

FIGURE 11
AGREEMENT TO CONSTRUCT PUBLIC IMPROVEMENTS

THIS AGREEMENT is made this (Date) _____, 20 ____, by and between the City of Albuquerque, New Mexico ("City"), whose address is P.O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and _____ ("Developer"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] _____ whose address is _____, (City) _____, (State) _____ (Zip Code) _____ and whose telephone number is _____, in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Developer is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe:] _____

_____ recorded on (Date) _____, 20 ____, in Book _____, pages ____ through ____ as Document No. _____ in the records of the Bernalillo County Clerk, State of New Mexico ("Developer's Property"). The Developer certifies that the Developer's Property is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in Developer's Property to the present owner:] _____ ("Owner").

Developer proposes to install public infrastructure improvements upon City property which abuts or is near or on Developer's Property, for the benefit of Developer's Property. The City requires, and the Developer is willing to provide certain assurances as a prerequisite to the City's granting permission to the Developer to enter City property to construct the improvements.

2. Deadline and Improvements. The Developer agrees to install and complete the following public infrastructure improvements, identified as Project No. _____, to the satisfaction of the City, on or before the (Date) _____, 20__ ("Construction Completion Deadline"), at no cost to the City: _____

_____ ("Improvements").

3. Work Order Requirements. The City agrees to issue a Work Order after:

A. The Developer submits all documents and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and Figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The Certificate of Insurance must establish that the Developer has procured or has caused to be procured public liability insurance in the amount of not less than One Million Dollars (\$1,000,000) combined single limit for accidents or occurrences which are related to the activities covered by this

Agreement which cause bodily injury, death or property damage to any member of the public as a result of any condition of the Developer's Property; the Improvements; or the Developer's construction activities on Developer's Property or the City's property. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insureds. The Developer must maintain the insurance until the City accepts the Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, attention City Engineer.

B. The Developer complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, price adjustment for asphalt and concrete paving, if applicable, and other related City fees and County Clerk recording fees:

Type of Fee	Amount
Engineering Fee	3.6% of total cost
Street Excavation and Barricading Ordinance and street restoration fees	As required per City-approved estimate (Figure 7)

(Note: The Developer must pay all City fees which have been incurred during construction before the City will accept the Improvements.)

4. Surveying, Inspection and Testing. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the Improvements shall be performed by _____. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Developer shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. The Developer shall pay the City a reasonable fee for any construction surveying performed by the City. As-built record drawings shall be provided to the City by the entity performing the survey.

B. Construction Inspection Methods. Inspection of the construction of the Improvements shall be performed by _____ a New Mexico Registered Professional Engineer. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data to the City which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed

necessary or advisable by the City Engineer. The Developer shall pay the City a reasonable fee for any inspections performed by the City.

C. Field Testing. Field testing of the construction of the Improvements shall be performed by _____, a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. If any field testing is performed by an entity other than the City, the City may monitor the field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review. The Developer shall pay the City a reasonable fee for any field testing performed by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable, and the Developer shall pay the City a reasonable fee therefore

5. Acceptance and Termination. After the Developer completes the Improvements to the satisfaction of the City and submits the final acceptance package, the City will review it, and, if acceptable, the City will issue a Certificate of Completion and Acceptance for the Improvements. Thereafter, the Developer's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Developer must provide to assure the materials and workmanship, as required by the Subdivision Ordinance.

6. Indemnification. Until the Improvements are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Developer agrees to indemnify and hold harmless the City and its officials, agents and employees and, if the Improvements include water and wastewater infrastructure, the ABCWUA, its employees, officers and agents, from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

7. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer and the express written concurrence of any surety which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

8. Payment for Incomplete Improvements. If the Developer fails to complete construction of the Improvements satisfactorily by the Construction Completion Deadline, the City may make demand upon the excavation bond posted in accordance with City Street Excavation Ordinance 6-5-2-3(A)(3) or any successor ordinance in order to obtain payment for completing the Improvements. If the cost of completing the Improvements exceeds the amount

of the excavation bond, the City may proceed against the Developer for the balance of the completion costs and for any costs or damages incurred by the City as a result of Developer's failure to perform according to the terms of this Agreement.

9. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three (3) days after the notice is mailed if there is no actual evidence of receipt.

10. Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

11. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

12. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

13. Captions. The captions to the sections or paragraphs of this Agreement are not part of this Agreement and will not affect the meaning or construction of any of its provisions.

14. Form Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

15. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.

Executed on the date stated in the first paragraph of this Agreement.

DEVELOPER: _____

CITY OF ALBUQUERQUE:

By [signature]: _____

By: _____

Name [print]: _____

Shahab Biazar, P.E., City Engineer

Title: _____

Dated: _____

Dated: _____

DEVELOPER'S NOTARY

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on this _____ day of _____, 20____ by [name(s) of person(s):] _____, title or capacity, for instance, "President" or "Owner":] _____ of _____ [Developer:].

(SEAL)

Notary Public

My Commission Expires: _____

CITY'S NOTARY

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this _____ day of _____, 20____ by Shahab Biazar, P.E., City Engineer, City of Albuquerque, a municipal corporation, on behalf of said corporation.

(SEAL)

Notary Public

My Commission Expires: _____

[POWER OF ATTORNEY ATTACHED IF DEVELOPER
IS NOT THE OWNER OF THE SUBDIVISION]

POWER OF ATTORNEY

NOTE: Must be signed and notarized by the owner if the developer is not the owner of the Subdivision.

STATE OF _____)
) ss.
COUNTY OF _____)

[State name of present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:] _____ ("Owner"),
of [address:] _____ [City:] _____, [State:] _____ [zip code:] _____, hereby makes, constitutes and appoints [name of developer:] _____ ("Developer") as my true and lawful attorney in fact, for me and in my name, place and stead, giving unto the Developer full power to do and perform all and every act that I may legally do through an attorney in fact, and every proper power necessary to meet the City of Albuquerque's ("City") subdivision requirements regarding the real estate owned by me and described in Section 1 of the Agreement to Construct Public Improvements ("Agreement") above, including executing the Agreement and related documents required by the City, with full power of substitution and revocation, hereby ratifying and affirming what the Developer lawfully does or causes to be done by virtue of the power herein conferred upon the Developer.

This Power of Attorney can only be terminated: (1) by a sworn document signed and notarized by the Owner, which shall be promptly delivered to the City Engineer in order to provide notice to City of the termination of this Power of Attorney; or (2) upon release of the Agreement by the City.

NOTE: Alternate wording may be acceptable, but must be submitted to the City Legal Department for review and approval before the final contract package is submitted to the City for review. The City may require evidence of ownership and/or authority to execute the Power of Attorney, if the Owner is not the Developer. If Owner is a corporation, the Power of Attorney must be signed by the president or by someone specifically empowered by the Board of Directors, in which case the corporate Secretary's certification and a copy of the Board's resolution empowering execution must accompany this document.

OWNER: _____

By [Signature:]: _____
Name [Print]: _____
Title: _____
Dated: _____

The foregoing Power of Attorney was acknowledged before me this ____ day of _____, 20____
by [name of person:] _____,
[title or capacity, for instance "President":] _____
of [Owner:] _____ on behalf of the Owner.

(SEAL)

Notary Public

My Commission Expires: _____