AGREEMENT TO CONSTRUCT
SUBDIVISION IMPROVEMENTS
- PRIVATE INFRASTRUCTURE -

THIS AGREEMENT is made this Day of Month day of Month, Year, between the County of Bernalillo, New Mexico (hereinafter referred to as "County") and Subdivider Name, its heirs, executors, administrators, successors, transferees, and assigns jointly and severally (hereinafter referred to as "Developer") and shall be in full force and effect through Current Date + 1 year + 90 days, except as otherwise provided below under TERMINATION.

WHEREAS, the Developer wishes to develop certain lands within the County of Bernalillo, State of New Mexico known as Name of Subdivision, (hereinafter referred to as the "Subdivision"); and

WHEREAS, the Developer has submitted and the County has approved a preliminary plat identified as Case #, Bernalillo County, New Mexico, describing the Subdivision; and

WHEREAS, the County requires Developer to construct roadway and drainage improvements to County specifications in said subdivision as a prerequisite to approval of Final Plat of the Subdivision; and

WHEREAS, the County wishes to secure and protect the purchasers of lots within the subdivision from the possibility of the Developer's failure to build satisfactory infrastructure improvements to serve such purchasers; and

WHEREAS, the County requires the execution of an Agreement to construct said private improvements, together with actual satisfactory construction or acceptable guarantees of construction as specified below, as a prerequisite to approval of a Final Plat of the Subdivision; and

WHEREAS, the Developer must obtain County approval of construction plans, specifications, and cost estimates for the improvements and upon County approval of such construction plans, specifications, and cost estimates the County is prepared to issue the Developer a Work Order permitting the commencement of construction activities upon execution of this Agreement and payment of any required fees, all as set forth and specified in Exhibit "A", which is attached hereto and incorporated herein as if fully set forth in this Agreement; and

WHEREAS, the County is willing to inspect or monitor the private improvements during the course of their construction and accept said improvements upon their satisfactory completion, all as set forth and specified in Exhibit "B", which is attached hereto and incorporated herein as if fully set forth in this Agreement; and

WHEREAS, the Developer financially guarantees the satisfactory completion of the infrastructure construction required herein and the payment of all labor and material costs and charges, all as set forth and specified in Exhibit "C" which is attached hereto and incorporated herein as if fully set forth in this Agreement;

Revision 1
April 26, 2002

NOW, THEREFORE, in consideration of the above, the County and Developer hereby agree as follows:

1. The Developer shall, on or before the Current Date + 1 year, complete to the satisfaction of the County the improvements required for the Subdivision as set forth, specified and referenced in Exhibit "A" attached hereto. The improvements which the Developer shall satisfactorily complete within the time limitation stated above are described and identified in Exhibit "D", which is attached hereto and incorporated herein as if fully set forth in this Agreement.

The time limitation stated above may be extended by the County Engineer for a period not to exceed twelve (12) months if the Developer shows adequate reasons for said extension.

2. After execution of this Agreement, payment of all fees as specified in Exhibit "A" attached hereto, and, if applicable, delivery of the financial guarantee specified in Exhibit "C" attached hereto, the Developer shall be issued a Work Order by the County. The Developer shall advise the County Engineer in advance of the actual start of construction and arrange for all inspections required and specified in Exhibit "B" attached hereto. The Developer shall permit the County or other participating agencies to make such tests and inspections during the construction of the improvements and upon completion of the improvements as are necessary or desirable.

3. Prior to final acceptance of the completed improvements by the County, the Developer shall furnish to the County Engineer all documentation of the completion of construction as set forth and specified in Exhibit "A" attached hereto.

4. Until acceptance of the improvements by the County, the Developer shall be solely responsible for maintaining the premises being subdivided in a safe condition. The Developer agrees to defend, indemnify and hold harmless the County and its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury or damage arising out of the design or construction of the improvements or by reason of any act or omission, or misconduct of the Developer, his agents, employees or the Engineer or Contractor or their agents or employees. Provided, however, such indemnity shall not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee, or the giving of or the failure to give directions or instructions by the indemnitee, or the agents or employees of the indemnitee, where such giving or failing to give directions or instructions is a primary cause of bodily injury to persons or damage to the property. The indemnity required hereunder shall not be limited by reason of the specifications of any particular insurance coverage in this Agreement. Nothing herein is intended to impair any right or indemnity under the laws of the State of New Mexico.

5. The Developer shall procure or cause to be procured and maintain public liability insurance in the amount of not less than One Million Dollars ($1,000,000) combined single limit for accidents or occurrences which cause bodily injury, death or property damage to any member of the public resulting from any condition of the lands of the subdivision or improvements therein or the construction activities thereon. The insurance policy must name the County of Bernalillo, its employees, and elected officials, as their interest may appear, as additional insureds. The Developer shall maintain such insurance until acceptance of the improvements by the County. Any cancellation provision must provide that if the policy is canceled prior to the expiration date hereof, materially changed, or not renewed, the issuing company will mail 30 days written notice to the County, attention County Engineer. The Developer shall furnish the County Engineer a certificate of said insurance prior to issuance of a Work Order for construction of the improvements.

6. At the time of acceptance of the completed improvements or any portion thereof by the County, the Developer shall furnish or cause to be furnished a bond or other suitable guarantee in a form and with a surety satisfactory to the County to guarantee the completed project against defective materials and workmanship for a period of one (1) year following the date of acceptance by the County.

7. The County may either perform or monitor the performance of inspections during the course of construction of the improvements and inspect the improvements upon their completion in a timely manner, all as set forth and specified in Exhibit "B" attached hereto. The County may, at any time, inspect the improvements within the Subdivision to determine that the requisite work and material has been incorporated into the Subdivision and that the Developer is building the Improvements in accordance with its obligation herein. The Developer shall give the County sufficient notice of its construction activities called for in this agreement for the County to schedule its inspections. In this context, "sufficient notice" shall mean notice received by the County Public Works Division at least five working days prior to each new stage that may need inspection, or any shorter time agreed to by the County Engineer or his designated agent. The County may elect not to make any of these inspections, except that the County shall perform a final inspection prior to the termination of this Agreement.

8. The County shall designate a Construction Engineer and/or Inspector for this project.

9. The County may make available at established reproduction costs for the use of the Developer or its agents all of its maps, records, laboratory tests, or other data pertinent to the work to be performed by the Developer or its agents pursuant to this Agreement and also any other maps, records, or other materials available to the County upon the County's request to any other public agency or body.

10. The County shall issue a Certificate of Completion and Acceptance for the Improvements upon final completion to the County's satisfaction of the Improvements as described in the plans and specifications as set forth and specified in Exhibit "A" attached hereto. However, the County Engineer, in his discretion, may issue a Certificate of Completion and Acceptance for a portion of the Improvements in accordance with the conditions and procedures set forth in Exhibit "C" attached hereto.

11. If the Developer has requested Final Plat approval by the County prior to the actual construction of the improvements, the County will approve the Final Plat for recordation upon execution of this Agreement, payment of all fees specified in Exhibit "A" attached hereto, delivery of the financial guarantee specified in Exhibit "C" attached hereto and full compliance with the County's Subdivision Ordinance.

12. This Agreement shall not be assigned except with the written consent of the parties hereto and the express written concurrence of any surety who has undertaken to guarantee the completion of the Improvements. If so assigned, this Agreement, shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

13. In the event of the sale, conveyance, or assignment of the Subdivision or any portion thereof, the County will not release the Developer from its obligations under this Agreement and will continue to hold the Developer responsible for all Improvements until a successor in interest to the Developer has posted a suitable guarantee and entered into a Subdivision Improvements Agreement with the County. At such time as acceptable security has been posted by the Developer's successor in interest and the Agreement executed, the County will release the guarantee.

14. Should there be a conflict between the terms and conditions of this Agreement (with Exhibits A, B, C, D, E, and F) and the terms and conditions of any other document referred to herein, the terms and conditions of this Agreement (with Exhibits A, B, C, D, E, and F) shall govern.

15. TERMINATION. This Agreement shall terminate and the said bond or letter of credit shall be canceled and be of no further force and effect when the above-described Improvements within the Subdivision have been completed to the County's standards and specifications and so verified in writing by the Bernalillo County Public Works Division, or as specified as in Paragraph 1 of this Agreement, or at an earlier date mutually agreed on by the County and Developer.

16. If any part of this Agreement is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other part of this Agreement as long as the remainder of the Agreement is reasonably capable of completion.

17. NOTICES. Notice required to be given under this Agreement shall be given to the parties as shown:

COUNTY COMMISSION: BERNALILLO COUNTY PUBLIC WORKS DIVISION
2400 Broadway SE
Albuquerque, NM 87102

_____
Bernalillo County Public Works Division

DEVELOPER: _____

_____

_____

_____

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SIGNED:

Developer: _____

By: _____

_____

_____

_____

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

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____

My Commission Expires:

_____
Notary Public

Address

_____
City State Zip Code

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EXHIBIT "A"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
EXECUTED BETWEEN
Developer
AND COUNTY OF BERNALILLO (County) ON THE
Day of Month day of Month, Year

1. COMMITMENT TO CONSTRUCT IMPROVEMENTS.

The Developer shall construct in a manner satisfactory to the County the improvements identified in Paragraph 1 of the Subdivision Improvements Agreement, which are shown in greater detail on the Developer's proposed and approved Subdivision Improvements Plan, which was filed with the office of the County Engineer and identified as Project No. Case #.

2. DESIGN AND CONSTRUCTION METHODS.

As soon as reasonably practical after approval of the Developer's Preliminary Plat of the Subdivision, the Developer shall submit to the County Engineer final construction plans, specifications, and costs estimates for the proposed private improvements. At this time, the Developer shall pay all fees required under Paragraph 4 of this Exhibit.

The Developer has engaged Name of Engineer (if Applicable) as Engineer(s), for the construction project, who are Registered Professional Engineers in the State of New Mexico. The Developer shall ensure that the Engineer(s), in such capacity, shall provide the following services prior to, during, and after construction of the improvements:

Description of Services

The Developer shall ensure that the Engineer(s) perform all of the above services in a satisfactory manner and submit to the County Engineer any reports required by the County Engineer.

The Developer has engaged Name of Contractor as Contractor(s), who is properly licensed in the State of New Mexico. The Developer shall ensure that the Contractor(s), in such capacity, shall in a manner satisfactory to the County construct the improvements as shown on Developer's proposed Subdivision Improvements Plan (Project No. Case #), incorporating any change orders approved by the County Engineer, and all other applicable ordinances, laws, regulations, and policies. Construction surveying and testing shall be performed as set forth in Exhibit "B" of the Subdivision Improvements Agreement between Developer and the County.

3. COMPLETION OF CONSTRUCTION

The Developer shall report the completion of construction in writing to the County Engineer. Upon receipt of the report, the County Engineer or his representative shall visually inspect the private improvements to verify completion of construction according to plan. Subsequent to verification, the Developer shall submit to the County Engineer a "final acceptance package", which shall consist of the following documents:

a. "As-built" drawings of reproducible quality, depicting all construction of the private improvements as actually accomplished in the field and certified by a New Mexico Registered Professional Engineer or

Land Surveyor, as appropriate,

b. A list of quantities of contract items in place, using the bid items in the City of Albuquerque's standard Estimated Unit Prices. This list shall be divided into the following categories as applicable:

(1) Sanitary sewer items and quantities;
(2) Water service items and quantities;
(3) Street paving quantities;
(4) Street curb and gutter quantities;
(5) Storm drainage improvements and quantities;
(6) Earthwork and other quantities.

The County shall concurrently provide a written certification from the County Engineer that the construction has been performed in substantial compliance with the final plans and specifications for private improvements approved by the Bernalillo County Public Works Division and in accordance with the Subdivision Plat as submitted to and approved by Bernalillo County. A copy of such plat is hereto attached and incorporated as Exhibit "E". If the County is acting as the Contractor for all or a portion of the improvements constructed pursuant to this Agreement, the County shall prepare its own final acceptance package documents for those improvements actually constructed by the County.

Upon receipt of the Developer's "final acceptance package", the County Engineer shall review it for completeness and accuracy. If the documentation has been satisfactorily completed, the County Engineer shall approve the package and issue a certificate of Completion and Acceptance. Any financial guarantee provided by the Developer in accordance with Exhibit "C" to the Subdivision Improvements Agreement between the Developer and the County shall be released no later than sixty (60) days after approval of the final acceptance package by the County Engineer.

4. PAYMENT OF FEES

Prior to issuance of a Work Order, the Developer shall pay to the County the following fee(s):

Type of Fee	**Amount**
Design Review Fee	$
Construction Permitting	TBD

Prior to final acceptance of the improvements by the County, the Developer shall pay any County fees which may have been incurred during the course of construction.

The Developer is liable for any and all costs for completing the designated Improvements in excess of any amounts paid to the County regarding this portion of the project. In the event that it costs more to build the Improvements than provided by this agreement, the Developer shall bear all additional costs, based on final quantities and contracted unit prices.

The Design Review Fee shown above is based on an estimate for construction prepared prior to final approval of construction plans. Should the work shown on approved construction plans be of greater extent or complexity than that presented in plans used to prepare the above estimate, the County shall have the option to increase the Design Review Fee accordingly.

EXHIBIT "B"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
EXECUTED BETWEEN
Developer
AND COUNTY OF BERNALILLO (County) ON THE
Day of Month day of Month, Year

1. CONSTRUCTION INSPECTION METHODS

Inspection of the subdivision improvement construction shall be performed by Name of Engineer (if Applicable), a New Mexico Registered Professional Engineer, in accordance with all applicable laws, ordinances and regulations. If said inspection is performed by an entity other than the County, the County may monitor said inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data to the County as required for review. The County 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 County Engineer. For any inspections performed by the County, the Developer shall pay to the County a reasonable fee therefor.

2. CONSTRUCTION SURVEYING

Construction surveying for the subdivision improvement project shall be performed Name of Survey Company (if Applicable), in accordance with all applicable laws, ordinance and regulations. If said construction surveying is performed by an entity other than the County, the County may monitor said 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 County as required for review. If any construction surveying is performed by County, the Developer shall pay to the County a reasonable fee therefor.

3. FIELD TESTING

Field testing of the subdivision improvement construction shall be performed Name of Testing Laboratory, a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the technical standards contained in the applicable contract documents and all applicable laws, ordinances, and regulations. If any field testing is performed by an entity other than the County, the County may monitor said field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the County as required for review. If any field-testing is performed by the County, the Developer shall pay to the County a reasonable fee therefor.

4. RECORD TESTING

Notwithstanding the provisions of Paragraph 3 above, the County retains the right to perform any and all record testing which may be deemed necessary or advisable by the County Engineer and the Developer shall pay to the County a reasonable fee therefor.

EXHIBIT "C"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
EXECUTED BETWEEN
Developer
AND COUNTY OF BERNALILLO (County) ON THE
Day of Month day of Month, Year

1. PLAT APPROVAL STATUS

The Developer ___has/has not (choose one)___ requested final plat approval by the County prior to construction of the Subdivision Improvements described in Paragraph 1 of the Subdivision Improvements Agreement. If the Developer has not requested final plat approval prior to construction of the improvements, no financial guarantee is required by the County. However, the Developer understands and agrees that the County will not approve the Developer's proposed plat until the improvements are completed in accordance with the Agreement to which this document is attached as an Exhibit.

If the Developer has requested final plat approval prior to the construction of the improvements, a financial guarantee in an amount of not less than 125 percent of the costs of completing the improvements (as approved by the County Engineer) is required. Said financial guarantee must be irrevocable in form and shall be effected by a bond or letter of credit posted by the Developer with the County listed as the Obligee in the event of Developer's default under the Subdivision Improvements Agreement.

2. FINANCIAL GUARANTEE

Concurrent with the execution of this Agreement, Developer shall place with County an acceptable bond or letter of credit hereto attached as Exhibit "F" in the amount of _____Dollars ($ ___,_____) subject to the terms and conditions of this Agreement. The bond or letter of credit shall be in effect from the date of this Subdivision Improvements Agreement to **ninety** calendar days after the date specified in Paragraph 1 of the Subdivision Improvements Agreement. The bond or letter of credit shall reference this Agreement as an attachment. For the purpose of this Agreement, the surety issuing the bond or letter of credit is designated the Guarantor. The County agrees to hold the bond or letter of credit and to execute against it only as provided in this Agreement.

With respect to the Subdivision Improvements Agreement to which this document is attached as an Exhibit, the Developer has acquired or is able to acquire the following described financial guarantee (*describe fully, indicate amount, identification number, names of bank or bonding entity, inclusive dates of guarantee, and all other relevant information*):

_____

_____

The Developer understands and agrees that the original executed financial guarantee described above must be delivered to the County prior to the approval and filling of the Final Subdivision Plat; and must be in an amount of not less than 125 percent of the cost of completing the improvements, as estimated by the County Engineer.

In the event the Developer shall fail or neglect to fulfill his obligations under this Agreement, the County shall have the right to construct or cause to be constructed the Improvements specified herein, as shown on the Final Plat and in the plans and specifications as approved, and the Developer as Principal and the surety or sureties shall be jointly and severally liable to pay to and indemnify the County, the total cost to the County thereof, including but not limited to, engineering, legal, and contingent costs together with any damages, either direct or consequential, which the County may sustain on account of the failure of the Developer to carry out and execute all of the provisions of the Agreement to which this document is attached as an Exhibit. The County shall have the unconditional right to call upon the financial guarantee provided by the Developer described in this paragraph for the purposes specified and in the amounts enumerated in such guarantee.

If the Developer fails to or refuses to complete the Improvements under the terms of this Agreement by the date as specified in Paragraph 1 of the Subdivision Improvements Agreement, the County, without any notice to the Developer, may at any time (or times) execute against the bond or letter of credit for those funds it deems necessary to complete the work - whether by the County, a private company, or a public agency - upon certifying (1) that the Developer has not completed the Improvements, and (2) that the amount drawn against the bond or letter of credit does not exceed 125% of the estimated cost of completing the Improvements. The certification shall be made by a notarized statement signed by the Director of the Bernalillo County Public Works Division or his designated agent. If the County takes over the completion of the Improvements because of the Developer's failure or refusal to complete the same, and if the bond or letter of credit posted for the Improvements is insufficient, the Developer shall be liable to the County upon demand for the additional funds necessary to complete the Improvements according to the Plans and Specifications.

If the County performs or has performed on its behalf by a private company or a public agency, the Improvements specified in the Plans and Specifications, and of the final costs of the Improvements to the County, including administrative costs, is less than the amount drawn against the bond or letter of credit, then the County shall refund the excess to the Developer within thirty (30) days from completion and acceptance of the Improvements.

The Developer shall be liable for the payment of all fees and costs incident to the bond or letter of credit which may be charged by the Surety pursuant to the terms of the bond or letter of credit.

The Surety will not be liable to any of the parties hereof for acts undertaken by it upon consideration of all facts and matters presented to it, or because of the reliance by it upon representations made to it by the parties hereto, or in the exercise of its own best judgement, or in good faith reliance upon an opinion of counsel. Surety shall have no responsibility, duty, or liability to determine whether any requests by County for draws or claims against the bond or letter of credit are in accordance with this Agreement or whether Developer has any defenses to said draw or claims.

Notwithstanding the posting of the bond or letter of credit, the Developer is liable for any and all costs for completing the designated Improvements in excess of any amounts paid to the County pursuant to its execution upon the bond or letter of credit.

In the event that it costs more to build the Improvements than provided by the bond or letter of credit, the Developer shall bear all additional cost regardless of the final amount necessary to complete the Improvements. The Developer shall be responsible for completion of all Improvements shown on the Plans.

Notwithstanding the above, the County has no obligation to complete the Improvements. The County may elect to complete any Improvements through the use of County equipment and County Employees, and charge for said items their reasonable value, or the County may bid the job and let a contract to a private construction firm, which construction firm shall be entitled to payment from the monies obtained under the bond or letter of credit.

3. PROCEDURES FOR REDUCTION OF FINANCIAL GUARANTEE UPON PARTIAL COMPLETION OF IMPROVEMENTS

The Developer may request a reduction in the amount of financial guarantee upon partial completion of the subdivision improvements. To qualify for a financial guarantee reduction, the completed improvements must be of a free-standing nature, functionally independent of any uncompleted improvements, and completed in substantial compliance with the subdivision improvement construction plans as determined by an inspection conducted by the County.

If the completed improvements meet the above requirements, the County Engineer will then estimate the costs of completing the remaining improvements. The Developer may then submit the following documents to the County for review and approval:

a) A revised financial guarantee in an amount of not less than 125 percent of the County Engineer's estimated costs of completing the remaining improvements;

b) A release of the original financial guarantee for execution by the County;

c) Documentation that the completed improvements and the land on which the completed improvements are located are subject to no liens, claims or other encumbrances;

d) A bond or letter of credit or other suitable instrument guaranteeing the completed improvements against defective materials and workmanship for a period of one (1) year as set forth in Paragraph 7 of the Subdivision Improvements Agreement between the Developer and the County.

Upon receipt of the above-described documents in forms acceptable to the County, the County shall issue a Certificate of Completion and Acceptance for the completed improvements and accept the revised financial guarantee tendered by the Developer.

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EXHIBIT "D"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
EXECUTED BETWEEN
Developer
AND COUNTY OF BERNALILLO (County) ON THE
Day of Month day of Month, Year

Approved construction plans and specifications.

(PWCO Case # Case # (if Applicable))

EXHIBIT "E"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
EXECUTED BETWEEN
Developer
AND COUNTY OF BERNALILLO (County) ON THE
Day of Month day of Month, Year

SUBDIVISION PLAT
CASE No. Subdivision Case #

EXHIBIT "F"

TO SUBDIVISION IMPROVEMENTS AGREEMENT
EXECUTED BETWEEN
Developer
AND COUNTY OF BERNALILLO (County) ON THE
Day of Month day of Month, Year

BOND OR LETTER OF CREDIT
Attached