

**REIMBURSEMENT AGREEMENT
per Town Code §14-04-070**

Upsized Granville Wastewater Line

THIS AGREEMENT dated July 25, 2013, is made by and between the TOWN OF PRESCOTT VALLEY, ARIZONA, a municipal corporation of Arizona (“Town”) and GRANVILLE DEVELOPMENT COMPANY, INC. OF PRESCOTT VALLEY, ARIZONA, a corporation of Arizona (“Developer”).

RECITALS

WHEREAS, Town Code §14-04-015(A) provides that developers of residential subdivisions shall finance and construct all on-site and off-site street and utility improvements required as a condition of plat approval; and

WHEREAS, Town Code §14-04-070(A) further authorizes the Town Manager to require developers to upsize such improvements in order to accommodate anticipated nearby development. In such cases, Town Code §14-04-070(B) gives the Town the option to agree to cover the incremental cost of upsizing (in whole or in part) through development agreements or separate reimbursement agreements. If the Town enters into a separate reimbursement agreement, it may reimburse the developer from buy-in fees charged to subsequent developers who connect to the improvements; and

WHEREAS, on December 16, 1999, the Town entered into a development agreement with the predecessor of Developer for a period of 20 years which provides, among other things, for credits to Developer against the Town’s System Capacity Charges in appropriate circumstances (including against the Water System Capacity Charge for oversized water transmission lines that will serve other properties); and

WHEREAS, Developer has successfully developed 1717 homes in 6 phases of the Granville master planned community, including during the recent worldwide economic downturn during which other developers of planned communities had to cease operations and even declare bankruptcy; and

WHEREAS, Developer has recently decided to extend the infrastructure to Granville Unit 7 by improving the Santa Fe Loop Road from Tuscany Drive to the west boundary of the Granville Master Plan, which includes construction of a new 12” diameter wastewater line to the west; and

WHEREAS, prior to commencement of construction the Town Manager requested that Developer upsize said wastewater line from 12” to 18” diameter in order to accommodate anticipated residential development further to the west and to the south; and

WHEREAS, the effects of the worldwide recession have included difficulty in borrowing funds for development purposes, resulting in a requirement that developers use their own cash. This, in turn, has made it difficult for developers to front the cost of required upsizing and then wait for reimbursement through credits against future fees or from buy-in fees paid by subsequent developers; and

WHEREAS, the Town has excess funds available with which it may immediately reimburse Developer for upsizing this requested wastewater line, then reimburse itself from any buy-in fees it may charge as a condition of development when anticipated residential development occurs further to the west or south; and

WHEREAS, the Town has taken steps to ensure that construction of the particular upsized wastewater line (shown in Exhibit "A" attached hereto and expressly made a part hereof) will be bid and constructed in accordance with the requirements in Title 34, Chapter 2 of the Arizona Revised Statutes, and that the cost differential between the 12" line and the 18" line has been ascertained by competent engineering;

NOW THEREFORE, for and in consideration of the mutual covenants of the parties hereto (and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged), the parties now agree as follows:

SECTION ONE. The upsized wastewater line described in Exhibit "A" shall be constructed by Developer during the term of this Agreement within public easements or rights of way and in compliance with applicable Town codes, related regulations and policies, and right-of-way permits. During and at completion of construction, the upsized wastewater line may be inspected by Town representatives to determine if the same has been constructed to applicable standards. Upon approval by the Town of the upsized wastewater line (which approval shall not be unreasonably withheld), the same shall be dedicated or conveyed to and accepted by the Town for continuous maintenance and/or operation no later than 60 days after acceptance and approval.

SECTION TWO. In constructing the upsized wastewater line, Developer shall specifically comply with the requirements of Title 34, Chapter 2 Arizona Revised Statutes in the design, bidding and construction of the line. Town staff shall provide assistance to Developer in identifying and carrying out the necessary steps for bidding and contracting for the construction.

SECTION THREE. Within 45 days after acceptance of the upsized wastewater line by the Town, the Town shall reimburse Developer the portion of actual costs attributable to the difference between a 12" line originally approved and the 18" line as currently requested. Said payment shall be made in response to receipt of an invoice which includes appropriate documentation of actual costs incurred in the upsizing of this line. Said costs to include any amounts incurred in order to comply with the requirements of Title 34, Chapter 2, Arizona Revised Statutes in the design bidding and construction of the line. The parties understand and agree that the Town's liability for said costs shall be approximately \$75,000.00.

SECTION FOUR. Nothing herein shall preclude the application of any credits for development fees and system capacity charges for Developer's portion of the upsized wastewater line as set forth in §6.5 of the development agreement.

SECTION FIVE. In accordance with Town Code §14-04-070(C)(9), the term of this Agreement shall be from the date first-above written through June 30, 2023 (or sooner if full reimbursement from subsequent developer's is obtained through payment of buy-in fees per §14-04-070(C)(5)).

SECTION SIX. Nothing herein is intended to create any partnership, joint venture or other arrangement between Developer and the Town. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

SECTION SEVEN. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of 30 days ("Cure Period") after written notice thereof from the other party shall constitute a default under this Agreement. However, if the failure or delay is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said 30 day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies which may be available under law or equity, including without limitation the right to specifically enforce any term or provision hereof and/or the right to institute an action for damages.

SECTION EIGHT. Developer shall defend, indemnify and hold harmless the Town, its officers, employees, agents and successors (but only to the extent authorized by law) from any and all claims and costs (including but not limited to reasonable attorney fees and other reasonable administrative, consultant or other reasonable costs) actually and directly incurred by the Town, its officers, employees, agents and successors in any subsequent administrative proceeding challenging the approval, execution or performance of this Agreement. Developer shall have the right to intervene and assist in the defense of any legal action arising out of the approval or execution of this Agreement, and to participate fully in any negotiations and settlements involving any such actions.

SECTION NINE. This Agreement may only be amended by a written agreement fully executed by Developer and the Town.

SECTION TEN. This Agreement shall inure to the benefit of and shall be binding upon the successors in interest of each of the parties hereto. Each of the parties to this Agreement may assign all or any portion of its rights hereunder to any one or more persons or entities, on such terms and conditions as each may deem appropriate. Provided, however, that

no party may convey all or any portion of its rights hereunder unless either (a) the corresponding obligations of that party are completely assumed by the assignee of the party's rights, the assignee accepts such obligations and demonstrates its ability to perform them, and the obligations are specifically listed in the assignment, or (b) the party remains personally obligated to perform said corresponding obligations after such assignment. Otherwise, any such assignment shall be void.

SECTION ELEVEN. No waiver by any party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. Furthermore, no delay in exercising any right or remedy shall constitute a waiver thereof. In the event any action shall be instituted between any of the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorney fees. If either party hereto is prevented from performing any of its obligations under this Agreement by reason of natural disasters, wars, insurrections, strikes, acts of government or any other circumstances beyond its control, the particular failure or failures occasioned thereby shall be waived during such period of prevention and shall not be considered breaches of this Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are superseded and merged herein.

SECTION TWELVE. In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

SECTION THIRTEEN. This Agreement may be canceled without penalty pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein by any person significantly involved in negotiating this Agreement on behalf of the Town.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized representatives as of the day first-above written.

Town of Prescott Valley, Arizona

Harvey C. Skoog, Mayor

ATTEST:<http://www.pvaz.net/Index.aspx?page=249>

Diane Russell, Town Clerk

APPROVED AS TO FORM:

Ivan Legler, Town Attorney

Granville Development Company, Inc.
of Prescott Valley, Arizona

By: _____
Norman W. Fain, II, Chairman

EXHIBIT A

Upsized Wastewater Line