

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 [proposed by the City](#) 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 [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. ~~One~~ [The primary](#) 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 [backup supply to supplement mitigation water from Hobo Springs, when mitigation supply from Hobo Springs is insufficient, stream flow mitigation purposes as identified in the Permit](#) is Sallal’s wellfield located adjacent to Rattlesnake Lake. [The Permit anticipates that Sallal may make surplus water from its wellfield available for backup mitigation water.](#) The Permit also provides the City may seek water for stream flow mitigation purposes from other sources subject to additional approvals. [In order to address the City’s potential deficiency in obtaining Mitigation Water from SPU, the City and Sallal have negotiated terms and conditions as set forth below for the City to acquire backup Mitigation Water from the Rattlesnake Lake Wellfield.](#)

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

Commented [L1]: The DRAFT as composed is unacceptable. The DRAFT as composed changes the City’s proposed mitigation plan laid out in the Centennial Well ROE and puts Sallal into the position of being the primary source of mitigation water rather than Hobo Springs. This significantly elevates the risk level to Sallal – the risk is that water availability to Sallal members will be negatively impacted. This arrangement to make Sallal the primary source is not required and was ~~never~~ contemplated. The proposed edits here, and in subsequent sections below, correct this defect and provide terms that protect the interests of Sallal members.

Key terms from the Centennial Well ROE that must be properly represented in this agreement include Hobo Springs as “primary” and Sallal as “supplemental, using surplus water”. Reference ROE page 16 paragraphs 2 and 4, page 18 paragraph 3.

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 [all of the planned](#) 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 [surplus](#) 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.

Commented [L2]: Exhibit A is incomplete and does not provide sufficient information to clarify how the inter-tie will function. As a minimum, an instrumented flow diagram with Sequence of Operation description is needed.

The Sequence of Operation must be detailed enough to clarify the transition from Normal Operation to Mitigation Operation, and demonstrate during Mitigation Operation how Sallal’s supply of domestic water to its members is not negatively impacted.

Commented [L3]: Similar to Exhibit A, Exhibit B is not sufficient to clarify how the inter-tie will function. More work is needed here to provide an instrumented flow diagram with Sequence of Operation.

Commented [L4]: How will this be accomplished if both Well #1 and #2 are implicated in the supply of mitigation water, while simultaneously needing to supply [treated](#) water to Sallal members – particularly when two pumps are needed to meet Sallal’s demand?

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.

Commented [L5]: 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 amongst the Intertie Committee, or if the recommendations by the Committee are not mutually accepted by the parties?

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.

Commented [L6]: 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.

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.

Commented [L7]: The Water Usage Plan is a critical component of the contract. Without these details defined prior to contract execution, the contract as currently written is too uncertain to assure that no impacts to the availability of water supply to Sallal members will occur.

Commented [L8]: Since this provision appears to override committee recommendations in the Water Usage Plan, 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.

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

Commented [L9]: Sallal water rate studies would normally be considered confidential information. What protections are provided in the terms of this agreement to assure that confidentiality? See proposed edit below.

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. All records shared between the parties for purposes of this agreement shall be confidential between the parties unless otherwise mutually agreed by the parties.

IV. MITIGATION WATER SUPPLY AND PURCHASE

4.1 Mitigation Water Supply. In consideration of the benefits provided by this Agreement, whenever Mitigation Water to the City from Hobo Springs or other sources of Mitigation Water authorized by the Permit are determined to be insufficient for the City's mitigation needs, Sallal shall may sell up to and not more than 100 AFY of Mitigation Water to the City to supplement the other sources 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 for the Rattlesnake Lake Wellfield in the amounts of 696 AFY and 1,691 GPM. Sallal's operational water production needs shall be satisfied as a first priority as determined by Sallal, and any surplus water thereafter may be provided to the City for mitigation purposes as a supplement to the aforementioned Hobo Springs and other sources. Sallal shall have no obligation to provide Mitigation Water at other times or for other purposes. In order that Sallal's water rights are not exceeded:

(a) 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 quantity of all Mitigation Water provided to or reserved for use by the City shall be replaced with Municipal Water at the North Bend Intertie pursuant to the subjections 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 may reserve water rights capacity of up to 100AF during each such calendar year by making prior purchases from the City of up to 100AF in order to reasonably ensure that the forecasted quantity of Mitigation Water is available for use by the City during each

Commented [L10]: This contradicts requirements in the budget appropriation bill ESSB5200 which stipulates a minimum of 100AF of permanent water per year. How is this reconciled and what do these conditions mean in the appropriation bill?

Commented [L11]: This is not acceptable and needs to be revised. Only surplus water should be provided after all Sallal needs are satisfied.

Commented [L12]: Utilize the "banking" concept and language previously established in August 2021 and September 2022 and as previously accepted by Sallal's legal counsel and engineer. "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. Any release of Sallal water for mitigation without assurance that an equal quantity can be provided to replace it increases the risk to Sallal.

Commented [L13]: This provision is unacceptable. It significantly increases the risk to Sallal as there is no certainty that the City will be able to "replace" any mitigation water back to Sallal at the time Sallal would need it. As such, Sallal members will be exposed to an increased risk of water curtailment in order to reduce demand to match available supply. Such forced reductions would not otherwise be experienced by Sallal members were it not for this agreement. The "banking" methodology noted above mitigates this risk without impacting the City's ability to receive mitigation water from Sallal.

Commented [L14]: What is the consequence of this forecast and what action if any is derived from it, and under whose authority? Appears further clarification of the process is warranted.

such calendar year subject to the limitations of Sallal’s instantaneous water right as described in 4.1.2 above, 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.~~

Commented [L15]: This seems to be unnecessary duplication.

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

(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.~~

Commented [L16]: What is the reason for this provision? It exceeds the prior maximum ever experienced by the City which was stated to be 704gpm. Diverting operation of two Rattlesnake Lake wells for production of mitigation water subject to terms of this agreement increases the risk to Sallal considerably. There would only be one production well remaining to supply water to Sallal members with limited capacity and no redundancy – DURING PERIODS OF HIGHEST DEMAND. This arrangement as presented is insufficient to assure there is no increase in risk to Sallal members. Any arrangement with increased risk to Sallal members is unacceptable.

(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.

The condition for two pumps 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 to 70 million gallons/year) from the UGA buildout and the results will likely be water shortages for Sallal members.

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).

Commented [L17]: Very this value since the mitigation supply will come from Rattlesnake where the instantaneous limit there is 1600gpm. Use of the Edgewick pump Q1 seems dubious since the ability to distribute that water throughout the Sallal system as replacement for water being committed for mitigation does not seem viable.

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 may result in reductions to the supply of mitigation water to the City. 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.

Commented [L18]: The operation of this provision is not clear. Based on historical and projected demands, it appears the resulting calculation can be a negative number – of several hundred gpm. Such outcome would indicate that there is a net water deficit dependent on supply coming from Centennial Well. The simultaneous demand of City customers, together with this deficit, would represent the amount of pumping needed from Centennial Well in order to avoid forced curtailments. Since under this provision the City is needing mitigation supply from Sallal, its ability to meet the combined demand is not possible – FORCED CURTAILMENT IS THE RESULT. All Sallal members will be impacted which they would not have otherwise experienced were it not for this agreement.

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,

Commented [L19]: What is the point of that statement?

Commented [L20]: The legal limitations of Sallal’s water right have been addressed in previous sections. Making a vague reference to that again, here, in this context introduces a potential conflict.

Commented [L21]: Not acceptable. This is contrary to the basic premise that Sallal water is for use by Sallal members. There should be no equal apportionment of Sallal water as a contract provision – Sallal members must have the priority.

including the supporting rationale and probable duration. Sallal shall use reasonable efforts to minimize service interruptions to deliveries of Mitigation Water to the City.

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

4.2 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, Upon completion,~~ Sallal may inspect and access the facilities and read the meter.

Commented [L22]: NOT acceptable. 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. As previously noted, including Well #1 is NOT acceptable and would only complicate the operational complexity, adding risk to Sallal.

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 700GPM~~, 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.

Commented [L23]: As noted previously, the 1000 GPM value needs verification of purpose – why, when, for how long, etc. Regardless, since two pumps are needed to potentially meet that production rate, the proposed arrangement is not acceptable as it increases the risk to Sallal by complicating the controls, by reducing Sallal’s production capacity to one pump, and by eliminating the redundancy of always having at least one pump on standby.

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 ~~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 supplied under this Agreement.

Commented [L24]: The isolation valve must be Sallal’s.

4.5 Notice of Mitigation Water Withdrawals. The City shall give Sallal reasonable notice of its intent need 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.

Commented [L25]: The word "intent" suggests that the City has control of this operation. The City can make a request for mitigation water, but the control and functionality in response to such request must be solely in the hands of Sallal.

Commented [L26]: Has this been verified with Denny and Tree? It seems that a longer period would be doable given that a planned transition to Sallal as a supplement to Hobo Springs (or other sources) should be visible well in advance of the need becoming imminent.

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.

Commented [L27]: This requirement further reinforces the objection to implicating two pumps at Rattlesnake for the supply of mitigation water.

Also, 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.

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 ~~shall~~ 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.

Commented [L28]: 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.

4.6.4 Sallal may ~~shall~~ 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~~ reserve Mitigation Water that can be 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 XXX. 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 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

Commented [L29]: What is this value based on – how was it determined?

Commented [L30]: Which pump is being referenced here – Centennial Well, or the booster pump station?

Commented [L31]: What are these operational limits and capacities, and how do they align (or not) with the anticipated demand and required pumping needed to supply Sallal with water?

Commented [L32]: This is an impractical condition since there is no way to segregate Sallal’s UGA customers from all other Sallal customers. As such, ALL 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. WITHOUT A REMEDY, THIS DEFECTIVE PROVISION IS A DEAL BREAKER.

Further, there is no political opportunity for Sallal members in unincorporated King County to influence that outcome via the ballot box since there is no opportunity for those members to vote in City elections.

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.

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, but not limited to, a pump station, controls, and underground piping located on City property at a location approximately depicted on Exhibit B and agreed upon in writing.

Commented [L33]: 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 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

Commented [L34]: This section is incomplete. 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.

Commented [L35]: This section is not acceptable and needs to be revised to align with the corrections made in section 4 regarding "banking".

Further, it will be necessary to check whether the "no cost" provision conforms with the terms of the RD Loan Security Agreement and any other requirements of the RD loans. The Security Agreement requires "All service rendered by or use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the Organization; no free service by or use of the Facility will be permitted."

Approval of this agreement by USDA Rural Development is necessary according to terms of the loans.

Commented [L36]: Not charge for what? This is not clear.

Commented [L37]: This section is unacceptable as written. Actual charging rates need to be defined now in order to ascertain the financial implications of this agreement. Leaving it open ended as currently written will result in unexpected costs and consequences. Since it has been projected that Sallal will be purchasing many more times the amount of water as will be provided to the City for mitigation, the cost consequences to Sallal members will be many times greater. This should not be left to guessing. Based on the City's current rate structure, it is likely that the City will charge a price that is significantly higher than what the equivalent amount of water would cost if provided by Sallal. As such, that premium (which could be quite significant when considering all of the factors the City has attempted to claim such as SPU facility charge, Cascade Golf Course, all City staff, consultant fees, depreciation, etc.) will be added to Sallal's nominal water rate charges per its current rate schedule. The premium charges, however, should only be assessed to those members benefiting from the water supplied by the City which are those residing in the City/UGA boundary. As such, a separate Sallal customer class will need to be defined in order to administer these costs fairly. Clarifying now what these cost consequences will be is essential for determining whether this contract is suitable or not.

Further, as noted previously, any financial consequences attributed to this agreement appear will require USDA Rural Development approval in order to conform with terms of the loan agreements.

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. Application of the WCO to Sallal customers residing within the City limits shall only apply providing the City achieves DSL performance at or better than the DOH standard of 10%.

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 suitable for addressing anticipated conditions relevant to the Sallal Water System, 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.

Commented [L38]: This is an important provision as the City's current DSL of 20%+/- means that amount of any mitigation water Sallal provides will be wasted by the City. That could amount to 20AF (6.5 million gallons) if the full allotment of 100AF is used by the City.

Commented [L39]: What does this mean "substantially similar"? Such arbitrary term is not acceptable. Further, terms of the City WCO are not relevant to the Sallal Water System as they are largely tied to the gauge level of Masonry Pool which is entirely unrelated to the operation of Sallal's system.

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.

Commented [L40]: This is a loaded provision and speaks to the importance of having terms in the agreement that will not lead to disputes or claims. The agreement terms must minimize risk to Sallal regarding its obligations, and be absolutely clear so as to avoid any misunderstanding. As earlier comments have noted, there is work to be done here.

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.

Commented [L41]: This provision appears to run afoul of the USDA Rural Development loan requirements noted above (see section 6.1). There is no reason to grant another membership to the City. New memberships cost \$21,527 to \$25,327 depending on the meter installation arrangements. If a new membership is approved, it should be charged at the going rate.

8.17 Exhibits. Exhibits A, B and C 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: Denise Smutny, President

Attest/Authenticated:

Attest/Authenticated:

| Last Updated [4/17/2023](#)/~~11/2023~~
REJ edits 3.28.23 – KD edits 04032023

Susie Oppedal, City Clerk

Secretary

DRAFT

EXHIBIT A:
Boxley Creek Intertie Drawing

Commented [L42]: Exhibit A is not acceptable. The exhibit is incomplete and does not provide sufficient information to clarify how the inter-tie will function. As a minimum, an instrumented flow diagram with Sequence of Operation description is needed. The diagram should depict the ownership demarcation between the parties and the operational elements needed to implement the functionality in accordance with the terms of this agreement.

The Sequence of Operation, and corresponding control modifications must be detailed enough to clarify the transition from Normal Operation to Mitigation Operation (and back), describe the change to the chlorination operation, and demonstrate during Mitigation Operation how Sallal's supply of domestic water to its members is not negatively impacted across the full range of current and future demand projections – i.e. how two pumps aligned to produce mitigation water will allow Sallal to meet its water supply demand with only one pump. Also, how long would such conditions possibly continue, with the resulting loss of pump redundancy?

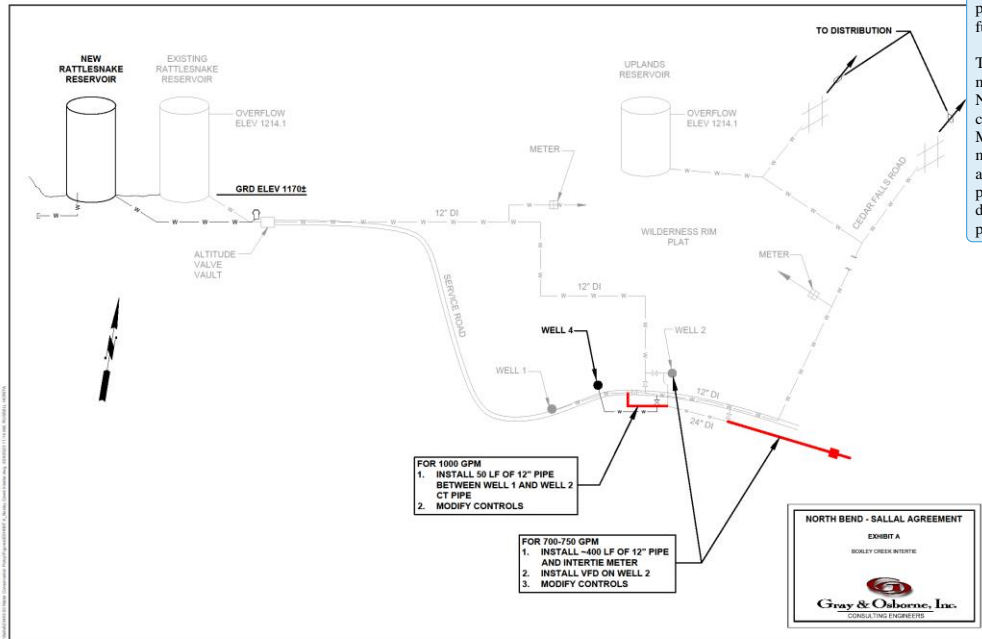


EXHIBIT B:
North Bend Way Intertie Drawing

Commented [L43]: Exhibit B is not acceptable. The exhibit is incomplete and does not provide sufficient information to clarify how the inter-tie will function. As a minimum, an instrumented flow diagram with Sequence of Operation description is needed. The diagram should depict the ownership demarcation between the parties and the operational elements needed to implement the functionality in accordance with the terms of this agreement.

