



OLYMPIC VALLEY PUBLIC SERVICE DISTRICT



GRANITE CHIEF A LINE SEWER REPLACEMENT PROJECT

DATE: July 30, 2024
TO: District Board Members
FROM: Dave Hunt, District Engineer
SUBJECT: Granite Chief "A" Line Sewer Replacement Project – Sewer Line Replacement and Dedication Agreement

BACKGROUND: The Granite Chief "A" Line sewer is a non-compliant private sewer line that provides service to eight (8) properties at the lower end of the Granite Chief subdivision. The "A" Line is owned by the property owners connected to that line. The line is located immediately adjacent to Washeshu Creek, and a failure of the line could result in a sewage spill into Washeshu Creek with associated environmental and public health impacts.

Discussions of the "A" Line and its ownership and operation and maintenance responsibilities date back to the 1970s. In May 2013, the District informed the Granite Chief Estates Property Owners Association (GCEPOA) and property owners connected to that line in writing of its damaged and deteriorating condition. The District followed up with a letter on December 4, 2013 requiring the affected parties to develop a plan and schedule to replace the line, and requiring quarterly cleaning of the line until a plan was agreed upon and executed.

In 2015, the GCEPOA contracted with Auerbach Engineering Corporation to prepare a Technical Design Memorandum (TDM) to study alternatives to replace the "A" Line in conformance with Federal, State and County regulations and the District's Sewer Code. If designed and constructed in compliance with the District Sewer Code with the necessary easements provided, the District may accept dedication of the new sewer line, pending approval from the Board of Directors, and relieve the GCEPOA and property owners of their individual and collective liability and risk associated with ownership of a private sewer facility. The District has extended efforts to work cooperatively with the property owners since 2015 regarding this alternative. However, not all affected property owners have agreed to convey the necessary easements.

On April 13, 2023, the District notified the owners that the “A” Line is in a failed condition, not in compliance with Sections 3.15 and 10.01 of the Sewer Code and must be permanently abandoned no later than November 30, 2023. On December 4, 2023, the District issued the owners a Notice of Discontinuance of Sewer and Water Service stating that, effective June 30, 2024, the District shall disconnect the “A” Line from the District sewer system and discontinue water service to the properties. On May 30, 2024, the District issued the owners a Final Notice of Discontinuance of Sewer and Water Service, informing them that the deadline to appeal the second notice had passed and confirming that the District would discontinue sewer and water service to the properties after June 30, 2024 unless the owners were willing and able to satisfy the District’s rules and regulations before that date. On July 1, 2024, the District discontinued water and sewer service to the properties due to continued non-compliance.

Several property owners have proposed an improvement project to replace the failing “A” line. The proposed project involves constructing approximately 450 lineal feet of 6-inch sewer main, five (5) sewer manholes, and associated sewer service laterals. This is a private project being managed and completely funded by the property owners. The District will take dedication of the new sewer facilities after successful completion of the project and acceptance by the District.

DISCUSSION: To facilitate this project, Staff has prepared a Sewer Line Replacement and Dedication Agreement (Agreement). This Agreement outlines the terms and conditions under which the District will accept dedication of the new sewer assets and defines the rights and responsibilities of both the District and Applicant related to the District’s provision of sewer service to the requesting parcels. The Agreement also defines specific conditions for restoring water and sewer service to the properties.

Specific conditions of the Agreement include, but are not limited to:

- **Cost and Fees:** Applicants will pay to District all reasonable attorney’s fees and costs incurred by District for the preparation, negotiation, and execution of the Agreement and its supervision or administration, as well as staff time, engineering fees and costs incurred by District in the review, modification, supervision, observation, and other activities of the project.
- **Dedications and Warranty:** Upon completion of the improvements, Applicant must execute and deliver to the District dedications transferring the improvements, including all easements necessary for the construction, maintenance, repair, and replacement of the dedicated improvements. The dedication includes a 2-year warranty on the improvements in the form of a Maintenance Bond.

Conditions related to restoring water and sewer service to the properties include:

- Applicants have submitted to the District and the District has approved the Plans and Specifications;
- Applicants have provided signed sewer easements pursuant to Section 6.3 of the Agreement;
- Applicants have contracted with a California State licensed Class A or C-34 contractor to complete the Improvements and provided satisfactory proof thereof to the District;
- Applicants have provided the District satisfactory proof of financing for the Improvements;

The Agreement also stipulates if the construction of the improvements are not completed and accepted by the District on or before November 1, 2024, future discontinuation of water and sewer service will occur.

Construction of the improvements is expected to begin in August 2024.

- ALTERNATIVES:**
1. Approve Resolution 2024-24 authorizing execution of the Sewer Line Replacement and Dedication Agreement for the Granite Chief “A” Line Sewer Replacement Project.
 2. Do not approve Resolution 2024-24.

FISCAL/RESOURCE IMPACTS: There are no fiscal impacts associated with executing the Agreement. 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 2024-24 authorizing execution of the Sewer Line Replacement and Dedication Agreement for the Granite Chief A Line Sewer Replacement Project.

ATTACHMENTS:

- Resolution 2024-24 – A Resolution of the Board of Directors of the Olympic Valley Public Service District Granite Chief A Line Sewer Line Replacement and Dedication Agreement
- Sewer Line Replacement and Dedication Agreement for the Granite Chief A Line Sewer Replacement Project

DATE PREPARED: July 25, 2024

RESOLUTION 2024-24

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
OLYMPIC VALLEY PUBLIC SERVICE DISTRICT
GRANITE CHIEF "A" LINE
SEWER REPLACEMENT AND DEDICATION AGREEMENT**

WHEREAS, the Olympic Valley Public Service District, hereinafter referred to as "DISTRICT" wishes to enter into an agreement with an Unincorporated Association of Property Owners, hereinafter referred to as "APPLICANTS," to construct a new sewer main to replace the failing Granite Chief "A" Line.

WHEREAS, The Granite Chief "A" Line provides sewer service to eight (8) parcels located on Granite Chief Road, APNs 096-030-014, 096-030-015, 096-030-016, 096-030-017, 096-030-018, 096-030-035, 096-030-047, and 096-030-048 within the District's jurisdictional boundaries and sewer service territory.

WHEREAS, the Applicants have contracted Auerbach Engineering Corporation to design the replacement sewer main and appurtenances under conditions acceptable to the District for dedication and pursuant to the Improvement Plans entitled *Improvement Plans for the Granite Chief A-Line Sewer Replacement Project*.

WHEREAS, the Improvements include installation of approximately 450 lineal feet of six (6) inch sewer main, five (5) sanitary sewer manholes, and associated sewer service laterals and appurtenances.

WHEREAS, the Board of Directors has reviewed the Sewer Line Replacement and Dedication Agreement and considered the recommendations of Staff.

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 Sewer Line Replacement and Dedication Agreement for the Granite Chief "A" Line Sewer Replacement Project with the Applicants.

PASSED AND ADOPTED this 30th day of July 2024 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

**SEWER LINE REPLACEMENT
and
DEDICATION AGREEMENT**

This Sewer Line Replacement and Dedication Agreement (hereinafter “Agreement”) is entered into effective _____, 2024 (hereinafter “Effective Date”) by and between **OLYMPIC VALLEY PUBLIC SERVICE DISTRICT**, a California special district formed, operating, and existing under California Water Code sections 30000 et seq. (hereinafter “District”) and an **UNINCORPORATED ASSOCIATION OF PROPERTIES OWNERS**, consisting of owners of real property located at Assessor’s Parcel Numbers (“APNs”) 096-030-016, 096-030-017, and 096-030-018 (hereinafter “Applicants”) (together, “Parties”).

RECITALS

This Agreement is entered into on the basis of the following facts, understandings, and intentions of the Parties.

- A. The Granite Chief A Line (“A Line”) sewer is an existing private sanitary sewer facility as defined in Section 2.42 of Chapter 2 (“Sewer Code”) of the Olympic Valley Public Service District Administrative Code.
- B. The A Line provides sewer service to eight (8) parcels located on Granite Chief Road, APNs 096-030-014, 096-030-015, 096-030-016, 096-030-017, 096-030-018, 096-030-035, 096-030-047, and 096-030-048 within the District’s jurisdictional boundaries and sewer service territory.
- C. The District notified the Applicants and owners of the Properties, in a letter dated April 13, 2023, that the A Line is in a failed condition, not in compliance with Section 3.15 and Section 10.01 of Chapter 2 (“Sewer Code”) of the Olympic Valley Public Service District Administrative Code, and must be permanently abandoned no later than November 30, 2023.
- D. Subsequently, the District issued a Notice of Discontinuance of Sewer and Water Service on December 4, 2023 stating that, effective June 30, 2024, the District shall disconnect the A Line from the District sewer system and shall discontinue water service to the Properties.
- E. On July 1, 2024, the District discontinued sewer and water service to the Properties.
- F. Auerbach Engineering Corporation (“AEC”) has been contracted to design the replacement sewer main and appurtenances under conditions acceptable to the District for dedication

and pursuant to the Improvement Plans entitled *Granite Chief A-Line Sewer Replacement Improvements*.

- G. Applicants propose to contract for, commence, and complete Construction of the Improvements and, upon completion thereof to the satisfaction of District, dedicate the Improvements, together with any necessary public utility easements and licenses required by District in connection therewith.
- H. The Applicants intend to engage a qualified contractor and have agreed to bear all expenses to complete the Improvements as required.
- I. Upon Completion of the Improvements, recording of an Irrevocable Offer of Dedication in the Placer County Recorder's Office, and payment of all applicable District fees, the District will provide sewer service to the Applicants pursuant to the Improvements.
- J. Upon satisfaction of the conditions in Article XIII of this Agreement, the District shall restore sewer service and water service to a Property or the Properties.

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

ARTICLE I. 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**. Shall mean any and all permits and approvals as required or available from District and those of the County of Placer and/or other public agency having jurisdiction over the Properties or installation of the Improvements.

1.3. **Completion of the Improvements**. Shall mean the occurrence of all of the following:

- (a) The actual connection of the Improvements to District's sewer system;
- (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 or licenses, as may be required pursuant to this Agreement, for the Improvements;
- (c) Payment of any and all applicable fees required by District; and
- (d) Final inspection and approval of Improvements by District.

1.4. **Construction of Improvements.** Shall mean the completion of work in a good and workmanlike manner in accordance with the approved Plans and Specifications including all necessary labor, supplies, materials, and equipment.

1.5. **Improvements.** Shall mean the installation of approximately 450 lineal feet of six (6) inch sewer main, five (5) sanitary sewer manholes, four (4) sewer services with associated appurtenances, surface restoration and/or paving, and connection to the District's existing sewer system located in the Placer County Right of Way in Shirley Canyon Rd. in accordance with the Plans and Specifications approved by District and in compliance with this Agreement.

1.6. **Applicable Laws.** Shall mean any and all federal, state, and local laws, regulations, codes, policies, rules, orders, and official policies including, without limitation, those adopted by District governing water and sewer service and any other activity authorized to be performed by District under the California Water Code and applicable to the Properties, Improvements, and activities related thereto.

1.7. **Plans and Specifications.** Shall mean the drawings, designs, plans, renderings, standards, and specifications to be prepared by Applicants and/or GCEPOA and approved by District for the Construction of the Improvements, and any approved modifications thereto.

1.8. **Properties.** Shall mean the three (3) parcels located on Granite Chief Road, APNs 096-030-016, 096-030-017, and 096-030-018.

1.9. **Property.** Shall mean one of the Properties.

ARTICLE II. 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's Board of Directors 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 Applicants perform promptly and expeditiously and are, otherwise, in compliance with the terms and conditions of this Agreement.

ARTICLE III. CONDITIONS OF THE IMPROVEMENTS

3.1 **Authority.** Applicants represent that they are empowered and have the full and complete authority to enter into this Agreement.

3.2 **Joint and Several Liability** Each of the Applicants is jointly and severally liable for the successful Construction of Improvements and Completion of the Improvements and compliance with any and all obligations imposed on Applicants pursuant to this Agreement. Each of the Applicants agrees to and shall grant to each other and to District any and all easements, licenses, rights, approvals, and/or permissions as may be necessary or convenient to carry out the purposes and intents of this Agreement.

3.3 **Covenants** Except for items disclosed to District, Applicants have not received any notice of any condemnation actions being contemplated affecting the Properties. Applicants have not granted to any person or entity, nor to Applicants' knowledge does any person or entity other than Applicants have, any unrecorded right, title, or interest in or to the Properties or any portion thereon.

ARTICLE IV. IMPROVEMENT PLANS AND CONTRACT

4.1 **Design.** The Applicants shall be responsible for submitting the Plans and Specifications to the District for acceptance prior to Construction of the Improvements. All materials to be furnished and all construction to be completed shall be in accordance with the District's Sewer Code, Technical Specifications, and Standard Drawings, each of which is incorporated in full in this Agreement by this reference. Upon acceptance by District in writing, the Plans and Specifications shall become incorporated into this Agreement by this reference.

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 Laws.

4.3 **Construction.** Applicants shall construct the Improvements shown on the approved 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.

4.4 **Submission to District.** Applicants shall provide to District, at Applicants' sole cost, copies 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 and

Specifications 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 V. CONSTRUCTION OF IMPROVEMENTS; OBSERVATION

5.1 **Construction.** Applicants shall, at their sole cost and expense and with all reasonable diligence, commence and complete Construction of the Improvements. 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 and construction thereof, at Applicants' sole cost and expense.

5.2 **Contractor Compliance With Laws.** Applicants shall require their contractor and any subcontractor(s), singular or several, to comply with all Applicable Laws including, without limitation, those pertaining to employment, payment of prevailing wages, occupational safety, and health during the course of installation and construction of the Improvements herein described. Contractor and/or any subcontractor(s) must be properly licensed by the State of California and shall be properly bonded and insured.

5.3 **Construction Observation and Inspection.** District shall have the right to observe all Construction of the Improvements during progress of construction for the purpose of assuring that the Improvements are installed and constructed in accordance with the approved Plans and Specifications. Should observation or inspection by District reveal a material failure to conform to the Plans and Specifications and/or Applicable Laws, the Improvements shall not be connected to District's sewer system unless and until all corrections are performed and completed to the reasonable satisfaction of District.

5.4 **Construction Observation Fee.** Applicants shall reimburse District for its actual costs of conducting any such observations during Construction of the Improvements, including but not limited to the actual time spent by District personnel, its agents or independent contractors, to assure District that provisions of this Agreement have been met. Payment for the costs of conducting such observations shall be immediately due and payable upon demand by District.

5.5 **Disclaimer Warranty or Waiver.** The observation of any work during Construction of the Improvements by District, its agents, contractors, 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 and/or Applicable Laws; nor shall such observation be deemed a waiver of any failure of Applicants' contractor to perform the work in compliance with the approved Plans and Specifications and/or Applicable Laws, nor a waiver of any breach of this Agreement. 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 Properties or the Improvements 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 Improvements, District's systems, and/or the water supply for purpose of assuring the public health and safety.

ARTICLE VI. EASEMENTS AND DEDICATIONS

6.1 **Location of Existing Facilities.** Upon request by Applicants, District shall promptly furnish Applicants with District's current information concerning the location of existing District sewer and water facilities and easements necessary therefor on or adjacent to the Properties. 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. Applicants waive and release District from any and all claims, demands, causes of action, damages, and liabilities as may be suffered or incurred by Applicants as a result of any act or omission of District in locating such facilities.

6.2 **Dedication.** Upon District's acceptance of the Improvements in accordance with the approved Plans and Specifications and the expiration of any lien period applicable to construction thereof, Applicants shall promptly execute and deliver to District conveyances and dedications transferring the Improvements and all necessary easements or licenses, 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 Properties 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 Applicants that the Properties and conveyances and dedication transferred thereby are free of any lien, cloud, claim, or encumbrance, including without limitation that of mechanic's lien claims. The Parties agree to meet and confer in the event that the Irrevocable Offer of Dedication of the Improvements is insufficient, unsatisfactory, or otherwise unacceptable to District in District's sole discretion.

6.3 **Easements and Licenses.** Applicants shall submit to District all easements and licenses necessary for the construction, installation, maintenance, repair, replacement, inspection, and use of the Improvements which are the subject of this Agreement. Upon District's acceptance

of the Improvements, District shall also accept and Applicants shall grant to, or obtain for, District all such easements and licenses. In the event District does not accept the Improvements, all such easements and licenses on behalf of District shall be returned, terminated, destroyed, or otherwise extinguished. Such easements and licenses shall be in a form and content acceptable to District and shall include provisions releasing District from any liability arising from or related to the grantors' use, occupancy or improvement of the real Properties which is the subject of the easement and/or license 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 Applicants for District's use of the easements and/or licenses.

6.4 **Acceptance.** Upon satisfaction of the terms and conditions of this Agreement and the Construction of Improvements, 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 and licenses offered by Applicants, provided that the Improvements, which are the subject of the dedications, have been inspected by District and found to be in conformance with the approved Plans and Specification, and further provided that Applicants have 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 sewer system, and shall thereafter provide sewer service to the Applicants 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.** As a condition precedent to District's acceptance of the Improvements, Applicants shall provide to District, at Applicants' sole 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 properties, improvements, licenses, or easements, required or contemplated to be conveyed to District pursuant to this Agreement.

ARTICLE VII. COSTS AND FEES

7.1 **Professional Fees.** Applicants 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 Improvements contemplated hereunder.

7.2 **Security.** Applicants have 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 Applicants 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, Applicants shall restore the deposit to a minimum of Ten Thousand Dollars (\$10,000.00). If Applicants fails to do so, District shall not be required to provide service to the Improvements. District shall return any remaining deposit to Applicant within thirty (30) days after acceptance of an Irrevocable Offer of Dedication of the Improvements.

ARTICLE VIII. RESTORATION OF SEWER SERVICE AND WATER SERVICE TO PROPERTIES

8.1. **Conditions to Restoring Water and Sewer Service to Properties.** The District shall restore water and sewer service to a Property when the District determines, in its sole discretion, that all of the following have been satisfied:

- (a) The owner of the Property has submitted to the District and the District has approved the Plans and Specifications;
- (b) The owner of the Property has provided signed sewer easements pursuant to Section 6.3 of this Agreement;
- (c) The owner of the Property has contracted with a California State licensed Class A or C-34 contractor to complete the Improvements and provided satisfactory proof thereof to the District;
- (d) The owner of the Property has provided the District satisfactory proof of financing for the Improvements;
- (e) The owner of the Property has obtained any and all approvals, permits, and/or inspections required by the District's Administrative Code or applicable law, including without limitation from the County of Placer, prior to undertaking any work for which approval, permit(s), or inspection is required, including, but not limited to, the Improvements and correction of any and all Sewer Code violations to the District's satisfaction.

8.2. **Future Discontinuation of Water Service and Sewer Service.** The Applicants acknowledge, understand, and agree that, if the District restores water service and sewer service to a Property and one or more of the conditions in Section 8.1 of this Agreement are not satisfied or later determined to be not satisfied, and/or the Construction of Improvements has not been completed and accepted by the District on or before November 1, 2024, the District shall immediately discontinue water service and sewer service to the Property, without further or

additional notice of any kind, until all Sewer Code violations are remediated, as determined by the District in its sole discretion.

8.3. **Release and Indemnification for Discontinuance of Water Service and Sewer Service.**

- (a) Owner, and on behalf of his, her, or its successors, assignees, agents, insurers, attorneys, and other representatives, hereby waives, releases, and forever discharges the District, its elected officials, officers, employees, agents, attorneys, independent contractors, representatives, volunteers, successors, and assigns, from any and all claims, demands, causes of actions, obligations, damages, losses, costs, expenses, appeals, and/or liabilities of any nature whatsoever, whether in law or equity, known or unknown, suspected or unsuspected, fixed or contingent, under constitutional, statutory, or common law, which they have or may have in the future against the District, its elected officials, officers, employees, agents, attorneys, independent contractors, representatives, volunteers, successors, and assigns relating to or arising out of the District's decision to discontinue water and/or sewer service to the Property including, without limitation, pursuant to this Agreement, and/or any notice sent by the District related thereto. Owner agrees it shall waive the provisions of California Civil Code section 1542, which states in full: **“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”**
- (b) Owner, and on behalf of his, her, or its successors, assignees, agents, insurers, attorneys, and other representatives, shall not now or in the future bring any action in law or in equity in any court, forum, or arbitration proceeding (whether by original process, counterclaim, cross-claim, third-party process, impleader, claim for indemnity or contribution, or otherwise) against the District, its elected officials, officers, employees, agents, attorneys, independent contractors, representatives, volunteers, successors, and assigns, relating to or arising out of the District's decision to discontinue water and/or sewer service to the Property including, without limitation, pursuant to this Agreement, and/or any notice sent by the District related thereto.

**ARTICLE IX. APPLICANTS' GUARANTEE AND OBLIGATION FOR REPAIRS;
SECURITY**

9.1. **Performance Bond**. Applicants shall procure and continuously maintain, at their 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 Applicants will perform all of their obligations under this Agreement and will pay for all work and material furnished to the job. Said Performance Bond or other security shall be in an amount equal to one hundred fifty percent (150%) of the value of the cost of Construction of the Improvements. Applicants shall maintain the Performance Bond at all times until District accepts the Improvements. District may provide written waiver of the requirement for the Performance Bond if Applicants demonstrate that they have provided comparable security to another public entity pursuant to Government Code Section 66499.1, which security encompasses the installation of the Improvements and names the District as a co-obligee.

9.2. **Maintenance Bond and Warranty**. After Construction of Improvements and before acceptance thereof by the District, a Maintenance Bond in the amount of 50% of the cost of the Improvements shall be provided to the District by the Applicants or the Applicants' 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 Maintenance Bond may be provided. Such Maintenance Bond shall remain good for two (2) years after acceptance by the District of the Improvements. Said two (2) year 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. Applicants agree to supply District with all warranty and guarantee documents relative to equipment, materials, and supplies incorporated in the Improvements, as guaranteed by suppliers, distributors, or manufacturers before acceptance of an Offer of Dedication therefor.

9.3. **Applicants' Obligation for Repairs**. For two (2) years following acceptance by District of the Improvements, Applicants or their successors in interest, at their sole cost, shall replace or repair any and all defects in material or workmanship in said Improvements immediately upon demand by District. In the event Applicants fail 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 Applicants, or their 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 take any and all actions and exercise

any and all rights and remedies available to District at law or in equity to collect such costs, interest, and expenses.

9.4. **Emergency Condition.** In the event that any such defect, as described in Paragraph 7.3 above, has created an emergency condition to exist, as determined by District and/or the Placer County Public Health Officer or their representative, District shall make a reasonable effort to give Applicants notice of such circumstance. If District is unable to immediately communicate such notice to Applicants, or if Applicants receive such notice and fail to immediately commence corrective work, District may cause such work as is necessary to eliminate or mitigate such emergency condition to be performed and accordingly charge and collect all costs and expenses so incurred by remitting proof thereof to the surety issuing bonding, as set forth in this Article 7, and/or recover such costs and expenses from Applicants.

ARTICLE X. INSURANCE AND INDEMNITY

10.1. **Insurance.** At all times during the term of this Agreement, Applicants and their contractor and subcontractor(s) shall obtain and continuously maintain a policy or policies of insurance in a form approved by District, including worker's compensation insurance coverage, if applicable, 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 \$4,000,000 in aggregate, and environmental liability/pollution insurance coverage covering loss (including cleanup costs) as a result of claims for bodily injury, property damage, and cleanup costs (including expenses required by environmental laws or incurred by federal, state, or local governments or third parties) with policy limits of not less than \$5,000,000 per occurrence. For the purposes of this section, "pollution conditions" includes the dispersal, discharge, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant (such as smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste, and waste materials) into or upon land, any structure on land, the atmosphere, or any watercourse or body of water (including groundwater), provided the conditions are not naturally present in the environment in the amounts or concentrations discovered.

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, including its officials, officers, employees, agents, and volunteers, 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 covenant and agree that they 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.

10.2. **Applicants' Indemnity For Injury To Person or Property.** Applicants and their successors, assignees, agents, insurers, attorneys, and other representatives, shall indemnify, defend, and hold harmless District, its elected officials, officers, employees, agents, and volunteers, from and against of any and all claims, demands, losses, damages, injuries, causes of action, attorneys fees, cost of defense, and liability arising from or related to the death of or injury to any person or persons, including employees of Applicants and their contractor or subcontractor(s), or from and on account of damage or destruction to any property (including without limitation loss of use thereof), caused by or resulting from the performance of work under or pursuant to this Agreement by Applicants, their agents, servants, employees, or by the contractor or subcontractor(s), singular or several, employed by Applicants or by the agent, servants or employees of any such contractor or subcontractor(s), either singular or several, except due to the sole active negligence or willful misconduct of District.

10.3. **Applicants' Hold Harmless.** Applicants agree to indemnify, defend and hold harmless District, its elected officials, officers, employees, agents and volunteers, from and against of any and all claims, demands, losses, damages, injuries, causes of action, attorneys fees, cost of defense, and liability resulting from, arising out of, or in any way attributable to the design of the Improvements, performance of work, and, prior to acceptance of the Improvements, easements, licenses 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 sole active negligence or willful misconduct of District.

Applicants shall be solely liable for the cost of all construction and, prior to District's acceptance of the Improvements, easements, licenses and dedications, for repairs and maintenance of the Improvements. Applicants shall bear all risk of all damage, liability, injury or death, and 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 sole active negligence or willful misconduct of District.

10.4. **Indemnity Against Challenge.** Each of the Applicants shall indemnify, defend and hold harmless District, its elected officials, officers, employees, agents and volunteers, from and against any and all claims, suits, actions or proceedings, including without limitation any and all judgments, damages, attorneys fees and costs, brought by third parties or one or more

Applicants against the District and arising from, in connection with, as a consequence of, or in any way attributable to this Agreement, performance of the work, approval or acceptance of the Improvements, and/or issuance of permits.

ARTICLE XI. AMENDMENT, TERMINATION AND REMEDIES

11.1. **Amendment or Cancellation**. This Agreement may be canceled, modified, or amended only by mutual consent of the Parties in writing, except as otherwise provided in this Agreement.

11.2. **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 Applicants to District or which are due by Applicants to District under the terms of this Agreement.

11.3. **Remedies**. If either Party defaults under this Agreement, the non-defaulting Party may pursue (i) specific performance of this Agreement, in which action the prevailing Party shall have the right to recover costs of suit and reasonable attorneys' fees; or (ii) cancellation of this Agreement by providing at least ten (10) days' written notice to the defaulting Party. Applicants shall not be entitled to and shall not seek monetary damages, whether direct, special, general, indirect, consequential, or punitive, from District under this Agreement or under any otherwise applicable legal basis for monetary damages. The Parties agree that specific performance (or writ of mandate for performance of a required act by the District) shall be the sole available and appropriate remedy for either Party under this Agreement. No delay or omission in the exercise of any right or remedy accruing to the non-defaulting Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach by the defaulting Party. The waiver by either Party of any condition or covenant contained herein shall not be deemed a waiver of any other condition or of any subsequent breach by the other Party of any term, covenant or condition contained herein. All rights, powers, elections and remedies afforded to a Party either hereunder or by law shall be cumulative and not alternative, and the exercise of any right, power, election or remedy shall not bar the exercise of any other.

ARTICLE XII. NOTICES

12.1. **Procedure**. The Parties hereby acknowledge and agree that any and all notices pursuant to this Agreement shall be delivered to the Designated Contact listed below. The Parties further acknowledge and agree that delivery of notice in accordance herewith to the Designated Contact shall constitute sufficient notice, and further agree to waive and release the other Party from any claim arising out of or alleging insufficient notice based on the failure to deliver notice to any person other than the Designated Contact below. Any notice to either Party shall be in

writing and given by delivering the same to such Party's Designated Contact in person or by sending the same by registered or certified mail, return receipt requested, with postage prepaid, to the mailing address of the Party's Designated Contact. 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: General Manager

APPLICANTS:

Either Party may change its Designated Contact and/or mailing addresses at any time by giving written notice of such change to the other Party's Designated Contact 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 XIII. MISCELLANEOUS; CONCLUDING PROVISIONS

13.1. **Negation of Partnership.** The Parties specifically acknowledge that the Improvements 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.

13.2. **Entire Agreement.** This Agreement and any addendum, executed contemporaneously herewith, contains 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.

13.3. **Construction of Agreement.** The provisions of this Agreement and the Exhibits hereto 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.

13.4. **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.

13.5. **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.

13.6. **California Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California. In the event of any dispute arising out of or related to this Agreement, venue shall be in the Superior Court of California for the County of Placer.

13.7. **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.

13.8. **Binding Effects.** The terms, covenants, and conditions of this Agreement shall run with the Properties 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.

13.9. **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.

13.10. **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.

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

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

13.13. **Authority to Bind.** Applicants warrant and represent 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.

13.14. **Third Parties.** Applicants and District intend that this Agreement is entered into solely between those 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

APPLICANTS:

Dated: _____

By: _____

Caroline Winnett
221 Granite Chief Rd.
APN: 096-030-016-000

Dated: _____

By: _____

Louise Hansen
225 Granite Chief Rd.
APN: 096-030-017-000

Dated: _____

By: _____

Tracy Hansen
225 Granite Chief Rd.
APN: 096-030-017-000

Dated: _____

By: _____

Susan Bradski
229 Granite Chief Rd.
APN: 096-030-018-000

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