

## REIMBURSEMENT AGREEMENT (8" WATERLINE PROJECT/UPLAND)

THIS REIMBURSEMENT AGREEMENT (8" Waterline Project) (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between THE CITY OF UPLAND, a public body corporate and politic (the "City"), whose address is 460 N. Euclid Avenue, Upland, CA 91786, and CITY VENTURES HOMEBUILDING, LLC, a Delaware limited liability company ("Developer"), whose address is 3121 Michelson Drive, Suite 150, Irvine, CA 92612, with reference to the following facts. The City and Developer are sometimes referred to individually in this Agreement as "party" and collectively as "parties."

### RECITALS

A. The City and Developer are parties to that certain Housing Disposition and Development Agreement dated November 28, 2022 (the "DDA"). Each of the initially capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meaning given to it in the DDA.

B. CITY VENTURES CONSTRUCTION, INC., a Delaware corporation, an affiliate of Developer ("Contractor"), holds an active contractor's license issued by the Contractors State License Board (License No. 1003565).

C. The purpose of this Agreement is to provide for the performance of the Waterline Work (as hereinafter defined) in order to satisfy Conditions of Approval Nos. 60.38 and 60.39 for Tract 20647 in the City of Upland.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Developer do hereby agree as follows:

1. Definitions. For the purpose of this Agreement, the following initially capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings set below:

1.1 "Waterline" means a cement mortar lined and coated pipe having a diameter of 8" to be laid and jointed in accordance with the City's Standards and Special Provisions in the locations depicted in pink, orange and blue on the site plan attached hereto as Exhibit A (the "Site Plan").

1.2 "City's Special Provisions" means those City's Standards and Special Provisions, Constructions Methods and General Provisions which are applicable to the Waterline Work, which applicable provisions are attached hereto as Exhibit B.

1.3 "Waterline Work" means the work necessary to construct and install the Waterline including, without limitation, the removal and replacement of asphalt and trenching.

1.4 "Civil Engineer" means C&V Consulting, Inc., or another civil engineer selected by Developer and reasonably acceptable to the City.

1.5 “Civil Engineer’s Contract” means a contract between Contractor and Civil Engineer for the preparation of the plans and specifications for the Waterline Work.

1.6 “Waterline Plans” means those plans and specifications for the Waterline Work to be prepared by the Civil Engineer and approved by the City.

1.7 “Waterline Segments” means the Blue Segment, the Orange Segment and the Pink Segment which are shown on the Site Plan.

1.8 “Blue Segment” means the portion of the Waterline depicted in blue on the Site Plan, having an approximate length of 180 feet and which will connect at its southerly terminus with the waterline being constructed by the City which is depicted in red on the Site Plan and on its northerly terminus with the Orange Segment. The Blue Segment is located in 1st Avenue.

1.9 “Orange Segment” means the portion of the Waterline depicted in orange on the Site Plan, having an approximate length of 150 feet and which will connect at its (i) northerly terminus in 9th Street with the Pink Segment and (ii) southerly terminus in 1st Avenue with the Blue Segment.

1.10 “Pink Segment” means the portion of the Waterline shown in pink on the Site Plan, having an approximate length of 180 feet.

1.11 “Construction Contract” means a construction contract between Developer and Contractor for the Waterline Work which provides, inter alia, that Contractor shall be paid no contractor’s fee or fee general conditions in connection with the Waterline Work,

1.12 “Subcontractor” means a contractor licensed as class A or C34 in the State of California who has not less than five (5) years experience performing work similar to the Waterline Work and is selected in accordance with the provisions set forth in Section 3 below.

1.13 “Subcontract” means a contract between Contractor and Subcontractor for the performance of the Waterline Work substantially in the form customarily used by Contractor, a copy of which is attached hereto as Exhibit C. The Subcontract shall divide the Waterline Work and the cost thereof among the Blue Segment, the Orange Segment and the Pink Segment, and shall include line items for (i) the cost of the pipe comprising the Waterline, (ii) the R&R Expense and (iii) the cost of trenching.

1.14 “R&R Expense” means the cost of removing and replacing the asphalt concrete roadway to the extent necessary to construct the Waterline.

1.15 “City’s Reimbursement Obligation” means the obligation of the City to reimburse Developer for all amounts paid by Contractor under the Subcontract, excepting only (i) as to the Blue Segment, all costs shown on the Subcontract relating thereto other than costs for change orders arising from unforeseen conditions, which change order cost payment allocation shall be subject to future negotiation between the parties if and when change orders are needed, and (ii) as to the Orange Segment, all costs shown on the Subcontract relating thereto other than R&R Expense, (the cost of asphalt trenching and removal shall be exclusively

the payment obligation of Developer), and costs for change orders arising from unforeseen conditions, which change order cost payment allocation shall be subject to future negotiation between the parties if and when change orders are needed. As to the Pink Segment, the City's Reimbursement Obligations shall include costs with respect thereto shown on the Subcontract as well as the costs for change orders resulting from unforeseen conditions.

2. Waterline Plans and Permit. As soon after the Effective Date as is reasonably practicable, Contractor shall enter into the Civil Engineer's Contract with the Civil Engineer to prepare the Waterline Plans and, upon receipt, submit the Waterline Plans to the City for plan check. The City agrees to expedite its plan check of the Waterline Plans and, upon the City's approval of the Waterline Plans, the City shall issue a permit for the Waterline Work. The City agrees to reimburse Developer for thirty-five percent (35%) of Developer's costs incurred (i) in preparing the Waterline Plans. Such reimbursement payment shall be made by the City to Developer within forty-five (45) days after (i) Developer's submittal of paid invoices for the preparation of the Waterline Plans. The City will credit plan check, permit and inspection fees to the Developer at the time of submittal for those items in the amount of 35% ("Developer's Credit"). Developer has an accrued Developer's Credit in the amount of \$2,027.00 arising from Developer's payment of plan check fees in the amount of \$5,790.00. That accrued Developer's Credit and any future Developer's Credits shall be applied against the next permit, plan check and inspection fees that Developer becomes obligated to pay. In addition, in order to facilitate the timely execution of the Waterline Work, the City agrees to allow Developer to close portions of First Avenue and Ninth Street at no additional cost to Developer or Contractor for such period of time as is reasonably necessary for the Waterline Work to be completed.

3. Selection of Subcontractor. Upon completion of the Waterline Plans, Contractor shall obtain no fewer than two (2) bids for the performance of the Waterline Work from contractors who meet the qualifications for the Subcontractor and, after submitting those bids to the City and consulting with the City in connection therewith, Contractor shall select the Subcontractor and enter into the Subcontract with the Subcontractor. Contractor agrees to select the lower or lowest of the bids unless Contractor believes there are good reasons to select another to be the Subcontractor. Developer shall obtain and provide to the City a Payment Bond and Performance Bond for the full amount of the Subcontract. All Subcontracts shall include provisions requiring that the Subcontractor shall maintain in place general liability, auto and other insurance typically required by the City in similar contracts. The insurance obligations set forth in the preceding sentence may be satisfied by naming the City as an additional insured on the insurance policies which Subcontractor is obligated to provide to Contractor under the form of subcontract attached hereto as Exhibit C. The selection of the Subcontractor and the Subcontract shall be subject to approval by the City, which shall not be unreasonably withheld.

4. Performance of the Waterline Work. Contractor shall supervise and direct the Waterline Work and shall diligently endeavor to see that the Subcontractor completes the Waterline Work in accordance with the Waterline Plans approved by the City including, without limitation, the Special Provisions and all other applicable City ordinances, rules and regulations. Contractor shall not charge a contractor's fee in connection with the Waterline Work.

5. Payment and Reimbursement. Developer shall be responsible for the timely payment to Contractor of all sums due under Construction Contract and all sums paid by

Contractor under the Civil Engineer's Contract, and Contractor shall be responsible for the timely payment of all sums due under the Subcontract and the Civil Engineer's Contract, subject to the City's Reimbursement Obligation. Within forty-five (45) days after the date on which Developer provides a written reimbursement request to the City (each, a "Reimbursement Request"), setting forth the amount of the City's Reimbursement Obligation with respect to Waterline Work performed and amount paid under the Civil Engineer's Contract prior to the date of the Reimbursement Request (the "Reimbursement Amount") supported by invoices and evidence of payment, the City will remit the Reimbursement Amount to Developer. Developer may submit Reimbursement Requests to the City no more than once during any thirty (30) day period.

6. Prevailing Wage. This Agreement is made based upon the understanding between the City and Developer that there shall be no prevailing wage or labor contract obligations with respect to the Waterline Work. If there are prevailing wage obligations with respect to the Waterline Work or if Developer or Contractor is obligated to sign a labor agreement with respect to the Waterline Work, then this Agreement shall be void ab initio and neither the City nor Developer shall have any obligations hereunder.

7. Miscellaneous.

7.1 Entire Agreement and Amendment. This Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof and may only be amended by a written amendment signed by both parties.

7.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

7.3 Successors and Assigns. This Agreement shall be binding on the parties and their respective successors and assigns.

7.4 Attorneys' Fees. If any action or proceeding is commenced by either party to enforce its rights under this Agreement, the prevailing party in such action or proceeding shall be entitled to recover all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys' fees and costs, in addition to any other relief awarded by the court.

7.5 California Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

7.6 Notices. Any notice to the other party shall be given by email or U.S. Mail addressed as follows:

City:

Public Works Director

460 N. Euclid Avenue

Upland, CA 91786

afrench@uplandca.gov

Developer:

City Ventures Homebuilding, LLC

3121 Michelson Drive

Suite 150

Irvine, CA 92612

ATTN: Michelle Thrakulchavee

IN WITNESS WHEREOF, the parties have executed this REIMBURSEMENT AGREEMENT FOR 8.” OF WATERLINE as of the date first above written.

CITY:

THE CITY OF UPLAND,  
a public body corporate and politic

By: \_\_\_\_\_

DEVELOPER:

CITY VENTURES HOMEBUILDING, LLC,  
a Delaware limited liability company

By: CITY VENTURES COMMUNITIES,  
LLC, a Delaware limited liability  
company, its sole member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**LIST OF EXHIBITS**

EXHIBIT A

SITE PLAN

EXHIBIT B

THE CITY'S SPECIAL PROVISIONS

EXHIBIT C

FORM OF CONTRACT

EXHIBIT A  
SITE PLAN

EXHIBIT B  
THE CITY'S SPECIAL PROVISIONS



EXHIBIT C  
FORM OF CONTRACT