

## Cherne, Curtis

---

**From:** Vince Carrica [VCarrica@tierrawestllc.com]  
**Sent:** Tuesday, July 19, 2011 11:59 AM  
**To:** Cherne, Curtis  
**Subject:** RE: Boulders Pond Covenant and Agreement - Revised

Thanks Curtis! See response to comments below, in red.

---

**From:** Cherne, Curtis [mailto:CCherne@cabq.gov]  
**Sent:** Tuesday, July 19, 2011 10:35 AM  
**To:** Vince Carrica  
**Subject:** RE: Boulders Pond Covenant and Agreement - Revised

Vince,

1. In section 1 where it talks about who owns the property, change City to User. I read it that the City is the owner of the easement on the User's property. Not sure if that should be changed.
2. In the Recital, it states Tract B, whereas on Exhibit A it shows Tract 7. Yes. We will have to update the exhibit A to be based on the Boulders Plat since we are now going to record both this agreement and the final plat at the same time.
3. I did not get an Exhibit B. Exhibit B will just be a drawing similar to what is shown on Sheet 29 of the work order set.
4. There is an indent typo in paragraph 6 tat the capital T.
5. Yes, tie to Final Plat.

Curtis

---

**From:** Vince Carrica [mailto:VCarrica@tierrawestllc.com]  
**Sent:** Monday, June 27, 2011 2:40 PM  
**To:** Cherne, Curtis  
**Cc:** Ron Bohannon; Cynthia Abeyta; Keli Krueger  
**Subject:** Boulders Pond Covenant and Agreement - Revised

Curtis,

I revised the pond covenant and agreement to reflect the platting info that will happen with the Boulders Phase I, as you requested. I made the changes you noted on the marked up copy and have attached the new agreement for your review. I have also included the exhibit as well. Please call me if you have any questions. It is my understanding that the agreement will now be tied to the final plat in stead of the work order. That makes more sense to me and it allows us to use the new/proposed platting info,

Thanks.

Vince

---

If this email is spam, report it to [www.OnlyMyEmail.com](http://www.OnlyMyEmail.com)

8/2/2011

(Procedure C)  
**PUBLIC IMPROVEMENTS AGREEMENT**

**FIGURE 13**

**AGREEMENT TO CONSTRUCT  
PUBLIC IMPROVEMENTS BY CITY CONTRACT**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 \_\_\_\_\_ ("Developer"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] \_\_\_\_\_, whose address is **9737 Wadsworth Parkway, West Minster, CO 80021**, and whose telephone number is **303-861-2744**, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. **Recital.** The Developer owns certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe:] **Tract A Lots 1 and 2 Bulk Land Plat for Paradise at Unser (Document 2008026463)** ("Developer's Property"). 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] \_\_\_\_\_ ("Owner").

The Developer is responsible for a portion of the construction of the Unser Boulevard Storm Drain Improvements.

Developer's Property is adjacent to and will benefit from the construction of the Unser Boulevard Storm Drain Improvements detailed below, which will be located on public right-of-way, and the City is willing to construct those improvements with the participation of the Developer.

The Developer has prepared a design for the Unser Boulevard storm drain improvements which have been designed to City of Albuquerque standards and approved by the City as part of the Chamisa Master Drainage Plan.

Therefore, the City and the Developer agree:

2. **Improvements.** The City agrees to install and complete the following public improvements, identified as Project No.7617.86

- a. a 60" storm drain in Unser Boulevard from the intersection of Paradise

& Unser as shown on drawings 7617.86, south to the limits shown on Sheet 30 through 32.

("Improvements").

3. Impact Fee Credits. All design and construction costs of the Improvements as defined in the City's Development Process Manual shall be considered system improvements as defined in the City's Drainage Facilities Impact Fees Ordinance § 14-19-3-1 et seq. and are therefore eligible for drainage impact fee credits. The Developer agrees that Developer shall not be eligible for impact fee credits until Developer reimburses the City Developer's actual Construction Cost of the Improvements.

4. Developer's Estimated Cost. The Developer's share has been determined to be TWO HUNDRED TWENTY NINE THOUSAND EIGHT HUNDRED TWENTY FIVE DOLLARS AND 61 CENTS (\$229,825.61) ("Developer's Estimated Cost"), as detailed in the attached City-approved estimate.

5. Reimbursement. The Developer shall, within three (3) years from receipt of completion and final acceptance by the City, reimburse the City of Albuquerque the amount of the actual construction cost of Improvements.

*Municipal Lien*  
6. Letter of Credit. ~~To guarantee Developer's reimbursement of Developer's~~ Estimated Cost to the City, Developer shall submit to the City with execution of this Agreement, an Irrevocable Letter of Credit ("~~Letter of Credit~~") in the amount of TWO HUNDRED TWENTY NINE THOUSAND EIGHT HUNDRED TWENTY FIVE DOLLARS AND 61 CENTS (\$229,825.61), issued by a federally insured financial institution. The ~~Letter of Credit shall be substantially in the form attached as Exhibit A.~~

7. Accounting and Adjustment. After the Improvements are completed, the City shall render an accounting to the Developer, and the following adjustment will be made between the Developer and the City;

If the Developer's Estimated Cost is less than the actual cost of the Developer's share of construction of the Improvements, the Developer will cause the Letter of Credit to be awarded to reflect the actual cost of the Developer's share of construction of the Improvements, and the Developer will thereafter pay to the City the actual costs of construction without additional demand by the City.

If the Developer's Estimated Cost is more than the actual cost of the Developer's share of construction of the Improvements, the Developer shall cause the Letter of Credit to be amended to reflect the actual cost of the Developer's share of construction of the Improvements and the Developer will thereafter pay to the City the actual costs of construction without additional demand by the City.

8. Payment. All payments will be made only in the following form: cash, certified check, cashier's check or other form of payment approved by the City in advance of execution of this Agreement.

9. Change Orders. All change orders which are made to the Improvements and the amount by which the change order changes the obligation of the Developer must be established in writing signed by the City and the Developer, as part of Developer's reimbursement to the City.

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 six 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. Recitals. The Recitals are a material part of this Agreement and are incorporated herein for all purposes.

15. 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.

16. 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.

17. 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:** \_\_\_\_\_

**CITY OF ALBUQUERQUE:**

By [signature]: \_\_\_\_\_

By: \_\_\_\_\_

Name [print]: \_\_\_\_\_

Richard Dourte, City Engineer

Title: \_\_\_\_\_

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

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

**DEVELOPER'S NOTARY**

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

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by [name(s) of person(s):] \_\_\_\_\_,  
[title or capacity, for instance, "President" or "Owner":] of \_\_\_\_\_  
[Developer:] \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**CITY'S NOTARY**

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

      This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by Richard Dourte, City Engineer, City of Albuquerque, a municipal corporation, on  
behalf of said corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

[POWER OF ATTORNEY ATTACHED IF DEVELOPER  
IS NOT THE OWNER OF THE SUBDIVISION]

[To be used with SIA Procedure C, C-Modified, or  
Sidewalk Deferral]

**POWER OF ATTORNEY**

NOTE: Must be signed and notarized by the owner if the developer is not the owner of the Subdivision.

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

[State name of present real property owner exactly as shown on the real estate document conveying title in the Subdivision to the present owner:]

\_\_\_\_\_, ("Owner"), of  
[address:] \_\_\_\_\_ [City:]  
\_\_\_\_\_, [State:] \_\_\_\_\_ [zip code:] \_\_\_\_\_, hereby  
makes, constitutes and appoints [name of developer:] \_\_\_\_\_  
("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")  
subdivision requirements regarding the real estate owned by me and described in Section 1 of the  
Subdivision 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.

NOTE: Alternate wording may be acceptable, but must be submitted to the City Legal Department  
for review and approval before the final contract package is submitted to the City for review. The  
City may require evidence of ownership and/or authority to execute the Power of Attorney, if the  
Owner is not the Developer. If Owner is a corporation, the Power of Attorney must be signed by the  
president or by someone specifically empowered by the Board of Directors, in which case the  
corporate Secretary's certification and a copy of the Board's resolution empowering execution must  
accompany this document.

OWNER: \_\_\_\_\_

By [Signature]: \_\_\_\_\_

Name [Print]: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

The foregoing Power of Attorney was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by [name of person:] \_\_\_\_\_, [title or capacity, for instance "President":] \_\_\_\_\_ of [Owner:] \_\_\_\_\_ on behalf of the Owner.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_