

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (“Agreement”), entered into this 27th day of October, 2016, by and between the Town of Prescott Valley, a municipal corporation of Arizona (“Owner”) and Universal Homes Construction, LLC, a limited liability company of Arizona (“Contractor”);

WITNESSETH:

WHEREAS, per ARS §9-463.01(C)(8) the Town Code generally requires developers to finance and construct all needed on-site and off-site public improvements for their developments. [Town Code §14-04-015(A)] However, for economic development purposes the Owner may enter into separate development agreements with developers to (among other things) set out different conditions, terms, restrictions and requirements for public improvements (and their financing). [ARS §9-500.05(H)(1)(g)]; and

WHEREAS, the Contractor is the successor-in-interest to the entity which entered into a Development Agreement with the Owner dated December 16, 1999 for development of what became known as Granville. Subsection 6.5 of the Development Agreement provided that the Owner’s development fees and utility system capacity charges (water and sewer) would be fixed for a period and set forth certain provisions for credits against those fees and charges. In particular, the Contractor would receive a dollar-for-dollar credit against the Water Capacity Charge for all amounts the Contractor expended for “design and installation and overhead” of “any improvements to the water system, other than the installation of water lines within individual subdivisions.” Those would include “arterial water lines, storage tanks, oversized transmission lines that serve additional properties, or any other enhancement to the water plant and delivery system.” The credits would apply when building permits were purchased and the Contractor and the Owner would agree ahead of time on the work to be completed (and the credits to be applied) based on engineers’ estimates; and

WHEREAS, over time the Owner and the Contractor have reached various agreements with regard to financing required public improvements in accordance with the Development Agreement, including financing of necessary arterial water lines; and

WHEREAS, the October 2004 Water Master Plan for the Southwest Phase of Granville showed an existing 16” water line from the Tank Farm that went north (and then east) until it connected with a line leading to three of the Owner’s water wells. Granville needed another 12” water line for this area which could also be accommodated if the 16” line were replaced with a 20” line. The Plan proposed that a new 20” line be placed in right-of-way for extension of Prescott East Highway and a new Granville Fairway (with the original 16” line being abandoned in place and the easement vacated so lots could be platted over it). Sometime between 2004 and 2007, a portion of this Plan was accomplished. From a point on the original 16” line where the extension of Prescott East Highway and Granville Fairway would meet, a new 20” line was placed in the Granville Fairway right-of-way and connected to a line in Tuscany Way. Because the new 20” line was categorized as an “arterial”, the Development Agreement required that credits for the cost be applied to the Owner’s Water Capacity Charge; and

WHEREAS, when Granville Fairway was recently constructed in the platted right-of-way, that portion of the 20" line located under a significant wash would have been left under box culverts and significant fill (making it inaccessible for maintenance) if the line were not raised during construction. Because the line now belonged to the Owner as a major arterial in the larger water system, it was now the Owner's responsibility to raise it. However, sometimes it is convenient for the Owner to enter into direct agreements with developers to construct, improve or replace public improvements that are already part of the Owner's utility system through a bidding exception under ARS §34-201(D) (provided the cost is no greater than \$150,000 in FY 1994-95, adjusted by the GDP deflator...\$228,255 today). In this case, the Owner's Town Manager entered into a verbal agreement to reimburse the Contractor for raising the line during construction of Granville Fairway at an approximate cost of \$110,000; and

WHEREAS, the line has since been raised by the Contractor as part of its construction of Granville Fairway and the Contractor now requests reimbursement for \$105,035 in actual costs incurred; and

WHEREAS, said amount is included in the Owner's Utilities Department FY 2016-17 budget and is available for the reimbursement; and

WHEREAS, it is proposed that the Owner's Town Council now enter into this Agreement to formalize the earlier verbal agreement and provide for reimbursement of the cost already incurred:

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

ARTICLE I – RECITALS

Each of the recitals set forth above is hereby incorporated into and made a part of this Agreement and the parties acknowledge the accuracy and correctness of said recitals.

ARTICLE II – SCOPE OF WORK

The Contractor has furnished the labor, materials, equipment, transportation, utilities, services and facilities required to perform all work for the construction related to the raising of the 20" water line described above, and has completely and totally constructed the same and installed the material therein for the Owner, in a good and workmanlike and substantial manner and to the satisfaction of the Owner through its Engineers and under the direction and supervision of the Engineer, or the Engineer's properly authorized agents.

ARTICLE III – TIME OF COMPLETION

At the Contractor's own cost and expense, it has done all work for construction of said improvements and has completely constructed the same and installed the material therein, free

and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified within the time, or times, required.

ARTICLE IV – PAYMENT TO CONTRACTOR

The Owner’s Engineer having performed final inspection of (and having accepted) the work, for and in consideration of the faithful performance of said work the Owner now agrees to pay the Contractor the amount of \$105,035 earned, computed from actual quantities of work performed and accepted or materials furnished, and to make such payment in accordance with applicable Arizona Revised Statutes,

ARTICLE V – WARRANTY

The Contractor hereby warrants all workmanship and materials involved in the work described herein for a period of two (2) calendar years after the date first above written.

OWNER:
Town of Prescott Valley, Arizona

CONTRACTOR:
Universal Homes Construction, LLC

Harvey C. Skoog, Mayor

Joseph Contadino, Manager

ATTEST:

Diane Russell, Town Clerk
(CORPORATE SEAL)

APPROVED AS TO FORM:

Ivan Legler, Town Attorney