(PROCEDURE "A" - City)
INFRASTRUCTURE IMPROVEMENTS AGREEMENT

FIGURE 11
AGREEMENT TO CONSTRUCT PUBLIC IMPROVEMENTS

THIS AGREEMENT is made this (Date) March 3, 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 **Scott Barlow** ("Developer"), an Individual , [state the type of business entity e.g. "New Mexico corporation," "general partnership," "individual," etc.], whose address is **6205 Wilshire NE, Albuquerque, NM, 87113** and whose telephone number is **(505) 328-6490** , 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 [describe:] **031 030 Tract A Unit B North Albuquerque Acres** recorded on in the records of the Bernalillo County Clerk, State of New Mexico ("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 in Developer's Property to the present owner:] **Scott Barlow** ("Owner").

Developer proposes to install public infrastructure improvements upon City property which abuts or is near or on Developer's Property, for the benefit of Developer's Property. The City requires, and the Developer is willing to provide certain assurances as a prerequisite to the City's granting permission to the Developer to enter City property to construct the improvements.

2. Deadline and Improvements. The Developer agrees to install and complete the following public infrastructure improvements, identified as Project No.**745883**, to the satisfaction of the City, on or before the (Date) **February 18, 2022**("Construction Completion Deadline"), at no cost to the City: _____

Curb & Gutter, Sidewalk, & Asphalt Concrete Paving ("Improvements").

3. Work Order Requirements. The City agrees to issue a Work Order after:

A. The Developer submits all documents and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and Figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The Certificate of Insurance 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 are related to the activities covered by this Agreement which cause bodily injury, death or property damage to any member of the public as a result of any condition of the Developer's Property; the Improvements; or the Developer's construction activities on Developer's Property or the City's property. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear,

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AGRE R:$25.00 Linda Stover, Bernalillo County

as additional insureds. The Developer must maintain the insurance until the City accepts the 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, price adjustment for asphalt and concrete paving, if applicable, and other related City fees and County Clerk recording fees:

Type of Fee	Amount
Engineering Fee	3.6% of total cost
Street Excavation and Barricading Ordinance and street restoration fees	As required per City-approved estimate (Figure 7)

(Note: The Developer must pay all City fees which have been incurred during construction before the City will accept the Improvements.)

4. 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 **Miller Engineering.** 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. The Developer shall pay the City a reasonable fee for any construction surveying performed by the City. As-built record drawings shall be provided to the City by the entity performing the survey.

B. Construction Inspection Methods. Inspection of the construction of the Improvements shall be performed by **Miller Engineering.** 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 any inspections performed by the City.

C. Field Testing. Field testing of the construction of the Improvements shall be performed by **BSN/Western Tech**, 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

5. Financial Guaranty. 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 and approved in Circular 570 as published by the U. S. Treasury Department; 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 sixty (60) days immediately following the Construction Completion Deadline.

To meet this requirement, the Developer has acquired or is able to acquire the following Financial Guaranty:

Type of Financial Guaranty: **Infrastructure Bond CNB -35836-00**
Amount: **$62,467.84**
Name of Financial Institution or Surety providing Guaranty:
Insurors Indemnity Company
Date City first able to call Guaranty (Construction Completion Deadline):
February 18, 2022
If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call Guaranty is: _____
Additional information: _____

6. Acceptance and Termination. After the Developer completes the Improvements to the satisfaction of the City and submits the final acceptance package, the City will review it, and, if acceptable, the City will issue a Certificate of Completion and Acceptance for the 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 must provide to assure the materials and workmanship, as required by the Ordinance.

7. 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.

8. 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 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.

9. Failure to Complete Improvements. If the Developer fails to complete construction of the Improvements, including submittal of the final acceptance package, by the Construction Completion Deadline, the City may make demand upon the contractor's bonds in order to obtain payment for completing the Improvements and/or the City may place a hold on the Certificate of Occupancy on the building related to the project. If the cost of completing the Improvements exceeds the amount of the bonds, the City may proceed against the Developer for the balance of the completion costs and for any costs or damages incurred by the City as a result of Developer's failure to perform according to the terms of this Agreement.

10. 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 three (3) days after the notice is mailed if there is no actual evidence of receipt.

11. 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.

12. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

13. 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.

14. 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.

15. Form Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

16. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.

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

DEVELOPER: SCOTT BARLOW

By [signature]: _____
Name [print]: SCOTT BARLOW
Title: DEVELOPER
Date: 2/18/2020

CITY OF ALBUQUERQUE:

By: _____ (AV)
Shahab Biazar, P.E., City Engineer
Date: 3/3/20

DEVELOPER'S NOTARY

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

This instrument was acknowledged before me on this 18 day of FEBRUARY, 2020 by [name(s) of person(s):] Scott BARlow, [title or capacity, for instance, "President" or "Owner":] of DEVELOPER [Developer:] _____.

(SEAL)

Official Seal
FRANKIE J. TRUJILLO, JR.
Notary Public
State of New Mexico
My Commission Expires 5-10-21

Notary Public: _____
My Commission Expires: MAY 10, 2021

CITY'S NOTARY

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

This instrument was acknowledged before me on this 3rd day of March, 2020 by Shahab Biazar, P.E., City Engineer, City of Albuquerque, a municipal corporation, on behalf of said corporation.

(SEAL)

CHARLOTTE LABADIE NOTARY PUBLIC STATE OF NEW MEXICO

Notary Public : Charlotte LaBadie
My Commission Expires: March 15, 2021

FIGURE 16
INFRASTRUCTURE BOND
(Procedure A)

Bond No. [Surety's No:] CNB-35836-00

INFRASTRUCTURE IMPROVEMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: That we [name of Developer:] Scott Barlow ("Developer") a [state type of business entity, e.g. "New Mexico corporation," "general partnership," "individual," etc.] Individual as "Principal", and [name of surety:] Insurors Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of Texas 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 [written amount:] Sixty-two thousand four hundred sixty-seven dollars and eighty-four cents Dollars, ([amount in figures:] $ 62,467.84), 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 [name of Developer's Property:] Barlow Shop - 6205 Wilshire ("Developer's Property"), City Project No. 745883; 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:]
grading of land, sidewalks, pavement, etc
("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;] Scott Barlow and the CITY OF ALBUQUERQUE, as recorded in the office of the Clerk of Bernalillo County, New Mexico, on March 12, 2020 as Document Number 2020 0023197, as amended by change order or amendments to the agreement.

Bond No. [surety's No:] CNB-35836-00

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 [Construction Completion Deadline established in Agreement or as amended:] February 18, 2022 ("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 17th day of February, 2020.

DEVELOPER

By [signature:]
Name: Scott Barlow
Title: Individual
Dated: February 17th 2020

SURETY

By [signature:]
Name: Joseph A. Menicucci
Title: Attorney-In-Fact
Dated: February 17th 2020

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

INSURORS
INDEMNITY COMPANIES

POWER OF ATTORNEY of INSURORS INDEMNITY COMPANY
Waco, Texas

KNOW ALL PERSONS BY THESE PRESENTS: **Number:** CNB-35836-00

That INSURORS INDEMNITY COMPANY, Waco, Texas, organized and existing under the laws of the State of Texas, and authorized and licensed to do business in the State of Texas and the United States of America, does hereby make, constitute and appoint

Joseph A. Menicucci of the City of Albuquerque, State of NM

as Attorney in Fact, with full power and authority hereby conferred upon him to sign, execute, acknowledge and deliver for and on its behalf as Surety and as its act and deed, all of the following classes of document, to-wit:

Indemnity, Surety and Undertakings that may be desired by contract, or may be given in any action or proceeding in any court of law or equity; Indemnity in all cases where indemnity may be lawfully given and with full power and authority to execute consents and waivers to modify or change or extend any bond or document executed for this Company.

INSURORS INDEMNITY COMPANY

Attest: Tammy Tieperman
Tammy Tieperman, Secretary

By: Dave E. Talbert
Dave E. Talbert, President

State of Texas
County of McLennan

On the 11th day of November, 2014, before me a Notary Public in the State of Texas, personally appeared Dave E. Talbert and Tammy Tieperman, who being by me duly sworn, acknowledged that they executed the above Power of Attorney in their capacities as President, and Corporate Secretary, respectively, of Insurors Indemnity Company, and acknowledged said Power of Attorney to be the voluntary act and deed of the Company.

Sheri Carnes
Notary Public, State of Texas

Sherri Carnes
Notary Public, State of Texas
My Comm. Exp. 5/21/21
Notary ID 223539-7

Insurors Indemnity Company certifies that this Power of Attorney is granted under and by authority of the following resolutions of the Company adopted by the Board of Directors on November 11, 2014:

RESOLVED, that all bonds, undertakings, contracts or other obligations may be executed in the name of the Company by persons appointed as Attorney in Fact pursuant to a Power of Attorney issued in accordance with these Resolutions. Said Power of Attorney shall be executed in the name and on behalf of the Company either by the Chairman and CEO or the President, under their respective designation. The signature of such officer and the seal of the Company may be affixed by facsimile to any Power of Attorney, and, unless subsequently revoked and subject to any limitation set forth therein, any such Power of Attorney or certificate bearing such facsimile signature and seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signature and seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is validly attached.

RESOLVED, that Attorneys in Fact shall have the power and authority, subject to the terms and limitations of the Power of Attorney issued to them, to execute and deliver on behalf of the Company and to attach the seal of the Company to any and all bonds and undertakings, and any such instrument executed by such Attorneys in Fact shall be binding upon the Company as if signed by an Executive Officer and sealed and attested to by the Secretary or Assistant Secretary of the Company.

I, Tammy Tieperman, Secretary of Insurors Indemnity Company, do hereby certify that the foregoing is a true excerpt from the Resolutions of the said Company as adopted by its Board of Directors on November 11, 2014, and that this Resolution is in full force and effect. I certify that the foregoing Power of Attorney is in full force and effect and has not been revoked.

In Witness Whereof, I have set my hand and the seal of INSURORS INDEMNITY COMPANY on this 17th day of February, 2020.

Tammy Tieperman
Tammy Tieperman, Secretary

NOTE: IF YOU HAVE ANY QUESTION REGARDING THE VALIDITY OR WORDING OF THIS POWER OF ATTORNEY, PLEASE CALL 800 933 7444 OR WRITE TO US AT P. O. BOX 32577, WACO, TEXAS 76703 OR EMAIL US AT BONDDEPT@INSURORSINDEMNITY.COM.