

INFRASTRUCTURE IMPROVEMENTS AGREEMENT
(Procedure B)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS

Project Name: Highlands East Block
Project Number: CPN: 764784

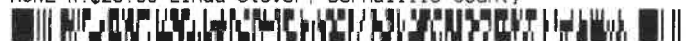
THIS AGREEMENT is made upon the date of the latest signature below, by and between the City of Albuquerque, New Mexico ("City"), whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and Urban Highlands East, LLC ("Developer"), a New Mexico limited liability company, [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.], whose email address is jrogers@titan-development.com, whose address is 6300 Riverside Plaza Lane #200 (City) Albuquerque, (State) NM (Zip Code) 87114 and whose telephone number is 505-998-0163, 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 [existing legal description:] Tract 6 of The Highlands recorded on 6/13/2017, attached, pages 1 through 4, as Document No. 2017056634 in the records of the Bernalillo County Clerk, State of New Mexico (the "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 for the Developer's Property to the present owner:] Urban Highlands East LLC ("Owner").

The Developer has submitted and the City has approved a Preliminary Plat or Site Plan identified as Highlands East Block describing Developer's Property ("Developer's Property"). If this Agreement is for a "Phase" as identified on the Infrastructure List, then the Phase shall be added to the Preliminary Plat or Site Plan identified above.

As a result of the development of the Developer's Property, the Integrated Development Ordinance ("I.D.O.") requires the Developer, at no cost to the City, to install certain public and/or private improvements, which are reasonably related to the development of the Developer's Property, 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 Plan.

2. **Improvements and Construction Deadline.** The Developer agrees to install and complete the public and/or private improvements described in **Exhibit A**, the required Infrastructure List ("Improvements"), to the satisfaction of the City, on or before the Construction Completion Deadline as shown in paragraph 6, at no cost to the City. All of the improvements on Exhibit A are to be included in this Agreement, unless the Development



Review Board (DRB) has approved phasing of the improvements, or the DRB has approved them as “Deferred” and they are shown in greater detail on the Developer's proposed and approved plans, which have been filed with the City Engineer.

Note: To compute the Construction Completion Deadline: If a final plat will be filed after Developer meets the requirements of this Agreement, the Construction Completion Deadline can be no later than two years after execution of this Agreement. (See DPM, Chapter 5.) 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 Developer processes an amendment to the Agreement. If this Agreement, with any amendments does not utilize the maximum time allowed for completion of construction, the Developer may obtain an extension of the Construction Completion Deadline if the Developer shows adequate reason for the extension.

3. Albuquerque Bernalillo County Water Utility Authority (“ABCWUA”) and Albuquerque Metropolitan Arroyo Flood Control Authority (“AMAFCA”). Pursuant to the Memorandum of Understanding between the City of Albuquerque and ABCWUA dated March 21, 2007, and the Memorandum of Understanding with AMAFCA dated February 6, 2013, the City is authorized to act on behalf of the ABCWUA and AMAFCA 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 Developer causes to be submitted all documents, and meets all requirements listed in Development Process Manual (“DPM”), Chapter 2, Work Order Process.

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, 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 4)

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

C. The Developer must procure a New Mexico licensed Contractor to construct the

improvements per the specifications contained in the City-approved construction drawings. The Contractor shall provide proof of proper licensure to complete the improvements. If the Contractor that has been identified by the Developer does not possess all of the proper licenses for the improvements then proof of proper licensure of the subcontractors must be provided. The Developer's Contractor shall obtain a Performance & Warranty bond and a Labor & Materials bond utilizing the bond templates provided and approved by the City. The mandatory bonds obtained by the Contractor are independent of, and in addition to, the Financial Guaranty provided by the Developer. If the Developer or the City determines that the Contractor failed to faithfully construct or maintain the specified and warranted work, the Developer and the City shall each have standing to make claim on the applicable bonds.

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 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. Record drawings shall be provided by the entity performing the survey. The Developer 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 Bohannan Huston Inc. and inspection of the private Improvements shall be performed by Bohannan Huston Inc., 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 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 the level of inspection performed by the City.

C. Field Testing. Field testing of the construction of the public Improvements shall be performed by Bohannan Huston Inc., and field testing of the private Improvements shall be performed by Bohannan Huston 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 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.

6. Financial Guaranty. If final plat approval is not requested prior to construction of the Developer's Property, a financial guaranty is not required. If final plat approval is requested, the Developer 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 I.D.O. requirements, the Developer has acquired, or is able to acquire, the following Financial Guaranty:

Type of Financial Guaranty: Letter of Credit #5121085472
Amount: \$ 534,569.67
Name of Financial Institution or Surety providing Guaranty:
New Mexico Bank & Trust
Date City first able to call Guaranty (Construction Completion Deadline):
March 21, 2024
If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call
Guaranty is: May 20, 2024
Additional information: _____

7. Notice of Start of Construction. Before construction begins, the Developer shall arrange for a preconstruction conference and all required inspections.

8. Completion, Acceptance and Termination. When the City receives Developer's final acceptance package, the City shall review it for completeness and accuracy. (See DPM Chapter 2). 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 Developer's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Developer has provided to assure the materials and workmanship, as required by the I.D.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

Developer 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.

10. Reduction of Financial Guaranty Upon Partial Completion. The Developer 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 Developer must follow the procedures and meet the requirements detailed in the DPM, Chapter 2.

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 Developer 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 I.D.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 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.

12. 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 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 Developer's Property or any part thereof is sold, conveyed or assigned, the City 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 entered into an Infrastructure Improvement Agreement with the City. Thereafter, if the Developer'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 Developer 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 Developer 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 Developer'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 Developer 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 Developer's Property. The provisions of this Agreement constitute covenants running with Developer's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Developer 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 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.

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. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City Legal Department on this form.

22. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the Owner must execute the Power of Attorney below.

DEVELOPER: Urban Highlands East, LLC
By, Urban Partners, LLC, its Manager
By [Signature]: 
Name [Print]: Ben F. Spencer
Title: Manager
Dated: March 30, 2022

DEVELOPER'S NOTARY

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

This instrument was acknowledged before me on this 30 day of March, 2022, by
[name of person:] Ben F. Spencer, Manager of Urban Partners, LLC
["President" or "Owner":] as Manager of
[Developer:] Urban Highlands East, LLC, on behalf of the company.




Notary Public
My Commission Expires: 11/23/25



Post Office Box 1048
Albuquerque, New Mexico 87103-1048

New Mexico Bank & Trust
May 5, 2022

IRREVOCABLE LETTER OF CREDIT AND AGREEMENT NO. 5121085472
AMOUNT: \$534,569.67

Sanjay Bhakta
Chief Financial Officer
City of Albuquerque
P. O. Box 1293
Albuquerque, NM 87103

Re: Letter of Credit for (Guarantor for “Developer”): Cedar Investors, LLC
Developer: Urban Highlands East, LLC
City of Albuquerque Project No.: 764784
Project Name: Highlands East Block

Dear Mr. Bhakta:

This letter is to advise the City of Albuquerque (“City”) that, at the request of (Guarantor for Developer”): Cedar Investors, LLC, [Financial Institution] New Mexico Bank & Trust in [city] Albuquerque [state] New Mexico, has established an Irrevocable Letter of Credit in the sum of [written amount] Five Hundred Thirty Four Thousand, Five Hundred Sixty Nine Dollars and Sixty Seven Cents ([amount in figures] \$ 534,569.67) (“Letter of Credit”) for the exclusive purpose of providing the financial guarantee, which the City requires [Developer] Urban Highlands, LLC to provide for the installation of the improvements, which must be constructed at [Name of Subdivision] Highlands East Block, Project No. 764784 (“Project”). The amount of the Letter of Credit is 125% of the City's estimated cost of construction of improvements as required by the City’s Integrated Development Ordinance. The improvements are identified in the agreement between the City of Albuquerque and Developer in the records of the Clerk of Bernalillo County, New Mexico.

A draft or drafts for any amount up to, but not in excess of [written amount] Five Hundred Thirty Four Thousand, Five Hundred Sixty Nine Dollars and Sixty Seven Cents ([amount in figures] \$ 534,569.67) is/are available certified mail at the option of the City of Albuquerque or at sight at [Financial Institution] New Mexico Bank & Trust [street address] 320 Gold Ave SW, Suite 100, [city] Albuquerque [state] New Mexico between [Construction Completion Deadline date established in Agreement] March 21, 2024 and [60 days thereafter] May 20, 2024.

When presented for negotiation, the draft(s) is/are to be accompanied by the City's notarized certification stating: "1) [Developer] Urban Highlands, LLC has failed to comply with the terms of the Agreement; 2) the undersigned is the Chief Financial Officer of the City of Albuquerque and is authorized to sign this certification; and 3) the amount of the draft does not exceed 125% of the City's estimated cost of completing the improvements specified in the Agreement."

We hereby agree with the drawer of draft(s) drawn under and in compliance with the terms of this credit that such draft(s) will be duly honored upon presentation to the drawee if negotiated between [Construction Completion Deadline date established in Agreement:] March 21, 2024 and [60 days thereafter] May 20, 2024.

The draft(s) drawn under this credit must contain the clause: "Drawn under Letter of Credit and Agreement No. 5121087472 of [Financial Institution] New Mexico Bank & Trust [city] Albuquerque, [state] New Mexico, dated March 21, 2022" and the original Letter of Credit must be endorsed on the reverse side with the amount of each draft. This Letter of Credit must accompany each draft and be attached to the draft which exhausts this credit.

This Letter of Credit for the benefit of the City of Albuquerque shall be irrevocable until:

1. Sixty (60) days after the City accepts the completed improvements specified in the Agreement; or
2. City notification of [Developer] Urban Highlands, LLC's failure to comply with the terms of the Agreement, and payment by Certified Check from [Financial Institution] New Mexico Bank & Trust to the City of Albuquerque of 125% of the City's estimated costs of completing the improvements specified in the Agreement; or
3. Expiration of the date [60 days after the Construction Completion Deadline date] May 20, 2024; or
4. Written termination of this Letter of Credit by the City of Albuquerque, signed by its Chief Administrative Officer.

This Letter of Credit will terminate at 4:00 o'clock p.m., New Mexico time, [date 60 days after Construction Completion Deadline] May 20, 2024.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600.

Very truly yours,

New Mexico Bank & Trust

By: 

Print Name: Michael E Gaillour

Title: Senior Vice President

Date: May 5th, 2022

ACCEPTED:

CITY OF ALBUQUERQUE

By: _____

Sanjay Bhakta
Chief Financial Officer

Date: _____

Revised February 2022

Very truly yours,

New Mexico Bank & Trust

By: 

Print Name: Michael E Gaillour

Title: Senior Vice President

Date: May 5th, 2022

ACCEPTED:

CITY OF ALBUQUERQUE

DocuSigned by:
By: Sanjay M. Bhakta
Sanjay M. Bhakta
Chief Financial Officer

Date: 5/14/2022 | 9:35 AM PDT

Revised February 2022