

L15D006

**MEMORANDUM OF UNDERSTANDING  
PERTAINING TO THE UNIVERSITY OF NEW MEXICO  
GIBSON COMMERCIAL DISTRICT DEVELOPMENT**

This Memorandum of Understanding (the "**Memorandum of Understanding**") pertaining to the University of New Mexico Gibson Commercial District Development is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (the "**City**") and the Regents of the University of New Mexico, a constitutionally created educational institution of the State of New Mexico (the "**University**" or "**UNM**") (collectively, the "**Parties**").

**RECITALS**

WHEREAS, the University owns approximately 45.77 acres of land, including approximately 0.35 acres of land owned by Albuquerque Metropolitan Arroyo Flood Control Authority ("**AMAFCA**"), which UNM intends to acquire from AMAFCA prior to final plat approval, (the "**UNM Gibson Commercial District**") located within the City limits highlighted in yellow on **Exhibit A** attached hereto, upon which the University intends to develop commercial, retail, and fire station uses; and

WHEREAS, the University and the City have entered into a Land Exchange Agreement (the "**Land Exchange Agreement**"), executed on September 13, 2011, whereby the University has agreed to convey certain property to the City for a fire station ("**Fire Station Site**").

WHEREAS, the University wishes to undertake the necessary efforts to plan the development, plat the parcels, and develop the related and necessary infrastructure for the UNM Gibson Commercial District including the Fire Station Site, in order to enable the subsequent construction of commercial, retail, and fire stations uses in the UNM Gibson Commercial District; and

WHEREAS, the University will retain ownership of all the land, including the subsequently platted parcels within the UNM Gibson Commercial District, except for the Fire Station Site, which will be conveyed, in fee simple, to the City pursuant to the terms of the Land Exchange Agreement; and

WHEREAS, UNM wishes to make available to the UNM Gibson Commercial District, certain infrastructure and services so that the University can commence development of the UNM Gibson Commercial District in the year 2011 and comply with the Land Exchange Agreement; and

WHEREAS, the Parties wish to reach an agreement regarding the design, approval, permitting, construction, and installation of the infrastructure necessary to access and service the UNM Gibson Commercial District, including, but not

limited to, access to City streets, paving, curbs, gutters, sidewalks and storm drainage.

NOW, THEREFORE, the Parties agree that:

### **UNDERSTANDING**

1. The Recitals are hereby restated and incorporated herein as part of this Memorandum of Understanding.
2. The University will take the necessary steps to commence the development of the UNM Gibson Commercial District in November/December 2011, or as soon thereafter as possible, which will, among other things, implement the Land Exchange Agreement.
3. The rezoning, subdivision, permitting and subsequent conveyance of Parcel 2 to the City and the construction of West Road and related infrastructure must occur in accordance with the timelines in the Land Exchange Agreement. In the event that the subdivision and infrastructure identification and approval of the entire UNM Gibson Commercial District as shown on Exhibit A, cannot be completed in accordance with those timelines, the Parties agree that the rezoning subdivision and infrastructure construction of Parcel 2 will be completed independent of the remainder of the UNM Gibson Commercial District Property.
4. The University will bind its successors, assigns and/or replacement parties, if any, to the terms of this Memorandum of Understanding, except for those that necessarily remain with the University.
5. The University will retain title to the land comprising the UNM Gibson Commercial District, except for (1) the Fire Station Site, which is to be conveyed, in fee simple, to the City for the construction of a City fire station and (2) any right-of-way that may be dedicated to the City or any other governmental entity. In the event UNM conveys title to any of the parcels within the Gibson Commercial District to a private entity, the City's normal development approval process shall thereafter apply to the parcel or parcels conveyed.
6. Because the UNM Gibson Commercial District is property of the University, a constitutionally created educational institution of the State of New Mexico, it is not subject to the land use, zoning, platting, or permitting jurisdiction of the City. Consequently, except for the fire station site:
  - a. City zoning or other land use approval is not necessary for development within the UNM Gibson Commercial District.

- b. City building permits are not necessary for development within the UNM Gibson Commercial District.
  - c. City planning and platting approval is not necessary for development within the UNM Gibson Commercial District.
7. Notwithstanding Section 6(c) *supra*, UNM agrees, subject to the exceptions contained herein, to voluntarily employ the City subdivision approval process Section 14-14-1-1 *et seq.* ROA 1994 overseen by the City Development Review Board (the “DRB”) to subdivide University lands to create platted parcels within the UNM Gibson Commercial District, as shown on **Exhibit A** (which are subject to change in number, size, and shape), and arrange for the construction of infrastructure, and if necessary the dedication of right of way and easements, as may be reasonably required by the DRB to serve the UNM Gibson Commercial District. The City subdivision approval process, which shall be reasonably administered, shall include, but not be limited to the following:
- a. City review and approval of preliminary and final plat application(s).
  - ➔ b. City review and approval of grading and drainage plan.
  - c. City Design Review Committee work order process.
  - d. City Development Process Manual standards for the construction of infrastructure which may be dedicated to the City of Albuquerque.
  - e. Traffic impact access study analyzing the impacts of the UNM Gibson Commercial District on area traffic flows and specifying needed infrastructure improvements, which study will be subject to review and approval by the City's traffic engineer, prior to DRB approval of the final plat.
  - f. A Subdivision Improvement Agreement (SIA) substantially in the form attached hereto as **Exhibit B** to be entered into by the Parties subsequent to execution of this Memorandum of Understanding, which will set forth the respective responsibilities for procurement, construction and installation of necessary infrastructure. Required infrastructure may include, but is not limited to:
    - 1) curb cuts
    - 2) curbs
    - 3) gutters
    - 4) sidewalks

- 5) lane expansions, changes or additions
- 6) median cuts or additions
- 7) traffic signals or signage
- 8) storm drainage
- 9) landscaping

Any required infrastructure identified in the City approved traffic impact access study shall also be included in the SIA as necessary infrastructure.

- g. An understanding with the City Fire Department regarding hydrant placement and access thereto within the UNM Gibson Commercial District.
  - h. A financial guaranty in an amount approved by the City's Design Review Committee covering the cost of the infrastructure required by the DRB to serve the UNM Gibson Commercial District, which will be provided by the University or other(s) authorized by the University.
    - 1) The guaranty may take the form of a bond, municipal lien, approved, if and as necessary, by the appropriate approval authority to the satisfaction of the City, irrevocable letter of credit or other security instrument acceptable to the City.
  - i. The City administrative appeal process as prescribed by the City Subdivision Ordinance.
- 8. UNM agrees, in lieu of the City requiring a vehicle turnaround at the north end of the new portion of West Road ("**West Road South**"), to allow two-way public access from that point north to Avenida de Caesar Chavez for the full length and width of the existing University owned road ("**West Road North**") with the understanding that if the parties, acting reasonably, agree, the University may dedicate West Road North to the City provided that West Road North has been built to City standards. *- show this*
  - 9. The University will reach a separate understanding with the Albuquerque Bernalillo County Water Utility Authority (the "**Water Authority**") regarding the provision of water and wastewater services to the UNM Gibson Commercial District.
  - 10. The University will reach a separate understanding with AMAFCA regarding the acquisition or use of the 0.35 acres owned by AMAFCA as part of the development of the Gibson Commercial District.

11. This Memorandum of Understanding shall expire one (1) year after the City engineer signs the letter of completion and acceptance of infrastructure to be dedicated to the City, unless the parties agree in writing to extend this Memorandum of Understanding to remain in effect thereafter.
12. Nothing in this Memorandum of Understanding shall be construed to waive any rights, claims or defenses asserted heretofore or hereafter by any of the Parties.
13. All notices and other communications under this Memorandum of Understanding shall be in writing and shall be deemed duly given: (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fifth business day after mailing if mailed by certified mail, return receipt requested, (iii) the day of transmission, if sent by facsimile or telecopy during regular business hours or the day after transmission, if sent after regular business hours, provided that, in either event, the completed transmission is electronically verified, or (iv) the day of transmission, if sent electronically, if there is proof of receipt on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses, telecopy numbers, or e-mail addresses (or to such other address, telecopy number, or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provision):

**If to the City:**

Robert J. Perry  
Chief Administrative Officer  
City of Albuquerque  
City / County Bldg. - 11th Floor  
Albuquerque, NM 87102  
Facsimile: (505) 768-3019  
Telephone: (505) 768-3000  
E-mail: [rjperry@cabq.gov](mailto:rjperry@cabq.gov)

**With a copy to:**

Robert D. Kidd, Jr., Interim City Attorney  
City of Albuquerque  
One Civic Plaza, NW  
City/County Building  
4th Floor, Room 4015  
Albuquerque NM 87102  
Facsimile: (505) 768-4525  
Telephone: (505) 768-4500  
E-mail: [rkidd@cabq.gov](mailto:rkidd@cabq.gov)



**If to the University:** Director of Real Estate  
Attention: Kim D. Murphy  
University of New Mexico  
2811 Campus Boulevard NE  
MSC 3595  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Facsimile: (505) 277-6290  
Telephone: (505) 277-4620  
E-mail: kmurphy@unm.edu

**With a copy to:** University Counsel  
Attention: Lee K. Peifer, Esq.  
University of New Mexico  
Scholes Hall, Room 152  
MSC05 3310  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Facsimile: (505) 277-4154  
Telephone: (505) 277-5035  
E-mail: lpeifer@salud.unm.edu

*and*

Rodey, Dickason, Sloan, Akin & Robb,  
P.A.  
Attention: John P. Salazar, Esq.  
*Street Address:* 201 Third Street NW, Suite 2200  
Albuquerque, NM 87102  
*Mailing Address:* P.O. Box 1888  
Albuquerque, NM 87103-1888  
Facsimile: (505) 768-7395  
Telephone: (505) 765-5900  
E-mail: jsalazar@rodey.com

14. This Memorandum of Understanding may be executed in one or more counterparts, including facsimile counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.
15. This Memorandum of Understanding may be amended, upon mutual agreement of the Parties, by written agreement executed by each of the Parties.

16. The Parties agree to hereafter negotiate and enter into such further and more definitive agreements, as may be necessary, to effectuate the transactions contemplated by this Memorandum of Understanding.
17. 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.
18. This Memorandum of Understanding is signed, sealed, executed and delivered by the Parties as of the date indicated next to the respective signatures below, with the Effective Date to be the date of the last signature affixed hereto.

**CITY OF ALBUQUERQUE,  
a New Mexico municipal corporation**

By: 

Robert J. Perry  
Chief Administrative Officer

Date: 10/11/11

*Handwritten notes:*  
10/11/11  
10/10/11  
10/10/11

**REGENTS OF THE UNIVERSITY OF NEW MEXICO,  
a constitutionally created educational institution of the  
State of New Mexico**

By:   
*for*

David W. Harris  
Executive Vice President for  
Administration, COO and CFO

Date: Oct. 10, 2011

**ACKNOWLEDGEMENT OF THE CITY OF ALBUQUERQUE**

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

This instrument was acknowledged before me this 11<sup>th</sup> day of October, 2011, by Robert J. Perry, Chief Administrative Officer, City of Albuquerque, a New Mexico municipal corporation, on behalf of said corporation.

Marc E. Chavez  
Notary Public

My commission expires:

2/17/13



**ACKNOWLEDGEMENT OF THE UNIVERSITY**

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

This instrument was acknowledged before me this 10 day of October, 2011, by Kim D. Murphy, Director of Real Estate, for David W. Harris, Executive Vice President for Administration, COO and CFO, University of New Mexico, on behalf of the Regents of the University of New Mexico.

Bertha M. Gomez  
Notary Public

My commission expires:

11/3/14





**UNM Gibson Commercial District  
(Parcel Sizes / Number of Parcels)  
(Subject to Change)**

