

INFRASTRUCTURE IMPROVEMENTS AGREEMENT
(Procedure B-No Work Order)

AGREEMENT TO CONSTRUCT
PUBLIC AND/OR PRIVATE INFRASTRUCTURE IMPROVEMENTS

Project Name: Allsup's, 98th & Gibson SW
Project Number: 647152

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 BW Gas & Convenience Real Estate, LLC ("Developer"), a Delaware limited liability company, whose address is 138 Conant Street, Beverly, Massachusetts 01915, Attn: Greg Gardner, 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 E-5-A-2, of Albuquerque South, Unit 3, within the Town of Atrisco Grant, Projected Section 4, Township 9 North, Range 2 East, NMPM, City of Albuquerque, Bernalillo County, New Mexico, as shown on the plat recorded in Plat Book 2010C, Page 390 in the office of the County Clerk of Bernalillo County, New Mexico ("Developer's Property"). The Developer's Property is owned by Developer.

The Developer has submitted and the City has approved a preliminary plat or Site Plan identified as Atwell Job 22003692 dated February 10, 2023 for Allsup's Convenience Store #102460 describing 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** ("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. Although the Improvements are required, they are below the threshold 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 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

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AGRE R:\$25.00 Linda Stover, Bernalillo County

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. 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: Cashier's Check

Amount: \$41,872.01

Name of Financial Institution or Surety providing Guaranty: Developer

Date City first able to call Guaranty (Construction Completion Deadline): January 15, 2025

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

Guaranty is: N/A

Additional information: N/A

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 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.

CITY OF ALBUQUERQUE

DocuSigned by:
By: Shahab Biazar ^{DS} KU ^{DS} BMR
07E16B5491E948C...
Shahab Biazar, P.E., City Engineer

Agreement is effective as of (Date): 1/22/2024 | 2:02 PM MST

CITY'S NOTARY

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

This instrument was acknowledged before me on this 22 day of January, 2024,
by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of
said corporation.

(SEAL)

Renee C-Zamora
Notary Public

My Commission Expires: 4/24/25

STATE OF NEW MEXICO
NOTARY PUBLIC
Renee Costilla-Zamora
Commission No. 1136057
November 24, 2025

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



FINANCIAL GUARANTY AMOUNT

December 14, 2023

Type of Estimate: I.J.A. Procedure B with FG -- Non work order

Project Description:

Project ID #: 647152 Allsup's, 98th & Gibson SW

Requested By: Chris Sveum

Approved Estimate Amount: \$ 26,054.22

Contingency Amount: 10.00% \$ 2,605.42

Subtotal: \$ 28,659.64

PO Box 1293

NMGRT: 7.625% \$ 2,185.30

Subtotal: \$ 30,844.94

Albuquerque

Engineering Fee: 6.60% \$ 2,035.77

New Mexico 87103

Testing Fee: 2.00% \$ 616.90

Subtotal: \$ 33,497.60

www.cabq.gov

FINANCIAL GUARANTY RATE: 1.25

TOTAL FINANCIAL GUARANTY REQUIRED: \$ 41,872.01

APPROVAL:

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

DATE:

Dec. 14 2023

Notes: Procedure B, Non Work Order

Current DRC
Project Number:

FIGURE 12

Date Submitted: _____
Date Site Plan Approved: _____
Date Preliminary Plat Approved: _____
Date Preliminary Plat Expires: _____
DRB Project No.: PR-2021-006208
DRB Application No.: SI-2023-01171

INFRASTRUCTURE LIST

(Rev. 2-18-18)

EXHIBIT "A"

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

**Adspur's Convenience Store, 9501 Gibson Blvd.
PROPOSED NAME OF PLAT AND/OR SITE DEVELOPMENT PLAN**

Tract E-5-A-2, Albuquerque South Unit 3

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 #
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Size	Type of Improvement	Location	From	To
87	Valley gutter and curb	South side of site	52' East of West property line	128' East of West property line
60	Pavement removal and replacement	South side of site	57' South of south property line	South property line
60	Pavement removal and replacement	West side of site	40' west of west property line	west property line
60	Pavement removal and replacement	West side of site	40' west of west property line	west property line

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Construction Certification	
Inspector	City Cnst Engineer
/	/
/	/
/	/
/	/

Procedure C Agreement Improvements

Financially Guaranteed DRC #	Constructed Under DRC #	Size	Type of Improvement	Location	From	To	Construction Certification	
							Inspector	City Cnst Engineer
<input type="text"/>	<input type="text"/>	573'	Curb and Gutter	East edge of site	Gibson Blvd East Entry	Existing Asphalt Drive North property line	/	/
<input type="text"/>	<input type="text"/>	12' Wide Lane	190' northbound right turn lane along 98th street with associated signage and striping	98th street	98th street bus stop	northwest entry off of 98th street	/	/
<input type="text"/>	<input type="text"/>	100'	Sawcut and removal of existing asphalt pavement	Gibson Blvd	25' West of East property line	125' West of East property line	/	/
<input type="text"/>	<input type="text"/>	6' wide sidewalk	300' of Concrete sidewalk with ADA accessible ramps	Gibson Blvd	106' West of East property line	West Property line	/	/
<input type="text"/>	<input type="text"/>	6' wide sidewalk	305' of Concrete sidewalk with ADA accessible ramps	98th Street	75' North of South property line	North property line	/	/
<input type="text"/>	<input type="text"/>	1	Removal and Relocation of existing turn lane sign	West of Gibson site entry	113' West of East property line	125' West of East property line	/	/
<input type="text"/>	<input type="text"/>	2	Handicap Ramps	Gibson Blvd	52' East of West property line	128' East of West property line	/	/
<input type="text"/>	<input type="text"/>	2	Handicap Ramps	98th Street	60' South of North property line on 98th street	100' South of North property line on 98th street	/	/
<input type="text"/>	<input type="text"/>						/	/
<input type="text"/>	<input type="text"/>						/	/
<input type="text"/>	<input type="text"/>						/	/

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		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

CHRISTINE SVEUM, P.E.

NAME (print)

ATWELL LLC



DEVELOPMENT FACILITATION TEAM APPROVALS

<i>Jay Roderbeck</i>	Nov 29, 2023	<i>Whitney Rubin</i>	Nov 29, 2023
<i>Ernest Amijor</i>	Nov 29, 2023		
<i>Alfonso Gutierrez</i>	Dec 13, 2023	<i>SM Plan</i>	Nov 29, 2023
<i>Shahab Biagar</i>	Nov 30, 2023	<i>Code Enforcement</i>	Nov 29, 2023

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT / OWNER

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

Receipt: 1494378

Product	Name	Extended
AGRE	Agreement	\$25.00
	# Pages	11
	Document #	2024007134
	# Of Entries	0

Total \$25.00

Tender (Cash) \$25.00
Paid By David Jones
Phone # +1 (505) 924-3996

Thank You!

2/1/24 2:15 PM moniqueo