

**INFRASTRUCTURE IMPROVEMENTS AGREEMENT**  
**(Procedure B)**

**AGREEMENT TO CONSTRUCT**  
**PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS**

**Project Name:** Westpointe Data Center  
**Project Number:** 655779

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 CLOP Albuquerque NM LLC, a Delaware limited liability company, whose email address is dylan.rusk@oppidan.com, whose address is 400 Water Street, Suite 200, Excelsior, Minnesota 55331 and whose telephone number is 612-294-0353, 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: Tract 2-A of Plat for Tract 2-A and 2-B, AVALON SUBDIVISION UNIT 5, Being Comprised of Tract 2, Avalon Subdivision Unit 5, City of Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the Plat of said Subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico on July 22, 2021 in Plat Book 2021C, Page 82 as Document No. 2021086661, recorded on December 14, 2016, as Document No. 2016116751 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 98<sup>th</sup> & I-40 Land, LLC ("Owner").

The Developer has submitted and the City has approved a Preliminary Plat or Site Plan identified as Westpointe Data Center 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 the approved 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 the approved Infrastructure List are to be included in this Agreement, unless the approved Infrastructure List indicates phasing of the improvements; or indicates 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 Hearing Officer (“DHO”), unless the DHO 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 <i>Combined DRC Application</i> .

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 Improvements shall be performed by New Mexico Registered Surveyor. 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.

B. Construction Inspection Methods. Inspection of the construction of the Improvements shall be performed by a New Mexico Registered Professional Engineer with the ability to make in-person observations of the improvements. The City may monitor the inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data as required for project close out, and a Certification of Substantial Compliance for the project to the City, which the City requires for review and approval. The City retains the right to perform its own general overall inspection of the construction project at any time prior to/and including final acceptance of the Improvements.

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. 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.

D. Additional Testing. The City retains the right to request additional testing which the City Engineer deems is necessary or advisable, and the Developer shall pay the cost for the additional testing.

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: Infrastructure Improvement Bond  
Amount: \$1,005,621.35  
Name of Financial Institution or Surety providing Guaranty: Colonial American Casualty and Surety Company  
Date City first able to call Guaranty (Construction Completion Deadline): June 6, 2026  
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 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: CLOP Albuquerque NM LLC

By [Signature]: [Signature]

Name [Print]: David Scott

Title: Vice President

Dated: 6.6.2024

DEVELOPER'S NOTARY

STATE OF MINNESOTA           )  
   ) ss.  
COUNTY OF HENNEPIN           )

This instrument was acknowledged before me on this 6 day of June, 2024, by David Scott, Vice President of CLOP Albuquerque NM LLC.

[Signature]

Notary Public

My Commission Expires: 1/31/2026



CITY OF ALBUQUERQUE:

DS KV DS jmw

DocuSigned by: Ernest Armijo 2737069873674BC... Ernest Armijo, Acting City Engineer

Agreement is effective as of (Date): 6/12/2024 | 1:14 PM MDT

CITY'S NOTARY

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

This instrument was acknowledged before me on this 12th day of June, 2024, by Ernest Armijo, Acting City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.

Rachael Miranda Notary Public

STATE OF NEW MEXICO NOTARY PUBLIC Rachael Miranda Commission No. 1119740 November 09, 2025

My Commission Expires: 11-9-2025

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



**POWER OF ATTORNEY**

NOTE: Must be signed and notarized by the owner if the Developer is not the owner of the Developer’s Property.

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

98<sup>th</sup> & I-40 Land, LLC ("Owner"), of 6300 Riverside Plaza NW, Suite 200, Albuquerque, New Mexico 87120, hereby makes, constitutes and appoints CLOP Albuquerque NM LLC ("Developer") as my true and lawful attorney in fact, for me and in my name, place and stead, giving unto the Developer full power to do and perform all and every act that I may legally do through an attorney in fact, and every proper power necessary to meet the City of Albuquerque's ("City") Integrated Development Ordinance requirements regarding the real estate owned by me and described in Section 1 of the Infrastructure Improvements Agreement ("Agreement") above, including executing the Agreement and related documents required by the City, with full power of substitution and revocation, hereby ratifying and affirming what the Developer lawfully does or causes to be done by virtue of the power herein conferred upon the Developer.

This Power of Attorney can only be terminated: (1) by a sworn document signed and notarized by the Owner, which shall be promptly delivered to the City Engineer in order to provide notice to City of the termination of this Power of Attorney; or (2) upon release of the Agreement by the City.

OWNER:  
98<sup>TH</sup> AND I-40 LAND, LLC  
By: Titan Property Management, LLC, its Manager

By [Signature:]: 

Name [Print]: Ben F. Spencer

Title: Manager

Dated: 5-23-24

The foregoing Power of Attorney was acknowledged before me on May 23,  
2024 by Ben F. Spencer, Manager of Titan Property Management, LLC, as manager of 98<sup>th</sup> and  
I-40 Land, LLC, on behalf of the Owner.

(SEAL)



  
Notary Public

My Commission Expires: 11/23/25

# CITY OF ALBUQUERQUE



## FINANCIAL GUARANTY AMOUNT

May 3, 2024

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

Project Description:

Project ID #: 655779 Westpointe Data Center

Requested By: Jack Ammerman

Approved Estimate Amount: \$ 625,732.62

Contingency Amount: 10.00% \$ 62,573.26

Subtotal: \$ 688,305.88

PO Box 1293

NMGRT: 7.625% \$ 52,483.32

Subtotal: \$ 740,789.21

Albuquerque

Engineering Fee: 6.60% \$ 48,892.09

New Mexico 87103

Testing Fee: 2.00% \$ 14,815.78

Subtotal: \$ 804,497.08

www.cabq.gov

FINANCIAL GUARANTY RATE: 1.25

TOTAL FINANCIAL GUARANTY REQUIRED: \$ 1,005,621.35

APPROVAL:

A handwritten signature in blue ink, appearing to read "Jack Ammerman", is written over a horizontal line.

DATE:

A handwritten date "May 3, 2024" in blue ink is written over a horizontal line.

Notes: Work order plans not approved.

Current DRC 655779  
 Project Number: \_\_\_\_\_

FIGURE 12

Date Submitted: \_\_\_\_\_

Date Site Plan Approved: \_\_\_\_\_

Date Preliminary Plat Approved: \_\_\_\_\_

Date Preliminary Plat Expires: \_\_\_\_\_

DFT Project No.: PR-2020-004747

DFT Application No.: SI-2024-00451

**INFRASTRUCTURE LIST**

(Rev. 2-16-19)

**EXHIBIT "A"**

**TO SUBDIVISION IMPROVEMENTS AGREEMENT  
 DEVELOPMENT FACILITATION TEAM (DFT) REQUIRED INFRASTRUCTURE LIST**

**WESTPOINTE DATA CENTER**

**PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN**

**TRACT 1 OF AVALON SUBDIVISION, UNIT 5 AND TRACT 2-A OF AVALON SUBDIVISION, UNIT 5**

**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	P.E.	City Cnst Engineer
		36' F-F	Major Collector Paving	Daytona Road	South Corner of Tract 2B	South Corner of existing Tract 2A (104' south of proposed replatted corner of 2A-1)	/	/	/
		COA STD DWG #2415A	Curb & Gutter	Daytona Road	South Corner of Tract 2B	South Corner of existing Tract 2A (104' south of proposed replatted corner of 2A-1)	/	/	/
		6' Wide	Sidewalk (north side)	Daytona Road	South Corner of Tract 2B	South Corner of existing Tract 2A (104' south of proposed replatted corner of 2A-1)	/	/	/
		48" Dia.	Sanitary Manhole at terminous of existing collector sewer	Daytona Road	Daytona Road Centerline	30' south of Tract 1 existing Prop Line	/	/	/
		12"	Water PVC Line w/ necessary valves, MJs & RJs, tees, and hydrants. @ laterals. (See note 1)	Daytona Road	16.4' northeast of Tract 2A Prop Line	30' south of Tract 1 existing Prop Line	/	/	/
		18"	RCP Storm Drain Laterals (see note 2)	Daytona Road	131.5' north of existing Tract 1 Prop Line	Daytona Road	/	/	/

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

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification	
							Private Inspector	City Cnst Engineer
							/	/
							/	/
							/	/

**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 Connect 12" watermain to existing watermain stubs within Daytona Rd. on the east and west side of site.
- 2 Storm drain to include manholes and inlets
- 3

**AGENT / OWNER** **DEVELOPMENT FACILITATION TEAM APPROVALS**

Colleen Ruiz, PE	NAME (print)	<i>Ernest Umrigar</i>	PLANNING - date	05/12/24	<i>Whitney Blum</i>	PARKS & RECREATION - date	05/10/24
Stantec Consulting Services, Inc		<i>Ernest Umrigar</i>	TRANSPORTATION DEVELOPMENT - date	05/09/24	<i>Whitney Blum</i>	AMAFCA - date	05/09/24
Ruiz, Colleen <small>Digitally signed by Ruiz, Colleen Date: 2024.05.07 11:35:44-0500'</small>	SIGNATURE - date	<i>Shakab Biagan</i>	UTILITY DEVELOPMENT - date	05/13/24	<i>Shakab Biagan</i>	HYDROLOGY - date	05/09/24

**DESIGN REVIEW COMMITTEE REVISIONS**

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT / OWNER












# PR-2020-004747\_SI-2024-00451\_IL

Final Audit Report

2024-05-15


Created:	2024-05-09
By:	Jay Rodenbeck (jrodenbeck@cabq.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAqmYgF4Djlx9bY_WUOBF2j pzD9Aa37Ba3

## "PR-2020-004747\_SI-2024-00451\_IL" History

-  Document created by Jay Rodenbeck (jrodenbeck@cabq.gov)  
2024-05-09 - 10:07:53 PM GMT
-  Document emailed to Ernest Armijo (earmijo@cabq.gov) for signature  
2024-05-09 - 10:08:00 PM GMT
-  Document emailed to Tiequan Chen (tchen@cabq.gov) for signature  
2024-05-09 - 10:08:00 PM GMT
-  Document emailed to David G. Gutierrez (dggutierrez@abcwua.org) for signature  
2024-05-09 - 10:08:00 PM GMT
-  Document emailed to Jeff Palmer (jppalmer@cabq.gov) for signature  
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-  Document emailed to Whitney Phelan (wphelan@cabq.gov) for signature  
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-  Document emailed to Jay Rodenbeck (jrodenbeck@cabq.gov) for signature  
2024-05-09 - 10:08:00 PM GMT
-  Document emailed to Shahab Biazar (sbiazar@cabq.gov) for signature  
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-  Email viewed by Jeff Palmer (jppalmer@cabq.gov)  
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-  Document e-signed by Jeff Palmer (jppalmer@cabq.gov)  
Signature Date: 2024-05-09 - 10:08:30 PM GMT - Time Source: server
-  Email viewed by Ernest Armijo (earmijo@cabq.gov)  
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 Document e-signed by Ernest Armijo (earmijo@cabq.gov)

Signature Date: 2024-05-09 - 10:11:05 PM GMT - Time Source: server

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2024-05-09 - 10:44:28 PM GMT

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2024-05-10 - 1:27:27 PM GMT

 Document e-signed by Whitney Phelan (wphelan@cabq.gov)

Signature Date: 2024-05-10 - 1:28:02 PM GMT - Time Source: server

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2024-05-13 - 1:33:17 AM GMT

 Document e-signed by Jay Rodenbeck (jrodenbeck@cabq.gov)


Signature Date: 2024-05-13 - 1:33:34 AM GMT - Time Source: server

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2024-05-13 - 1:59:51 PM GMT

 Document e-signed by Shahab Biazar (sbiazar@cabq.gov)

Signature Date: 2024-05-13 - 2:00:15 PM GMT - Time Source: server

 Document e-signed by David G. Gutierrez (dggutierrez@abcwua.org)

Signature Date: 2024-05-15 - 1:27:57 PM GMT - Time Source: server

 Agreement completed.

2024-05-15 - 1:27:57 PM GMT

**INFRASTRUCTURE BOND  
(Procedure B)**

Bond No. 9440897

**INFRASTRUCTURE IMPROVEMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS: That we CLOP Albuquerque NM, LLC, a Delaware limited liability company located at 400 Water Street, Suite 200, Excelsior, Minnesota 55331 ("Developer") as "Principal", and COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Illinois and authorized to do business in the State of New Mexico, as "Surety," are held and firmly bound unto the CITY OF ALBUQUERQUE in the penal sum of One million five hundred thousand six hundred twenty one and 35/100s Dollars, (\$ 1,005,621.35), as amended by change orders approved by the Surety or changes to the infrastructure list approved by the City Development Review Board, the payment of which is well and truly to be made; and each of us bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

NOW, THEREFORE, the condition of the above obligation is such that:

WHEREAS, the Principal is the owner of and/or is interested in or is developing land and premises known as Westpointe Data Center ("Developer's Property"), City Project No. 655779; and

WHEREAS, said Developer's Property is subject to the provisions and conditions of the ordinance of the CITY OF ALBUQUERQUE known as the Integrated Development Ordinance, the requirements of which include the installation of various other improvements by the Principal; and

WHEREAS, the Integrated Development Ordinance also requires the Principal to install and construct the following improvements at the Developer's Property: [list the improvements, e.g., water, sewer, pavement, sidewalks:]

parking, curb and gutter, sidewalk, manhole, water lines,  
m drain,

("Improvements")


All construction shall be performed in accordance with the Agreement to Construct Public and/or Private Infrastructure Improvements Agreement entered into between [name of Developer;] Clop Albuquerque NM LLC and the CITY OF ALBUQUERQUE, as recorded in the office of the Clerk of Bernalillo County, New Mexico, on \_\_\_\_\_, 20\_\_\_\_ as Document Number 2024042354, as amended by change order or amendments to the agreement.




NOW, THEREFORE, if the Principal completes construction of the Improvements and facilities and performs the work hereinabove specified to be performed, all on or before 6<sup>th</sup> day of June, 20 26 ("the "Construction Completion Deadline"), then this obligation shall be null and void; if the Principal does not complete construction by or before the Construction Completion Deadline, the City may call on this obligation until released by the City.

IN WITNESS WHEREOF, this bond has been executed 6<sup>th</sup> day of June 2024.

**DEVELOPER**

By:   
Name: David Scott  
Title: Executive Vice President  
Dated: 6-6-2024

**SURETY**

By:   
Name: Matthew W. Davies  
Title: Attorney-in-fact  
Dated: 6-6-24

\*NOTE: Power of Attorney for Surety must be attached.

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Matthew W. DAVIES, Jonathan S. DAVIES and Patricia J. ZASKE, all of Minneapolis, Minnesota, EACH, its true and lawful agent and Attorney-in-Fact**, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland, and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland, in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 26th day of February, A.D. 2020.



**ATTEST:  
ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

By: *Robert D. Murray*  
Vice President

By: *Dawn E. Brown*  
Secretary

**State of Maryland  
County of Baltimore**

On this 26th day of February, A.D. 2020, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2023

**EXTRACT FROM BY-LAWS OF THE COMPANIES**

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

**CERTIFICATE**

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By- Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 6th day of JUNE, 2024.



*Brian M. Hodges*

By: Brian M. Hodges  
Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:**

Zurich Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056  
[www.reportsfclaims@zurichna.com](http://www.reportsfclaims@zurichna.com)  
800-626-4577

**Bernalillo County, NM**

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

**Receipt: 1528331**

<b>Product</b>	<b>Name</b>	<b>Extended</b>
AGRE	Agreement	\$25.00
	# Pages	19
	Document #	2024042354
	# Of Entries	0
<b>Total</b>		<b>\$25.00</b>

Tender (Check) \$25.00  
Check# 1929

Paid By JUAN & COLLEEN  
RUIZ/CITY OF ALBUQ  
Phone # 5059244434

Thank You!

6/21/24 3:18 PM MST darleneh