings and other communications over the past two years. Beginning in February 2021, the City has in fact made several proposals to Sallal without yet receiving track-changed or other substantive response. At no point prior to your June 8 e-mail had Sallal raised the notion of separate contracts, and correctly so – we’ve both at all times understood that the reciprocal supplies of water were linked.

As always, the City remains ready to supply municipal water to Sallal in exchange for Sallal’s equal commitment to supply mitigation water to North Bend. In the absence of Sallal’s agreement to execute a water supply agreement that benefits the City, however, the City has no incentive or basis to unilaterally supply additional water to Sallal.

The City’s most recent proposal squarely provides for that mutual benefit, in the same manner as all of the prior City proposals offered under my Administration. Prior to drafting our last proposal, Sallal had indicated that it could not guarantee the sale of any particular volume of mitigation water at any particular time. Sallal specifically suggested that the City draft the contract to include “guarantee” language similar to the language in the City’s existing agreement with Seattle Public Utilities (“SPU”) under which the City now obtains mitigation water. The City expressly adopted Sallal’s suggestion in that regard, and the

City's proposal remains consistent with other regional municipal supply contracts approved by DOH and Ecology without a guarantee. While no guarantee is required from Sallal, reciprocal sales that benefit both parties are included.

As municipal water suppliers, North Bend and Sallal each have a legal "duty to serve" under RCW 43.20.260 within our retail water service areas, and to do so consistent with adopted land use plans and development regulations. Sallal has recently announced a potentially indefinite moratorium on new water connections. This moratorium makes it impossible for Sallal to satisfy its statutory duty to serve numerous properties within the City of North Bend (as well as other properties outside of the City but within Sallal's water service area), thereby failing to comply with the City's adopted land use plans and development regulations. Execution and implementation of the City's most recent contract proposal would wholly resolve Sallal's deficiency in that regard, and enable us both to fully satisfy our statutory duty. We do not understand how Sallal can reject an offer from the City that would be cost effective, mutually benefit both parties, and assist multiple landowners by fulfilling both the City and Sallal's legal duty to serve water within their service areas.

The City's most recent proposal also ensures that the City is obligated to sell municipal water to Sallal as needed to replace any mitigation water sold by Sallal to the City. We are puzzled by Sallal's response that the City's proposal was "unworkable" because the contract terms for the reciprocal water supplies are "much different." Section III of the City's proposal sets forth Sallal's obligation to sell mitigation water to the City and Section IV sets forth the City's reciprocal obligation to sell municipal water to Sallal –the reciprocal sale provisions are almost identical.

Sallal's response offers no insight into Sallal's actual position or how separate agreements might achieve an improved result. Sallal's goals and objectives regarding a water supply agreement are unclear to the City, while the City has made its goals and objectives very clear to Sallal.

If Sallal would like to propose a new version of the agreement providing for reciprocal purchase and sale of water and integrating appropriate water conservation measures, the City will thoughtfully consider those revisions together with the other accommodations that Sallal has previously requested regarding the franchise agreement. At this point, if Sallal is indeed serious about a reciprocal water supply agreement, it is incumbent on Sallal to make an actual substantive written counter-proposal rather than general and non-productive comments.

As I've consistently advised during the discussions regarding the water supply agreement, I intended to present to the City Council an agreed three-part package – an agreed form of water supply agreement, agreed proposed amendments to the City's water conservation ordinance, and an agreed form of franchise agreement. Developments over this past year have shown the value of incorporating water conservation terms into the water supply agreement in the same manner as those terms are incorporated into other water supply agreements.

The water conservation ordinance remains in effect. And it is time for Sallal to execute the franchise agreement in the form transmitted to Sallal on July 15, 2021. The City expects significant new development along North Bend Way in the near future, much of which will likely require the relocation of Sallal facilities, after first obtaining the necessary Right of Way permits under North Bend Municipal Code chapter 12.24.

Thank you for your consideration of this response. Please let us know whether we should expect a substantive, written counterproposal to the City's last draft of the water supply agreement. If none is forthcoming, we will consider negotiations on a mutual water supply agreement indefinitely suspended.

Sincerely,



Rob McFarland, Mayor

cc: North Bend City Council
Richard Rodriguez, WA Department of Health
Kasey Cykler, WA Department of Ecology
Jae Hill, King County Utilities Technical Review Committee
John Taylor, King County Department of Local Services