

Figure 12

Nearest Major Streets: _____
No. of Lots: _____

INFRASTRUCTURE IMPROVEMENTS AGREEMENT
(Procedure B)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS

THIS AGREEMENT is made this (Date) November 4, 2020, 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 Custom Grading, Inc. ("Developer"), a New Mexico, [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.] Corporation, whose email is michael@cginm.com, tru@cginm.com, whose address is P.O. Box 94088 (City) Albuquerque, (State) NM (Zip Code) 87199 and whose telephone number is 505-897-4225, 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:] Albuquerque West Unit 1 recorded on March 08, 1990, in Plat Book 90c, Page 67 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:] Novus Properties LLC ("Owner").

The Developer has submitted and the City has approved a preliminary plat or Site Plan identified as Fountain Hills Subdivision 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 April 21, 2022 ("Construction Completion Deadline"), at no cost to the City. The Improvements are shown in greater detail on the Developer's proposed and approved plans, which have been filed with the City Engineer and are identified as Project No. 584487.

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

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AGRE R \$25.00 Linda Stover, Bernalillo County



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. 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, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Developer 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 Developer's Property, the Improvements, or the Developer's construction activities within, or related to the Developer's Property. 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 Developer 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 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 7)

Note: The Developer 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 Terra Land Surveys, and construction surveying of the private Improvements shall be performed by Terra Land Surveys. 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 Huitt-Zollars and inspection of the private Improvements shall be performed by Huitt-Zollars, 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 Geo-Test, and field testing of the private Improvements shall be performed by Geo-Test 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: Subdivision Bond No.B-3263488
Amount: \$1,573,048.70
Name of Financial Institution or Surety providing Guaranty: The Cincinnati Insurance Company
Date City first able to call Guaranty (Construction Completion Deadline): April 21, 2022
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 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 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

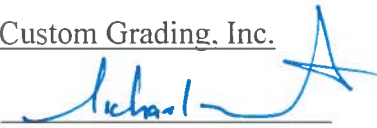
unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.

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.

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

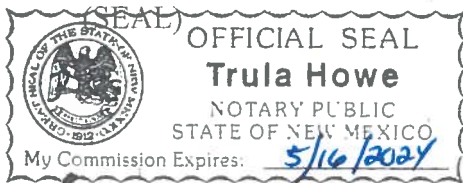
DEVELOPER: Custom Grading, Inc.
By [Signature]: 
Name [Print]: Michael Montoya
Title: President
Dated: 10/29/20

CITY OF ALBUQUERQUE
By: _____
Shahab Biazar, P.E., City Engineer
Dated: _____

DEVELOPER'S NOTARY

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

This instrument was acknowledged before me on this 29th day of October, 2020, by
[name of person:] Michael Montoya, [title or capacity, for instance, "President" or "Owner":] President
of [Developer:] Custom Grading, Inc..



[Signature]

Notary Public

My Commission Expires: 5/16/2024

CITY'S NOTARY

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

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

(SEAL)

[Signature]

Notary Public

My Commission Expires: _____

[EXHIBIT A ATTACHED]
[POWER OF ATTORNEY ATTACHED IF DEVELOPER
IS NOT THE OWNER OF THE DEVELOPER'S PROPERTY]

CITY OF ALBUQUERQUE:

DocuSigned by: Shahab Biazar DS
a
Shahab Biazar, P.E., City Engineer

Date: 11/4/2020 | 6:27 PM MST

CITY'S NOTARY

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

This instrument was acknowledged before me on this 4th day of November, 2020, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of the municipal corporation.

Charlotte LaBadie
Notary Public

My Commission Expires: March 15, 2021

(SEAL)



OWNER: Novus Properties LLC

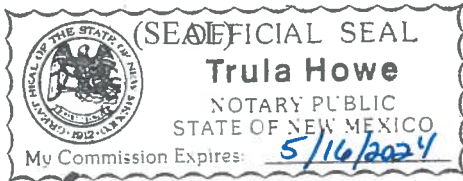
By [Signature:]: Michael Montoya

Name [Print]: Michael Montoya

Title: Manager

Dated: 10/29/20

The foregoing Power of Attorney was acknowledged before me on October 29,
20 20 by [name of person:] Michael Montoya, [title or capacity, for instance "President":]
Manager of [Owner:] Novus Properties LLC on behalf of the Owner.



Trula Howe
Notary Public

My Commission Expires: 5/16/2024

ORIGINAL

Figure 12

INFRASTRUCTURE LIST

EXHIBIT 'A'
TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST
FOUNTAIN HILLS

Date Submitted: June 5, 2007
Date Site Plan Approved: N/A
Date Preliminary Plat Approved: 6-20-07
Date Preliminary Plat Expires: 6-20-08

DRB Project No. 1003445
APP #
07DRB-70054
5-2-08
01-20-09

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 guarantee. All such revisions require approval by the DRC Chair, the User Department and signatory. 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.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Chief Engineer
PHASE 1 INFRASTRUCTURE IMPROVEMENTS									
PHASE 1 OFFSITE PUBLIC ROADWAY IMPROVEMENTS									
	<u>584480</u>	30' F-F 16' MEDIAN	ARTERIAL PAVEMENT W/ MEDIUM & STD CURB & GUTTER W/ 6' SIDEWALK ON SOUTH-SIDE	PARADISE BLVD	WEST PROPERTY BOUNDARY	EAST PROPERTY BOUNDARY	/	/	/
	<u>584480</u>	30' WIDE	4" TEMPORARY ASPHALT	PARADISE BLVD EASTBOUND LANE	DAVENPORT ST	WEST PROPERTY BOUNDARY	/	/	/
	<u>584480</u>	30' WIDE	4" TEMPORARY ASPHALT	PARADISE BLVD EASTBOUND LANE	EAST PROPERTY LINE	EXISTING MINI STORAGE UNIT WEST PROPERTY LINE	/	/	/
		NOTE:	STREET LIGHTS AS PER COA DPM				/	/	/
		NOTE:	LANDSCAPING WITHIN THE PUBLIC RIGHT OF WAY WILL BE CONSTRUCTED IN ACCORDANCE WITH AN APPROVED STREETSCAPE AGREEMENT. A FINANCIAL GUARANTEE IS NOT REQUIRED FOR LANDSCAPING WITHIN PUBLIC RIGHT OF WAY.				/	/	/
PHASE 1 ONSITE PUBLIC ROADWAY IMPROVEMENTS									
	<u>584480</u>	40' F-F	PAVEMENT W/ PCC CURB & GUTTER & 6'-6" WIDE SIDEWALK ON BOTH SIDES	NUNBERG AVE	EAGLE RANCH RD	VISTA FUENTE ROAD	/	/	/
	<u>584480</u>	VARIES	PAVEMENT W/ PCC CURB & GUTTER & 6'-6" WIDE SIDEWALK ON BOTH SIDES	NUNBERG AVE	VISTA FUENTE ROAD	PARADISE BLVD	/	/	/
	<u>584480</u>	24' F-F MIN - 48' F-F MAX	ROUNDABOUT	EAST HALF OF ROADWAY NUNBERG AVE	VISTA FUENTE	NUNBERG AVE	/	/	/
		NOTE:	STREET LIGHTS AS PER COA DPM				/	/	/
		NOTE:	LANDSCAPING WITHIN THE PUBLIC RIGHT OF WAY WILL BE CONSTRUCTED IN ACCORDANCE WITH AN APPROVED STREETSCAPE AGREEMENT. A FINANCIAL GUARANTEE IS NOT REQUIRED FOR LANDSCAPING WITHIN PUBLIC RIGHT OF WAY.				/	/	/

(A) Street name signs, plats, & parcel addresses
all reference NUNBERG. Loma Fuente is false.
(B) Sidewalks incomplete as of 2019 - to be completed w/ 584487
Annotations by Jim Roeder, DRC Chair, 8/5/2020

PHASE 1 PUBLIC SANITARY SEWER IMPROVEMENTS

- 8" DIA SANITARY SEWER LINE W/ NEC MHS & SERVICES
- 8" DIA SANITARY SEWER LINE W/ NEC MHS & SERVICES

PARADISE BLVD
NUNZIO AVE

VISTA FUENTE ROAD

EAGLE RANCH RD
PARADISE BLVD
NUNZIO AVE

140' SOUTHWEST OF INTERSECTION OF VISTA FUENTE ROAD & NUNZIO AVE

Private Inspector

City Inspector

City Cnst Engineer

_____	_____	_____
_____	_____	_____

PHASE 1 PUBLIC WATERLINE IMPROVEMENTS

- 8" DIA WATERLINE W/ NEC VALVES FH'S, MJS & RJS
- 8" DIA WATERLINE W/ NEC VALVES FH'S, MJS & RJS

PARADISE BLVD
NUNZIO AVE

VISTA FUENTE ROAD

EAGLE RANCH RD
PARADISE BLVD
NUNZIO AVE

EDUCATION PLACE

_____	_____	_____
_____	_____	_____

PHASE 1 PUBLIC STORM DRAIN IMPROVEMENTS

- 18"-42" DIA RCP W/ NEC MHS, LATERALS, & INLETS
- 18"-30" DIA RCP W/ NEC. MHS, LATERALS, & INLETS
- 24" DIA RCP W/ NEC. MHS, LATERALS, & INLETS
- 2.5 AC-FT DETENTION POND

PARADISE BLVD
NUNZIO AVE

VISTA FUENTE ROAD

PARADISE BLVD
EXISTING LOT 6-A-1
NUNZIO AVE

TRACT D

DETENTION POND

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

PHASE 2 INFRASTRUCTURE IMPROVEMENTS

584480	_____
584481	_____
584480	_____
584487	_____
584487	_____

PHASE 2 OFFSITE PUBLIC ROADWAY IMPROVEMENTS

- TRAFFIC SIGNAL
- 12' WIDE ADD 2ND LEFT TURN ARTERIAL PAVEMENT W/ PCC CURB & GUTTER
- 12' WIDE ADD RIGHT TURN LANE ARTERIAL PAVEMENT W/ PCC CURB & GUTTER
- 12' WIDE ADD RIGHT TURN LANE ARTERIAL PAVEMENT
- 10' WIDE TRAIL

PARADISE BLVD
PRICKLY PEAR ST

PASEO DEL NORTE
EAST BOUND LANE

RICHLAND HILLS RD
SOUTHBOUND LANE

PASEO DEL NORTE
WESTBOUND LANE

PASEO DEL NORTE

RICHLAND HILLS RD

PASEO DEL NORTE

150' EAST OF RICHLAND HILLS EAST CURB & GUTTER

EAGLE RANCH RD

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

