

11/29/2012

**WATER INFRASTRUCTURE REIMBURSEMENT AGREEMENT
(CUP NO. C-09-125 AND VTTM NO. 5956)**

THIS AGREEMENT ("Agreement") is made and entered into this 30th day of October, 2012, between the City of Fresno, a California municipal corporation ("City") and Granville Homes, Inc. ("Developer").

RECITALS

WHEREAS, City approved Developer's application for Conditional Use Permit Application No. C-09-125 and Vesting Tentative Tract Map No. 5956 for development of a one-lot condominium on 1.19 net acres located on the southerly corner of the intersection of Amador and Fulton Streets, 1735 Fulton Street ("Project"); and

WHEREAS, City conditioned approval of Conditional Use Permit Application No. C-09-125, Section E(4)(b)-1 (as incorporated) as follows:

"The existing water distribution system(s) serving the project was not designed to serve the increase in densification proposed and is inadequate to provide necessary fire flows to support the proposed development. The development shall construct a 10-inch water main (including installation of City fire hydrants) within Amador Street from the Broadway Street/Fulton Street Alley to the Fulton Street/Van Ness Street Alley. Sixty-Eight percent (68%) of the cost for construction of the water main (including fire hydrants), shall be reimbursed through progress payments under a separate reimbursement agreement setting forth the scope for the construction of the water main (including fire hydrants), to be approved by the Fresno City Council. Included in the agreement will be the provision for progress reimbursement payments to be made within 30 days of an approved invoice."; and

WHEREAS, City applied the same condition of approval on Vesting Tentative Tract Map No. 5956 Condition of Approval "General Conditions" 31-1 (as incorporated); and

WHEREAS, the costs of constructing the improvements required by Condition of Approval for Conditional Use Permit No. C-09-125 Section E(4)(b)-1 and Condition of Approval for Vesting Tentative Tract Map No. 5956 Condition 31-1 for a 10-inch water main (including installation of City fire hydrants) within Amador Street from the Broadway Street/Fulton Street Alley to the Fulton Street/Van Ness Street Alley ("Improvements") will be reimbursed in accordance with this Agreement; and

WHEREAS, prior to execution of this Agreement, the Developer has installed the Improvements; and

WHEREAS, City and Developer now wish to set forth the obligations of the Developer associated with the Improvements and the conditions for reimbursement of the Developer for such work.

APPROVED BY CITY COUNCIL
November 29, 2012
By Sherrin L. Budestcher
DEPUTY

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT

In consideration of the foregoing recitals and the obligations undertaken by the parties as hereinafter set forth, the parties agree as follows:

1. **Obligations of the Developer**

1.1 Developer shall construct the Improvements, which were installed and accepted by the City on December 15, 2011.

1.2 This Agreement is intended to define the City's obligation to reimburse the Developer for the cost of constructing the Improvements, subject to the terms and limitations set forth in this Agreement. Nothing in this Agreement shall alter or waive any obligations or duties of the Developer to comply with existing City ordinances, policies, procedures, plans and specifications related to the construction of the Improvements, including any requirements to obtain approval of construction plans or obtain necessary building, street-work, encroachment or other permits or to comply with any requirements or conditions placed on the issuance of those permits (e.g. insurance, improvement security, etc.). Nothing in this Agreement shall alter or waive any Condition of Approval or requirement for Conditional Use Permit No. C-09-125 and Vesting Tentative Tract Map No. 5956, or any requirement of the Subdivision Agreement for Final Map of Tract No. 5956.

1.3 As City is reimbursing Developer for the Eligible Costs of Actual Construction (ECAC), the Improvement is a "Public Work" as defined by California Labor Code, Section 1720(a). Developer agrees and warrants that, to the extent required by law, it has (a) paid, and caused its contractors and subcontractors to pay, prevailing wages for the construction of the Improvement and (b) complied with the other applicable provisions of Labor Code, section 1720 et seq., and implementing regulations of the Department of Industrial Relations, necessary to determine that prevailing wages have been paid as required by law. During the construction of the Improvement, Developer has, or has caused its contractor, to post at the Project area the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with legal counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code sections 1720 et seq., and/or the implementing regulations of the Department of Industrial Relations in connection with construction of the Improvement.

1.4 Developer shall maintain written documentation evidencing the ECAC Costs the Developer incurred in constructing the Improvement for submittal to the City at the time Developer seeks reimbursement for the eligible costs of constructing the Improvement. Developer's failure to provide the necessary documentation evidencing certain eligible construction costs will result in the City not reimbursing the Developer for those otherwise eligible construction costs. Acceptable documentation of ECAC includes invoices for construction materials used to construct the Improvement and invoices from contractors and subcontractors clearly identifying the labor and materials expended to construct the Improvement.

1.5 Developer shall submit to City's Department of Public Utilities – Water Division all documentation evidencing the eligible costs of constructing the Improvements. If the Developer fails to submit the documentation evidencing the eligible construction costs, City shall have the option of refusing to reimburse Developer for any of the otherwise eligible costs of construction.

1.6 Developer shall not assert or be entitled to a fee credit or offset toward a UGM or development impact fee from City for any portion of the Improvements for which reimbursement was paid under this Agreement.

1.7 To the furthest extent allowed by law, including California Civil Code section 2782, Developer shall indemnify, hold harmless and defend (with legal counsel reasonably acceptable to the City) City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorney's fees if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the installation of the work or Improvements by Developer and Developer's employees, officers, agents, contractors or subcontractors; (iv) the design and installation of the work and Improvements; or (v) City's granting, issuing or approving use of this Agreement. Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers. The obligations in this section are in addition to, and shall not otherwise reduce or limit, any other contract or obligation Developer may have to indemnify, hold harmless and defend City. This section shall survive any expiration or termination of the project or this Agreement.

2. City's Obligations

2.1 The Engineer's Estimate of the ECAC (including an allocation for Eligible Professional Services) of constructing the Improvement is \$53,596.61. An itemization of the individual Eligible Construction Costs is attached hereto as Exhibit "A." Upon Developer's compliance with Section 1.5 to the reasonable satisfaction of the Director of the Department of Public Utilities ("Director"), and upon confirmation of the ECAC, the City shall reimburse the Developer for ECAC up to, but not more than, the amount of the Engineer's Estimate.

2.2 Subject to staffing limitations, City shall use its best efforts to review the documentation of eligible construction costs and inform Developer of any insufficiencies in the documentation within 15 days of receipt or execution of this Agreement, whichever is later. If the documentation is determined to be sufficient, issue the reimbursement within 30 days of receiving from Developer all of the documentation of eligible construction costs required by City. If Developer has submitted documentation prior to the execution of this Agreement, no obligation to issue a reimbursement shall arise prior to 30 days from the date of the last Party to execute this Agreement.

3. Additional Terms

3.1 **Binding upon Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their predecessors; successors; assigns; past, present, or future affiliated and related entities; officers; members; agents; employees; and representatives.

3.2 **Integration.** This Agreement constitutes the complete and final agreement of the parties with respect to the subject matters referred to in this Agreement. This Agreement supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, and

representations of every nature whatsoever with respect to the subject matters referred to in this Agreement, all of which have become merged and finally integrated into this Agreement.

3.3 Incorporation of Attachments. All recitals and attachments to this Agreement, including all Exhibit(s) referenced herein, and all subparts thereto, are incorporated herein by this reference.

3.4 Modification. Any modification of this Agreement must be in writing and signed by all parties. No oral modifications shall be effective to vary or alter the terms of this Agreement.

3.5 No Assignment. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by Developer without the written consent of City.

3.6 Ambiguities or Uncertainties. Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this Agreement, on the express understanding and agreement the Parties participated equally in the negotiation and preparation of the Agreement, or have had equal opportunity to do so. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

3.7 Severability. If any provision or any part of any provision of this Agreement shall, for any reason, be held invalid, unenforceable, or contrary to public policy or law, the remainder of this Agreement shall not be affected thereby, and shall continue to be value and enforceable.

3.8 Counterparts. This Agreement may be executed in counterparts, including true and accurate copies of the original, all of which, when taken together, shall be deemed one original agreement. Any executed copy shall not be binding upon any party until all parties have duly executed a copy of this Agreement.

3.9 Attorneys Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of the representation of the prevailing party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

3.10 Waiver of Terms. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

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The parties have executed this Agreement on the day and year first above written.

CITY OF FRESNO.

a Municipal Corporation

Public Utilities Department
Patrick Wiemiller, Director

By: 
Martin Querin, Asst. Director

Date: 11-29-12

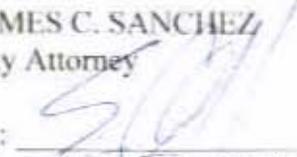
ATTEST:

Yvonne Spence, CMC
City Clerk

By: 
12/13/12 Deputy

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: 
Shannon L. Chaffin, Sr. Deputy

Date: 11/12

DEVELOPER

GRANVILLE HOMES, INC.

By: 

Print Name: Darius Assemi

Title: President

(Attach Notary Acknowledgment(s))

APPROVED AS TO FORM:

DEVELOPER ATTORNEY

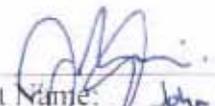
By: 
Print Name: John Bezanalmon
Title: Counsel

Exhibit A: Eligible Construction Costs

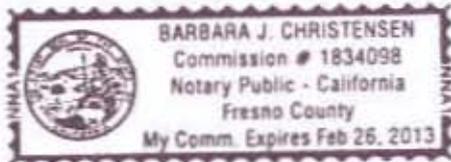
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On Oct. 30, 2012 before me, Barbara J. Christensen, Notary Public

personally appeared Darius Asseini



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Barbara J. Christensen

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

EXHIBIT A

Eligible Construction Costs

Water Main Construction

1. 10" C-900 Pipe	290 LF	@	\$48.50	\$14,065.00
2. 10" Gate Valve	3 Ea	@	\$1,321.70	\$3,965.10
3. 10" Street Crossing	Lump Sum			\$5,218.60
4. Trench Pavement	1,295 SF	@	13.00	\$16,835.00
5. Traffic Control	Lump Sum			\$2,946.00
6. Mobilization	Lump Sum			\$1,038.28
			Subtotal	\$44,067.98
7. Add 10" and 6" Fittings	Lump Sum			\$1,311.33
8. Add 64 Hours Labor/Mat/Equip	Lump Sum			\$3,571.20
			Subtotal	\$4,882.53

Wet Ties (F.#20090925)

1. Install 12" x 12" x 10" Tee	Lump Sum			\$ 5,000.00
2. Abandon 6" Water Main	Lump Sum			\$4,000.00
3. Install 10" x 10" x 6" Tee	Lump Sum			\$4,500.00
4. Cap Existing Main	Lump Sum			\$5,000.00
			Subtotal	\$18,500.00

Fees and Charges

1. Design and Surveying	Lump Sum			\$2,937.03
2. Plan Check	Lump Sum			\$2,267.00
3. Inspection	Lump Sum			\$6,164.00
			Subtotal	\$ 11,368.03

Total \$ 78,818.54
City's Reimbursement (68%) \$53,596.61