

Nearest Major Streets:

No. of Lots:

INFRASTRUCTURE IMPROVEMENTS AGREEMENT
(Procedure B-No Work Order)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS

Project Name: Encanto Apartments

Project Number:775449

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 Mesa Apartments, LLC ("Developer"), a LLC, [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.], whose email address is Sheller@hellerandcompany.com , whose address is 5504 Estate Oak Circle (City) Hollywood , (State) FL (Zip Code) 33312 and whose telephone number is 305-992-2798 , 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:] TR A-4 BULK LAND PLAT OF TRS A-1 THRU A-6 MESA DEL SOLINNOVATION PARK (A REPL OF TR A MESA DEL SOL INNOVATIONPARK) CONT 14.4493 AC recorded on December 6, 2021, attached, pages 1 through 2 , as Document No. 2010123413 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:] Mesa Apartments, LLC ("Owner").

The Developer has submitted and the City has approved a preliminary plat or Site Plan identified as Encanto Apartments 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 November 19, 2022 ("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

Doc# 2021139234

11/29/2021 12:26 PM Page: 1 of 11
AGRE R:\$25.00 Linda Stover, Bernalillo County



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

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: Cashier's Check
Amount: \$76,920.16
Name of Financial Institution or Surety providing Guaranty: City National Bank
Date City first able to call Guaranty (Construction Completion Deadline): 11/19/2022

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 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.

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.

CITY OF ALBUQUERQUE



FINANCIAL GUARANTY AMOUNT

November 19, 2021

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

Project Description:

Project ID #: 775449 Encanto Apartments at Mesa del Sol

Requested By: Scott McGee

Approved Estimate Amount: \$ 47,751.48

Contingency Amount: 10.00% \$ 4,775.15

Subtotal: \$ 52,526.63

PO Box 1293

NMGRT: 7.875% \$ 4,136.47

Subtotal: \$ 56,663.10

Albuquerque

Engineering Fee: 6.60% \$ 3,739.76

New Mexico 87103

Testing Fee: 2.00% \$ 1,133.26

Subtotal: \$ 61,536.13

www.cabq.gov

FINANCIAL GUARANTY RATE: 1.25

TOTAL FINANCIAL GUARANTY REQUIRED: \$ 76,920.16

APPROVAL:

A handwritten signature in blue ink, appearing to read "Scott McGee", written over a horizontal line.

DATE:

A handwritten date in blue ink, "Nov. 19, 2021", written over a horizontal line.

Notes: Plans not yet approved.

City of Albuquerque

Reference Number: 2021327002-16
Date/Time: 11/23/2021 3:19:47 PM

Building Permits, Business Registrations,
Code Enforcement Permits and Planning Appl
ications

2021327002-16-1

Permit Information

Permit Number: SI-2021-01982

Permit Description: DRS003: Planning: Desi
gn Review & Construction (Site Improvement
Plan)

Name: SMM PE, LLC SCOTT MCGEE - CU14708974
4

Amount: \$76,920.16

Total: \$76,920.16

1 ITEM TOTAL: \$76,920.16

TOTAL: \$76,920.16

DUPLICATE RECEIPT 11/23/2021 3:20:19 PM

Check \$76,920.16

Bank Account #: *****0050

Check Number: 533005

Bank Routing #: *****4367

Address:

Total Received: \$76,920.16



Thank you for your payment.



533005
63-436/660

DATE 11/22/2021

\$ 76,920.16

REMITTER: MESA APARTMENTS LLC

PAY TO THE City of Albuquerque
ORDER OF

**** Seventy Six Thousand Nine Hundred Twenty and 16/100****

MEMO:

CASHIER'S CHECK

CUSTOMER COPY

NON - NEGOTIABLE

INFRASTRUCTURE LIST

Current DRC _____
 Project Number: _____
 Date Submitted: 9/20/2021
 Date Site Plan Approved: _____
 Date Preliminary Plat Approved: _____
 Date Preliminary Plat Expires: _____
 DRB Project No.: _____
 DRB Application No.: _____

FIGURE 12

INFRASTRUCTURE LIST

EXHIBIT "A"
 TO SUBDIVISION IMPROVEMENTS AGREEMENT
 DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST
 ENCANTO APARTMENTS
 PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN
 TRACT A-4-A MESA DEL SOL INNOVATION PARK
 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.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
		50' R/W	6' CONCRETE SIDEWALK	PENN AVE	SAGAN LOOP	ARBUS DR	/	/	/
		50' R/W	6' CONCRETE SIDEWALK	ARBUS DR	PENN AVE	UNIVERSITY BLVD	/	/	/
		66' R/W	(THE FOLLOWING ITEMS ARE FINANCIALLY GUARANTEED AS PART OF CPN 393581)				/	/	/
			14' AC PAVED NB DRIVING LANE	SAGAN LOOP	PENN AVE	BOBBY FOSTER RD	/	/	/
			7' AC PAVED PARKING LANE				/	/	/
			STD CURB & GUTTER				/	/	/
			3.3' LANDSCAPE BUFFER				/	/	/
			6' CONCRETE SIDEWALK				/	/	/
			8" WATERLINE				/	/	/
			16" REUSE WATERLINE				/	/	/
			8" SANITARY SEWER W/ MANHOLES				/	/	/
			30" STORM DRAIN, INLETS, MANHOLES				/	/	/
			AUX. LANE 12' RT LANE 150' LENGTH				/	/	/
			WITH TRANSITION				/	/	/
		52' R/W	(2) 11' AC PAVED EB DRIVING LANES,	BOBBY FOSTER ROAD	SAGAN LOOP	UNIVERSITY BLVD	/	/	/
			6' BIKE LANE & 7' PARKING LANE	SOUTH 1/2-SECTION			/	/	/
			STD CURB & GUTTER				/	/	/
			MEDIAN CURB & GUTTER				/	/	/
			6' LANDSCAPE BUFFER				/	/	/
			6' CONCRETE SIDEWALK				/	/	/
			AUX. LANES 100' LT LANE				/	/	/
			FUTURE 100' LT LANE W/ TRANSITION				/	/	/
		70' RT LANE					/	/	/
		10" WATERLINE					/	/	/
		16" REUSE WATERLINE					/	/	/
		24" SANITARY SEWER W/ MANHOLES					/	/	/

SIA Sequence #	COA DRG Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Crst Engineer
		81' RW	(2) 11' AC PAVED SB DRIVING LANES 6' BIKE LANE & 7' PARKING LANE STD CURB & GUTTER MEDIAN CURB & GUTTER 6' LANDSCAPE BUFFER 6' CONCRETE SIDEWALK	SB UNIVERSITY BLVD	BOBBY FOSTER RD	ARBUS DR	/	/	/
							/	/	/

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			
Scott McGee NAME (print)	 Sep 22, 2021 DRB CHAIR - date	 Sep 22, 2021 PARKS & GENERAL SERVICES - date		
SMM PE, LLC FIRM 	 Sep 22, 2021 TRANSPORTATION DEVELOPMENT - date	 Sep 22, 2021 CODE ENFORCEMENT - date		
_____ SIGNATURE - date	 Sep 22, 2021 ABCWUA - date	_____ - date		
MAXIMUM TIME ALLOWED TO CONSTRUCT THE IMPROVEMENTS WITHOUT A DRB EXTENSION: _____	 Sep 22, 2021 CITY ENGINEER - date	_____ - date		
DESIGN REVIEW COMMITTEE REVISIONS				
REVISION	DATE	DRB CHAIR	USER DEPARTMENT	AGENT / OWNER