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DRAINAGE AGREEMENT #4383.82

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 1992, by and between SUNWEST BANK OF ALBUQUERQUE, National Association ("SUNWEST"), whose address is P.O. Box 25500, Albuquerque, New Mexico 87125-0500, and the CITY OF ALBUQUERQUE, a New Mexico Municipal Corporation ("CITY"), whose address is P.O. Box 1293, Albuquerque, New Mexico 87103.

WHEREAS, SUNWEST is the owner of the property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), located in the County of Bernalillo, State of New Mexico; and,

WHEREAS, the Property is in the general vicinity of Airport Drive and Bluewater Road N.W., public thoroughfares in the City of Albuquerque, County of Bernalillo, State of New Mexico; and,

WHEREAS, the CITY and GEORGE BRUNACINI and JEANNETTE BRUNACINI, husband and wife, joined by JIM BRUNACINI (collectively, "BRUNACINI"), entered into a Drainage Agreement as of the 26th day of November, 1991, which was filed for record on February 29, 1992 and recorded in Book BCR 92-4 at pages. 6610-6668 of the records of Bernalillo County, New Mexico (the "Original Agreement"), for the construction of a 30 inch storm drain line under Airport Drive commencing 10 feet north of the south boundary of Atrisco Business Park, Unit 1, Tract B, for an approximate distance of 2,200 feet to an existing 24 inch storm drain line in Airport Drive, 1,040 feet south of Central Avenue (the "Project"); and,

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WHEREAS, pursuant to the Original Agreement, BRUNACINI was obligated to provide the services of a professional engineer to design the Project, provide construction and bid documents; bidding phase services as defined in the Original Agreement and Construction Phase services as defined in the Original Agreement at his expense; and,

WHEREAS, SUNWEST desires to provide for additional capacity in the Project and has requested that the Project be upgraded to a 48 inch line (the "Upgraded Project"); and,

WHEREAS, BRUNACINI is in agreement with the proposed modification of the Project, and the CITY is willing to construct the Upgraded Project upon certain terms and conditions.

NOW, THEREFORE, in consideration of the above, and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. The foregoing recitals are hereby incorporated in this Agreement as if fully set forth herein.
2. Subject to the availability of funds for construction of the Upgraded Project, the CITY agrees to construct the Upgraded Project in accordance with the time periods set forth in the Original Agreement.
3. SUNWEST agrees to employ a New Mexico registered professional engineer to design the Upgraded Project, provide construction and bid documents; Bidding Phase Services as defined in Exhibit "B"; and Construction Phase Services as

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defined in Exhibit "C" to the CITY at SUNWEST's expense. The CITY shall provide full time inspection, construction surveying, and construction testing.

4. The engineering design plan shall be in compliance with standard architectural and engineering plan requirements of the CITY. Construction of the Upgraded Project shall be pursuant to engineering design plans approved by the CITY and the CITY shall provide design review at no cost to SUNWEST. Approved, biddable construction plans and bid documents shall be submitted to the CITY no later than August 14, 1992.

5. SUNWEST agrees to contribute exactly One Hundred Twenty-Five Thousand Dollars (\$125,000.00) (the "Sunwest Contribution") in cash toward the total construction costs, excluding the services provided pursuant to Section 3 of this Agreement, of the Upgraded Project. SUNWEST shall provide a Letter of Credit in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) to the CITY, for the benefit of the CITY, upon execution of this Agreement. The Letter of Credit shall be irrevocable and shall be in form satisfactory to the CITY. The Letter of Credit shall recite that the issuing bank shall pay the proceeds of the Letter of Credit to the CITY within three (3) business days after presentment of a draft by the CITY to the issuing bank. The Letter of Credit shall be callable by the CITY between August 3, 1992 and December 31, 1992, upon publication by the CITY of the first advertisement for bids for the construction of the Upgraded

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Project. If the CITY calls the Letter of Credit and the contract for the construction of the Upgraded Project is not awarded within one hundred twenty (120) days of the publication of the first advertisement for bids for the construction of the Upgraded Project, the CITY shall promptly return the funds received from the Letter of Credit to SUNWEST. If SUNWEST is the issuer of the Letter of Credit, the Letter of Credit shall contain the following provision: "Sunwest Bank of Albuquerque, National Association, is issuing this Irrevocable Standby Letter of Credit for its own account and hereby certifies that by doing so, Sunwest Bank of Albuquerque, N.A. is not violating any rules or regulations of any federal or state regulatory authority having jurisdiction, and further that Sunwest Bank of Albuquerque, N.A. has full corporate authority to issue this Letter of Credit."

6. Except as otherwise provided in Section 7 of this Agreement, SUNWEST understands and agrees that construction of the Upgraded Project does not obligate the CITY to extend the Upgraded Project to the north nor does it require the CITY to upgrade the existing downstream 24 and 30 inch storm drain lines (collectively, the "Improvements"). SUNWEST and the CITY further understand and agree that except as to Parcel C, none of the Property shall be permitted to discharge developed flows into the Upgraded Project prior to construction of the Improvements. SUNWEST further understands and agrees that



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discharge from the Property, assuming construction of the Improvements and the Upgraded Project, shall be entitled to a maximum discharge rate of 0.1 cubic feet per second per acre (the "Controlled Discharge Rate"), and that SUNWEST shall be required to construct on-site drainage improvements on the Property for detention of storm water runoff from the Property in excess of the Controlled Discharge Rate.

7. As to the construction of the Improvements for the benefit of the Property, the CITY and SUNWEST agree that at SUNWEST's expense, SUNWEST shall employ a New Mexico registered professional engineer to design the upgrade of the existing downstream 24 inch and 30 inch storm drain lines to a 48" storm drain line within the location shown on the map attached hereto and made a part hereof as Exhibit "D" (the "Coors Upgrade"). The engineering design plan of the Coors Upgrade shall be submitted to the City for approval within one year from the date of this Agreement and construction of the Coors Upgrade shall be commenced by SUNWEST within two years from the date of this Agreement at its sole cost or in conjunction with others. Construction of the Coors Upgrade shall be pursuant to engineering design plans approved by the CITY. SUNWEST shall provide, upon execution of this Agreement, a Letter of Credit for the benefit of the CITY in the amount of One Hundred Seventy-Two Thousand Five Hundred Dollars (\$172,500.00) which is not less than 125% of the estimated cost of constructing the Coors Upgrade, as estimated by the City Engineer. The Letter

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of Credit shall be irrevocable, shall be callable by the CITY within sixty (60) days after the deadline established in this Section for commencement of construction if SUNWEST has failed to commence construction of the Coors Upgrade and shall be in a form satisfactory to the City. If SUNWEST is the issuer of the Letter of Credit, the Letter of Credit shall contain the following provision: "Sunwest Bank of Albuquerque, National Association, is issuing this Irrevocable Standby Letter of Credit for its own account and hereby certifies that by doing so, Sunwest Bank of Albuquerque, N.A. is not violating any rules or regulations of any federal or state regulatory authority having jurisdiction, and further that Sunwest Bank of Albuquerque, N.A. has full corporate authority to issue this Letter of Credit."

8. Except as otherwise expressly provided in this Agreement, coincident with and after the completion of construction and acceptance by the CITY of the Upgraded Project, SUNWEST shall not have any maintenance or other responsibilities relating to the Improvements. The CITY shall not have any maintenance or other responsibilities relating to the Coors Upgrade until its acceptance by the CITY, which acceptance shall not be unreasonably withheld.

9. Nothing contained in this Agreement shall relieve the owner of the Property from any obligations accruing to it for construction of on-site or off-site infrastructure improvements or from any obligation to participate in a special assessment district which benefits the Property.

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10. SUNWEST understands and agrees that the CITY shall have no obligation to construct the Upgraded Project if SUNWEST fails to comply with the provisions of Sections 3, 4, 5 or 7 hereof in their entirety. The CITY understands and agrees that SUNWEST shall have no obligation to construct the Coors Upgrade if construction of the Upgraded Project is not timely commenced through no fault of SUNWEST.

11. The rights and obligations created by this Agreement shall be deemed to run with the Property and shall be binding upon and inure to the benefit of the undersigned, their respective heirs, successors and assigns in all respects.

12. SUNWEST represents and warrants to the CITY and the CITY represents and warrants to SUNWEST that as of the date hereof:

(i) it is validly organized and existing;

(ii) its execution, delivery and performance of this Agreement are within its powers, have been and remain duly authorized by all necessary action, corporate or otherwise, and do not conflict with any provision of any law, regulation, rule, decree, order, judgment or contractual restriction binding or affecting it or its property or assets;

(iii) this Agreement has been duly executed and delivered and this Agreement constitutes its valid and legally binding obligation enforceable against it in accordance with its terms;

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(iv) all necessary consents, authorizations, licenses and approvals of, and registrations and declarations with any governmental authority required in connection with its execution, delivery and performance of this Agreement have been obtained and remain in full force and effect;

(v) no occurrence or condition with respect to it which constitutes a default (or which with the passage of time or the giving of notice or both would constitute a default) has occurred and is continuing; and

(vi) the determination of any legal or administrative proceedings pending or threatened against it or any of its affiliates or to which it is a party will not impair its ability to perform its obligations under this Agreement, and there is no such proceeding which purports to affect the legality, validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

SUNWEST BANK OF ALBUQUERQUE,  
National Association

By [Signature]  
Its Vice President

CITY OF ALBUQUERQUE, a New  
Mexico Municipal Corporation

By [Signature] 9/14/92  
Its Chief Administrative  
Officer

[Signature] 9-8-92  
Public Works Director

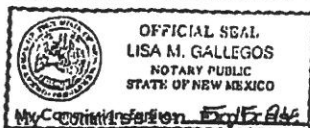
[Signature]  
Vickie Sedillo-Perea, CIP  
Official

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ACKNOWLEDGMENTS

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this  
31<sup>st</sup> day of July, 1992, by Patrick J. Bono,  
Vice President of SUNWEST BANK OF ALBUQUERQUE,  
National Association, on behalf of said association.



5-15-96

Lisa M. Gallegos  
Notary Public

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this  
8<sup>th</sup> day of September, 1992, by ROBERT E. GURULE  
Director of Public Works Dept. of the CITY OF ALBUQUERQUE, a New  
Mexico Municipal Corporation, on behalf of said corporation.

Robert E. Gurule  
Notary Public

My Commission Expires:

8-7-93

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
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**EXHIBIT "A"**

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**LEGAL DESCRIPTION**

Parcel lettered 'C' of Atrisco Business Park, Unit Two (2), of a replat of parcel 'B', 'C', 'D', 'E', and 'F', Bernalillo County, New Mexico, as the same is shown and designated on said replat, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 7, 1974.

Lots Numbered One (1) through Nine (9), inclusive, in Tract "M", and Lots Two (2) through Six (6), inclusive, in Tract "S-1", and the northerly portion of Tract "S-1", of Unit No. 2, Atrisco Business Park, Albuquerque, New Mexico, as the same is shown and designated on the Land Division of Tracts A, D, M, N, S-1 and S-2 of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 12, 1973.

Lot Numbered One-A (1-A), in Tract "S-1", Amended replat of Lot 1, Tract S-1 and Lot 3A Tract S-2, Atrisco Business Park Unit No. 2, within projected Sec. 15, T10N, R2E, N.M.P.M., Albuquerque, New Mexico, as the same is shown and designated on said replat, filed in the office of the County Clerk of Bernalillo County, New Mexico on June 12, 1986.

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EXHIBIT "B"

BIDDING PHASE SERVICES

- a. Prepare and submit for approval a final construction cost estimate no later than two (2) days prior to the bid opening.
- b. The Engineer shall attend and provide professional services for a pre-bid meeting when the City determines a pre-bid meeting is needed.
- c. Prepare advertisement for bids.
- d. Have sufficient copies of Contract Documents reproduced for sale to prospective bidders. Place copies in private plan rooms in Albuquerque for review by bidders. Provide City Project Manager with seven (7) copies.
- e. Provide clarification of the Contract Document's intent during the bidding process and determine the need for issuance of addenda. Addenda shall be distributed not less than two (2) working days prior to bid opening.
- f. Prepare and distribute addenda when required. Addenda must be signed by the Engineer and submitted to the City Project Manager for appropriate signature prior to distribution. Maintain Bidder's log and addenda distribution log.
- g. Attend the Bid Opening.
- h. Tabulate and assist the City in evaluating the bids.
- i. Advise the City, when requested, as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the lowest responsive bidder.
- j. Assist the City in obtaining additional information regarding the apparent low Bidder's qualifications, should the City request qualification information.
- k. Prepare a recommendation of award letter to the City.
- l. The Engineer shall not proceed with further performance of Basic Services until receiving a written order to do so from the City Project Manager.

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EXHIBIT "C"

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CONSTRUCTION PHASE SERVICES

- a. Provide seven (7) copies of the formal Contract Documents to the successful bidder for execution.
- b. Attend the Preconstruction Conference.
- c. Furnish consultation and advice during construction pertaining to the Contract Document's intent. Prepare elementary and supplementary sketches needed by the City to resolve problems due to field conditions encountered other than those involving changes in the scope of the project.
- d. Review manufacturer's shop drawings of equipment and/or materials proposed for use by the Contractor when required by the Contract Documents. Review construction drawings and/or erection drawings submitted by the prime contractor for compliance with the Contract Documents. Make mill, shop, and/or laboratory inspection of materials and equipment, when appropriate, when within the City's metropolitan area ( $\pm$  20 mi. of downtown Albuquerque).
- e. Make weekly observations of the project site by a member of the Engineer's design team. A written summary of the observation shall be submitted to the City Project Manager within one (1) week of the site visit. The Engineer shall be responsible for notifying the City of any observed deficiencies. In performing observations, the Engineer does not guarantee the performance of the Contractor. The Engineer shall not be responsible for the means, methods, techniques, sequence or procedures of construction selected by the Contractor or the safety precautions and programs incidental to the work of the Contractor.
- f. Review for acceptability any Change Orders prepared by the City Project Manager and provide comments to the City.
- g. Attend the final inspection and make observations to determine if the completed work is acceptable.
- h. Prepare record drawings based on marked up prints, drawings and other data supplied by the City Project Manager to reasonably reflect construction. "Record Drawings" shall be prepared by revising the original drawings, or, where original drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings. Each sheet shall be clearly marked "Record Drawings" with the date.

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DRAINAGE AGREEMENT

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THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 1992, by and between SUNWEST BANK OF ALBUQUERQUE, National Association ("SUNWEST"), whose address is P.O. Box 25500, Albuquerque, New Mexico 87125-0500, and the CITY OF ALBUQUERQUE, a New Mexico Municipal Corporation ("CITY"), whose address is P.O. Box 1293, Albuquerque, New Mexico 87103.

WHEREAS, SUNWEST is the owner of the property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), located in the County of Bernalillo, State of New Mexico; and,

WHEREAS, the Property is in the general vicinity of Airport Drive and Bluewater Road N.W., public thoroughfares in the City of Albuquerque, County of Bernalillo, State of New Mexico; and,

WHEREAS, the CITY and GEORGE BRUNACINI and JEANNETTE BRUNACINI, husband and wife, joined by JIM BRUNACINI (collectively, "BRUNACINI"), entered into a Drainage Agreement as of the 26th day of November, 1991, which was filed for record on February 29, 1992 and recorded in Book BCR 92-4 at pages 6610-6668 of the records of Bernalillo County, New Mexico (the "Original Agreement"), for the construction of a 30 inch storm drain line under Airport Drive commencing 10 feet north of the south boundary of Atrisco Business Park, Unit 1, Tract B, for an approximate distance of 2,200 feet to an existing 24 inch storm drain line in Airport Drive, 1,040 feet south of Central Avenue (the "Project"); and,

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WHEREAS, pursuant to the Original Agreement, BRUNACINI was obligated to provide the services of a professional engineer to design the Project, provide construction and bid documents; bidding phase services as defined in the Original Agreement and Construction Phase services as defined in the Original Agreement at his expense; and,

WHEREAS, SUNWEST desires to provide for additional capacity in the Project and has requested that the Project be upgraded to a 48 inch line (the "Upgraded Project"); and,

WHEREAS, BRUNACINI is in agreement with the proposed modification of the Project, and the CITY is willing to construct the Upgraded Project upon certain terms and conditions.

NOW, THEREFORE, in consideration of the above, and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. The foregoing recitals are hereby incorporated in this Agreement as if fully set forth herein.
2. Subject to the availability of funds for construction of the Upgraded Project, the CITY agrees to construct the Upgraded Project in accordance with the time periods set forth in the Original Agreement.
3. SUNWEST agrees to employ a New Mexico registered professional engineer to design the Upgraded Project, provide construction and bid documents; Bidding Phase Services as defined in Exhibit "B"; and Construction Phase Services as

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defined in Exhibit "C" to the CITY at SUNWEST's expense. The CITY shall provide full time inspection, construction surveying, and construction testing.

4. The engineering design plan shall be in compliance with standard architectural and engineering plan requirements of the CITY. Construction of the Upgraded Project shall be pursuant to engineering design plans approved by the CITY and the CITY shall provide design review at no cost to SUNWEST. Approved, biddable construction plans and bid documents shall be submitted to the CITY no later than August 14, 1992.

5. SUNWEST agrees to contribute exactly One Hundred Twenty-Five Thousand Dollars (\$125,000.00) (the "Sunwest Contribution") in cash toward the total construction costs, excluding the services provided pursuant to Section 3 of this Agreement, of the Upgraded Project. SUNWEST shall provide a Letter of Credit in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) to the CITY, for the benefit of the CITY, upon execution of this Agreement. The Letter of Credit shall be irrevocable and shall be in form satisfactory to the CITY. The Letter of Credit shall recite that the issuing bank shall pay the proceeds of the Letter of Credit to the CITY within three (3) business days after presentment of a draft by the CITY to the issuing bank. The Letter of Credit shall be callable by the CITY between August 3, 1992 and December 31, 1992, upon publication by the CITY of the first advertisement for bids for the construction of the Upgraded

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Project. If the CITY calls the Letter of Credit and the contract for the construction of the Upgraded Project is not awarded within one hundred twenty (120) days of the publication of the first advertisement for bids for the construction of the Upgraded Project, the CITY shall promptly return the funds received from the Letter of Credit to SUNWEST. If SUNWEST is the issuer of the Letter of Credit, the Letter of Credit shall contain the following provision: "Sunwest Bank of Albuquerque, National Association, is issuing this Irrevocable Standby Letter of Credit for its own account and hereby certifies that by doing so, Sunwest Bank of Albuquerque, N.A. is not violating any rules or regulations of any federal or state regulatory authority having jurisdiction, and further that Sunwest Bank of Albuquerque, N.A. has full corporate authority to issue this Letter of Credit."

6. Except as otherwise provided in Section 7 of this Agreement, SUNWEST understands and agrees that construction of the Upgraded Project does not obligate the CITY to extend the Upgraded Project to the north nor does it require the CITY to upgrade the existing downstream 24 and 30 inch storm drain lines (collectively, the "Improvements"). SUNWEST and the CITY further understand and agree that except as to Parcel C, none of the Property shall be permitted to discharge developed flows into the Upgraded Project prior to construction of the Improvements. SUNWEST further understands and agrees that

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discharge from the Property, assuming construction of the Improvements and the Upgraded Project, shall be entitled to a maximum discharge rate of 0.1 cubic feet per second per acre (the "Controlled Discharge Rate"), and that SUNWEST shall be required to construct on-site drainage improvements on the Property for detention of storm water runoff from the Property in excess of the Controlled Discharge Rate.

7. As to the construction of the Improvements for the benefit of the Property, the CITY and SUNWEST agree that at SUNWEST's expense, SUNWEST shall employ a New Mexico registered professional engineer to design the upgrade of the existing downstream 24 inch and 30 inch storm drain lines to a 48" storm drain line within the location shown on the map attached hereto and made a part hereof as Exhibit "D" (the "Coors Upgrade"). The engineering design plan of the Coors Upgrade shall be submitted to the City for approval within one year from the date of this Agreement and construction of the Coors Upgrade shall be commenced by SUNWEST within two years from the date of this Agreement at its sole cost or in conjunction with others. Construction of the Coors Upgrade shall be pursuant to engineering design plans approved by the CITY. SUNWEST shall provide, upon execution of this Agreement, a Letter of Credit for the benefit of the CITY in the amount of One Hundred Seventy-Two Thousand Five Hundred Dollars (\$172,500.00) which is not less than 125% of the estimated cost of constructing the Coors Upgrade, as estimated by the City Engineer. The Letter

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of Credit shall be irrevocable, shall be callable by the CITY within sixty (60) days after the deadline established in this Section for commencement of construction if SUNWEST has failed to commence construction of the Coors Upgrade and shall be in a form satisfactory to the City. If SUNWEST is the issuer of the Letter of Credit, the Letter of Credit shall contain the following provision: "Sunwest Bank of Albuquerque, National Association, is issuing this Irrevocable Standby Letter of Credit for its own account and hereby certifies that by doing so, Sunwest Bank of Albuquerque, N.A. is not violating any rules or regulations of any federal or state regulatory authority having jurisdiction, and further that Sunwest Bank of Albuquerque, N.A. has full corporate authority to issue this Letter of Credit."

8. Except as otherwise expressly provided in this Agreement, coincident with and after the completion of construction and acceptance by the CITY of the Upgraded Project, SUNWEST shall not have any maintenance or other responsibilities relating to the Improvements. The CITY shall not have any maintenance or other responsibilities relating to the Coors Upgrade until its acceptance by the CITY, which acceptance shall not be unreasonably withheld.

9. Nothing contained in this Agreement shall relieve the owner of the Property from any obligations accruing to it for construction of on-site or off-site infrastructure improvements or from any obligation to participate in a special assessment district which benefits the Property.

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10. SUNWEST understands and agrees that the CITY shall have no obligation to construct the Upgraded Project if SUNWEST fails to comply with the provisions of Sections 3, 4, 5 or 7 hereof in their entirety. The CITY understands and agrees that SUNWEST shall have no obligation to construct the Coors Upgrade if construction of the Upgraded Project is not timely commenced through no fault of SUNWEST.

11. The rights and obligations created by this Agreement shall be deemed to run with the Property and shall be binding upon and inure to the benefit of the undersigned, their respective heirs, successors and assigns in all respects.

12. SUNWEST represents and warrants to the CITY and the CITY represents and warrants to SUNWEST that as of the date hereof:

(i) it is validly organized and existing;

(ii) its execution, delivery and performance of this Agreement are within its powers, have been and remain duly authorized by all necessary action, corporate or otherwise, and do not conflict with any provision of any law, regulation, rule, decree, order, judgment or contractual restriction binding or affecting it or its property or assets;

(iii) this Agreement has been duly executed and delivered and this Agreement constitutes its valid and legally binding obligation enforceable against it in accordance with its terms;



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(iv) all necessary consents, authorizations, licenses and approvals of, and registrations and declarations with any governmental authority required in connection with its execution, delivery and performance of this Agreement have been obtained and remain in full force and effect;

(v) no occurrence or condition with respect to it which constitutes a default (or which with the passage of time or the giving of notice or both would constitute a default) has occurred and is continuing; and

(vi) the determination of any legal or administrative proceedings pending or threatened against it or any of its affiliates or to which it is a party will not impair its ability to perform its obligations under this Agreement, and there is no such proceeding which purports to affect the legality, validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

SUNWEST BANK OF ALBUQUERQUE,  
National Association

By [Signature]  
Its Vice President

CITY OF ALBUQUERQUE, a New  
Mexico Municipal Corporation

By [Signature] 9/14/92  
Its Chief Administrative  
Officer

[Signature] 9-8-92  
Public Works Director

[Signature]  
Vickie Sedillo-Perea, CIP  
Official

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7/20/92

ACKNOWLEDGMENTS

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STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this  
31<sup>st</sup> day of July, 1992, by Patrick J. Romo,  
Vice President of SUNWEST BANK OF ALBUQUERQUE,  
National Association, on behalf of said association.



Lisa M. Gallegos  
Notary Public

My Commission Expires:  
5-15-96

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this  
8<sup>th</sup> day of September, 1992, by ROBERT E. GURINE,  
of the CITY OF ALBUQUERQUE, a New  
Mexico Municipal Corporation, on behalf of said corporation.

Carlene S. Saavedra  
Notary Public

My Commission Expires:  
8-7-93

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EXHIBIT "A"

LEGAL DESCRIPTION

Parcel lettered 'C' of Atrisco Business Park, Unit Two (2), of a replat of parcel 'B', 'C', 'D', 'E', and 'F', Bernalillo County, New Mexico, as the same is shown and designated on said replat, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 7, 1974.

Lots Numbered One (1) through Nine (9), inclusive, in Tract "M", and Lots Two (2) through Six (6), inclusive, in Tract "S-1", and the northerly portion of Tract "S-1", of Unit No. 2, Atrisco Business Park, Albuquerque, New Mexico, as the same is shown and designated on the Land Division of Tracts A, D, M, N, S-1 and S-2 of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 12, 1973.

Lot Numbered One-A (1-A), in Tract "S-1", Amended replat of Lot 1, Tract S-1 and Lot 3A Tract S-2, Atrisco Business Park Unit No. 2, within projected Sec. 15, T10N, R2E, N.M.P.M., Albuquerque, New Mexico, as the same is shown and designated on said replat, filed in the office of the County Clerk of Bernalillo County, New Mexico on June 12, 1986.

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

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92-21-6032-6044  
JOYCE H. DAVIS  
COUNTY CLERK

7/20/92

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EXHIBIT "B"

BIDDING PHASE SERVICES

- a. Prepare and submit for approval a final construction cost estimate no later than two (2) days prior to the bid opening.
- b. The Engineer shall attend and provide professional services for a pre-bid meeting when the City determines a pre-bid meeting is needed.
- c. Prepare advertisement for bids.
- d. Have sufficient copies of Contract Documents reproduced for sale to prospective bidders. Place copies in private plan rooms in Albuquerque for review by bidders. Provide City Project Manager with seven (7) copies.
- e. Provide clarification of the Contract Document's intent during the bidding process and determine the need for issuance of addenda. Addenda shall be distributed not less than two (2) working days prior to bid opening.
- f. Prepare and distribute addenda when required. Addenda must be signed by the Engineer and submitted to the City Project Manager for appropriate signature prior to distribution. Maintain Bidder's log and addenda distribution log.
- g. Attend the Bid Opening.
- h. Tabulate and assist the City in evaluating the bids.
- i. Advise the City, when requested, as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the lowest responsive bidder.
- j. Assist the City in obtaining additional information regarding the apparent low Bidder's qualifications, should the City request qualification information.
- k. Prepare a recommendation of award letter to the City.
- l. The Engineer shall not proceed with further performance of Basic Services until receiving a written order to do so from the City Project Manager.

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IN DENSITY TO PHOTOGRAPH  
BY MICROFILM PROPERLY

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EXHIBIT "C"

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CONSTRUCTION PHASE SERVICES

- a. Provide seven (7) copies of the formal Contract Documents to the successful bidder for execution.
- b. Attend the Preconstruction Conference.
- c. Furnish consultation and advice during construction pertaining to the Contract Document's intent. Prepare elementary and supplementary sketches needed by the City to resolve problems due to field conditions encountered other than those involving changes in the scope of the project.
- d. Review manufacturer's shop drawings of equipment and/or materials proposed for use by the Contractor when required by the Contract Documents. Review construction drawings and/or erection drawings submitted by the prime contractor for compliance with the Contract Documents. Make mill, shop, and/or laboratory inspection of materials and equipment, when appropriate, when within the City's metropolitan area ( $\pm$  20 mi. of downtown Albuquerque).
- e. Make weekly observations of the project site by a member of the Engineer's design team. A written summary of the observation shall be submitted to the City Project Manager within one (1) week of the site visit. The Engineer shall be responsible for notifying the City of any observed deficiencies. In performing observations, the Engineer does not guarantee the performance of the Contractor. The Engineer shall not be responsible for the means, methods, techniques, sequence or procedures of construction selected by the Contractor or the safety precautions and programs incidental to the work of the Contractor.
- f. Review for acceptability any Change Orders prepared by the City Project Manager and provide comments to the City.
- g. Attend the final inspection and make observations to determine if the completed work is acceptable.
- h. Prepare record drawings based on marked up prints, drawings and other data supplied by the City Project Manager to reasonably reflect construction. "Record Drawings" shall be prepared by revising the original drawings, or, where original drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings. Each sheet shall be clearly marked "Record Drawings" with the date.

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BY MICROFILM PROPERLY

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IN ORDER TO PHOTOGRAPH  
BY 11/11/11

EXHIBIT D



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DRAINAGE AGREEMENT

#4383.82

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THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 1992, by and between SUNWEST BANK OF ALBUQUERQUE, National Association ("SUNWEST"), whose address is P.O. Box 25500, Albuquerque, New Mexico 87125-0500, and the CITY OF ALBUQUERQUE, a New Mexico Municipal Corporation ("CITY"), whose address is P.O. Box 1293, Albuquerque, New Mexico 87103.

WHEREAS, SUNWEST is the owner of the property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), located in the County of Bernalillo, State of New Mexico; and,

WHEREAS, the Property is in the general vicinity of Airport Drive and Bluewater Road N.W., public thoroughfares in the City of Albuquerque, County of Bernalillo, State of New Mexico; and,

WHEREAS, the CITY and GEORGE BRUNACINI and JEANNETTE BRUNACINI, husband and wife, joined by JIM BRUNACINI (collectively, "BRUNACINI"), entered into a Drainage Agreement as of the 26th day of November, 1991, which was filed for record on February 29, 1992 and recorded in Book BCR 92-4 at pages 6610-6668 of the records of Bernalillo County, New Mexico (the "Original Agreement"), for the construction of a 30 inch storm drain line under Airport Drive commencing 10 feet north of the south boundary of Atrisco Business Park, Unit 1, Tract B, for an approximate distance of 2,200 feet to an existing 24 inch storm drain line in Airport Drive, 1,040 feet south of Central Avenue (the "Project"); and,

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WHEREAS, pursuant to the Original Agreement, BRUNACINI was obligated to provide the services of a professional engineer to design the Project, provide construction and bid documents; bidding phase services as defined in the Original Agreement and Construction Phase services as defined in the Original Agreement at his expense; and,

WHEREAS, SUNWEST desires to provide for additional capacity in the Project and has requested that the Project be upgraded to a 48 inch line (the "Upgraded Project"); and,

WHEREAS, BRUNACINI is in agreement with the proposed modification of the Project, and the CITY is willing to construct the Upgraded Project upon certain terms and conditions.

NOW, THEREFORE, in consideration of the above, and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. The foregoing recitals are hereby incorporated in this Agreement as if fully set forth herein.
2. Subject to the availability of funds for construction of the Upgraded Project, the CITY agrees to construct the Upgraded Project in accordance with the time periods set forth in the Original Agreement.
3. SUNWEST agrees to employ a New Mexico registered professional engineer to design the Upgraded Project, provide construction and bid documents; Bidding Phase Services as defined in Exhibit "B"; and Construction Phase Services as



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defined in Exhibit "C" to the CITY at SUNWEST's expense. The CITY shall provide full time inspection, construction surveying, and construction testing.

4. The engineering design plan shall be in compliance with standard architectural and engineering plan requirements of the CITY. Construction of the Upgraded Project shall be pursuant to engineering design plans approved by the CITY and the CITY shall provide design review at no cost to SUNWEST. Approved, biddable construction plans and bid documents shall be submitted to the CITY no later than August 14, 1992.

5. SUNWEST agrees to contribute exactly One Hundred Twenty-Five Thousand Dollars (\$125,000.00) (the "Sunwest Contribution") in cash toward the total construction costs, excluding the services provided pursuant to Section 3 of this Agreement, of the Upgraded Project. SUNWEST shall provide a Letter of Credit in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) to the CITY, for the benefit of the CITY, upon execution of this Agreement. The Letter of Credit shall be irrevocable and shall be in form satisfactory to the CITY. The Letter of Credit shall recite that the issuing bank shall pay the proceeds of the Letter of Credit to the CITY within three (3) business days after presentment of a draft by the CITY to the issuing bank. The Letter of Credit shall be callable by the CITY between August 3, 1992 and December 31, 1992, upon publication by the CITY of the first advertisement for bids for the construction of the Upgraded

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Project. If the CITY calls the Letter of Credit and the contract for the construction of the Upgraded Project is not awarded within one hundred twenty (120) days of the publication of the first advertisement for bids for the construction of the Upgraded Project, the CITY shall promptly return the funds received from the Letter of Credit to SUNWEST. If SUNWEST is the issuer of the Letter of Credit, the Letter of Credit shall contain the following provision: "Sunwest Bank of Albuquerque, National Association, is issuing this Irrevocable Standby Letter of Credit for its own account and hereby certifies that by doing so, Sunwest Bank of Albuquerque, N.A. is not violating any rules or regulations of any federal or state regulatory authority having jurisdiction, and further that Sunwest Bank of Albuquerque, N.A. has full corporate authority to issue this Letter of Credit."

6. Except as otherwise provided in Section 7 of this Agreement, SUNWEST understands and agrees that construction of the Upgraded Project does not obligate the CITY to extend the Upgraded Project to the north nor does it require the CITY to upgrade the existing downstream 24 and 30 inch storm drain lines (collectively, the "Improvements"). SUNWEST and the CITY further understand and agree that except as to Parcel C, none of the Property shall be permitted to discharge developed flows into the Upgraded Project prior to construction of the Improvements. SUNWEST further understands and agrees that

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discharge from the Property, assuming construction of the Improvements and the Upgraded Project, shall be entitled to a maximum discharge rate of 0.1 cubic feet per second per acre (the "Controlled Discharge Rate"), and that SUNWEST shall be required to construct on-site drainage improvements on the Property for detention of storm water runoff from the Property in excess of the Controlled Discharge Rate.

7. As to the construction of the Improvements for the benefit of the Property, the CITY and SUNWEST agree that at SUNWEST's expense, SUNWEST shall employ a New Mexico registered professional engineer to design the upgrade of the existing downstream 24 inch and 30 inch storm drain lines to a 48" storm drain line within the location shown on the map attached hereto and made a part hereof as Exhibit "D" (the "Coors Upgrade"). The engineering design plan of the Coors Upgrade shall be submitted to the City for approval within one year from the date of this Agreement and construction of the Coors Upgrade shall be commenced by SUNWEST within two years from the date of this Agreement at its sole cost or in conjunction with others. Construction of the Coors Upgrade shall be pursuant to engineering design plans approved by the CITY. SUNWEST shall provide, upon execution of this Agreement, a Letter of Credit for the benefit of the CITY in the amount of One Hundred Seventy-Two Thousand Five Hundred Dollars (\$172,500.00) which is not less than 125% of the estimated cost of constructing the Coors Upgrade, as estimated by the City Engineer. The Letter

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of Credit shall be irrevocable, shall be callable by the CITY within sixty (60) days after the deadline established in this Section for commencement of construction if SUNWEST has failed to commence construction of the Coors Upgrade and shall be in a form satisfactory to the City. If SUNWEST is the issuer of the Letter of Credit, the Letter of Credit shall contain the following provision: "Sunwest Bank of Albuquerque, National Association, is issuing this Irrevocable Standby Letter of Credit for its own account and hereby certifies that by doing so, Sunwest Bank of Albuquerque, N.A. is not violating any rules or regulations of any federal or state regulatory authority having jurisdiction, and further that Sunwest Bank of Albuquerque, N.A. has full corporate authority to issue this Letter of Credit."

8. Except as otherwise expressly provided in this Agreement, coincident with and after the completion of construction and acceptance by the CITY of the Upgraded Project, SUNWEST shall not have any maintenance or other responsibilities relating to the Improvements. The CITY shall not have any maintenance or other responsibilities relating to the Coors Upgrade until its acceptance by the CITY, which acceptance shall not be unreasonably withheld.

9. Nothing contained in this Agreement shall relieve the owner of the Property from any obligations accruing to it for construction of on-site or off-site infrastructure improvements or from any obligation to participate in a special assessment district which benefits the Property.

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10. SUNWEST understands and agrees that the CITY shall have no obligation to construct the Upgraded Project if SUNWEST fails to comply with the provisions of Sections 3, 4, 5 or 7 hereof in their entirety. The CITY understands and agrees that SUNWEST shall have no obligation to construct the Coors Upgrade if construction of the Upgraded Project is not timely commenced through no fault of SUNWEST.

11. The rights and obligations created by this Agreement shall be deemed to run with the Property and shall be binding upon and inure to the benefit of the undersigned, their respective heirs, successors and assigns in all respects.

12. SUNWEST represents and warrants to the CITY and the CITY represents and warrants to SUNWEST that as of the date hereof:

(i) it is validly organized and existing;

(ii) its execution, delivery and performance of this Agreement are within its powers, have been and remain duly authorized by all necessary action, corporate or otherwise, and do not conflict with any provision of any law, regulation, rule, decree, order, judgment or contractual restriction binding or affecting it or its property or assets;

(iii) this Agreement has been duly executed and delivered and this Agreement constitutes its valid and legally binding obligation enforceable against it in accordance with its terms;

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(iv) all necessary consents, authorizations, licenses and approvals of, and registrations and declarations with any governmental authority required in connection with its execution, delivery and performance of this Agreement have been obtained and remain in full force and effect;

(v) no occurrence or condition with respect to it which constitutes a default (or which with the passage of time or the giving of notice or both would constitute a default) has occurred and is continuing; and

(vi) the determination of any legal or administrative proceedings pending or threatened against it or any of its affiliates or to which it is a party will not impair its ability to perform its obligations under this Agreement, and there is no such proceeding which purports to affect the legality, validity or enforceability of this Agreement.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

SUNWEST BANK OF ALBUQUERQUE,  
National Association

By [Signature]  
Its Vice President

CITY OF ALBUQUERQUE, a New  
Mexico Municipal Corporation

By [Signature] 9/14/92  
Its Chief Administrative  
Officer

[Signature]  
Public Works Director

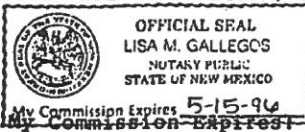
[Signature]  
Vickie Sedillo-Perea, CIP  
Official

ACKNOWLEDGMENTS

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STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

The foregoing instrument was acknowledged before me this  
31st day of July, 1992, by Patrick J. Romo,  
of SUNWEST BANK OF ALBUQUERQUE,  
National Association, on behalf of said association.



Lisa M. Gallegos  
Notary Public

5-15-96

STATE OF NEW MEXICO )  
COUNTY OF BERNALILLO ) ss.

8th The foregoing instrument was acknowledged before me this  
day of September, 1992, by ROBERT E. GURULE  
Director of Public Works Dept. of the CITY OF ALBUQUERQUE, a New  
Mexico Municipal Corporation, on behalf of said corporation.

Carlene S. Saavedra  
Notary Public

My Commission Expires:  
8-7-93

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

92 SEP 14 PM 2:57

CLAYTON M. DAVIS  
CO CLERK & RECORDER

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EXHIBIT "A"

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**LEGAL DESCRIPTION**

Parcel lettered 'C' of Atrisco Business Park, Unit Two (2), of a replat of parcel 'B', 'C', 'D', 'E', and 'F', Bernalillo County, New Mexico, as the same is shown and designated on said replat, filed in the office of the County Clerk of Bernalillo County, New Mexico, on February 7, 1974.

Lots Numbered One (1) through Nine (9), inclusive, in Tract "M", and Lots Two (2) through Six (6), inclusive, in Tract "S-1", and the northerly portion of Tract "S-1", of Unit No. 2, Atrisco Business Park, Albuquerque, New Mexico, as the same is shown and designated on the Land Division of Tracts A, D, M, N, S-1 and S-2 of said subdivision, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 12, 1973.

Lot Numbered One-A (1-A), in Tract "S-1", Amended replat of Lot 1, Tract S-1 and Lot 3A Tract S-2, Atrisco Business Park Unit No. 2, within projected Sec. 15, T10N, R2E, N.M.P.M., Albuquerque, New Mexico, as the same is shown and designated on said replat, filed in the office of the County Clerk of Bernalillo County, New Mexico on June 12, 1986.

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EXHIBIT "B"

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BIDDING PHASE SERVICES

- a. Prepare and submit for approval a final construction cost estimate no later than two (2) days prior to the bid opening.
- b. The Engineer shall attend and provide professional services for a pre-bid meeting when the City determines a pre-bid meeting is needed.
- c. Prepare advertisement for bids.
- d. Have sufficient copies of Contract Documents reproduced for sale to prospective bidders. Place copies in private plan rooms in Albuquerque for review by bidders. Provide City Project Manager with seven (7) copies.
- e. Provide clarification of the Contract Document's intent during the bidding process and determine the need for issuance of addenda. Addenda shall be distributed not less than two (2) working days prior to bid opening.
- f. Prepare and distribute addenda when required. Addenda must be signed by the Engineer and submitted to the City Project Manager for appropriate signature prior to distribution. Maintain Bidder's log and addenda distribution log.
- g. Attend the Bid Opening.
- h. Tabulate and assist the City in evaluating the bids.
- i. Advise the City, when requested, as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the lowest responsive bidder.
- j. Assist the City in obtaining additional information regarding the apparent low Bidder's qualifications, should the City request qualification information.
- k. Prepare a recommendation of award letter to the City.
- l. The Engineer shall not proceed with further performance of Basic Services until receiving a written order to do so from the City Project Manager.

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EXHIBIT "C"

CONSTRUCTION PHASE SERVICES

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- a. Provide seven (7) copies of the formal Contract Documents to the successful bidder for execution.
- b. Attend the Preconstruction Conference.
- c. Furnish consultation and advice during construction pertaining to the Contract Document's intent. Prepare elementary and supplementary sketches needed by the City to resolve problems due to field conditions encountered other than those involving changes in the scope of the project.
- d. Review manufacturer's shop drawings of equipment and/or materials proposed for use by the Contractor when required by the Contract Documents. Review construction drawings and/or erection drawings submitted by the prime contractor for compliance with the Contract Documents. Make mill, shop, and/or laboratory inspection of materials and equipment, when appropriate, when within the City's metropolitan area ( $\pm$  20 mi. of downtown Albuquerque).
- e. Make weekly observations of the project site by a member of the Engineer's design team. A written summary of the observation shall be submitted to the City Project Manager within one (1) week of the site visit. The Engineer shall be responsible for notifying the City of any observed deficiencies. In performing observations, the Engineer does not guarantee the performance of the Contractor. The Engineer shall not be responsible for the means, methods, techniques, sequence or procedures of construction selected by the Contractor or the safety precautions and programs incidental to the work of the Contractor.
- f. Review for acceptability any Change Orders prepared by the City Project Manager and provide comments to the City.
- g. Attend the final inspection and make observations to determine if the completed work is acceptable.
- h. Prepare record drawings based on marked up prints, drawings and other data supplied by the City Project Manager to reasonably reflect construction. "Record Drawings" shall be prepared by revising the original drawings, or, where original drawings cannot be satisfactorily revised for record purposes, by preparation of appropriate new drawings. Each sheet shall be clearly marked "Record Drawings" with the date.



EXHIBIT D