

HERITAGE HEIGHTS SEWER EXTENSION REIMBURSEMENT AGREEMENT

This agreement ("Agreement") is made and entered into this 8th day of December, 2015, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and Blue Star Industries, ("Developer").

RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility ("Regional Sewer" or "System") and in such capacity controls the use of and access to the sewer facilities located within the 201 Service Area. Developer represents that it is the owner of property as shown on Exhibit 1, attached hereto, more particularly described as Heritage Heights Subdivision Book 5730, Pages 880 of the records of Mesa County, State of Colorado, "Property". Developer is required to dispose of its sewage waste through the System. Developer desires to recoup some of its costs incurred in construction of a sewer line extension, along with appurtenant facilities such as manholes "Improvements" from the owners of property who connect to and receive a benefit from use of the Improvements paid for and installed by the Developer. Such property owners are termed "Future Users" and are those persons who develop within the area shown on the attached Exhibit 1 and who are deemed to benefit from their connection to and use of the Improvements specifically and the System in general.

The City has determined that it is in the best interest of the regional system to install the Improvements in a manner so that they will serve the Developer's property and Future Users who later tie into the System. The City recognizes that Future Users will receive benefit from this Developer's construction of the Improvements because Future Users will not have to construct as long a line in order to receive sewer service.

The Developer wants the City to collect payments/reimbursement from Future Users when/if such Future Users connect to the System as provided for herein, however, the City is only willing to collect money for reimbursement to the Developer if the City is not at risk, even for its own negligence and only if the City is paid as provided herein.

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals are intended to state the intent of the Developer and the City, and shall constitute substantive terms of this Agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this Agreement; the Developer and City agree that each is fully capable of engaging its own attorney(s) and other expert(s) to understand and negotiate the language and enforcement thereof.

2. Developer agrees to construct the Improvements to serve the Property, and agrees to connect to the Regional Sewer, at such location as is required by the City. The Improvements shall be constructed in accordance with the applicable engineering standards as required by the City Engineer.

3. The City accepted, by email to Developer dated July 1, 2015, which is attached hereto and incorporated herein by this reference, the sewer facilities installed at F¼ Road east of 24½ Road on July 1, 2015. For purposes of this Agreement, this shall be the date of **Substantial Completion** of the Improvements. Acceptance was subject to the Developer's agreement to forever: (1) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this Agreement and/or the construction of the Improvements or connection to the Regional Sewer, excepting only causes of action or claims resulting from the sole misconduct of the City; (2) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs; (3) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims by the Developer, any successor of the Developer, and any third party, whether or not any such claim or cause of action is frivolous, groundless or otherwise without merit.

4. The Developer is entitled to be reimbursed by Future Users, identified on Exhibit #1 and Exhibit #2, for some of the reasonable and necessary costs incurred by the Developer for actual construction costs, as approved by the City Engineer, as follows:
 - (a) Reimbursable costs are those costs actually paid which may include reasonable engineering fees, but not legal or other consulting fees, paid by the Developer and actually required to design, construct, and inspect the Improvements. In no event shall reimbursable costs exceed \$ 298,421.66.

 - (b) For a period of ten (10) years following the Substantial Completion of the Improvements, as evidenced by a writing from the City, or until the Developer is reimbursed for those costs set forth in (4a) above, whichever first occurs, the City agrees that it will not authorize any other person to use the Improvements unless each Future User first pays, in addition to all other applicable charges and fees, a Reimbursement Amount ("RA") which sum is calculated as follows:

$$RA = \frac{(RC)}{A} + \frac{RC \times i}{A} + B$$

where:

RC = actual reimbursable costs incurred by Developer and approved by the City Utility Engineer as shown on Exhibit #2. RC= \$ 298,421.66.

i = 0.67% per month simple interest (8% annually) times the number of complete months (up to a maximum of 120 months) following the date of this agreement.

B = \$100.00 (this represents the amount to be paid to the City for administration of this agreement and will be paid by each Future User to the City).

x = multiply.

A = Number of lots/EQUs that could be served by the System as determined by the City Utility Engineer. A= 296.49 EQUs

Once the reimbursable costs have been approved by the City Utility Engineer, the reimbursement amount established by the above formula, plus any interest as provided, will be calculated and paid by each Future User (other than those users who have purchased the Developer's lots or are Developer's successors). Thus, the Developer's property and lots/EQUs created from the Property will be allowed to connect to the Improvements without payment of the amounts/charges provided for in this Agreement.

- (c) To be entitled to be reimbursed, Developer shall present to the City Utility Engineer adequate documentation with adequacy determined solely by the City Utility Engineer so that the City Utility Engineer may determine the actual costs of construction.
- 6.
- (a) If the City makes any collections pursuant to this Agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee at the last known address of the Developer or assignee. The City has no duty or obligation to locate a proper payee.
 - (b) In the event that any claim is made or cause of action is filed by any person alleging that this Agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that any interest or other money payable to the Developer hereunder from any Future User or other person is excessive, improper or is not enforceable, the City is not obligated to defend or to resist any such claim or cause of action; rather, the City may settle any such matter regarding any City interest or obligation. Developer agrees that it shall be bound by any settlement of such claim or cause of action, whether or not Developer or his assigns is a party hereto if Developer has reasonable notice thereof. If the City makes any collections pursuant to this Agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee at the last known address of the Developer or assignee. The City has no duty or obligation to locate a proper payee.
 - (c) Developer agrees to waive and hold the City (including its officers, employees and other agents, hereinafter "City") harmless from, and indemnify the City with respect to any claims the Developer, or Developer's heirs, successors or assigns, may have with regard to the act or failure to act of the City regarding any collection of any such fee, charge or reimbursement amount. Developer hereby waives and releases the City, its officers, agents and employees from any claims or causes of action Developer may have due to the failure of the City to abide by or enforce this Agreement.
 - (d) In the event that the City fails to collect the fee from any Future User, the Developer has the right to sue such Future User. The City agrees to cooperate, without expense to the City, in any such collection efforts of the Developer.

7. Upon request from the Developer during the term of this Agreement which request shall not occur more than once every twelve months, the City shall provide an accounting. Said accounting shall consist of a listing of each RA collected during the preceding twelve months, the name and address of the remitter of said RA, the property address for which the RA was paid, a current balance of the RC, and total interest credited to the Developer's account. The City shall pay all fees collected within the preceding twelve months at the time of each accounting, less amounts paid to or retained by the City for costs of administration and less any other amounts which may be retained by the City pursuant to law or this Agreement.
8. In the event that the Developer is in default with regard to any other obligation of the Developer as it relates to this Agreement and the several rights and duties of the parties reasonably related hereto, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default, expense or cost, in addition to any other remedy which the City may have.
9. In the event that the Developer receives any RA directly from any Future User, owner or developer of any property the Developer shall immediately notify the City Utility Engineer in writing of the amount collected, the name and address of the person from whom collection was made, and the property to which the collection is applicable.
10. This Agreement shall bind the signatory parties and their respective heirs, successors and assigns.
11. Upon nonperformance by the City pursuant to this Agreement, the Developer shall give written notice of default specifying the action giving cause to said default to the City Engineer and to the City Attorney. The City shall have thirty (30) days from receipt of the later of the two notices to correct the alleged default. If the City does not correct the default within the prescribed time, Developer may sue to enforce its rights hereunder; in no event shall the Developer have a claim, no matter how it is stated, for damages or the payment of money (except for RA amounts in the possession of the City). Upon the correction of said default as provided, the Agreement shall be restored and all terms and conditions will be in full force and effect.
12. In the event the Developer does not substantially complete the construction of the Improvements within one year of the execution of this Agreement and obtain acceptance by the City within fifteen (15) months of execution hereof, this Agreement shall terminate and shall be of no further force or effect.
13. Developer may assign its rights pursuant to this Agreement; however, any such assignment shall not be effective until notice of such assignment, with the address of the assignee, is made by certified mail return receipt requested to the City, in care of the City Utility Engineer.
14. The Developer agrees that the construction of the Improvements, and/or the acceptance by the City of the Improvements, does not waive or limit the payment by the Developer, or any successor of the Developer, of any costs, fees or charges (e.g., plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges) which the City is

Exhibit # 1

Project: Heritage Heights Sewer Reimbursement Agreement
Subject: Benefiting Areas

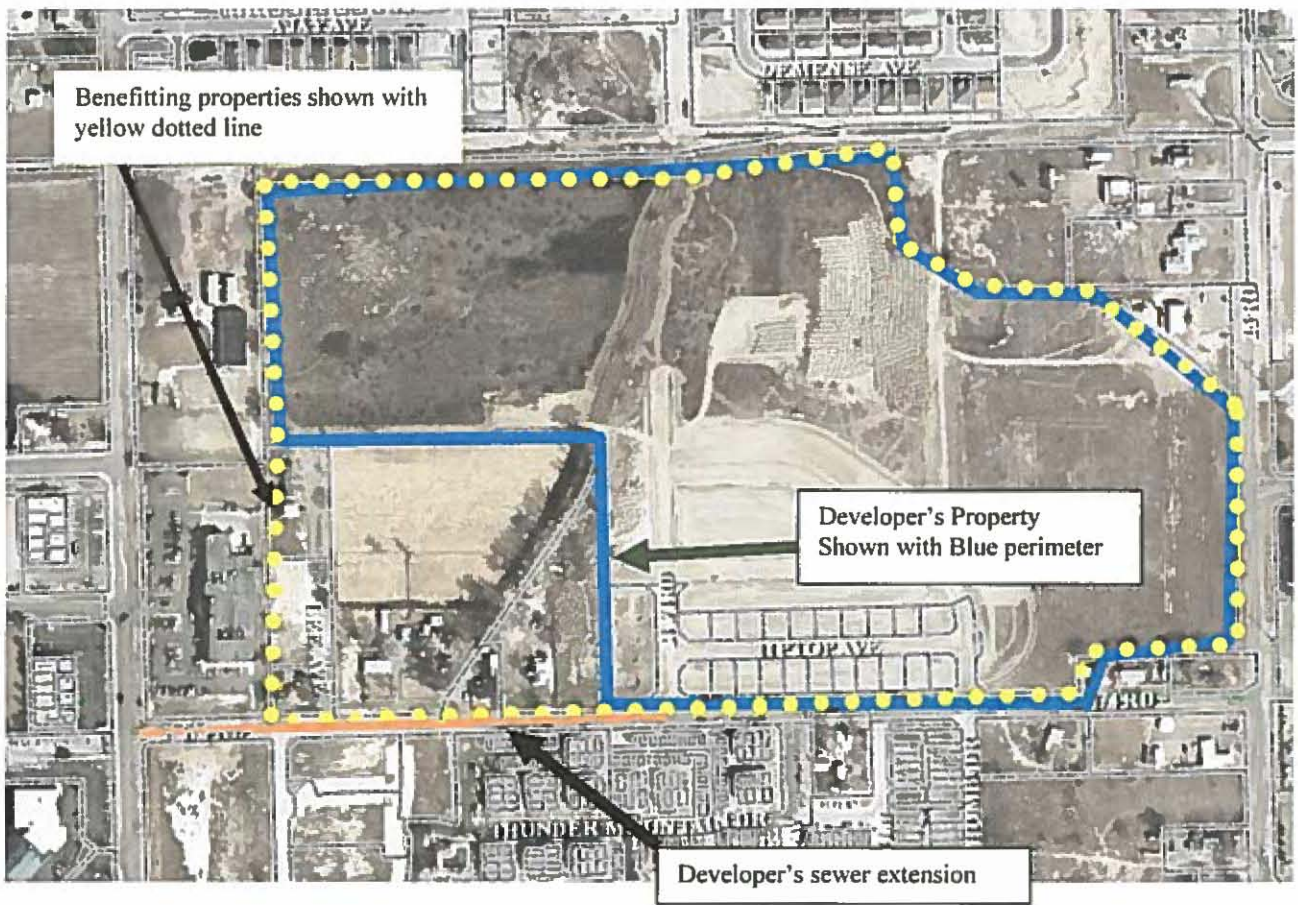


Exhibit # 2

Project: Heritage Heights Sewer Reimbursement Agreement
 Subject: Summary and Allocation of Costs

This project was completed and was found to be acceptable by the City on July 1, 2015. The developer repaved the entire street east of 24 1/2 Road to the entrance of the development. This was required due to damage to the street surface during construction of the sanitary sewer line. This cost was born by the developer, and is a result of means and methods on the part of the contractor performing the sewer installation. The City will recognize cost recovery for a twelve (12) foot width of the street that would make up the trench patch for the sewer line installation. This reimbursement does not apply to the properties hi-lited below that make up the Heritage Heights Development.

City of Grand Junction
 Dept of Public Works and Utilities
 Utilities Division

Project: <u>Heritage Heights Sewer Reimbursement Agreement</u>	Length \$/foot	Total
Subject: <u>Summary and Allocation of Costs</u>	1200 \$ 225.00	\$ 270,000.00

Item	Firm	Cost
Design Engineering/Inspection Vortex		\$ 18,232.85
Easement		\$ -
Materials/labor	Ben Dowd Excavating	\$ 280,188.81
Total Cost		\$ 298,421.66

Parcel ID	Address	EQU/parcel	Acres	Zone	EQU/Ac
2945-044-00-180	633 Lee Avenue	4.61	0.922	R-8	5
2945-044-00-179	627 Lee Avenue	4.31	0.861	R-8	5
2945-044-00-178	2458 F 1/4 Road	2.00	0.4	R-8	5
2945-044-00-172	2460 F 1/4 Road	33.93	6.786	R-8	5
2945-044-00-041	2464 F 1/4 Road	2.11	0.422	R-8	5
2945-044-00-040	2468 F 1/4 Road	11.54	2.307	R-8	5
2945-044-71-300	Heritage Heights	238.00	47.600	R-8	5

Total Benefiting EQUs	296.49
Cost per EQU	\$ 1,006.62
Interest Start Date	July 1, 2015
Proposed Payment Date	July 1, 2026
Number of months	120
Interest Due (8% interest since 7/1/15)	\$ 79.20
City Admin Fee	\$ 100.00
Total Reimbursement Per EQU assuming 2015 connection	\$ 1,186.72
Plant Investment Fee (2015 connection)	\$ 4,244.00
Total Due for sewer hookup	\$ 6,429.72

now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the System and/or the Improvements.

15. This Agreement, together with the exhibits and attachments hereto and documents incorporated herein by reference, constitutes the entire Agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.
16. Nothing contained in this Agreement constitutes a waiver of the City's sovereign immunity under applicable law.
17. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

CITY OF GRAND JUNCTION

BY: *Tom Mow*
City Manager

Date: 12-11-15

Attest: *Stephanie Yum*
City Clerk

Date: 12-11-15



DEVELOPER Heritage Estates, LLC

BY: *John Davis*
John Davis

Date: 12/08/2015

BY: _____

Date: _____

Address: 637 25 Rd

Grand Junction, CO 81505

Attest: *Kim A. Kerk*

Date: 12-08-15

KIM A. KERK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20064014738
My Commission Expires April 14, 2018