

**CITY OF MONROE
RESOLUTION NO. 026/2018**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, APPROVING A DEVELOPMENT AGREEMENT WITH MAINVUE WA LLC PURSUANT TO RCW 36.70B.170-200; AUTHORIZING THE MAYOR TO EXECUTE THE DEVELOPMENT AGREEMENT ON BEHALF OF THE CITY; ENTERING SUPPORTIVE FINDINGS AND CONCLUSIONS; AND PROVIDING DIRECTION TO STAFF

WHEREAS, the Monroe City Council has considered the approval of a proposed Development Agreement with MainVue WA, LLC, with respect to the use and development of certain real property in Snohomish County, Washington, which is legally described in the Development Agreement as Exhibit A, Legal Description of Annexation Area (the "Annexation Area"), and MainVue owns certain real property in the City of Monroe adjoining the Annexation Area, which is legally described in Exhibit B, Legal Description of MainVue Property (the "MainVue Property" or the "Gilmartin Preliminary Plat"). Collectively, the Annexation Area and the MainVue Property are referred to as the "Properties"); and

WHEREAS, the Annexation Area is located in the City's northern Urban Growth Area, and consists of approximately 1.05 acres of land located north of the preliminary plat currently known as Gilmartin, south of Chain Lake Road, east of 197 Ave SE, and west of the intersection of Chain Lake Road and Brown Road. The Annexation Area's current Snohomish County zoning is R-9600. The City of Monroe reviewed, held a public hearing on, and on October 23, 2018, adopted Ordinance No. 022/2018, which established pre-annexation zoning for the Annexation Area as R-4; and

WHEREAS, the MainVue property is located within City Limits, and consists of approximately 8.49 acres of land located north of 135th St SE, south of the annexation area, east of 197th Ave SE and southwest of the intersection of Chain Lake Road and Brown Road. The MainVue property is within City Limits and zoned R4; and

WHEREAS, on or about July 10, 2018, the City received a Notice of Intent to Commence Annexation Proceedings pursuant to RCW 35A.14.120 with respect to the Annexation Area. On October 23, 2018, the City Council passed Resolution No. 021/2018, accepting the Notice of Intent and authorizing the circulation of an annexation petition subject to certain conditions; and

WHEREAS, the City's SEPA Responsible Official has determined that the proposal will have no significant adverse environmental impacts and issued a DNS on October 29, 2018. The DNS was not timely appealed; and

WHEREAS, entering into a development agreement will be beneficial to both parties by encouraging and facilitating annexation of land located in the City's Urban

Growth Area and providing certainty and uniformity regarding the development regulations that will govern such land upon annexation; and

WHEREAS, the Development Agreement authorized by this resolution is consistent with applicable development regulations and meets the applicable standards for approval under RCW 36.70B.170 et seq; and

WHEREAS, following a public hearing and upon careful consideration of all testimony and evidence submitted, the Monroe City Council desires to approve the Development Agreement and authorize the Mayor's execution thereof.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. Findings and Conclusions. As its findings and conclusions in support of its approval decision herein, the City Council hereby adopts and incorporates by reference the above recitals, the content of Agenda Bill No. 18-246, together with the findings and conclusions set forth in the attached Development Agreement itself. Anything contained in the above-referenced recitals, agenda bill and agreement that could be construed as a finding is expressly adopted as such. Anything contained in the above-referenced recitals, agenda bill and agreement that could be construed as a conclusion is expressly adopted as such.

Section 2. Approval of Development Agreement. Based upon the preceding findings and conclusions, the City Council APPROVES the proposed Development Agreement with Mainvue WA, LLC. The Mayor is authorized to sign the Development Agreement on behalf of the City in substantially the form as set forth in Attachment A to this resolution, together with such minor revisions thereto as the Mayor may deem necessary and appropriate.

Section 3. Notice of Decision. The Community Development Director is hereby authorized and directed to prepare and issue a Notice of Decision for this approval in accordance with applicable state law and local regulations.

Section 4. Appeal; Reconsideration. The City Council's approval decision is appealable to the Snohomish County Superior Court within the timeframes established by applicable state law. The City Council's decision is also subject to reconsideration pursuant to MMC 21.50.080, which provides as follows:

21.50.080 Reconsideration.

A party to a public hearing or closed record appeal may seek reconsideration only of a recommendation or a decision by the hearing examiner or hearing body by filing a written request for reconsideration with the community development department within ten calendar days following issuance of the written final decision. All motions for reconsideration shall state specific errors of facts or law. Failure to do so will be grounds for non-consideration. The hearing examiner or hearing body shall consider the request, without any public comment or argument. Reconsideration will be

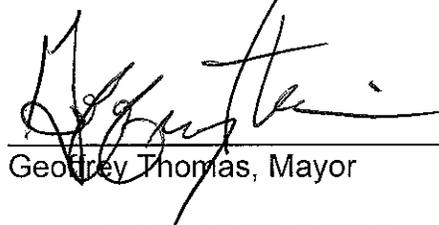
granted only when an obvious legal error has occurred or a material factual issue has been overlooked that would change the previous decision. If a request for reconsideration is accepted, a decision or recommendation is not final until after a decision on the reconsideration request has been issued.

ADOPTED by the City Council of the City of Monroe, at its regular meeting thereof, and APPROVED by the Mayor this 27th day of November, 2018.

Approved: November 27, 2018
Effective: November 27, 2018

CITY OF MONROE, WASHINGTON

(SEAL)

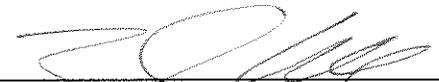


Geoffrey Thomas, Mayor

ATTEST:

APPROVED AS TO FORM:



Elizabeth M. Adkisson, MMC, City Clerk

Zach Lell, City Attorney

EXHIBIT A

Legal Description

THAT PORTION OF GOVERNMENT LOT 4 OF SECTION 30, TOWNSHIP 28 NORTH, RANGE 7 EAST, W.M. IN SNOHOMISH COUNTY, WASHINGTON, LYING SOUTHWESTERLY OF TH TROMBLEY ROAD AND EASTERLY OF A LINE 660 FEET WESTERLY OF AND PARALLEL TO THE EAST LINE OF SAID LOT 4;

EXCEPT THE WEST 30 FEET THEREOF.

H.S.

{03520728.DOCX;4 }

EXHIBIT B

Legal Description

THE NORTH 726 FEET, AS MEASURED ALONG THE WEST LINE OF THAT PORTION OF THE EAST 660 FEET OF GOVERNMENT LOT 1, SECTION 31, TOWNSHIP 28 NORTH, RANGE 7 EAST, W.M., LYING SOUTHWESTERLY OF TROMBLEY COUNTY ROAD;
EXCEPT THE WEST 30 FEET THEREOF;
EXCEPT THE EAST 96 FEET OF THAT PORTION OF THE NORTH 660 FEET LYING SOUTHWESTERLY OF TROMBLEY COUNTY ROAD.

SITUATE IN CITY OF MONROE, COUNTY OF SNOHOMISH COUNTY, STATE OF WASHINGTON.

When Recorded, Return to:

Attention:

DEVELOPMENT AGREEMENT

Reference to Related Documents:	N/A
Grantor:	City of Monroe and MainVue WA LLC
Grantee:	City of Monroe and MainVue WA LLC
Legal Description (abbreviated):	A portion of NW1/4 of Sec.31, Twp. 28 N., Rng. 07 E.W.M. and a portion of SW1/4 of Sec.30, Twp. 28 N., Rng. 07 E.W.M.
Assessor's Tax Parcel ID #'s:	280730-003-013-00; and 280731-002-023-00

This DEVELOPMENT AGREEMENT ("Agreement") is entered into this 27th day of November, 2018 (the effective date of the Resolution approving this Agreement), by and between the City of Monroe ("City"), a Washington municipal corporation, and MainVue WA LLC ("MainVue"), a Washington limited liability company (collectively, the "Parties").

RECITALS

A. MainVue owns certain real property in Snohomish County, Washington, which is legally described in Exhibit A - Legal Description of Annexation Area (the "Annexation Area"), and MainVue owns certain real property in the City of Monroe adjoining the Annexation Area, which is legally described in Exhibit B – Legal Description of MainVue Property (the "MainVue Property" or the "Gilmartin Preliminary Plat"). Collectively, the Annexation Area and the MainVue Property are referred to as the "Properties".

B. The Annexation Area is located in the City's northern Urban Growth Area, and consists of approximately 1.05 acres of land located north of the preliminary plat currently

known as Gilmartin, south of Chain Lake Road, east of 197 Ave SE, and west of the intersection of Chain Lake Road and Brown Road. The Annexation Area's current Snohomish County zoning is R-9600. The City of Monroe reviewed, held a public hearing on, and on October 23, 2018 adopted Ordinance No. 022/2018, which established pre-annexation zoning for the Annexation Area as R-4.

C. The MainVue Property is located within City limits, and consists of approximately 8.49 acres of land located north of 135th St SE, south of the Annexation Area, east of 197th Ave SE and southwest of the intersection of Chain Lake Road and Brown Road. The MainVue Property is within City limits and zoned R4.

D. On or about July 10, 2018, the City received a Notice of Intent to Commence Annexation Proceedings pursuant to RCW 35A.14.120 with respect to the Annexation Area. On October 23, 2018, the City Council passed Resolution No. 021/2018, accepting the Notice of Intent and authorizing the circulation of an annexation petition subject to certain conditions.

E. As set forth in these Recitals and other adopted Findings, the City has determined that the terms and conditions set forth herein will serve a public purpose and will promote the health, safety, prosperity, and general welfare of the citizens of the City.

F. This Agreement is authorized by applicable state law, specifically including without limitation RCW 36.70B.170 through 36.70B.210. Without limitation of the foregoing, the City is specifically authorized to enter into a development agreement for real property located outside its boundaries as part of a proposed annexation. As required by RCW 36.70B.200, the City held a duly noticed public hearing before the City Council on this Agreement on November 27, 2018.

G. The primary purpose of this Agreement is to vest the Properties to the same development standards, and to ensure that vesting of such development standards to the Annexation Area is contingent on the completion of the annexation process.

H. City staff has reviewed the State Environmental Policy Act ("SEPA") checklist for this Agreement, and has determined that the Agreement is consistent with the City's Comprehensive Plan and City's Annexation Plan.

I. The City's SEPA Responsible Official has determined that the proposal will have no significant adverse environmental impacts and issued a DNS on October 29, 2018.

J. This Agreement, together with all documents incorporated herein by reference, has been processed in material compliance with all applicable state and local procedural requirements.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

1. PROPERTY USE AND DEVELOPMENT STANDARDS; VESTING

1.1. Zoning and Land Use. All development of the Properties shall be consistent with the substantive City of Monroe zoning and land use ordinances in effect at the time this Agreement is executed, subject to Section 1.2 below; and the conditions and requirements of any permits, licenses or other regulatory approvals issued or otherwise required for the proposal.

1.2. Vested Rights. For a period of two (2) years from the from the date of this Agreement, development of the MainVue Property portion of the Properties shall be considered vested to the R-4 zoning and to the following development standards, including without limitation the following development-related codes in effect as of September 24, 2018: (a) Title 18 MMC Planning and Zoning; (b) Title 19 MMC Shoreline Management; and (c) Title 20 MMC Environment, not including any impact fees imposed pursuant to that title (collectively, the "Development Standards"). These same vested rights shall apply to the Annexation Area, provided that the Annexation Area is, in fact, annexed to the City of Monroe in due course. No zoning changes or amendments to the Development Standards adopted by the Monroe City Council shall affect the zoning designation applicable to the Properties during the Term of this Agreement.

Notwithstanding the remainder of this introduction to Section 1.2 above, the Properties are not vested to the following:

(a) Fees and Charges. This Agreement does not vest the Properties against changes in permit fees and other charges required as a condition of development approval, specifically including without limitation application fees imposed pursuant to Chapter 3.34 MMC, school impact fees imposed pursuant to Chapter 20.07 MM7, park impact fees imposed pursuant to Chapter 20.10 MMC, transportation impact fees imposed pursuant to Chapter 20.12 MMC, and utility fees and charges imposed pursuant to Title 13 MMC. All applicable fees and charges of the City of Monroe in effect at the time the fees are due and owing under the applicable fee resolution or ordinance shall apply.

(b) Building and Fire Codes. This Agreement does not vest the Properties against changes in the provisions of Chapter 15.04 MMC, specifically including without limitation the International Building Code, International Residential Code, the International Fire Code, and other applicable construction codes in effect in the City.

(c) County, State or Federal Mandates. The Properties are not vested against any new or different requirements or regulations that are mandated by county, state, or federal statutes, laws, or ordinances that preempt the City's authority to permit vesting.

(d) **Threats to Health, Safety, and Environment.** The Properties are not vested against any new or different officially adopted regulations of general applicability, to the extent required by a serious threat to the public health, safety, or environmental quality, as determined by the Monroe City Council.

(e) **Procedural Requirements.** The Agreement does not vest the Properties against changes in the procedural standards and process requirements applicable to any project permit applications submitted in regard to the Properties.

2. FEES.

2.1 **Review, Permit and Connection Fees.** MainVue shall be responsible for paying all applicable application fees, on-site and off-site permit review fees, driveway connection permits, and utility connection or service fees of any kind (including without limitation hook-up fees, general facility charges, special facility charges, capital facility charges, impact fees, and utility extension charges) associated with any development of the Properties.

2.2 **Reimbursement Fee.** Separate from and additional to the fees and charges referenced in Section 2.1, MainVue shall remit to the City a one-time fee ("Reimbursement Fee") of \$2000.00 to defray the City's staff and legal expenses incurred in the negotiation, revision and processing of this Agreement. MainVue shall remit the Reimbursement Fee prior to the City's execution of this Agreement.

3. MODIFICATIONS.

3.1 **Procedure.** Except as otherwise provided herein, the Parties may mutually agree to modify this Agreement. Any change, modification or amendment hereto (collectively, "modifications"), including modifications to any document incorporated by reference herein, shall comply with the procedures contained in this section.

3.2 **Designation of Modifications.** Modifications to the Agreement shall be designated as either minor or major modifications. Minor modifications may be administratively approved by the Community Development Director. Major modifications shall require approval of the Monroe City Council. The Community Development Director shall determine whether a proposed modification is major or minor under this section.

3.3 **Minor Modifications.** Minor modifications are those affecting the precise dimensions or location of buildings, streets, driveways or other site features, but that do not result in greater environmental impacts. Minor modifications shall be processed as Administrative Approvals Subject to Notice in accordance with MMC 21.50.020.

3.4 **Major Modifications.** Major modifications are those involving a significant deviation from the original specifications of the Development Agreement and/or its component

elements. Major Modifications shall require approval of the City Council following a public hearing.

4. TRANSFER OF PROPERTY; SUCCESSOR OWNERS.

4.1 Authority to Transfer. Pursuant to Chapter 36.70B RCW, MainVue's right to sell, transfer, mortgage, hypothecate, convey or take any other similar action regarding the title to or financing for the Properties after or in conjunction with purchase of the Properties or thereafter shall not be infringed by this Agreement, provided however that any such transfer, sale, etc. shall be subject to the terms and conditions, rights and obligations of this Development Agreement and all attachments thereto. At least 30 days prior to the effective date of any such transfer, MainVue or any other transferor shall (1) formally notify the transferee of this Development Agreement, and (2) formally notify the City of the intended transfer.

4.2 Binding on Successors. All of the provisions, conditions, regulations, and requirements of this Agreement shall be binding upon the successors and assigns of MainVue and the City, as if they were specifically mentioned herein, and shall run with the land to be binding on all future legal owners and occupants of the Properties.

4.3 Agreement to be Recorded. This Agreement shall be recorded against the Properties as a covenant with the land which touches and concerns the property and shall be binding upon the City and MainVue; their heirs, successors, and assigns; and all future owners of the Properties.

5. TERM.

The term of this Agreement ("Term") shall commence upon the effective date of the resolution approving this Agreement ("Effective Date") and shall continue in force until two (2) years from the Effective Date.

6. MISCELLANEOUS.

6.1 Notices. All notices, demands, and requests required or permitted to be given under this Agreement must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below, and the same shall be effective upon receipt or refusal. The initial addresses of the parties shall be:

If to MainVue: MainVue WA LLC
1110 112th Ave. NE, Suite 202
Bellevue WA 98004
Attn: Vanessa Normandin

With a copy to: Cairncross & Hempelmann
524 Second Ave, Suite 500
Seattle, WA 98104
Attn: Nancy Bainbridge Rogers

If to City: City of Monroe
806 West Main Street
Monroe, WA 98272
Attn: Ben Swanson

With a copy to: Ogden Murphy Wallace P.L.L.C.
901 Fifth Ave, Suite 3500
Seattle, WA 98164
Attn: J. Zachary Lell

Upon at least ten (10) days' prior written notice, each party shall have the right to change its address to any other address within the United States of America. Informal communications made between the parties during the completion of construction activities to be performed under this Agreement may be made by their respective project managers as designated from time to time.

6.2 Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between the parties.

6.3 Attorneys Fees. In the event either party hereto finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions hereof or any instrument executed pursuant to this Agreement, or by reason of any breach or default hereunder, the party substantially prevailing in any such action or proceeding shall be paid all costs and reasonable attorneys' fees by the other party and in the event any judgment is secured by such prevailing party, all such costs and attorneys' fees shall be included in any such judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not a jury.

6.4 Recitals/Exhibits/Additional Findings. The following exhibits attached to and referred to in this Agreement are hereby incorporated by reference as though set forth in full where referred to herein:

Exhibit A Legal Description of Annexation Area

Exhibit B Legal Description of MainVue Property

The recitals are incorporated herein by reference as matters of contract and not mere recital. The Monroe City Council hereby formally adopts the above recitals as findings in support of the City Council's approval of this Agreement. The City Council further adopts as findings the content of the November 13, 2018 staff report and agenda bill accompanying this Agreement.

6.5 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

6.6 Headings. Heading of sections are for convenience only and shall not be considered in construing the meaning of the content or meaning of any section.

6.7 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes and cancel all prior negotiations between the parties with respect to the Properties Any changes, amendments, and/or modifications hereto must be in writing signed by both Parties.

6.8 No Waiver. The failure to enforce any particular provision of this Agreement on any particular occasion shall not be deemed a waiver by any party of any of its rights hereunder, nor shall it be deemed to be a waiver of subsequent or continuing breaches of that provision, unless such waiver be expressed in a writing signed by the party to be bound.

6.9 Construction of Document. Since the parties hereto have participated in extensive negotiations in the drafting of the terms and provisions of this Agreement, the parties agree that this Agreement shall be construed without regard to the identity of the person or party who drafted the various provisions, and any rule of construction that a document is to be construed against the drafting party shall not be applicable.

6.10 Governing Law; Venue. This Agreement shall be governed by and construed, interpreted, and applied in accordance with the laws of the State of Washington. The exclusive judicial venue for any litigation arising out of this Agreement shall be the Superior Court for Snohomish County, Washington

6.11 Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

6.12 Remedies. The parties agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Agreement. The parties are also entitled to seek other remedies, including damages, to the extent otherwise provided for by law.

6.13 No Third-Party Beneficiary. This Agreement is intended for the exclusive benefit of the signatory parties hereto and their designated successors and assigns, and may only be enforced by the same.

6.14 Regulatory Authority Preserved. This Agreement is intended to be consistent with all applicable provisions of the MMC, and shall be reasonably construed and administered in

accordance therewith. Nothing herein shall be construed as waiving, limiting or otherwise abridging the City of Monroe's regulatory power, which the City hereby expressly reserves in full, this Agreement being an exercise of such powers pursuant to RCW 36.70B.170. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the City's authority to enter into development agreements pursuant to RCW 36.70B.170 et seq.

GRANTOR:

MainVue WA LLC
a Washington limited liability company

By: _____

Date: _____

GRANTEE:
City of Monroe
a Washington municipal corporation

By: _____

Date: _____

ATTEST:

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
City Attorney

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

On this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the Mayor of the City of Monroe, a Washington municipal corporation, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Name: _____
NOTARY PUBLIC in and for the State of Washington
residing at: _____
My appointment expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this ____ day of _____, 2018, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____ of MainVue WA LLC, a Washington Limited Liability Company, the entity that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first written above.

Name: _____
NOTARY PUBLIC in and for the State of Washington
residing at: _____
My appointment expires: _____