

FIGURE 13

**AGREEMENT TO CONSTRUCT
PUBLIC IMPROVEMENTS BY CITY CONTRACT**

THIS AGREEMENT is made this ____ day of _____, 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 type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] _____, whose address is _____, and whose telephone number is _____, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

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

_____ ("Developer's Property"). 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").

The Developer of the property is seeking [describe: "preliminary/final plat", "site development plan", etc.] _____ approval. The City and the property Developer have agreed that it would be beneficial to all parties and the general public to make certain improvements to the public roadways and that it is appropriate that the Developer contribute to the cost of the improvements.

Developer's Property will benefit from the construction of certain improvements detailed below, which will be located on public right-of-way, and the City is willing to construct those improvements with the participation of the Developer.

THEREFORE, the City and the Developer agree:

2. Improvements. The City agrees to install and complete the following public improvements, identified as Project No. _____:

_____ ("Improvements").

3. Developer's Estimated Cost. The Developer's share has been determined to be _____ dollars and _____ cents (\$_____) ("Developer's Share"), as detailed in the attached City-approved estimate which is attached as **Exhibit A**. The estimate includes City fees and contingencies and is the only amount Developer will be required to contribute for this project.

4. Payment. All payments will be made only in the following form: cash, certified check, cashier's check or other form of payment approved by the City.

5. 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 six (6) days after the notice is mailed if there is no actual evidence of receipt.

6. 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.

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

8. 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.

9. 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.

10. 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 the 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., Acting City Engineer

Title: _____

Dated: _____

Dated: _____

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:] _____

_____, [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 Subdivision Improvements Agreement ("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: _____