

Recording Requested By And
When Recorded Mail To:

SEATTLE CITY OF SPU-WTR
700 5TH AVE STE 4900-RPS
PO BOX 34018
SEATTLE WA 98124-4018

WATER UTILITY EASEMENT and AGREEMENT

Reference #s of Document Released or Assigned: None
Grantor:..... City of Seattle, Seattle Public Utilities
Grantee:..... Sallal Water Association
Legal Description (abbreviated)..... Portion N 1/2 of Section 34, Twp. 23 North,
Range 8 East, W.M., King County, WA.
Assessor’s Tax Parcel ID#:..... Portion of 3423089003

Sallal Well Easement at Rattlesnake Lake Recreation Area, SPU R/W File #C77-610

RECITALS

EASEMENT GRANT AND AGREEMENT

WHEREAS, City of Seattle Ordinance 112530 passed in 1985, authorized the Superintendent of the Seattle Water Department to enter into an agreement with the Sallal Water Association (hereinafter “Sallal”), to provide improvements and/or replacements to the Sallal water system and to terminate water service to Sallal by the City of Seattle (hereinafter the “City”)

WHEREAS, City of Seattle Ordinance 112531 passed in 1985, authorized the Superintendent of the Seattle Water Department to enter into and execute on behalf of the City of Seattle an easement with the Sallal, to providing for the construction, operation and maintenance of water supply and storage facilities and water transmission lines together with all necessary equipment and facilities appurtenant thereto over, upon, across and under City property located within Section 34, Township 23 North, Range 8 East, W.M., King County Washington, and

WHEREAS, said Agreement was executed and said Easements granted, and

WHEREAS, Sallal has now determined that it needs to increase the reliability of its water supply, and therefore has requested that the City grant additional Easement Area to expand the diameter of its 2 existing well easements, and be granted a third well easement; and

WHEREAS, King County requires the owner of the property (City) to record a Restrictive Covenant, for the protection of a Public Water Supply, and

WHEREAS, the City is willing to grant Sallal’s easement request, and execute and record the Restrictive Covenant, and

WHEREAS, the City and Sallal are willing to update the insurance requirements and the Water Access and Quality Control Regulations, from those required in the 1985 documents;
NOW THEREFORE,

FOR AND IN CONSIDERATION of the sum of NINETY SEVEN THOUSAND TWO HUNDRED DOLLARS (\$97,200), receipt of which is hereby acknowledged, the City of Seattle, a municipal corporation of the State of Washington, acting by and through Seattle Public Utilities (hereinafter “City”), does hereby grant, bargain, sell and convey unto the SALLAL WATER ASSOCIATION, a non-profit Washington corporation, (hereinafter “Sallal”) and its assignees, a permanent, non-exclusive easement for the construction, operation, and maintenance of a water system over, upon, across, and under that portion of the Cedar River Watershed of the City in the County of King, in the State of Washington, as legally described and depicted in EXHIBITS A and B attached hereto (hereinafter “Easement Area”).

PURPOSE

This easement is for the following purposes: the right to enter, construct, maintain, repair, rebuild and operate water wells, water storage and water transmission facilities, the right to maintain well protection areas, construct well pumping stations, water storage facilities and install water transmission lines and underground utility services and appurtenances necessary thereto; and the right to clear and maintain Easement Areas of brush and timber.

TERMS, RESERVATIONS and CONDITIONS

This easement is granted upon the following terms, reservations and conditions:

1. The Easement Areas granted by this Easement are in addition to those Easement Areas granted and authorized by City of Seattle Ordinances 112530 and 112531, and recorded under King County Recording Number 8511200358.
2. The City reserves the right to enter upon said property as necessary or convenient for the purpose of managing the watershed, which includes, but is not limited to, the management and harvest of timber, maintenance, patrol and protection of said watershed.
3. The City further reserves the right to grant ingress and egress across all road systems consistent with the purpose for which the well site protection areas are created. The City further reserves the right to use, which includes the removal of gravel, and maintain the existing gravel quarry situated within Well #1 protection area in the N ½ of Section 34, Township 23 North, Range 8 East, W.M.
4. Grantee shall have the right to cut and remove timber from said premises to the extent necessary for the construction and maintenance of new access roads, storage tank sites and other water supply or distribution appurtenances. The construction of any improvements, including the clearing, grubbing and construction of any new access roads, tank and well sites or the reconstruction of existing watershed roads shall be by and at the sole expense of the Grantee.
5. All timber now and in the future growing on said easement and rights-of-way areas shall remain the property of the City. All timber to be removed for construction and maintenance purposes shall be cut and yarded in tree length to locations to be determined by the City. All tree length material shall be cut to a minimum top diameter of 4 inches. Logs of all species which are 12 feet and greater in length and at least 4 inches in diameter at the small end shall be decked during the clearing operation.
6. Grantee agrees to dispose of all brush, stumps and non-merchantable logs resulting from the clearings and grubbing and maintenance of rights-of-way and storage tank and well sites in a manner approved by the General Manager and CEO of Seattle Public Utilities or his or her designee. If burning is performed, the City will be responsible for obtaining permits, if required.
7. Clearing required for any new construction will be kept to the minimum width necessary to provide ingress and egress and for the construction and maintenance of the Grantee's water supply or distribution appurtenances. With prior approval from the City, the Grantee may obtain the quantity of gravel necessary for the construction, maintenance and repair of access roads and water supply or distribution appurtenances on said property from a City-owned gravel quarry situated in the N ½ of Section 34, Township 23 North, Range 8 East, W.M.

8. Grantee agrees that during its occupation of said property under the provisions herein, all laws of the State of Washington and ordinances of the City of Seattle, which have been or may be enacted applicable to the preservation and protection of the Cedar River Watershed, will be fully complied with, the provision of which laws and ordinances are hereby made a part thereof as though fully set forth herein.
9. Grantee agrees to place underground all pipelines and electrical and telephones lines that are situated on City property and covered by this agreement.
10. Roadways which provide ingress and egress to the Easement Areas as set out herein shall not be open to the public or become a common user road, except at the discretion of the General Manager and CEO of Seattle Public Utilities or his or her designee. The road shall be closed to the general public by locked gates, and Grantee shall not allow the roads to be utilized by anyone other than employees or contractors of the Grantee without written permission of the General Manager and CEO of Seattle Public Utilities or his or her designee.
11. The Grantee shall provide at its sole expense, all maintenance and repair on any roads constructed within Easement Areas granted by the City. The City shall perform the regular and periodic maintenance of any existing access roads. All costs of such maintenance and of any additional improvements which are made on such existing roads shall be borne by the City.
12. It is understood and agreed that if roads or other property are damaged by the Grantee, its employees, contractors, or assigns, the Grantee or its assigns will be financially responsible for such damage.
13. Grantee agrees not to assign this easement or transfer any interest thereunder for any purpose without written consent of the General Manager and CEO of Seattle Public Utilities or his or her designee. Such consent shall not be unreasonably withheld.
14. In the event of termination of this easement as provided in Paragraph 14 herein, the Grantee agrees to quit and surrender the premises in as good state or condition as they are now, ordinary wear expected, and to remove from said premises all property of the Grantee unless expressly exempted by General Manager and CEO of Seattle Public Utilities or his or her designee.
15. It is understood and agreed that the failure of the City to immediately enforce any or all of the above terms and conditions shall not be construed as a waiver or relinquishment of the future performance of any such conditions, and the obligations of the Grantee with respect to such future performance shall continue in full force and effect.
16. This Agreement shall continue in effect so long as the Grantee operates a well or storage tank within the area covered by this easement. Discontinuance of the Grantee's operation of

these water system facilities shall constitute an abandonment of the Grantee's interests. Upon such abandonment in excess of six months' duration, all rights and interests under this Agreement shall revert to the City and the Grantee shall provide a release of easement to the City in the form of a recordable instrument. Temporary lapses in operation due to emergency circumstances shall not constitute abandonment.

WATERSHED PROTECTION REGULATIONS

This requirement supersedes the Watershed Access and Quality Control Regulations, dated 10/01/76 specified in Paragraph F of the Water Easement Agreement recorded under King County Recording Number 8511200358.

17. Grantee agrees to fully comply with Cedar River and South Fork Tolt Watersheds, Water Quality and Protection Regulations dated January 2011 V.1, and attached hereto as Attachment 1, and to further comply with any future revised or additional regulations of the General Manager and CEO of Seattle Public Utilities or his or her designee and Director of Public Health which may be promulgated applicable to the Cedar River Watershed.

INDEMNIFICATION

18. Grantee agrees at all times to protect and save harmless City from all claims, actions, suits, liability, loss, cost, expenses or damage of every kind and description which may accrue to or be suffered by any person or persons by reason of the use or occupancy of said property, and in case any action or suit shall be instituted or begun against the City for damages arising out of or by reason of such use or occupancy, Grantee shall upon notice to it or commencement of such action or suit defend the same at its sole cost and expense, and in case judgment shall be rendered against the City in such action or suit shall fully pay and satisfy such judgment within ninety (90) days after such action or suit shall have been finally determined.

INSURANCE

This requirement supersedes the insurance requirement specified in Article III, Section F of the Agreement Between the City of Seattle and Sallal Water Association, as specified in Exhibit B attached to Ordinance 112530.

19. Grantee's Insurance Coverages and Limits. Grantee shall, at its sole cost and expense, and at all times shall maintain in full force and effect the following minimum limits of insurance, and adhere to all terms and conditions set forth below:
 - a. Commercial General Liability (CGL) written on an occurrence form at least as broad as ISO CG 00 01, with Minimum Limits of Liability:
\$1,000,000 per Occurrence

\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal/Advertising Injury Liability
\$1,000,000 Damage to Premises Rented to You

Employers Liability / Washington Stop
\$1,000,000 Each Accident / Each Disease / Policy Limit

Alternatively, may be evidenced as Employer’s Liability insurance under Part B of a Workers Compensation insurance policy.

Coverage shall include: Premises and Operations; Broad Form Property Damage (Including Completed Operations); Liability assumed under an Insured Contract (including tort liability of another assumed in a business contract); Personal Injury and Advertising Liability; Independent Contractors; Severability of Interest Clause; Waiver of Subrogation endorsement in favor of City as required by contract; General Aggregate Limits of Insurance shall apply separately; “Claims Made” and “Modified Occurrence” policy forms are not acceptable.

The limits of liability described above are minimum limits of liability only. Regardless of provisions to the contrary under the terms of any insurance policy maintained by Grantee, the specification of any such minimum limits shall neither be (1) intended to establish a maximum limit of liability to be maintained by Grantee regarding this Agreement, nor (2) construed as limiting the liability of any of Grantee’s insurers, which must continue to be governed by the stated limits of liability of the relevant insurance policies.

- b. In the event that the City deems insurance to be inadequate to protect Grantee and the City, Grantee shall increase coverages and/or liability limits as the City shall deem reasonably adequate within sixty (60) days after the date of written notice.
- c. Terms and Conditions for Grantee’s Insurance.
 - i. The City of Seattle as Additional Insured: The CGL insurance shall include “The City of Seattle, its officers, officials, employees, agents and volunteers” as additional insureds. Grantee’s insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance and self-insurance (whether funded or unfunded),
 - ii. Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited: Grantee’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. Grantee’s insurance policy shall not contain any provision, exclusion or

endorsement that limits, bars, or effectively precludes the City of Seattle from coverage or asserting a claim under the Grantee’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. Grantee’s failure to comply with any of the requisite insurance provisions shall be a material breach of, and grounds for, the immediate termination of the Agreement with the City of Seattle; or if applicable, and at the discretion of the City of Seattle, shall serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by Grantee or reduced and/or offset against the Agreement.

- iii. Cancellation Notice: Coverage shall not be cancelled without 30 day written notice of such cancellation, except 10 day written notice as respects cancellation for non-payment of premium, to the City at its notice address herein except as may otherwise be specified in Revised Code of Washington (RCW) 48.18.290 (Cancellation by insurer.).
- iv. Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A-:VIII or higher in the then-current A. M. Best's Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).
- d. Deductible or Self-Insured Retention: Any deductible or self-insured retention (“S.I.R.”) must be disclosed to, and shall be subject to reasonable approval by, the City. Grantee shall cooperate to provide such information as the City may reasonably deem to be necessary to assess the risk bearing capacity of the Grantee to sustain such deductible or S.I.R. The cost of any claim falling within a deductible or S.I.R. shall be the responsibility of Grantee. If a deductible or S.I.R. for CGL or equivalent insurance is not “fronted” by an insurer but is funded and/or administered by Grantee or a contracted third party claims administrator, Grantee agrees to defend and indemnify the City to the same extent as the City would be protected as an additional insured for primary and non-contributory limits of liability as required herein by an insurer.
- e. Evidence of Insurance. On or before the Commencement Date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address herein as evidence of the insurance coverage required to be maintained by Grantee:
 - i. Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein; and

- ii. A copy of the policy’s declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;
 - iii. A copy of the CGL insurance policy provision(s) and endorsements expressly including the City of Seattle and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement;
- f. Insurance requirements may be revised from time to time in the future, to be consistent with the City of Seattle requirements.
- g. Failure of Comply. Failure of Grantee to comply with any of the terms of the above insurance provisions shall be considered a material breach of this Agreement and cause for its immediate termination at the option of the City.

NOTICE and CONTACTS

CITY OF SEATTLE – SEATTLE PUBLIC UTILITIES:

Mailing Address:

Seattle Public Utilities
PO Box 34018
Seattle WA 98124-4018

Location Address:

Seattle Public Utilities
700 Fifth Avenue, Suite 4900
Seattle WA 98124-4018

Emergency and 24 Hour Contact: SPU Operations Response Center 206-386-1800
SPU Real Property: 206-684-5969
Cedar River Watershed Management, Cedar Falls: 206-233-1511
Cedar River Watershed Protection, Cedar Falls: 206-386-4221

SALLAL WATER ASSOCIATION

Mailing Address:

P.O. Box 378
North Bend, WA 98045
Phone:

Location Address:

44021 SE Tanner Road – Suite E
North Bend, WA 98045
(425) 888-3650

IN WITNESS WHEREOF, the parties have caused this instrument to be executed.

This Easement hereby granted pursuant to City of Seattle Ordinance: _____

THE CITY OF SEATTLE

SALLAL WATER ASSOCIATION

Mami Hara
General Manager and CEO, Seattle Public Utilities

Sheldon Lynne
President

Date

Date

City of Seattle, Seattle Public Utilities Acknowledgment

STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Mami Hara** to me known to be the **General Manager and CEO of Seattle Public Utilities** and that she executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 2017.

Signature

Printed Name

Notary Public in and for the State of Washington

residing at _____

My appointment expires _____

Sallal Water Association, Acknowledgement

THIS IS TO CERTIFY that on this day, before me the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared **Sheldon Lynne**, to me known to be the **President** of **Sallal Water Association**, and that she/he executed the foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

WITNESS my hand and official seal this _____ day of _____, 2017.

Signature

Printed Name
Notary Public in and for the State of Washington

residing at _____

My appointment expires _____

EXHIBIT 'A'

Owner: City of Seattle
Parcel No. 342308-9003
Well Site and Protection Easement

A tract of land in the North One-half of Section 34, Township 23 North, Range 8 East, W.M. King County, Washington, being a circle having a radius of 110 feet, the center of which is described as follows:

BEGINNING at the Northeast Corner of said Section 34;
THENCE North 89°30'59" West along the North line of said Section a distance of 2323.79 feet;
THENCE South 00°29'01" West at right angles to said North line a distance of 1041.61 feet to the center point of said tract.
EXCEPTING THEREFROM a 20 foot wide strip of land as described in Tract 4 – Rattlesnake Lake Roadway in "Water Utility Easement Agreement" filed under Auditor's number 8511200358, Records of King County Washington;
Contains: 0.773 Acres, more or less.

TOGETHER WITH

A tract of land in the North One-half of Section 34, Township 23 North, Range 8 East, W.M. King County, Washington, being a circle having a radius of 110 feet, the center of which is described as the center point of a 100 foot radius described in Tract 1 – Well #1 Site and Protection Area in "Water Utility Easement Agreement" filed under Auditor's number 8511200358, Records of King County Washington;
EXCEPTING THEREFROM the 100 foot radius described in said Agreement.
ALSO EXCEPTING THEREFROM a 20 foot wide strip of land as described in Tract 4 – Rattlesnake Lake Roadway in said Agreement.
Contains: 0.147 Acres, more or less.

TOGETHER WITH

A tract of land in the North One-half of Section 34, Township 23 North, Range 8 East, W.M. King County, Washington, being a circle having a radius of 110 feet, the center of which is described as the center point of a 100 foot radius described in Tract 2 – Well #2 Site and Protection Area in "Water Utility Easement Agreement" filed under Auditor's number 8511200358, Records of King County Washington;
EXCEPTING THEREFROM the 100 foot radius described in said Agreement.
ALSO EXCEPTING THEREFROM a 20 foot wide strip of land as described in Tract 4 – Rattlesnake Lake Roadway and a 20 foot wide strip of land described in Tract 5 – Sallal Tank Roadway, both in said Agreement.
Contains: 0.136 Acres, more or less.

EXHIBIT 'B'

