

CITY OF GRANITE FALLS

ORDINANCE NO. 692-04

AN ORDINANCE ADOPTING THE DEVELOPER AGREEMENT AND REQUIRING EXECUTION OF A DEVELOPER AGREEMENT FORM FOR DEVELOPMENT WITHIN THE CITY OF GRANITE FALLS AND REPEALING ORDINANCE NO. 292 AND ALL ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GRANITE FALLS

Section 1. From and after the effective date of this Ordinance, all contractors, land developers, or others, whether persons or entities, do development within the City of Granite Falls shall execute a Develop Agreement in the form attached.

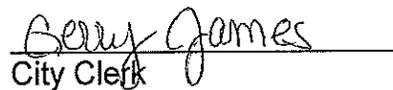
Section 2. This Ordinance shall take effect from and after the 1 day of June, 2004.

Section 3. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances, is not affected.

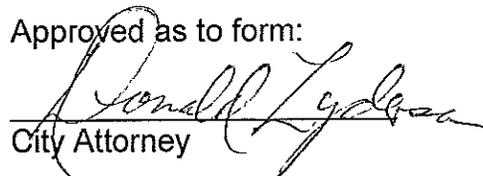
This Ordinance is hereby adopted by the City of Granite Falls this 12 day of May, 2004.

  
MAYOR

Attest:

  
City Clerk

Approved as to form:

  
City Attorney

FIRST READING:  
SECOND READING:  
DATE OF PUBLICATION:  
EFFECTIVE DATE:

April 28, 2004  
May 12, 2004  
May 27, 2004  
June 1, 2004

CITY OF GRANITE FALLS

DEVELOPER AGREEMENT

THIS AGREEMENT, by and between the City of Granite Falls, a municipal corporation, hereinafter referred to as "City", and \_\_\_\_\_, hereinafter referred to as "Developer":

WITNESSETH: That whereas the City of Granite Falls, a municipal corporation, provides water/sanitary/storm or roadway service within this area, and the above-named Developer is preparing to construct an extension or modification or additions thereto, and said development requires the City's service;

WHEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Developer agrees to construct the water/sanitary/storm or roadway system, or additions thereto, to be connected to the City's infrastructure, and to maintain such additions until such time as the improvements are accepted by the City, with the agreements conditioned as set forth below. The improvements, extension, or additions thereto, as described in Exhibit "A", shall be located within that area commonly referred to as \_\_\_\_\_, which property is described in Exhibit "A" attached hereto and referred to hereinafter as "Premises".
2. As a condition precedent to City obligations under this agreement, the Developer shall construct the proposed water/sanitary/storm or roadway system, or additions thereto, within said premises in conformance with the minimum standards as set forth in the City's currently adopted Developer Guidelines for Public Works Standards, as adopted together with any amendments thereto hereinafter made, and further to conform with the City's comprehensive planning documents, which agreement shall include furnishing, installing, and oversizing City owned utility mains identified in the Comprehensive Planning documents. Note: the Comprehensive Plan is intended to identify the "general location" of new facilities. The exact location to be prescribed by the City.
3. The Developer agrees that the construction of any infrastructure items, or additions thereto, shall not commence until the following conditions have been fulfilled:
  - a. The Developer shall furnish the City with three (3) sets of detailed plans for the proposed improvements, or additions thereto, at Developer's own expense, prepared by a qualified engineer currently licensed in the State of Washington.
  - b. The above plans shall require the review and approval by the City and may require engineering review. The cost of such review shall be at the Developer's own expense.
  - c. Minimum requirements for all plans, or additions thereto, submitted to the City for review are discussed in the development guidelines for Public Works Standards.

- d. Construction requirements in addition to the City standards and details for developer extensions, as adopted, are as follows:
- (1) All streets and/or roadways shall be graded to a minimum of two (2) above the crown of utility lines before installation of utility improvements, unless otherwise approved by the City Engineer.
  - (2) All lots shall be fully staked to assist all parties involved in the proper location of utility services.
  - (3) All contractors and subcontractors shall have a current Washington State Contractors License on file with the City in addition to a Business License in Granite Falls.
  - (4) The Developer's proposed improvements, or additions thereto, shall not be connected to any City system until authorized by the City, and such connection shall be performed only under the observation and approval of the City.
- e. For the purpose of applying RCW 4.24.115 to this Contract, the Developer and the City agree that the term "damages" applies only to the finding in a judicial proceeding and is exclusive of third party claims for damages preliminary thereto.

The Developer agrees to indemnify and hold harmless the City and/or its agents from all claims for damages by third parties, including costs and reasonable attorney's fees in the defense of claims for damages, arising from performance of the Developer's express or implied obligations under this Agreement. The Developer waives any right of contribution against the City.

It is agreed and mutually negotiated that in any and all claims against the City or any of its agents or employees by any employee of the Developer, any contractor or subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer or any contractor or subcontractor under Workman's Compensation Acts, disability benefits acts or other employees' benefit acts. The City and the Developer agree that all third party claims for damages against the City that are related to the Developer's project, and tendered by the City to the Developer, the Developer shall accept and undertake to defend or settle with the Claimant. The City retains the right to approve claim investigation and counsel assigned to said claim and all investigation and legal work product regarding said claim shall be performed under a fiduciary relationship to the City. In the event that the City agrees or a court finds that the claim arises from the sole negligence of the City, this indemnification shall be void and the City shall be responsible for all damages payable to the third party claimant. In the event that the City and the Developer agree or a

court finds that the claim arises from or includes negligence of both the Developer and the City, the Developer shall be responsible for all damages payable by the Developer to the third party claimant under the court findings, and, in addition thereto, the Developer shall hereunder indemnify the City for all damages paid or payable to the City under the court findings in an amount not to exceed the percentage of total fault attributable to the Developer. For example, where the Developer is 25% negligent, the Developer shall not be required to indemnify the City for any amount in excess of 25% of the claimant's total damages.

- f. In the event the Developer in his operation damages or disrupts existing improvements, the repairs shall be made at the Developer's expense. In the event they are so damaged or the service disrupted and the Developer fails or is unable to immediately restore the service, then the Owners of the improvements may cause the repairs to be made by others and all costs for the same shall be at the Developer's own expense.

Where the construction crosses or is adjacent to existing utilities, the Developer shall exercise extreme care to protect such utilities from damage.

If any damage is done to an existing utility, the Developer shall notify the utility company involved, who will dispatch a crew to repair the damage at the Developer's expense. All costs for the same shall be at the Developer's own expense.

The Developer shall be aware that some existing City owned facilities are known to contain asbestos cement pipe. The Developer shall conduct all work related to existing asbestos cement pipe in strict accordance with current WISHA safety regulations and provisions contained within WAC 296-62-077 or successor regulations. All costs related to work in compliance with established rules and regulations shall be the responsibility of the Developer. Demolition of existing asbestos cement pipe, if required, will be permitted only after the proper permits are obtained from the Puget Sound Clean Air Agency. The Developer shall be responsible for all associated fees and permits required for asbestos removal and disposal. Work crews shall be provided with proper protective clothing and equipment. Hand tools shall be used, and the asbestos cement pipe shall be scored and broken in lieu of the sawing or other methods which release fibers into the atmosphere. Waste asbestos pipe shall be buried in the trench. Asbestos pipe to be abandoned in place shall not be disturbed, except as noted herein, and shall remain in its original position.

The Developer is cautioned that all existing drainage systems, whether open ditch, buried pipe, or drainage structures, may not be on record. It shall be the responsibility of the Developer to repair or replace all such systems found during construction, which are damaged by the Developer's construction in a manner which is satisfactory to the City.

Where the Developer is allowed to use private property adjacent to the work, the property so used shall be returned to its original or superior condition. The Developer shall make all arrangements in advance with such property owners, to insure that no conflicts will ensue after the property is restored as described above. The Developer will be required to furnish the City with a written release from said private property owners, if the City deems it to be necessary to obtain such document.

4. The construction of the Developer's proposed improvements, or additions thereto, on the Premises shall be inspected by the City in such a manner and at such times as the City deems reasonably necessary to assure that construction of the system will conform with the approved plans and specifications and minimum City Standards. The Developer herewith agrees to allow such inspections and agrees to cooperate providing reasonable advance notice of his construction schedule during the various construction phases as requested by the City. The Developer further agrees to reimburse the City for all engineering fees and expenses incurred by the City for such inspection.
5. The Developer's proposed improvements, or additions thereto, on Premises shall not be accepted for service and use until the same have been fully inspected and approved, and the following requirements have been performed:
  - a. Submit to the City in Auto-CADD format (2000i), electronic files supplied on a three and one half (3-1/2) inch disc or compact disc (CD) accompanied by the original "fixed line" mylars, with all changes from the original design clearly marked to reflect the as-built conditions. Unless otherwise waived by the City, the Developer's engineer shall certify the accuracy of the record drawings and shall affix his seal and signature.
  - b. Payment of all permit fees, impact fees, assessment charges, engineering review fees, inspection fees, and any other applicable City charges required for Premises. This includes, but is not limited to: sanitary sewer connection fee, water connection fee, storm water connection fee, traffic impact fee (including an impact fee to the County as applicable), school district mitigation fees and latecomers fee as applicable.
  - c. Prepare and furnish the required easements in accordance with City's standard form, and furnish same to the City for approval by the City Attorney, prior to Developer recording same with County. Provide copy of recorded document.
  - d. Furnish the City with an affidavit warranting there are no liens against the improvements constructed or furnished by the Developers. This affidavit shall be in a form prescribed by the City Attorney.
  - e. Furnish the City with a Bill of Sale conveying the water/sanitary/storm or roadway system to the City, which shall include a two-year guarantee that the conveyed systems or improvements or additions thereto shall be free of defects in labor and materials. Form shall be as prescribed by the City.

- f. All applicable bills, invoices, fees, etc., have been paid in full.
- 6. In the event any warranty repairs are required, the City agrees, whenever feasible, to provide the Developer with reasonable notice before directly undertaking such repairs. The City reserves the right, however, to effect emergency repairs as deemed necessary by the City. The City shall be reimbursed by the Developer for all costs thereof.
- 7. Upon performing all requirements, including those as set forth in Paragraph 5 above, the City shall accept the water/sanitary/storm or roadway improvements, and agree therewith to operate and maintain said system.
- 8. In performing all requirements of this agreement, developers are also required to comply with all other City codes and regulations, including but not limited to, clearly showing the limits of clearing and cutting.

SUBMITTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY DEVELOPER: \_\_\_\_\_  
 Printed Name  
 \_\_\_\_\_  
 Signature  
 \_\_\_\_\_  
 Date

State of Washington )  
 ) ss.  
 County of Snohomish)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before, me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the person who executed the foregoing instrument, and acknowledged the said instrument to be his free and voluntary act and deed, for the uses and purposes therein mentioned, and acknowledged that he/she had the legal authority to execute said agreement on behalf of the "Developer".

WITNESS my hand and official seal affixed the day and year first above written.

\_\_\_\_\_  
 Notary Public in and for the State  
 of Washington, residing at \_\_\_\_\_

**CITY OF GRANITE FALLS**  
**DEVELOPER AGREEMENT**

**EXHIBIT "A"**

PLAT NAME: \_\_\_\_\_

DEVELOPER: \_\_\_\_\_

LEGAL DESCRIPTION: \_\_\_\_\_

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SCOPE OF WORK: \_\_\_\_\_

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