

SUBDIVISION IMPROVEMENTS AGREEMENT PUBLIC AND/OR PRIVATE
(Procedure B)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE SUBDIVISION IMPROVEMENTS

THIS AGREEMENT is made this 2nd day of February, 2018, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and 4404 McLeod, LLC ("Subdivider"), a New Mexico Limited Liability Company, whose address is 6801 Jefferson Street NE, Suite 300, Albuquerque, New Mexico 87109 and whose telephone number is (505) 858-0001, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Subdivider is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as Lots 1-A, Norris and Margaret Penny Addition recorded on July 7, 2017 in Book 2017C, page 78, as Document No. 2017065629 and Lot 2, Norris and Margaret Penny Addition filed on December 11, 1972 in Book B7, page 75 in the records of the Bernalillo County Clerk, State of New Mexico (the "Subdivision"). The Subdivider certifies that the Subdivision is owned by 4404 McLeod, LLC ("Owner").

The Subdivider has submitted and the City has approved a preliminary plat or Site Development Plan identified as McLeod Road and I-25 East Frontage Road Improvements describing Subdivider's Property ("Subdivider's Property").

As a result of the development of the City's Subdivision, the Subdivision Ordinance ("S.O.") and/or the Zoning Code, Section 14-16-3-11, require the Subdivider, at no cost to the City, to install certain public and/or private improvements, which are reasonably related to the development of the Subdivision, or to financially guarantee the construction of the public and/or private improvements as a prerequisite to approval of the final plat, building permit or the Site Development Plan for the Subdivision.

2. Improvements and Construction Deadline. The Subdivider agrees to install and complete the public and/or private improvements described in **Exhibit A**, the required infrastructure listing ("Improvements"), to the satisfaction of the City, on or before the January 17, 2020, ("Construction Completion Deadline"), at no cost to the City. The Improvements are shown in greater detail on the Subdivider's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. 585784.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Subdivider meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See S.O. Section 14-14-3.) If a final plat will not be filed pursuant to this Agreement, the Construction Completion Deadline can be no later than one year after approval of the preliminary plat by the City's Development



Review Board (“DRB”), unless the DRB grants an extension, not to exceed one additional year per extension, and the Subdivider processes an amendment to the Agreement. (See S.O. Section 14-14-3.) If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Subdivider may obtain an extension of the Construction Completion Deadline if Subdivider shows adequate reason for the extension.

3. Albuquerque Bernalillo County Water Utility Authority. Pursuant to the Memorandum of Understanding between the City of Albuquerque and the Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”) dated March 21, 2007, the City is authorized to act on behalf of the ABCWUA with respect to improvements that involve water and sewer infrastructure.

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

A. The Subdivider causes to be submitted all documents, and meets all requirements listed in Development Process Manual (“DPM”), 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 must establish that the Subdivider 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 cause bodily injury, death or property damage as a result of any condition of the Subdivision, the Improvements, or the Subdivider's construction activities within, or related to the Subdivision. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insured. If the Improvements include water and wastewater infrastructure, the insurance policy must name the ABCWUA, its employees, officers and agents, as their interest may appear, as additional insureds. The Subdivider must maintain the insurance until the City accepts the public Improvements and/or approves the private 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 Subdivider 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, and other related City fees and County Clerk recording fees:

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

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

5. 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 public Improvements shall be performed by Cartesian Surveys, Inc., and construction surveying of the private Improvements shall be performed by Cartesian Surveys, Inc. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Subdivider 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. Record drawings shall be provided by the entity performing the survey. The Subdivider shall pay the City a reasonable fee for any construction surveying performed by the City.

B. Construction Inspection Methods. Inspection of the construction of the public Improvements shall be performed by RESPEC and inspection of the private Improvements shall be performed by RESPEC, both New Mexico Registered Professional Engineers. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Subdivider 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 Subdivider shall pay the City a reasonable fee for the level of inspection performed by the City.

C. Field Testing. Field testing of the construction of the public Improvements shall be performed by Western Technologies, Inc., and field testing of the private Improvements shall be performed by Western Technologies, Inc. both certified testing laboratories 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 Subdivider 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 Subdivider 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 Subdivider shall pay the City a reasonable fee therefore.

6. Financial Guaranty. If final plat approval is not requested prior to construction of the Subdivision, a financial guaranty is not required. If final plat approval is requested, the Subdivider must provide the City with a financial guaranty in an amount of not less than 125% of the estimated cost of constructing the Improvements, as approved by the City Engineer. The financial guaranty must be irrevocable and may be in the form of a letter of credit, escrow deposit, or loan reserve letter issued by a Federally Insured Financial Institution; a bond issued by a surety qualified to do business in New Mexico; or other pledge of liquid assets which meets all City requirements. The City must be able to call the financial guaranty at any time within the sixty (60) days immediately following the Construction Completion Deadline.

To meet the City’s S.O. requirements, the Subdivider has acquired, or is able to acquire, the following Financial Guaranty:

Type of Financial Guaranty: Loan Reserve Letter
Amount: \$286,226.46
Name of Financial Institution or Surety providing Guaranty:
BOKF, NA dba Bank of Albuquerque
Date City first able to call Guaranty (Construction Completion Deadline):
January 17, 2020
If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call
Guaranty is: March 17, 2020
Additional information: _____

7. Notice of Start of Construction. Before construction begins, the Subdivider shall deliver an acceptable Notice to Proceed to the City and shall arrange for a preconstruction conference and all required inspections.

8. Completion, Acceptance and Termination. When the City receives Subdivider's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Volume 1, Chapter 5, Work Order Process, Step 9.) If the package is acceptable, the City shall approve the package and issue a Certificate of Completion and Acceptance for the public Improvements and a Certificate of Completion for the private Improvements. Thereafter, the Subdivider's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Subdivider has provided to assure the materials and workmanship, as required by the S.O. After the City approves the final acceptance package, the City will promptly release this Agreement and the Financial Guaranty.

9. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the real property upon, or in which, the public Improvements are constructed, the Subdivider will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the Subdivision.

10. Reduction of Financial Guaranty Upon Partial Completion. The Subdivider shall be entitled to a reduction of the Financial Guaranty as a result of completing construction of part of the Improvements if the following conditions are met:

A. Loan Reserve Financial Guaranty. If a loan reserve letter was provided as the Financial Guaranty, the Subdivider must follow the procedures and meet the requirements detailed in the DPM, Volume 1, Chapter 5.

B. Non-Loan Reserve Financial Guaranty. If a Financial Guaranty other than a loan reserve letter has been provided, the completed Improvements must be free-standing, functionally independent of any Improvements which have not yet been completed, and completed in substantial compliance with the approved construction plans, as determined by City on-site inspection in order to qualify for a Financial Guaranty reduction. If the Improvements which have been completed meet all City requirements, the City Engineer will estimate the cost of completing the remaining Improvements. Thereafter, the Subdivider must submit the following documents to the City for review and approval:

(1) A revised Financial Guaranty in an amount of not less than 125% of the cost of completing the remaining Improvements, as estimated by the City;

(2) A bond or other instrument acceptable to the City, which guarantees the completed Improvements against defective materials and workmanship for the period required by the S.O.

(3) Conveyance of real and personal property rights which meet the requirements of section 8 of this Agreement.

After the City receives and approves the required documents, the City shall issue a Partial Certificate of Completion and Acceptance for the completed public Improvements and a Certificate of Partial Completion for the completed private Improvements.

11. Indemnification. Until the Improvements are accepted by the City, the Subdivider shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Subdivider 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 Subdivider, its agents, representatives, contractors or subcontractors or arising from the failure of the Subdivider, its agents, representatives, contractors or subcontractors to perform any act or duty required of the

Subdivider 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. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Subdivider and the express written concurrence of any financial institution or 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.

13. Release. If the Subdivision or any part thereof is sold, conveyed or assigned, the City will not release the Subdivider from its obligations under this Agreement and will continue to hold the Subdivider responsible for all Improvements until a successor in interest to the Subdivider has entered into a Subdivision Improvements Agreement with the City. Thereafter, if the Subdivider's successor in interest has provided a substitute financial guaranty acceptable to the City, the City will release this Agreement and any related Financial Guaranty.

14. Payment for Incomplete Improvements. If the Subdivider fails to satisfactorily complete construction of the Improvements by the Construction Completion Deadline, the City may construct or cause the Improvements to be constructed as shown on the final plat and in the approved plans and specifications. The Subdivider shall be jointly and severally liable to pay to, and indemnify the City for the total cost, including, but not limited to, engineering, legal, and contingent costs, together with any damages, either direct or consequential, which the City may sustain as a result of Subdivider's failure to perform as required by this Agreement. If the direct or indirect costs and damages to the City exceed the amount of the City's Claim of Lien or any Financial Guaranty, the Subdivider shall be liable to, and shall pay, the City for all such costs and damages. The surety or sureties shall be jointly and severally liable to pay to and indemnify the City for the total cost to the extent of their obligations pursuant to any Financial Guaranty.

15. Binding on Subdivider's Property. The provisions of this Agreement constitute covenants running with Subdivider's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Subdivider and the Owner and their heirs, successors and assigns.

16. Notice. For purposes of giving formal written notice, including notice of change of address, the Subdivider'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.

17. 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.

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

19. 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.

20. 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.

21. Form not Changed. Subdivider agrees that changes to this form are not binding unless initialed by the subdivider and signed by the City Legal Department on this form.

22. Authority to Execute. If the Subdivider signing below is not the Owner of the Subdivision, the Owner must execute the Power of Attorney below.

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

SUBDIVIDER: 4404 McLeod, LLC

By [Signature]: 

Name [Print]: Steve Maestas

Title: Manager

Dated: 1-25-2018

CITY OF ALBUQUERQUE

By: 

Shahab Biazar, P.E., City Engineer

Dated: 2/2/18

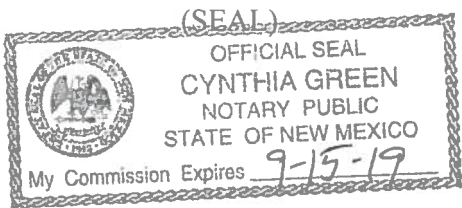
SUBDIVIDER'S NOTARY

STATE OF New Mexico)
) ss.
COUNTY OF Bernalillo)

This instrument was acknowledged before me on this 25 day of JANUARY, 20 18, by Steve Maestas, Manager of 4404 McLeod, LLC.



Notary Public

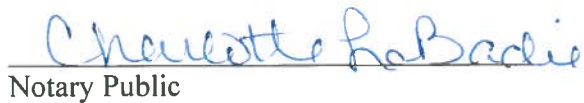


My Commission Expires: 9-15-19

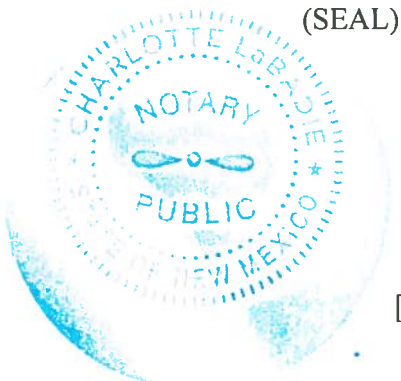
CITY'S NOTARY

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

This instrument was acknowledged before me on this 2nd day of February, 20 18, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.



Notary Public



My Commission Expires: March 15, 2021

[EXHIBIT A ATTACHED]
[POWER OF ATTORNEY ATTACHED IF SUBDIVIDER IS NOT THE OWNER OF THE SUBDIVISION]

INFRASTRUCTURE LIST

(Rev. 8-20-05)

EXHIBIT "A"

**TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST**

Norris and Margaret Penny Addition

PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN

**Lot 1-A and Lot 2, Norris and Margaret Penny Addition, 4.9 Acres
EXISTING LEGAL DESCRIPTION PRIOR TO PLATTING ACTION**

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

Financially Guaranteed	Constructed Under	Size	Type of Improvement	Location	From	To	Construction Certification	
							Inspector	City Cnst Engineer
<input type="checkbox"/>	<input type="checkbox"/>	11' Wide + 3' Shoulder	42 LF Deceleration Lane plus Transition	Main Driveway Entrance Frontage Road	South of Driveway Entrance	Driveway Entrance	/	/
<input type="checkbox"/>	<input type="checkbox"/>	11' Wide + 3' Shoulder	300 LF Deceleration Lane plus Transition	Deceleration Lane along Frontage Road to McLeod	Just North of Main Driveway	McLeod Rd	/	/
<input type="checkbox"/>	<input type="checkbox"/>	6' Wide	New Sidewalk along Frontage Road	25 Frontage Rd	South PL along Frontage Road	McLeod Rd	/	/
<input type="checkbox"/>	<input type="checkbox"/>	N/A	Storm Drain Improvements and Bar Ditch	Frontage Road. Connect to Ex. 36" Storm Drain			/	/
<input type="checkbox"/>	<input type="checkbox"/>	30' Wide	Driveway along Frontage Road per NMDOT approval	Frontage Road			/	/
<input type="checkbox"/>	<input type="checkbox"/>	N/A	ADA Ramps for Sidewalk Crossings	Qty. 3 along Frontage Rd			/	/
<input type="checkbox"/>	<input type="checkbox"/>	N/A	ADA Ramps for Sidewalk Crossings	Qty. 4 along McLeod			/	/
<input type="checkbox"/>	<input type="checkbox"/>	N/A	Remove and Replace Existing Curb & Gutter	McLeod Rd	Frontage Road	East PL along McLeod	/	/
<input type="checkbox"/>	<input type="checkbox"/>	6' Wide	New Sidewalk along McLeod Rd w/ Cobble Riprap between Curb & Sidewalk	McLeod Rd	Frontage Road	East PL along McLeod	/	/

ORIGINAL

Financially Guaranteed DRC #	Constructed Under DRC #

Size	Type of Improvement	Location	From	To	Inspector	Private P.E.	City Cnst Engineer
N/A	30 LF of Curb Cut for Drainage	Northeast Corner of Frontage Rd & McLeod	Southeast Curb Return	Existing Cattle Guard Inlet	/	/	/
N/A	30 LF Guard Rail	Northeast Corner of Frontage Rd & McLeod	Southeast Curb Return	Existing Cattle Guard Inlet	/	/	/
N/A	Remove 12.5 LF Existing Sidewalk to Allow for new Riprap Lined Swale	Northeast Corner of Frontage Rd & McLeod	N/A	N/A	/	/	/
N/A	30 LF Concrete Channel	Northeast Corner of Frontage Rd & McLeod	Southeast Curb Return	Existing Cattle Guard Inlet	/	/	/
N/A	Remove and Relay Ex Fire Hydrant	Northeast Corner of Frontage Rd & McLeod	N/A	N/A	/	/	/
N/A	Driveway Curb Cuts - Qty 2	McLeod			/	/	/
N/A	Remove existing Water Services (3), new Water/Sewer Services, and four (4) Private FH's	Frontage Rd & McLeod			/	/	/
					/	/	/
					/	/	/

The items listed below are on the CCIP and approved for Impact Fee credits. Signatures from the Impact Fee Administrator and the City User Department is required prior to DRB approval of this listing. The items listed below are subject to the standard SIA requirements.

Financially Guaranteed	DRC #	Size	Type of Improvement	Location	From	To	Construction Certification	
							Inspector	City Cnst Engineer
<input type="checkbox"/>	<input type="checkbox"/>						/	/
<input type="checkbox"/>	<input type="checkbox"/>						/	/

Approval of Creditable Items: _____ Date _____

Impact Fee Administrator Signature _____ Date _____

City User Dept. Signature _____ Date _____

NOTES

If the site is located in a floodplain, then the financial guarantee will not be released until the LOMR is approved by FEMA.
Street lights per City requirements.

- 1 _____
- 2 _____
- 3 _____

AGENT / OWNER

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

JEFFREY T. WOOTEN
NAME (print)

WOOTEN ENGINEERING
FIRM

JTW 1/9/2018
SIGNATURE - date

Ky 1-17-2018
DRB CHAIR - date

Raegeal M. Mail 1/17/18
TRANSPORTATION DEVELOPMENT - date

Jan Eitzyand 1/17/18
UTILITY DEVELOPMENT - date

James D. Hubler 1/17/2018
CITY ENGINEER - date

Chandora 1/17/18
PARKS & RECREATION - date

AMAFCA - date

- date

- date

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT / OWNER