

INFRASTRUCTURE IMPROVEMENTS AGREEMENT
(Procedure B-No Work Order)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS

Project Name: Whataburger San Pedro
Project Number:611584

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 Whataburger Restaurants LLC ("Developer"), a Limited Liability Corp [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.], whose email address is avazquez@wbhq.com, whose address is 300 Concord Plaza (Street or PO Box) San Antonio, TX (City, State), 78216 (Zip Code) and whose telephone number is 210-476-6614, 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:] 1-A, BLOCK 29, UNIT B, NORTH ALBUQUERQUE ACRES, BERNALILLO COUNTY, NM recorded on September 28, 2018, attached, pages — through —, as Document No. 2018085416 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:] Whataburger Restaurants LLC ("Owner").

The Developer has submitted, and the City has approved a preliminary plat or Site Plan identified as Whataburger Alameda & San Pedro describing Developer's Property ("Developer's Property").

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 listing ("Improvements"), to the satisfaction of the City, on or before the 05/04/2024 ("Construction Completion Deadline"), at no cost to the City. Although the Improvements are required, they are below the thresh hold level to be governed by the Work Order process. Permits are to be obtained from the Municipal Development Department Construction Services Division for work in the City Right-of-Way



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. 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. The Developer agrees to comply with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pay the staking fees, testing fees, and other related City fees required for work in the City ROW.

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 Improvements shall be performed by New Mexico Registered Surveyor. 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 Improvements shall be performed by a New Mexico Registered Professional Engineer. 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 Improvements shall be performed by a certified testing laboratory 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: Credit Card Payment

Amount: \$ 17,077.26

Name of Financial Institution or Surety providing Guaranty:

Bank of America – card ending in 4979

Date City first able to call Guaranty (Construction Completion Deadline): 5/04/24

If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call

Guaranty is: _____

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

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:

By [Signature]:

Name [Print]: ABRAHAM VAZQUEZ
Title: NEW UNIT PROJECT MANAGER
Dated: 8/12/22

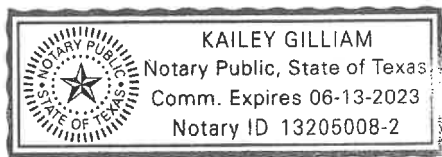
DEVELOPER'S NOTARY

STATE OF TEXAS)
COUNTY OF BEXAR) ss.

This instrument was acknowledged before me on this 12 day of AUGUST, 2022, by [name of person:] ABRAHAM VAZQUEZ, [title or capacity, for instance, "President" or "Owner":] NEW UNIT PROJECT MANAGER of [Developer:] WHATABURGER.

(SEAL)

Kailey Gilliam
Notary Public
My Commission Expires: 6-13-23



CITY OF ALBUQUERQUE

DocuSigned by:
By: Shahab Biazar
Shahab Biazar, P.E., City Engineer

DS
BMR

Agreement is effective as of (Date): 8/18/2022 | 8:03 AM MDT

CITY'S NOTARY

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

This instrument was acknowledged before me on this 18th day of August, 2022,
by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of
said corporation.



Rachael Miranda
Notary Public

My Commission Expires: 11-9-2025

CITY OF ALBUQUERQUE



FINANCIAL GUARANTY AMOUNT

June 29, 2022

Type of Estimate: I.I.A. Procedure B with FG

Project Description:

Project ID #: 611584 Whataburger, San Pedro NE

Requested By: Lucien El Asmar

Approved Estimate Amount: \$ 8,354.98

Contingency Amount: 30.00% \$ 2,506.49

Subtotal: \$ 10,861.47

NMGRT: 7.875% \$ 855.34

Subtotal: \$ 11,716.82

Engineering Fee: 6.60% \$ 773.31

Testing Fee: 10.00% \$ 1,171.68

Subtotal: \$ 13,661.81

FINANCIAL GUARANTY RATE: 1.25

TOTAL FINANCIAL GUARANTY REQUIRED: \$ 17,077.26

APPROVAL:

DATE:

June 29, 2022

Notes: Plans not yet approved. Non work order.



CITY OF ALBUQUERQUE INVOICE

Whataburger San Pedro
CPN: 611584

WHATABURGER ABRAHAM VASQUEZ

300 CONCORD PLAZA DR.

Reference NO: SI-2022-01488

Customer NO: CU-163633360

| Date | Description | Amount |
|---------|------------------------------|-------------|
| 8/08/22 | DRS Financial Guaranty Funds | \$17,077.26 |

Due Date: **8/08/22**

Total due for this invoice:

\$17,077.26

Options to pay your Invoice:

1. Online with a credit card: <http://posse.cabq.gov/posse/pub/lms/Default.aspx>
2. In person: Plaza Del Sol, 600 2nd St. NW, Albuquerque, NM 87102

PLEASE RETURN THE BOTTOM PORTION OF THIS INVOICE NOTICE WITH PAYMENT



City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

Date: 8/08/22
Amount Due: \$17,077.26
Reference NO: SI-2022-01488
Payment Code: 130
Customer NO: CU-163633360

WHATABURGER ABRAHAM VASQUEZ
300 CONCORD PLAZA DR.
SAN ANTONIO , TX 78216



130 0000SI2022014880009935511636333520000000001707726CU163633360



Your transaction is complete – Thank you!

Your request for payment has been received.

An additional confirmation will be sent to your email account if it was provided with the payment.

Your Reference Number: **2022222008-45**

08/11/2022 12:40:34 PM

Total Amount: \$17,546.88

**Building Permits, Business Registrations,
Code Enforcement Permits and Planning
Applications 2022222008-45-1** \$17,077.26
NAME: WHATABURGER ABRAHAM VASQUEZ - CU163633360
CUSTOMER NUMBER: CU163633360

Permit Information \$17,077.26
PERMIT NUMBER: SI-2022-01488
PERMIT DESCRIPTION: DRS003: Planning: Design Review & Construction (Site Improvement Plan)
NAME: WHATABURGER ABRAHAM VASQUEZ - CU163633360

Mastercard Service Fee 2022222008-45-3 \$469.62

Mastercard Credit Sale M \$17,077.26
CARD NUMBER: *****4979
FIRST NAME: Abraham
LAST NAME: Vazquez

Mastercard Service Fee Credit Sale M \$469.62
CARD NUMBER: *****4979
FIRST NAME: Abraham
LAST NAME: Vazquez
PAYMENT TYPE: credit

Total Amount: \$17,546.88



Payment processing disclaimer. Set me in Workgroup Config

Current DRC
Project Number:

Date Submitted: 04/27/2022
Date Site Plan Approved:
Date Preliminary Plat Approved:
Date Preliminary Plat Expires:

INFRASTRUCTURE LIST
(REV. 2-16-18)

DRB Project No.: 2018-001346
DRB Application No.: SI-2022-00184

EXHIBIT "A"

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

**WHATABURGER ALAMEDA AND SAN PEDRO
PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN**

1-A, Block 29 Unit B, North Albuquerque 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 DRC # | Constructed Under DRC # | Size | Type of Improvement | Location | From | To | Construction Certification | |
|------------------------------|-------------------------|--------------|---|---------------|-------------------------|---|----------------------------|---------------------|
| | | | | | | | Private Inspector | City Const Engineer |
| | | 30" (length) | Median Extension (offsite, Southwest of the site) | San Pedro Dr. | South property boundary | 30' further South | / | / |
| | | 18" | Concrete pipe, tying stormdrain into the back of the existing inlet. Will not disturb street. | San Pedro Dr. | On-site | Curb edge on the West side (East of San Pedro Dr) | / | / |
| | | | | | | | / | / |
| | | | | | | | / | / |
| | | | | | | | / | / |
| | | | | | | | / | / |
| | | | | | | | / | / |
| | | | | | | | / | / |
| | | | | | | | / | / |

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 S/A requirements.

| Financially Guaranteed DRC # | Constructed Under DRC # | Size | Type of Improvement | Location | From | To | Construction Certification | | Approval of Creditable Items: | City User Dept. Signature | Date |
|------------------------------|-------------------------|------|---------------------|----------|------|----|----------------------------|------|-------------------------------|---------------------------|------|
| | | | | | | | Inspector | P.E. | | | |
| | | | | | | | / | / | / | | |
| | | | | | | | / | / | / | | |

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** _____

ALI FAKIH NAME (print) _____ May 4, 2022
SEG, LLC FIRM _____ May 4, 2022
 427/2422 _____
 SIGNATURE - date _____
 DRB CHAIR - date _____
 Jeane Wolfenbarger May 4, 2022
 TRANSPORTATION DEVELOPMENT - date _____
 Blaine Carter May 4, 2022
 UTILITY DEVELOPMENT - date _____
 Ernest Amigo May 4, 2022
 CITY ENGINEER - date _____
 May 4, 2022
 AMAFCA - date _____
 CODE ENFORCEMENT - date _____

DESIGN REVIEW COMMITTEE REVISIONS

| REVISION | DATE | DRB CHAIR | USER DEPARTMENT | AGENT / OWNER |
|----------|------|-----------|-----------------|---------------|
| | | | | |
| | | | | |
| | | | | |

Bernalillo County, NM
415 Silver Ave. SW, 2nd Floor
P.O. Box 542
Albuquerque, NM 87102

Receipt: 1374430

| Product | Name | Extended |
|----------------|--------------|-----------------|
| AGRE | Agreement | \$25.00 |
| | # Pages | 12 |
| | Document # | 2022076595 |
| | # Of Entries | 0 |
| Total | | \$25.00 |

Tender (Check) \$25.00
Check# 414635248
Paid By WESTERN UNION
Phone # 505-924-3996

Thank You!

8/19/22 11:58 AM msouchet