

AGREEMENT AND COVENANT

City Project No. 1006539

This Agreement and Covenant (“Agreement”), between the City of Albuquerque, New Mexico (“City”) and Mesa del Sol Sol, LLC (“User”), is made in Albuquerque, New Mexico, and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk, State of New Mexico.

1. Recital. The User is the owner of certain real property (“User’s Property”) located at Stryker and University Blvd SE, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information) Tract 28 of Bulk Land Plat Tracts 28 & A-1-A Mesa del Sol Innovation Park and is attached as **Exhibit A**.

The City is the owner of a certain real property, easement or public right-of-way (“City’s Property”) in the vicinity of, contiguous to, abutting or within User’s Property, and more particularly described as: Future East University Blvd and Future North Mesa Del Sol Blvd. adjacent to Tract 28, the Public Drainage easements within tract 28, and the Public Drainage easements in Tract A-1-A in the future location of North Mesa Del Sol Blvd all shown on the Bulk Land Plat Tracts 28 & A-1-A Mesa del Sol Innovation Park Recorded in Bernalillo County Records Book Page .

The User wishes to construct upon, improve or repair and to maintain the following drainage Improvement (“Improvement”) on the City’s Property (or already has done so): unlined ditches for the purposes of storm water conveyance and temporary ponding

A sketch of the proposed or existing Improvement is attached as **Exhibit B** and made a part of the Agreement.

The City agrees to permit the Improvement to exist on the City’s Property provided the User complies with the terms of this Agreement.

2. City Use of City’s Property and City Liability. The City has the right to enter upon the City’s Property at any time and perform whatever inspection, installation, maintenance, repair, or modification or removal (“Work”) it deems appropriate without liability to the User. If the Work affects the Improvement, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City’s satisfaction. The cost of repairing the Improvement will be paid by User.

3. User’s Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement all in accordance with standards required by the City as per the approved Grading and Drainage Plan File R16D004 on file at the City Engineer’s office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City’s use of the City’s Property. The User will conform with all applicable laws, ordinances and regulations.

County Clerk’s Recording Label

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within 30 days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk, State of New Mexico. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk, State of New Mexico.

Cancellation of this Agreement for any reason shall not release the User from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. For purposes of giving formal written notice to the User, User's address is:

MDS Receivership

PO Box 95078

Albuquerque, NM 87199

Notice may be given to the User either in person or by mailing the notice by regular U.S. mail,

postage paid. Notice will be considered to have been received by the User within 3 days after the notice is mailed if there is no actual evidence of receipt. The User may change User's address by giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

11. Indemnification. The User shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The User agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the User, its agents, representatives, contractors or subcontractors or arising from the failure of the User, its agents, representatives, contractors or subcontractors to perform any act or duty required of the User 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.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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

16. 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.

17. 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.

CITY OF ALBUQUERQUE:

USER:

By: _____
Sarita Nair
Chief Administrative Officer
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

APPROVED:

Shahab Biazar, P.E., City Engineer

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this ___ day of _____, 20_, by Sarita Nair, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

SEAL

My Commission Expires: _____
Notary Public: _____

USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on this ____ day of _____, 20_, by _____, (name of person signing) _____ (title of person signing) on behalf of _____ (User).

SEAL

My Commission Expires: _____
Notary Public

EXHIBIT B - COA Drainage File RA16 D004

NOTICE TO CONTRACTORS

1. ALL WORK DETAILED THIS SHEET TO BE PERFORMED UNDER CONTRACT SHALL EXCEPT AS OTHERWISE STATED OR PROVIDED HEREON, BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 1986 EDITION AS REVISED THROUGH UPDATE No. 7, AMENDMENT #1.
2. TWO WORKING DAYS PRIOR TO ANY EXCAVATION, THE CONTRACTOR MUST CONTACT NEW MEXICO ONE CALL SYSTEM (260-1990) FOR LOCATION OF EXISTING UTILITIES.
3. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL EXCAVATE AND VERIFY THE HORIZONTAL AND VERTICAL LOCATIONS OF ALL OBSTRUCTIONS. SHOULD A CONFLICT EXIST, THE CONTRACTOR SHALL NOTIFY THE ENGINEER OR SURVEYOR IMMEDIATELY SO THAT THE CONFLICT CAN BE RESOLVED WITH A MINIMUM AMOUNT OF DELAY.
4. FIVE (5) WORKING DAYS PRIOR TO BEGINNING CONSTRUCTION THE CONTRACTOR SHALL SUBMIT TO CONSTRUCTION COORDINATION DIVISION A DETAILED CONSTRUCTION SCHEDULE, TWO (2) WORKING DAYS PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL OBTAIN A BARRICADE PERMIT FROM THE CONSTRUCTION COORDINATION DIVISION. CONTRACTOR SHALL NOTIFY BARRICADE ENGINEER (924-3400) PRIOR TO OCCUPYING AN INTERSECTION. REFER TO SECTION 19 IF THE STANDARD SPECIFICATIONS.
5. ALL PERMANENT STREET STRIPING ALTERED OR DESTROYED SHALL BE REPLACED WITH PLASTIC REFLECTORIZED PAVEMENT MARKING BY CONTRACTOR IN SAME LOCATION AS EXISTING OR AS INDICATED BY THIS PLAN SET.
6. ANY WORK WITHIN AN ARTERIAL ROADWAY REQUIRES TWENTY-FOUR HOUR CONSTRUCTION.
7. CONTRACTOR SHALL MAINTAIN A GRAFFITI-FREE WORK SITE. CONTRACTOR SHALL PROMPTLY REMOVE ANY GRAFFITI FROM ALL EQUIPMENT, WHETHER PERMANENT OR TEMPORARY.
8. CONTRACTOR SHALL PROVIDE AND MAINTAIN ALL CONSTRUCTION SIGNING UNTIL THE PROJECT HAS BEEN ACCEPTED BY THE OWNER.
9. DRIVE PADS SHALL BE PER DWG 2425 EXCEPT FLARES MODIFIED TO 8" @ 12:1 SLOPE.
10. ALL PRIVATE PAVING TO 4" AC PER COA STD DWG 2405B.

DRAINAGE MANAGEMENT PLAN

THIS SITE WILL FREE DISCHARGE SURFACE DRAINAGE TO THE ADJACENT STREETS (FUTURE BY SEPARATE PROJECT) TO BE ROUGH GRADED THIS PROJECT WHICH WILL CONVEY STORMWATER RUNOFF TO A PERMANENT OFFSITE PRIVATE RETENTION POND, ALSO TO BE ROUGH GRADED THIS PROJECT.

THE FUTURE STREETS AND OFFSITE POND WILL BE CONSTRUCTED WITH THE SUBDIVISION OF TOWN CENTER UNITS 1 & 2 AT MESA DEL SOL.

TOTAL LAND DISTURBANCE THIS PROJECT IS 1200 PORTION OF 3300 TOWN CENTER UNITS 1 AND 2. POND VOLUME BY PROPORTION IS 3.100. IN THIS PROJECT. SEE SEPARATE TOWN CENTER UNITS 1 AND 2 DRAINAGE REPORT FOR DRAINAGE CALCULATIONS.

WATER HARVESTING MANAGEMENT PLAN

SUSTAINABILITY GOALS WILL BE MET TO THE EXTENT POSSIBLE, BY DIRECTING STORMWATER FROM THE IMPERVIOUS SURFACES INTO THE VEGETATED LANDSCAPE AREAS WHICH WILL REMOVE SOME OF THE POLLUTANTS AND CONSERVE WATER. GROUND WATER RECHARGE AND SUSTAINABILITY GOALS OF WATER QUALITY ARE FURTHER MET BY THE PRIVATE RETENTION POND.

THE PRIVATE RETENTION POND WILL REMOVE THE REMAINING POLLUTANTS FROM WATER NOT PASSED OVER THE BIO-RETENTION LANDSCAPE STRIPS SO THAT NO POLLUTANTS WILL BE CARRIED OFF SITE BY STORMWATER AND THE POND LANDSCAPING WILL BE SUSTAINED LARGELY BY STORMWATER RUNOFF.

LEGEND

- AREA TO BE ROUGH GRADED THIS PROJECT
- 4" BENCH FINISHED GRADE SHOWN ON PLANS
- PAVING THIS PROJECT



URS
6501 americas parkway ne
suite 900
albuquerque, nm 87110
505 855 7500 p
505 855 7555 f

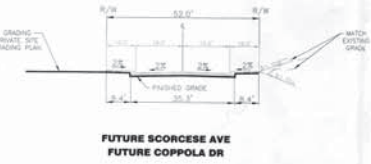
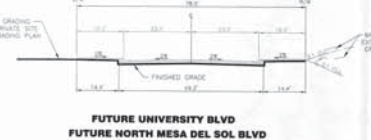
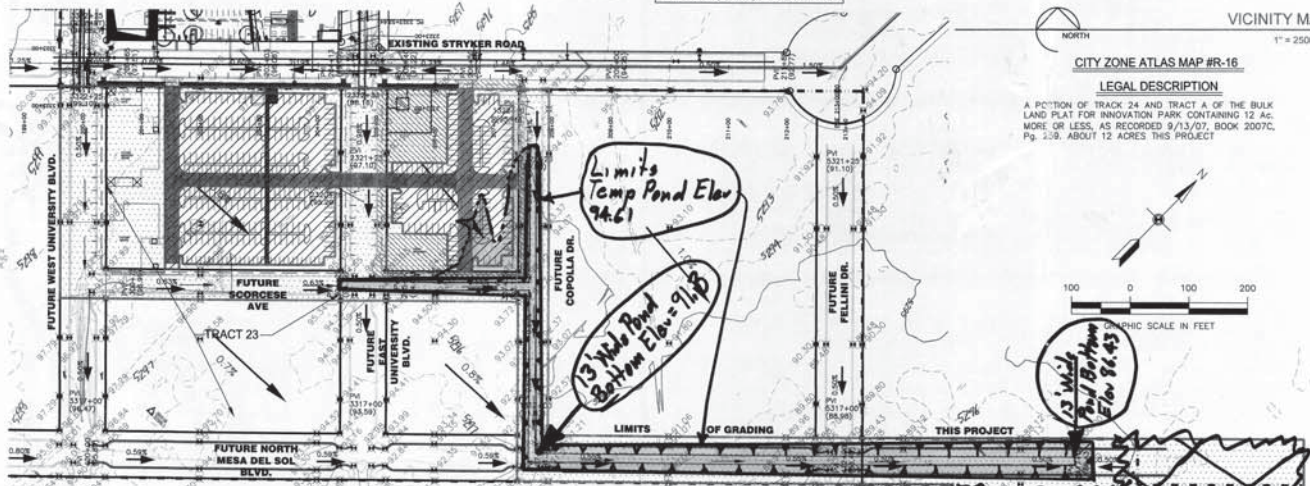
landscape architect
heads up
po box 10597
albuquerque, nm 87184
505 898 9615 p
505 898 2105 f

MESA DEL SOL
COMMUNITY CENTER
PARKING BLOCK F & O
ALBUQUERQUE, NEW MEXICO

RECEIVED
AUG 13 2008
HYDROLOGY SECTION

DATE: SEPTEMBER 9, 2008
SHEET TITLE: PAVING, GRADING, AND DRAINAGE PLAN
SHEET NUMBER: SHEET 18 OF 18

ENGINEER'S CERTIFICATION FOR MESA DEL SOL, COMMUNITY CENTER, PARKING BLOCK 'F' & 'O'



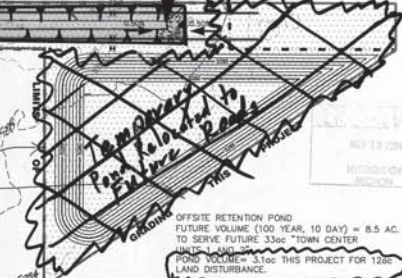
ENGINEER'S CERTIFICATION FOR MESA DEL SOL, COMMUNITY CENTER, PARKING BLOCK 'F' & 'O'
I, James D. Hughes, NMP# 81874, of the firm URS Corporation, hereby certify that this project has been paved and graded and with drain in substantial compliance with and in accordance with the design intent of the approved plan dated 11/30/2008 except as noted below. The record information edited onto the original design document has been obtained by me. I further certify that I have personally visited the project site on 01/12/2009 and have determined by visual inspection that original planned elevations are representative of actual site conditions and are true and correct to the best of my knowledge and belief. This certification is submitted for city files as requested in the permit letter dated 12/9/2008.

1) The offsite retention pond replaced with retention ponding in the offsite future roadway on the same parcel of land with the same private ownership as the pond was originally located on. Only private water, no public water, drains to the ponding site. As-built volume calculations by conic section equation are as follows:

The record information presented herein is not necessarily complete and is intended only to verify substantial compliance of the paving, grading, and drainage aspects of this project. Those relying on this record document are advised to obtain independent verification of its accuracy before using it for any other purpose.

James D. Hughes 8-13-09
James D. Hughes, NMP# 81874 Date

Elev. (Ft)	Area (SF)	Volume (Ac-Ft)
9387.00	0	0
9293.00	33179	1.62
9294.00	43885	2.40
9284.41		3.18
9298.00	44560	2.62



24.5.12.08-5 - P107 - Drawing/07.DWG - Working/07.DWG - Revised/07.DWG - 24.5.12.08 - 04.dwg