



OLYMPIC VALLEY PUBLIC SERVICE DISTRICT



Painted Rock Lodge Waterline Extension Project

DATE: March 30, 2021
TO: District Board Members
FROM: Dave Hunt, District Engineer
SUBJECT: Painted Rock Lodge Waterline Extension Project – Waterline Extension and Dedication Agreement

BACKGROUND: The property owners (Applicant) at 5038 and 5048 River Road have approached the District requesting water service to their parcels. Although on the east side of Highway 89, these single family residential properties are in our service area as Lots 8 and 9 of the 1994 Squaw Valley East Subdivision Map. In fact, these properties are sewer customers of the District.

Both of these properties currently use domestic wells for water supply. These wells are not only of extremely poor water quality but are also limited in their supply capacities. The District does have available capacity in our system to provide water service to these customers.

In order to provide water service, an extension of the District's existing water system will need to be constructed. This will include connecting to an existing 8-inch water main on the west side of Highway 89, extending a new water main across the Highway terminating adjacent to and on the west side of Bridge 3 with a new fire hydrant and two (2) new water services (meters and service lines). The project also includes installing new water service lines from the meters to the houses attached to the Bridge 3 substructure. The property owners have hired Auerbach Engineering Corporation to prepare the design plans and manage the permitting and construction of the project.

The District will take dedication of the new water assets within the Caltrans Highway 89 right of way (ROW) after successful completion of the project and acceptance by the District. The District will not take ownership of the water service lines from the water meters to the houses as our point of service is typically the water meter installed at the property/easement lines.

DISCUSSION: Staff has prepared a Waterline Extension and Dedication Agreement (Agreement) defining the terms and conditions for which the District will accept dedication of the new water assets in the Caltrans ROW and provide water service. The Agreement sets forth various rights and responsibilities of both the

District and Applicant related to the District's provision of water service to the requesting parcels. Specific conditions of the Agreement include, but are not limited to:

- Applicant has prepared, and the District has reviewed and approved, plans and specifications for the construction of water improvements necessary to serve the project. The District will provide construction observation of all water installations during construction and the Applicant will reimburse the District for the costs associated with construction management and inspection.
- Upon completion of the improvements, the Applicant will execute and deliver to the District dedications transferring the improvements and all easements necessary for the construction, maintenance, repair, and replacement of the dedicated water improvements. The dedication will include a 2-year warranty on the improvements in the form of a Maintenance Bond.

Construction of the improvements is expected to begin as early as May 1, 2021, pending project approvals from Caltrans.

- ALTERNATIVES:**
1. Approve Resolution 2021-03 authorizing execution of the Waterline Extension and Dedication Agreement with the property owners at 5038 and 5048 River Road for the Painted Rock Lodge Waterline Extension Project.
 2. Do not approve Resolution 2021-03.

FISCAL/RESOURCE IMPACTS: There are no fiscal impacts associated with executing the Agreement. There are also no fiscal impacts to the District for the project as a whole as the project is privately financed and the property owners will reimburse the District for all costs associated with the project including preparation of the Agreement, plan review and coordination, inspection, and preparation of offer of dedication documents.

RECOMMENDATIONS: Staff recommends approval of Resolution 2021-03 authorizing execution of the Waterline Extension and Dedication Agreement for the Painted Rock Lodge Waterline Extension Project.

ATTACHMENTS:

- Resolution 2021-03 – A Resolution of the Board of Directors of the Olympic Valley Public Service District Waterline Extension and Dedication Agreement Painted Rock Lodge Water System Extension
- Waterline Extension and Dedication Agreement for the Painted Rock Lodge Waterline Extension Project

DATE PREPARED: March 17, 2021

RESOLUTION 2021-03

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
OLYMPIC VALLEY PUBLIC SERVICE DISTRICT
WATER LINE EXTENSION AND DEDICATION AGREEMENT
PAINTED ROCK LODGE WATER SYSTEM EXTENSION**

WHEREAS, the Olympic Valley Public Service District, hereinafter referred to as "DISTRICT" wishes to enter into an agreement with David Peter Frederick Hess And Carlos Ramirez, hereinafter referred to as "APPLICANT," to construct a pipeline extension off the District's water system to provide water service to 5038 and 5048 River Road, APN 096-230-039-000 and 096-230-040-000, hereinafter referred to as the "Service Area."

WHEREAS, the Service Area lies within the District Water Service Territory and is not currently connected to the District's water system.

WHEREAS, Water service to the Service Area will require the installation of approximately 120 lineal feet of 8-in pipe (48 lineal feet in 20-inch steel casing), a fire hydrant, and two (2) water service laterals with associated appurtenances (meter boxes, meters etc.) within the Caltrans Highway 90 right of way.

WHEREAS, the Agreement will cover those improvements to be dedicated to the District within the Caltrans Highway 89 Right Of Way.

WHEREAS, Article 2 of the Dedication agreement states that the agreement will be effective upon the date of execution by the last signing party following the passage of a resolution by the District authorizing execution of the agreement and will terminate one (1) year thereafter, unless sooner terminated or extended per the terms of the agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Olympic Valley Public Service District hereby authorizes Dale Cox, Board President, to execute the Dedication Agreement for the Painted Rock Lodge Water System Extension with David Peter Frederick Hess And Carlos Ramirez.

PASSED AND ADOPTED this 30th day of March 2021 at a regular meeting of the Board of Directors of the Olympic Valley Public Service District by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Dale Cox, Board President

ATTEST:

Jessica Asher, Board Secretary

**WATER LINE EXTENSION
and
DEDICATION AGREEMENT**

This Agreement is entered into by and between **OLYMPIC VALLEY PUBLIC SERVICE DISTRICT**, a body politic (hereinafter “District”), and David Peter Frederick Hess and Carlos Ramirez. (“Applicant” herein).

RECITALS

This Waterline Extension and Dedication Agreement (“Agreement”) is entered into on the basis of the following facts, understandings, and intentions of the Parties.

- A. The Applicant has requested a pipeline extension off of the District’s water system to provide water service to 5038 and 5048 River Road, APN 096-230-039-000 and 096-230-040-000 respectively, hereinafter referred to as the “Service Area,” as shown on a set of plans entitled “Painted Rock Lodge Water System Extension,” prepared by Auerbach Engineering Corporation of Tahoe City, CA, which herein is referred to as the “Project.”
- B. The Service Area lies within the District Water Service Territory and is not currently connected to the District’s water system.
- C. Water service to the Service Area will require the installation of approximately 120 lineal feet of 8-inch pipe (48 lineal feet in 20-inch steel casing), a fire hydrant, and two (2) water service laterals with associated appurtenances (meter boxes, meters, etc.) within the Caltrans Highway 89 right of way. All quantities are estimates based on the preliminary plans and will be described more fully on the plans to be prepared by the Applicants, and which are hereinafter referred to as the “Improvements.”
- D. This Agreement covers only those improvements to be dedicated to the District within the Caltrans Highway 89 right of way (ROW), up to and including the fire hydrant, water service lines, water meter boxes, water meters, and related appurtenances.
- E. The Applicant bears the sole responsibility for permitting, design, and construction of the Project. The District shall share no financial burden or liabilities associated with the Project.
- F. Applicant proposes to contract for and to commence and complete construction of the Project, described in this Agreement, and upon completion to the satisfaction of District to

dedicate the Improvements, together with any applicable public utility easements, as required by District in connection therewith.

- G. The Applicant intends to engage a qualified contractor and has agreed to bear all expenses to furnish and install the Improvements as required.
- H. Upon completion of the Project and only after an Irrevocable Offer of Dedication has been recorded with the County, and all connection fees have been paid to the District, the District commits to providing water service to the Applicants.

NOW, THEREFORE, pursuant to the authority vested in District and Applicant and in consideration of the mutual covenants and promises of the Parties contained herein, the Parties agree, as follows:

ARTICLE 1. DEFINITIONS

1.1 **Defined Terms.** Each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term in this Article 1.

1.2 **Approvals.** Any and all permits and approvals as applicable pursuant to District Ordinances; that of the County of Placer and/or other public agency.

1.3 **Completion.** Completion of the Improvements occurs upon all of the following:

- (a) The actual connection of the Project to District Systems;
- (b) The adoption by District of a Resolution of Acceptance of the Improvements and an Irrevocable Offer of Dedication for the Improvements together with conveyance of any and all easements, as may be required pursuant to this Agreement, for the Project, and
- (c) Final inspection and approval of Improvements by District.

1.4 **Construction of Improvements.** “Construction of Improvements” as used herein shall mean completion of work in a good and workmanlike manner in accordance with the approved plans and specifications for the Project; final inspection by all applicable governmental entities and District approval of Improvements.

1.5 **Improvements.** The installation of approximately 120 lineal feet of 8-inch pipe (48 lineal feet in 20-inch steel casing), a fire hydrant, and two(2) water service laterals with

associated appurtenances (meter boxes, meters, etc.) within the Caltrans Highway 89 right of way in accordance with the plans and specifications approved by District and in compliance with this Agreement.

1.6 **Laws.** The laws of the State of California, Constitution of the United States, and any codes, statutes, or executive mandates in any court decision, state or federal, thereunder.

1.7 **Ordinances.** The ordinances, resolutions, codes, rules, regulations, and official policies of District, now or hereafter applicable and in effect, governing water and sewer service and any other activity authorized to be performed by the District under the California Water Code applicable to the Project.

1.8 **Property.** The real property described as Lots 8 and 9, as shown and designated on that map entitled “Tract No. 746, Squaw Valley East Subdivision,” filed in the Office of the County Recorder of Placer County, California on January 11, 1994, in Book “S” of Maps, at Page 50, as set forth in the attached Exhibit A.

ARTICLE 2. EFFECTIVE DATE AND TERM OF AGREEMENT

2.1 **Effective Date.** This Agreement shall be effective upon the date of execution by the last signing party hereof following the passage of a Resolution by District authorizing execution hereof.

2.2 **Term.** The Term of this Agreement shall commence upon the Effective Date and shall terminate one (1) year thereafter, unless sooner terminated or extended as hereinafter provided. Provided, however, that the District may agree to extend the Term in its reasonable discretion so long as the Applicant performs promptly and expeditiously and is, otherwise, in compliance with the terms and conditions of this Agreement.

ARTICLE 3. CONDITIONS OF THE PROJECT

3.1 **Project.** The Project consists of the installation of approximately 120 lineal feet of 8-inch pipe (48 lineal feet in 20-inch steel casing), a fire hydrant, and two (2) water service laterals with associated appurtenances (meter boxes, meters, etc.), and connection to an 8-inch water main owned and operated by the District, all within the Caltrans Highway 89 right of way.

3.2 **Authority.** Applicant represents that they are empowered and have the full and complete authority to enter into this Agreement.

ARTICLE 4. IMPROVEMENT PLANS AND CONTRACT

4.1 **Design.** It is the responsibility of the Applicant to prepare plans and specifications for installing the Improvements and submit them to the District for acceptance. All materials to be furnished and all construction shall be in accordance with the District's Water Code, Technical Specifications, and Standard Drawings. The plans and specifications, when accepted in writing by the District, shall become a part of this Agreement.

4.2 **Compliance with Laws.** The plans and specifications provided to District pursuant to Section 4.1 and the construction of the Improvements thereunder shall conform to and comply with all applicable District, county, state, and federal laws, codes, ordinances, regulations, and rules.

4.3 **Construction.** Applicant shall construct the Improvements shown on the plans and specifications described in Section 4.1 and no further changes or modifications, therein or thereto, shall be made or permitted without the prior written consent of District or District's Engineer first being obtained.

4.4 **Submission to District.** Applicant shall provide to District, at Applicant's cost, one (1) copy of the "record" plans and specifications described in Section 4.1, said plans and specifications to be certified by an engineer or architect licensed pursuant to the laws of the State of California to provide such certification and to update District's drawings. The record plans shall be provided in hard copy and electronic copy in pdf and AutoCAD formats, in compliance with the District's current As-Built Policy.

ARTICLE 5. CONSTRUCTION OF IMPROVEMENTS; OBSERVATION

5.1 **Installation and Construction.** Applicant shall, at its cost and expense and with all reasonable diligence, commence and complete installation and construction of the Improvements, as are subject of this Agreement. Construction of the Improvements shall be undertaken by a California State Licensed Class A or C-34 contractor, pursuant to all necessary permits required to be issued in connection with the Improvements at Applicant's sole cost.

5.2 **Contractor Compliance With Laws.** Applicant shall require its contractor and subcontractor, singular or several, to comply with all applicable District, county, state, and federal ordinances, laws, regulations, and rules pertaining to employment, occupational safety, and health during the course of installation and construction of the facilities herein described. Contractor and/or any subcontractors must be properly licensed by the State of California; including compliance with prevailing wage laws, as applicable to the construction of the Project, and shall be properly bonded and insured.

5.3 **Construction Observation.** District shall provide construction observation of all work of Improvement during progress of construction located in any unit or on any lot or parcel located within the Project, herein described, to assure District that the Improvements are installed and constructed in accordance with the approved plans and specifications and Ordinances applicable thereto. Should such observation by District reveal a material failure to conform to such rules, regulations, or ordinances, any unit, lot, or parcel found by District to be in such condition shall not be connected to or shall be disconnected from District's water or sewer lines or facilities.

5.4 **Construction Observation Fee.** For such observation service, Applicant shall pay to District, on-demand, the amount to cover actual time spent by District personnel, its agents or independent contractors, to assure District that provisions of this Agreement have been met.

5.5 **Disclaimer Warranty or Waiver.** The observation of any work of improvement by District, its agents or employees, shall not be deemed a guarantee, warranty, or approval by District that the Improvements have been built or constructed in accordance with the approved plans and specifications or applicable codes; nor shall such observation be deemed a waiver of any of Applicants' contractor. Furthermore, said observation shall not be deemed to create any liability or responsibility on the part of District for the design or construction of Improvements, including supervision thereof, to Applicants or any third party or entity, whatsoever.

5.6 **Environmental Conditions.** District shall have no obligation or responsibility to inspect the Property or the Project for leakage, spillage, or contamination from hazardous waste or substances, nor shall District have any obligation to require a work plan for remediation of contamination, nor to oversee and supervise the same, as may be required by other governmental agencies. District reserves the right to inspect for leakage, spillage, or contamination which may directly affect the Project, District's Systems, and/or the water supply for purpose of assuring the public health and safety.

ARTICLE 6. EASEMENTS AND DEDICATIONS

6.1 **Location of Existing Facilities.** Upon request by Applicant, District shall promptly furnish Applicant with District's current information concerning the location of existing District sewer and water facilities and easements necessary therefor on or adjacent to the Property. Such information provided by District shall be based upon District's best information and records, but shall not be deemed a guarantee or warranty that the information as provided is correct or complete. Applicant waives and releases District from any and all claims, demands, causes of action, damages, and liabilities as may be suffered or incurred by Applicant as a result of any act or omission of District in locating such facilities.

6.2 **Dedication.** Upon completion of the Improvements in accordance with the approved plans and specifications and the expiration of any lien period applicable to construction thereof, Applicant shall promptly execute and deliver to District conveyances and dedications transferring the Improvements and all easements, described below, to District, in a form and content acceptable to District. All owners, lenders, mortgagees, encumbrancers, beneficiaries under the deed of trust or other persons or entities holding a title interest in and to the property subject of such conveyances or easements, shall consent to, join-in, or subordinate to the execution of said conveyances, easements and the Irrevocable Offer of Dedication of the Improvements constructed pursuant to this Agreement. All of said conveyances or easements shall include a warranty by the Applicant that the property transferred thereby is free of any lien, cloud, claim, or encumbrance, including that of Mechanic's lien claims. Applicant is required, at their sole cost, to provide a policy of title insurance to the District.

6.3 **Easements.** Applicant shall grant to, or obtain for, District all easements in compliance with District Ordinances, necessary for the construction, maintenance, repair, replacement, and inspection of the Improvements which are the subject of this Agreement. Such easements shall be in a form and content acceptable to District and shall include provisions releasing District from any liability arising from the grantor's use, occupancy or improvement of the real property, which is the subject of the easement and shall include access rights required for District's ingress and egress to the Improvements for the right of repair, maintenance or replacement thereof and a release of liability and indemnity of Applicant for District's use of the easements.

6.4 **Acceptance.** Upon satisfaction of the terms and conditions of this Agreement, the completion by Applicant of construction and installation of the Improvements in accordance with the approved plans and specifications and upon District's final inspection, District shall place the issue of acceptance of the dedication for approval by its Board of Directors. At the hearing, District shall Approve and accept the dedication and easements offered by Applicant, provided that the Improvements, which are the subject of the dedications, have been approved by District and found to be in conformance with the approved plans and inspections and further provided that Applicant has complied with the terms and conditions of this Agreement. After Approval and acceptance, District shall operate and maintain the Improvements as part of District's System, and shall thereafter provide service to the Applicant in accordance with the adopted Ordinances, resolutions, policies, rates, charges, and taxes fixed or established from time to time by District.

6.5 **Title Insurance for Dedications.** Applicant shall provide to District, at Applicant's expense, a standard policy or policies of title insurance (ALTA Form), joined in by all record title owners, lenders, secured parties or beneficiaries under mortgage or deed of trust, or others, as may be necessary for insuring District in reference to any grant, dedication, transfer or

conveyance of any Property, Improvements, or easements, required or contemplated to be conveyed to District pursuant to this Agreement.

ARTICLE 7. COSTS AND FEES

7.1 **Professional Fees.** Applicant shall pay to District, within thirty (30) days of receipt of demand for payment from District, all reasonable attorney's fees and costs incurred by District for the preparation, negotiation, and execution of this Agreement and its supervision or administration, as well as all reasonable staff, engineering fees and costs incurred by District in the review, modification, supervision, observation, and other activities incurred by the engineer of District regarding this Agreement and the Project contemplated hereunder.

7.2 **Security.** Applicant has furnished the District with security for payment of the expenses it is to pay by depositing with District cash in the sum of Ten Thousand Dollars (\$10,000.00). Should Applicant fail to pay District any charges billed to Applicant or as otherwise required by this Agreement within thirty (30) days of billing, District may thereafter utilize the deposit for the payment in the amount of such past due charges. Should the funds available from said cash deposit be reduced to less than said amount at any time due to payment to District demand, as set forth above, Applicant shall restore the deposit to a minimum of Ten Thousand Dollars (\$10,000.00). If Applicant fails to do so, District shall not be required to provide service to the Project. District shall return any remaining deposit to Applicant within thirty (30) days after acceptance of an Irrevocable Offer of Dedication of the Improvements.

ARTICLE 8. APPLICANT'S GUARANTEE AND OBLIGATION FOR REPAIRS; SECURITY

8.1 **Economic Security.** Applicant shall procure and continuously maintain, at its sole expense, a Performance Bond issued by a company authorized to do surety business in the State of California upon its standard form, or other suitable form of security, guaranteeing that Applicant will perform all of its obligations under this Agreement and will pay for all work and material furnished to the job. Said bond or other security shall be in an amount equal to the value of the cost of construction of the Improvements. The Applicant shall maintain the Security at all times until the District accepts the Facilities. The District may provide written waiver of the requirement for the Security if the Applicant demonstrates that it has provided a comparable Security to another public entity pursuant to Government Code Section 66499.1, which Security encompasses the installation of the Facilities and names the District as a co-obligee.

8.2 **Guarantee of Improvements.** After completion of work and before acceptance by the District, a Maintenance Bond in the amount of 50% of the cost of the Facilities shall be provided to the District by the Applicant or the Applicant's Contractor. The maintenance bond

shall be in a form substantially as that attached hereto as Exhibit A, that is acceptable to the District. A cash deposit in an amount adequate to cover such guarantee may be provided. Such maintenance guarantee shall remain good for two (2) years after acceptance by the District of the Facilities. Said warranty shall not void any longer period of guarantee provided by any supplier, distributor, or manufacturer of material or supplies used in the construction of the Improvements. Applicant agrees to supply District with all warranty and guarantee documents relative to equipment, materials, and supplies incorporated in the job, as guaranteed by suppliers, distributors, or manufacturers before acceptance of an Offer of Dedication therefor.

8.3 **Applicant's Obligation for Repairs.** For two (2) years following acceptance by District of the Improvements, Applicant or its successors in interest, at its sole cost, shall replace or repair and all defects in material or workmanship in said Improvements immediately upon demand by District. In the event Applicant fails to commence such replacement or repair within fifteen (15) days after receipt of demand and thereafter to diligently prosecute such work to completion, District may, but shall not be obligated to, cause such work to be completed, and Applicant, or its successor in interest, shall reimburse District for any costs or expense of such work within thirty (30) days after receipt of a statement therefor from District. If such payment is not received by District within thirty (30) days, District may collect such costs, interest, and expenses per its ordinances and regulations.

8.4 **Emergency Condition.** In the event that any such defect, as described above, has created an emergency condition to exist, as determined by the Placer County Public Health Officer or his representative, District shall make a reasonable effort to give Applicant notice of such circumstance. If District is unable to immediately communicate such notice to Applicant, or if Applicant receives such notice and fails to immediately commence corrective work, District may cause such work as is necessary to eliminate or mitigate such emergency condition and accordingly charge and collect all costs and expenses so incurred by remitting proof thereto of the surety issuing bonding, as set forth in this Article 10 and/or recover such costs and expenses from Applicant.

ARTICLE 9. INSURANCE AND INDEMNITY

9.1 **Insurance.** At all times during the term of this Agreement, Applicants shall obtain and continuously maintain a policy or policies of insurance as may be required by law, including worker's compensation insurance coverage and a comprehensive general liability policy, with public and property damage insurance coverage for bodily injury or death, property damage and personal injury liability with policy limits of not less than \$2,000,000 per occurrence and \$2,000,000 in aggregate.

Said policy or policies shall be with reputable companies holding a "General Policy Holder's Rating" of A-, or better, with a size classification of no less than VII, as set forth in the most current

issue of “Best's Insurance Guide.” District shall be a named additional insured on all such policies, and Applicants shall deliver to District copies of all policies of such insurance or certificates evidencing coverage. No such policy shall be canceled, cancelable nor subject to a reduction of coverage, nor other modification or revision, except after thirty (30) days' prior written notice to District. Applicants shall, within thirty (30) days prior to the expiration of such policies, furnish District with any and all renewals, certificates, or evidence of extension of any and all such policies of insurance. In the event of the failure of Applicants to do so, or in the event of lapse of coverage, by virtue of cancellation, termination, or any other cause, District may procure and obtain the required insurance and charge the cost thereof to Applicants, which amount shall be payable by Applicants to District on demand. Applicants covenants and agrees that it shall not do nor permit any act nor conduct nor omission which would invalidate the insurance policies required to be maintained by Applicants pursuant hereto.

9.2 **Applicants’ Indemnity For Injury To Person or Property.** Applicants shall indemnify, defend, and hold District harmless from and on account of any and all claims, demands, losses, damages, injuries, causes of action, attorneys fees, cost of defense, and liability arising from the death of or injury to any person or persons, including employees of Applicants and its contractor or subcontractors, or from and on account of damage or destruction to any property (including loss of use thereof), caused by or resulting from the performance of work under or pursuant to this Agreement by Applicants, its agents, servants, employees, or by the contractor or subcontractor, singular or several, employed by Applicants or by the agent, servants or employees of any such contractor or subcontractor, either singular or several except due to the negligence or willful misconduct of District, its agents or employees.

9.3 **Applicants’ Hold Harmless.** Applicants agree to indemnify, defend and hold District harmless from and on account of any and all liability for claims, demands, causes of action, damages, reparative costs, and fines, and injuries, including the cost of defense and attorneys fees, resulting from, arising out of, or in any way attributable to the design, performance of work and of the Improvements and prior to acceptance of the easements and dedications by District, the use, maintenance, repair and operation of the Improvements installed and constructed by Applicants pursuant to this Agreement except due to the negligence or willful misconduct of District, its employees, or agents.

Applicants shall be solely liable for the cost of all construction and prior to District’s acceptance of the easements and dedications, for repairs and maintenance of the Improvements, Applicants shall bear all risk of damage, liability, injury or death, and from all liens, claims, demands and costs, including for attorneys fees and the cost of defense arising from any claim, damage, loss or destruction to all or a part of the Improvements to be constructed and installed pursuant to this Agreement except due to the negligence or willful misconduct of District, its employees, or agents.

9.4 **Indemnity Against Third-Party Challenge.** Applicant shall indemnify, defend and hold District harmless from and on account of any and all third-party claims, suits, actions or proceedings, including any and all judgments, damages, attorneys fees and costs, arising from, related to or for the purpose of challenging the execution of this Agreement, the issuance of permits for sewer or water service for the Project.

ARTICLE 10. AMENDMENT AND TERMINATION

10.1 **Amendment or Cancellation.** Except as provided in Article 10 above with respect to District's annual review, this Agreement may be canceled, modified, or amended only by mutual consent of the parties in writing.

10.2 **No Reimbursement of Fees or Costs.** In the event of any lawful cancellation by District pursuant to the terms of this Agreement, there shall be no refund whatsoever of any and all fees or costs which have been paid by Applicant to District or which are due by Applicant to District under the terms of this Agreement.

ARTICLE 11. NOTICES

11.1 **Procedure.** Any notice to either party shall be in writing and given by delivering the same to such party in person or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the party's mailing address. The respective mailing addresses of the parties are, until changed as hereinafter provided, the following:

DISTRICT: Olympic Valley Public Service District
 Post Office Box 2026
 Olympic Valley, CA 96146
 Attn: Michael Geary, General Manager

APPLICANT : David Peter Frederick Hess
 Carlos Ramirez

Either party may change its mailing address at any time by giving written notice of such change to the other party at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made, or communicated on the date personal delivery is effected or, if mailed, on the delivery date or attempted delivery date shown on a return receipt.

ARTICLE 12. MISCELLANEOUS; CONCLUDING PROVISIONS

12.1 **Negation of Partnership.** The parties specifically acknowledge that the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Applicants, the affairs of District, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any Person who is not a party, unless expressly otherwise provided.

12.2 **Entire Agreement.** This Agreement and any addendum, executed contemporaneously herewith, contain the entire Agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein. This Agreement shall supersede any and all prior Agreements with respect to the subject matter hereof.

12.3 **Construction of Agreement.** The provisions of this Agreement and the Exhibits hereto and such memoranda shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions hereof, in order to achieve the objectives and purpose of the parties hereunder. The captions preceding the text of each Article, Section, Subsection, and Index hereof are included only for the convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa.

12.4 **Mitigation of Damages.** In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party. Each party shall take all necessary measures to effectuate the provisions of this Agreement.

12.5 **Further Assurances; Covenant to Sign Documents.** Each party covenants, on behalf of itself and its successors, heirs, and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings, that may be necessary or proper to achieve the purposes and objectives of this Agreement.

12.6 **California Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

12.7 **Amendment.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change may be sought.

12.8 **Binding Effects.** The terms, covenants, and conditions of this Agreement shall run with the Property pursuant to *California Civil Code* section 1471 and shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, transferees, successors, associations and assigns.

12.9 **Severability.** In the event any term, covenant, condition, provision, or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, the validity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement herein contained. Nothing herein contained shall be deemed to limit, restrict, or modify any right, duty or obligation given, granted or imposed upon District by the laws of the State of California now in effect, or hereafter adopted, nor limit or restrict the power or authority of District, including the enactment of any rules, regulations, resolutions, policies, or ordinances, and in the event that any part of the provisions herein contained in this Agreement or incorporated herein, be found to be illegal or unconstitutional by a court of competent jurisdiction, such finding shall not affect the remaining parts, portions or provisions hereof.

12.10 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12.11 **Time.** Time is of the essence of this Agreement and of each and every term and condition hereof.

12.12 **Party.** The word “Party” or “Parties” means District and/or Applicant as the context may require.

12.13 **Mutual Intentions.** District and Applicant intend by this Agreement hereinafter set forth, subject to its terms, conditions, and covenants, to determine the rights and obligations of the parties hereto in the matter of the issuance of permits, all as more fully set forth herein.

12.14 **Authority to Bind.** Applicant warrants and represents to District that the undersigned are the duly authorized representatives of the Parties hereto and that each signatory is duly authorized and empowered to enter into this Agreement and execute it on behalf of its principal.

12.15 **Third Parties.** Applicant and District intend that this Agreement is entered into solely between those two parties and shall only be enforceable by either Applicants or District. Applicants and District do not intend to confer any benefits or expectations on any person or entity not a party hereto and no person or entity not a party hereto shall act in reliance on or have any legal right to act to enforce any of the provisions contained herein.

IN WITNESS WHEREOF, District and Applicants have executed this Agreement on the dates set forth below.

DISTRICT:

OLYMPIC VALLEY PUBLIC SERVICE DISTRICT,
a public entity

Date: _____

By: _____
Dale Cox, President, Board of Directors

ATTEST

Date: _____

By: _____
Jessica Asher, Board Secretary

APPLICANT:

DAVID PETER FREDERICK HESS,
a private citizen

Dated: 2/22/21

By: 

CARLOS RAMIREZ,
a private citizen

Dated: 2/22/21

By: 