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# TATOOSH WATER COMPANY

Snohomish County, Washington

## DEVELOPER EXTENSION AGREEMENT

THIS WATER SYSTEM EXTENSION AGREEMENT (this "Agreement") dated as of 2-19, 2020, is made by and between Nick Franulovich, a ("Contractor"), and TATOOSH WATER COMPANY, a Washington corporation ("TWC"). For good and valuable consideration, including the making and timely performance of the covenants herein made, the parties agree as follows:

### RECITALS

- A. Developer owns that certain parcel of real property located in Snohomish County, Washington, legally described on Exhibit A attached hereto (the "Property").
- B. Developer intends to construct and develop within the Property the following project: 908 27th ST NE - Viewmont Estates (the "Project").
- C. TWC operates a water system in the vicinity of the Property. TWC's water system service area boundaries include the Property. However, TWC's water system does not extend to the Property and otherwise cannot currently serve the Project.
- D. Developer has asked TWC to provide domestic water and fire flow utility services sufficient to serve the Project.
- E. TWC is willing to serve the Project if Developer will cause the construction and installation, at Developer's expense, of water system extensions and other water system facilities sufficient to serve the Project.
- F. This Agreement is made to further the intentions of Developer and TWC.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and TWC hereby agree as follows:

### 1. LOCATION AND EXTENSION

The proposed extension will be installed in roads and/or easements and/or on other approved rights-of-way and shall be for the use and benefit of the property hereinafter legally described as follows:

#### Legal Description of Property:

Section 19 Township 32 Range 05 Quarter NW  
Subdivision Viewmont Estates BLK 000 D-00 LOT 7

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**2. DESCRIPTION OF EXTENSION AND OWNERSHIP**

In this Agreement, the term "Extension" means water system facilities, including utility cabinets, buildings, pipes, pumps, tanks, vaults, and appurtenant facilities, to be constructed and installed by Developer at its expense, then conveyed to TWC for its ownership and operation, for the purpose of extending water system facilities currently owned and operated by TWC to a point within a public road or other right-of-way or utility easement area located adjacent to the Property. The Extension does not include water service pipelines, indoor and outdoor plumbing facilities, and appurtenant facilities located between a water meter and the buildings and other structures within the Project (collectively, "User Facilities"). The Extension is described in more particularity on Exhibit B attached hereto. The Extension will be located substantially as shown on Exhibit C attached hereto.

**3. FRANCHISE.**

TWC holds a Snohomish County franchise under Resolution No. \_\_\_\_\_ (the "Franchise") to install, operate, and maintain water utility facilities within public roads, streets, avenues, highways, alleys, rights-of-way, and other county properties. A copy of the Franchise is attached hereto as Exhibit D. Because the Extension will be constructed partly within a public right-of-way and because the Developer does not hold a franchise, if Snohomish County so requires then TWC shall obtain the Snohomish County construction permit for the Extension, or the portion thereof located within a public right-of-way, provided, however, that Developer shall pay in advance all costs and expenses to be incurred in connection therewith.

**4. FEES AND CHARGES**

- A. Developer shall pay to TWC all water system connection and user charges assessed by TWC from time to time. Developer also shall reimburse TWC its attorneys' fees and costs in the preparation of this Agreement in the amount of US\$1,000.00.
- B. Project Deposit - All costs incurred by the Company on this project shall be borne by the Developer. The Developer shall deposit a fee, which shall be determined by the Company after review of application. The fee shall be payment for the costs to be incurred by the Company for inspection, engineering, legal, financial or other services performed by or for the Company relating to this project. The Developer shall be responsible for the payment of all actual costs incurred by the Company before the Company accepts the project. The Company shall adjust the fee if actual costs incurred indicate that the original fee will not cover all costs. The fee shall be paid to the Company in consideration of the following work:

1. Prepare or review distribution system plans and specifications
  2. Construction inspection
  3. Advice regarding the Company's requirements
  4. Completion of as-built drawings
- C. Any remaining project deposit may be retained for one year after final acceptance, at which time all the unexpended fees will be returned to the Developer. This deposit will be used for warranty inspection and final acceptance procedures.
- D. A \$300 plan review fee shall be paid by the Developer for the Washington State Department of Health review. Depending on the complexity of the project, the Department of Health review fee may be less than \$300 in which case any remaining money will be returned to the Developer.
- E. Facilities charges shall be assessed as follows:
- D. General Water Facilities Charge — Any application for water service facilities shall be subject to a general facilities charge for each residential customer equivalent (R.C.E.) to be located on said parcel or tract.
- The Company will allow a credit against the general facilities charge to any Developer who is required to install a line larger than eight inches (8") in diameter for the additional cost of acquiring and installing such larger line over and above the cost of the eight inch (8") diameter line.
- Payment of the general facilities charge shall be made before construction begins.
2. Local Water Facilities Charge — Depending on the location and layout of the proposed project, a Local Facilities Charge may be due. This will be determined by the Company during the Developer Extension Agreement process. Payment shall be made prior to construction.

**D. PAYMENT – SECURITY OF FEES**

The Developer shall pay the Project Deposit described in paragraph 3.B. to the Company as follows:

- D. One-half (1/2) of the fee at the time the Agreement is made.
- B. Additional one-half (1/2) of the fee will be paid before construction begins.
- C. Final costs not covered by the original fee before the Company accepts the water system extension.
- D. All of the charges detailed herein shall be and become a lien on the property described in Paragraph 1 hereof.

## 6. PRELIMINARY ENGINEERING

- A. The Developer may have his own professional engineer prepare plans and specifications for water mains or the Developer may have the Company's engineer prepare said.
- B. The Developer shall furnish two (2) copies of the proposed plat map to a scale of 1 inch = 100 feet or 1 inch = 50 feet with contour intervals of 5 feet or less, and proposed road profile sheets prior to the Company's ordering of engineering design or plan review from its engineer. Final plat map shall be furnished as soon as possible. The Developer shall also provide the description, location and elevation of all benchmark data available on the project site and this information, wherever possible, shall be indicated on the maps furnished by the Developer. The datum used shall be the Company's and not an assumed datum.
- C. The Company recommends pump station and pump system plans and specifications be prepared by the Company.

## 7. DESIGN AND CONSTRUCTION

- a. **CONSTRUCTION PLANS AND PERMITS.** Developer shall prepare and submit to Snohomish County and other governmental agencies with jurisdiction over the construction and installation of the Extension all construction permit applications, construction plans, fees, and other materials relating to the construction of the Extension (collectively, "Construction Plans"). Developer shall not commence any work relating to the construction or installation of any portion of the Extension until (a) TWC has approved the Construction Plans by written notice to Developer, and (b) all construction permits and other governmental approvals and permits required in connection with the construction and installation of the Extension have been issued.
- b. **MANUAL.** Developer acknowledges and agrees that all work relating to the Extension must conform to all provisions of the Tatoosh Water Company Developer Extension Manual dated March 31, 2014, as it may be amended from time to time (as amended, the "Manual"). Developer acknowledges receipt of a copy of the Manual. In the event of any conflict between the Manual and this Agreement, the provision that is more protective of TWC shall govern.
- c. **CONSTRUCTION STANDARDS AND COSTS.** Developer shall construct the Extension in full compliance with the Manual, the Franchise, the Construction Plans approved by TWC, all issued governmental approvals and permits, and all applicable laws, regulations, and ordinances. Contractor shall construct and install the Extension in a workmanlike manner, in accordance with industry standards, and free and clear of all claims or liens. Developer shall bear all costs of construction and installation of the Extension and its connection to TWC's water system. TWC shall have no liability for any costs or expenses relating to the construction and installation of the Extension or its connection to TWC's water system.

- d. **USER FACILITIES.** Developer shall construct the User Facilities in full compliance with the Manual, all issued governmental approvals and permits, and all applicable laws, regulations, and ordinances. Contractor shall construct and install the User Facilities in a workmanlike manner, in accordance with industry standards, and free and clear of all claims or liens. Developer shall bear all costs of construction and installation of the User Facilities and their connection to the Extension. Developer, its successors and assigns, shall bear all costs of maintenance, repair, and replacement of the User Facilities. TWC shall have no liability for any costs or expenses relating to the construction, installation, maintenance, repair, replacement, and use of the User Facilities or their connection to TWC's water system.

## 8. **EVIDENCE OF INSURANCE**

Developer shall purchase and maintain at all times policies of commercial general liability insurance; worker's compensation insurance to the extent required by applicable laws; automobile liability insurance; and such other insurance as Developer deems advisable or is required to maintain by any applicable law, order, ordinance, or regulation. All insurance shall be obtained from insurance carriers rated Triple A (and rated in Class XI or better financial condition) by Best's Insurance Reports or equivalent rating service, and licensed to do business in the State of Washington. All such insurance policies shall provide that coverage may not be cancelled, modified, or allowed to lapse (including cancellation for nonpayment of premium) without compliance with all applicable provisions of RCW Chapter 48.18 pertaining to cancellation or non-renewal of insurance and at least thirty (30) days' prior written notice to TWC. Developer shall provide TWC with a true copy of all insurance policies required herein, which shall be in full force and effect immediately upon receipt of the same, showing TWC as an additional named insured therein, and Developer shall provide TWC with evidence that the premiums for such policies have been paid when due. The commercial general liability insurance shall insure both Developer and TWC and shall include protection against liability for non-owned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to similar properties in the greater Seattle metropolitan area. The limits of liability shall not be less than Two Million Dollars (US\$2,000,000) covering all claims for personal injury and/or property damage arising out of a single occurrence and Five Million Dollars (US\$5,000,000) general aggregate. Developer shall carry and maintain a policy of commercial automobile liability insurance insuring both Developer and TWC against liability for bodily injury or property damage claimed to have resulted from or be in any way connected with motor vehicles leased, owned, or used by Developer, with combined single limits each occurrence of not less than US\$2,000,000, which may be a combination of automobile and umbrella insurance coverage.

## 9. **PERFORMANCE BOND**

See Section 16 of General Conditions (Section 07700 of the Developer Project Manual) for performance bond requirements. The Company may accept a refundable cash deposit, amount to be determined by the Company, in lieu of the performance bond.

## 10. **EASEMENTS**

The Developer at his sole cost and expense shall obtain any required easements. The easement legal description shall be prepared by a licensed professional surveyor and shall bear his seal. The Company engineer will place the easement on the proper form and it will

be returned to the Developer for signature. Where applicable, the Developer shall provide an easement compatible with the Company's Comprehensive Water Plan to insure continuation of the water line. At the completion of construction and prior to the Company accepting the water extension, Developer shall convey and warrant to TWC a perpetual nonexclusive easements (each, an "Easement") ten (10) feet in width upon and within the Property, for the maintenance, operation, repair, replacement, and use of any portion of the Extension located either within the Property or within five (5) feet of the Property. The centerline of the Easement shall be the centerline of the Extension as constructed or installed. Developer covenants that no building or other structure shall be located within five (5) feet of the Extension in perpetuity.

Easements required for intervening properties shall be obtained by the Developer prior to construction start.

**11. PERMITS**

The Developer shall obtain all the necessary permits from all jurisdictions having authority. The Company shall be provided with a copy of all such permits before construction begins.

**12. GRADING OF ROADS**

Developer shall grade all roads to the design sub grade elevation prior to the start of construction and shall advise the Company in writing of any changes which may be contemplated during construction. If the Developer changes the sub grade elevation of the road after completion of the extension, or any part thereof, the Developer shall be responsible for all costs incurred for the extension as a result of said change in subgrade elevation. This obligation shall remain in full force until Snohomish County or other municipality releases the right-of-way or road construction bond or bond of other description in connection with the Developer's obligation for completion of the roads within the area.

**13. WATER**

The Company shall supply flushing water (approximately two fillings of the pipe system) for the Developer's project. The Developer shall purchase water for excessive flushing or other purposes such as settling and dust control from the Company at the current cost established by the Company for this purpose.

**14. CONNECTION TO THE COMPANY'S SYSTEM**

Not less than 48 hours prior to the time that said extension is partially or fully completed and connection to the Company's System is desired, written application for permission to make the actual connection at a specified time shall be made by the Developer. All new connections to the existing system and all testing of the new line shall require authorization of the Company and shall be conducted in the presence of the Company's representatives.

**15. DAMAGE TO EXISTING SYSTEM**

The Developer hereby guarantees payment to the Company for cost of repairs to the Company's system, which has been damaged by activities of the Developer or his contractor in the construction of the water extension.

**16. FINAL ACCEPTANCE**

The Company agrees to accept title to the extension when all work has been completed and when the Company has made final inspection and given approval of the system as having been completed in accordance with the plans and specifications. Acceptance of said extension shall be by resolution of the Board Members, upon receipt of a completed, executed bill of sale and payment in full of all fees and charges.

**17. BILL OF SALE**

Developer agrees to execute a bill of sale approved by the attorney for the Company within sixty (60) days of the approved and completed water extension. Said bill of sale will provide for transfer of title of the constructed system extension from the Developer to the Company and will further include the following items and statements:

- A. Cost including administration, legal and engineering fees, for the water main installation.
- B. Lengths and size description of the system and of system location.
- C. The Developer is the lawful owner of said property and it is free from all encumbrances.
- D. That all bills for labor and material have been paid.
- E. The Developer has the right to transfer said title and will warrant and defend the same against lawful claims and demands of all persons from one (1) year to the date of the bill of sale.
- F. Consideration will be recited that Developer grants the extension to Company for the consideration of incorporating the system in the overall water system of the Company.
- G. Developer further warrants that for a period of one (1) year from the date of the bill of sale that the water system will remain in perfect working order and condition except where abused or neglected by the Company and the Developer will repair or replace at his own expense any work or material that may prove to be defective during said one (1) year period of warranty.

**18. CERTIFICATION OF COSTS**

Developer agrees to complete in full the Certification of Costs of Developer Extensions in Section C of the Developer Project Manual.

**19. ACCEPTANCE AND OPERATION.**

Developer shall notify TWC and tender conveyance of ownership of the Extension to TWC by a warranty bill of sale in form and substance acceptable to TWC within ten (10) days after completion of construction and installation of the Extension, but before the backfilling of any

trenches or other excavations within which any portion of the Extension is located. TWC thereafter shall inspect the Extension and notify Developer either of any defects or of TWC's acceptance of the Extension. If TWC notifies Developer of any defects in the Extension, then Developer shall remedy such defects and notify TWC of the completion of such remedial work within ten (10) days after completion of such work. TWC thereafter shall re-inspect the Extension and shall notify Developer upon TWC's acceptance of the Extension. Upon TWC's acceptance of the Extension, Developer shall backfill all trenches and other excavations and restore the land surface to its condition before construction, and TWC shall cause the Extension to be connected to and incorporated within TWC's water system and thereafter shall own and operate the Extension.

**20. MAINTENANCE.**

After TWC's acceptance of the Extension, TWC shall maintain the Extension at its sole cost and expense, provided however, that Developer shall pay, reimburse, and indemnify and hold TWC harmless from and against all maintenance costs, expenses, liabilities, and losses incurred by TWC within one (1) year after the date of TWC's acceptance of the Extension.

**21. NO LIABILITY FOR FAILURE OF SERVICE.**

Notwithstanding anything to the contrary herein, TWC shall not be liable to Developer or any other entity or person for any suspension or interruption in service due to electricity failure, system closures for emergency or necessary repairs, or any other cause beyond the reasonable control of TWC. It is expressly understood that in such case, TWC shall use commercially reasonable efforts to cause the problem to be remedied but shall not be liable for any damage or inconvenience suffered by Developer or any other entity or person, nor for any property damage or claims for interruption of service or for other causes reasonably beyond TWC's control.

**22. PAYBACK AGREEMENT EXECUTION AND RECORDING**

Following receipt of the bill of sale as heretofore described, the Company agrees to execute and record a payback agreement pursuant to the terms of RCW 35.91, et seq. Said payback agreement will provide as follows:

- A. The parties agree to be bound pursuant to the terms of the "Municipal Water and Sewer Facilities Act." RCW 35.91.010, et seq.
- B. The Developer has constructed and installed the water line in the general vicinity (describe the vicinity) as portrayed by a map attached and made a part of the payback agreement.
- C. That said bill of sale has been attached to the payback agreement.
- D. That the line has been accepted by the Company and that the Developer will be supplied with water service at the rate established by the Company for their class of service.



- E. That the payback agreement will continue for a period of ten (10) years from the date of the agreement wherein the Company will agree to reimburse the Developer and his assigns in accordance with the agreement the pro-rata share of the construction of said water line.
- F. The owner of real estate which parallels said water line, who subsequently taps into or uses the water facilities constructed pursuant to this agreement, or laterals or branches connecting thereto, will be charged a fair pro-rata share of the costs of the construction of these water facilities.
- G. No person, firm or corporation shall use the water facilities or extensions thereof during the period of time prescribed in such contract without first paying to the Company the full amount required by the provisions of the contract. All amounts so received by the Company shall be paid out by it under the terms of that contract within sixty (60) days after the receipt thereof.

**23. RESPONSIBILITY FOR PROJECT MANAGEMENT**

The Developer shall be responsible for project management and coordination. Project management includes but is not limited to overall project coordination, utility and road locations and elevations and conflicts of said.

**24. AGREEMENT OF RESTRICTION**

This agreement is intended to be an Agreement of Restriction encumbering the said development as legally described in Paragraph 1 above, until such performance by Developer of all of the terms and conditions contained herein including any and all payments, required to be made to Company for payment of connection charges and any other obligations from Developer to Company.

**25. OTHER AGREEMENTS**

Developer shall, under no circumstances, make and/or enter into any agreements or contracts with other property owners, whether within or without the confines of the Tatoosh Water Company, concerning water service to their property, without prior written consent of the Company.

**26. CONVEYANCE OF TITLE/ COVENANTS TO RUN WITH LAND**

That in the event the Developer conveys title to the subject tract prior to connection of any lot or lots, then, in that event, it shall be the full responsibility of the Developer to locate the existing water service for any subsequent owners or developers. It is expressly declared that the rights, duties, obligations, and liabilities set forth in this Agreement shall run with ownership of the Property and shall be binding on the parties hereto, their heirs, representatives, successors, and assigns.

**27. GOVERNING LAW; SEVERABILITY.**

This Agreement shall be governed by the laws of the State of Washington. If any provision of this Agreement is declared invalid by any tribunal, the remaining provisions hereof shall not be affected thereby.

**28. ATTORNEYS' FEES.** In the event of any proceedings between the parties hereto relating to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and costs, including fees and costs incurred on appeal.

**29. NOTICES.** Any notice required or permitted under this Agreement shall be delivered by personal delivery, overnight courier, or by first class mail, postage pre-paid, or by facsimile or email addressed as follows, provided, however, that either party may change its address by written notice to the other party:

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copy to: \_\_\_\_\_  
\_\_\_\_\_

**30. TERMINATION.** This Agreement shall terminate five (5) years after the date hereof.

**31. AGREEMENT**

I, Nick Franelovich, the owner of the herein described property have read and accept the terms and conditions set forth in this application.

**TATOOSH WATER COMPANY**

Upon compliance with the terms and conditions of this Agreement by the above-named Developer, Tatoosh Water Company will accept said extension and furnish water service thereto.

By: \_\_\_\_\_

Manager  
Tatoosh Water Company

