

**Agreement to Provide Maintenance for
Channel Improvements on the Calabacillas Arroyo
at Golf Course Road**

THIS AGREEMENT is made and entered into this 7th day of December, 2004, by and between the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico (hereinafter referred to as "AMAFCA"), and Star Trust, Inc., a New Mexico Trust, by its trustees Samia Rabadi and Sharif A. Rabadi, and/or Samia Rabadi and Sharif A. Rabadi, individually (hereinafter collectively referred to as the "OWNER"), and all entities collectively referred to as the "PARTIES".

WHEREAS, the OWNER is the fee simple owner of Tract T-1A-2, being a replat of Tract T-1A, Town of Alameda Grant, filed in the Office of the County Clerk of Bernalillo County, New Mexico in Volume 96C, Folio 467, on November 18, 1996, the location of which is shown on Exhibit "A"; and,

WHEREAS, the "Calabacillas Arroyo Prudent Line Study and Related Work, Evaluation of Existing Erosion-Risk Limits between Coors Road and Swinburne Dam", prepared for AMAFCA by Mussetter Engineering, Inc, December 1998, identified the need for both bank protection and a grade control structure in the Arroyo adjacent to the OWNER's property; and,

WHEREAS, the OWNER proposes to develop the 8.5 acre Tract T-1A-2, which is located west of Golf Course Road and south of the Calabacillas Arroyo ("Arroyo"), and will construct Riprap Bank Protection ("IMPROVEMENTS"), to the lines and dimensions shown on Exhibit "B" in order to contain the Arroyo within the existing AMAFCA Drainage Easement; and,

WHEREAS, the OWNER has requested that AMAFCA maintain the IMPROVEMENTS that will be constructed by the OWNER; and,

WHEREAS, AMAFCA is agreeable to assumption of maintenance of the completed IMPROVEMENTS after acceptance by AMAFCA; and,

WHEREAS, in lieu of a lump sum contribution for the future grade control structure adjacent to the property, AMAFCA will allow OWNER to contribute 2,000 cubic yards of OWNER's riprap and to deliver said riprap to the Arroyo at the Eagle Ranch Road crossing, to be valued at fifty dollars (\$50.00) per cubic yard; and,

WHEREAS, AMAFCA will allow the OWNER to remove 30,000 cubic yards of sediment from the Swinburne Dam for the OWNER's use, because said material would otherwise be required to be removed by AMAFCA in its regular maintenance operations, and said removal will save AMAFCA future expense;

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the PARTIES agree as follows:

SECTION 1. OWNER, at its sole expense, agrees to:

- a. Cause to be designed, with engineer's seal and signature, and to be constructed the IMPROVEMENTS, consisting of Riprap Bank Protection. The IMPROVEMENTS shall conform to the dimensions and location shown on Exhibit "B". Construction of the IMPROVEMENTS shall conform to AMAFCA specifications and requirements.
- b. Provide final plans and specifications for construction of the IMPROVEMENTS to AMAFCA for review and approval prior to construction.
- c. Provide for the inspection of construction, including administration, testing, and inspection, or other supervision of construction, by a registered engineer and testing firm hired by OWNER and approved by AMAFCA to assure construction is in conformance with the plans and specifications.
- d. Reimburse AMAFCA for documented time spent at the job site by its staff for construction inspection. This time will be reimbursed at the rate of \$50.00 per hour, not to exceed a total combined amount of \$2,000.00.
- e. Cause work to be halted and remedial measures taken should the work be out of compliance with the plans and specifications, and/or standard construction practice.
- f. Obtain all necessary agency approvals for the project.
- g. Notify AMAFCA's Field Engineer by phone call to 884-2215 and in writing by facsimile to 884-0214 at least 48 hours prior to beginning work on the IMPROVEMENTS.
- h. Provide copies of all daily construction reports and testing reports to AMAFCA.
- i. Provide an engineer's certification to AMAFCA that the IMPROVEMENTS have been constructed in accordance with the approved plans and specifications. Furnish as-built drawings within 30 days of final acceptance.
- j. Require its contractor to provide liability insurance during the period of construction naming AMAFCA and the City of Albuquerque ("CITY") as additional named insured. The amount of the liability insurance shall be at least \$1,000,000.00. Evidence of said insurance shall be provided to AMAFCA and the CITY prior to commencement of construction of the IMPROVEMENTS.
- k. Deliver 2,000 cubic yards of riprap, ranging in size from eight inches to four feet in diameter, during a time period and to a location to be designated by AMAFCA, in the general vicinity of the Eagle Ranch Road crossing on the Arroyo.

SECTION 2. AMAFCA agrees to:

- a. Review and, if appropriate, approve plans and specifications for IMPROVEMENTS, as prepared by the OWNER's engineer. The vertical and horizontal limits of the IMPROVEMENTS will be substantially the same as shown in Exhibit "B".
- b. Provide periodic inspection of the IMPROVEMENTS during the construction period by its staff to assure that construction is in conformance with the plans and specifications.
- c. Accept the IMPROVEMENTS for continuous maintenance upon satisfactory completion of construction and confirm acceptance of same in writing by AMAFCA's Executive Engineer.
- d. Accept delivery of 2,000 cubic yards of riprap, ranging in size from eight inches to four feet in diameter, to the Eagle Ranch Road crossing on the Arroyo, as requested by AMAFCA, in lieu of a lump sum contribution for the future grade control structure on the Arroyo. This quantity shall be valued at \$50.00 per cubic yard.
- e. Allow the OWNER to remove 30,000 cubic yards of sediment from the Swinburne Dam for its use and, in lieu of a royalty payment to AMAFCA, consider the removal a contribution to AMAFCA's regular maintenance operation, as allowed by AMAFCA Resolution 1991-10, Section 2.d.

SECTION 3. All PARTIES agree:

- a. All PARTIES will strive for prompt action and timely response.
- b. If any situation arises which adversely affects any PARTY's participation in this Agreement, said PARTY will immediately notify the other PARTIES in writing.
- c. Any circumstance, including the above, which materially affects this Agreement will be promptly and equitably resolved by all PARTIES, and, if necessary, an amendment to this Agreement shall be executed.
- d. Unresolvable differences shall be referred to binding arbitration under the provisions of the New Mexico Uniform Arbitration Act.
- e. The OWNER, after consultation with AMAFCA, shall execute change orders and resolve contract claims relating to design and construction of the IMPROVEMENTS. The OWNER shall assume financial commitments resulting from any change order or resolution of a contract claim from construction of said projects, unless such change order or claim is the result and effected by actions of AMAFCA or a third party in expanding the size or capacity of the project beyond the originally approved design. Notwithstanding anything to the contrary, this Agreement requires the OWNER only to construct the drainage improvements shown on Exhibit "B" in accordance with this Agreement and AMAFCA's generally applicable standards.

f. All storm drainage facilities will be designed and constructed to City of Albuquerque and AMAFCA standards and, as constructed, shall meet all applicable codes.

g. This Agreement shall not be assignable by any PARTY of the PARTIES to this Agreement without the written consent of the other PARTIES of the Agreement.

h. This Agreement may be modified only by mutual written agreement of the PARTIES hereto.

i. The PARTIES understand and agree that the obligation of each PARTY under this Agreement shall be performed in compliance with the applicable laws, statutes and ordinances. Nothing herein is intended to constitute any agreement for the PARTIES to perform any activity in violation of the Constitution or Laws of the State of New Mexico.

j. All notices with respect to this Agreement shall be in writing and shall be delivered personally, sent via confirmed fax, or sent postage prepaid by United States Mail, certified mail, return receipt requested, to the addresses set forth below or such other addresses as hereafter specified in writing by each PARTY to the other:

Albuquerque Metropolitan Arroyo
Flood Control Authority
2600 Prospect Ave. NE
Albuquerque, NM 87107
FAX: (505) 884-0214

Star Trust, Inc.
120 Wyoming Blvd. SE
Albuquerque, NM 87123
FAX: (505) 256-1514

Samia and Sharif A. Rabadi
120 Wyoming Blvd. SE
Albuquerque, NM 87123
FAX: (505) 256-1514

k. If any clause or provision in this Agreement is illegal, invalid, or unenforceable, under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the PARTIES hereto that the remainder of this Agreement shall not be affected thereby.

l. It is specifically agreed between the PARTIES executing this Agreement that this Agreement does not and is not intended to create in the public, or any member thereof, any rights whatsoever, such as, but not limited to, the rights of a third party beneficiary, or to authorize anyone not a party to this Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

m. Each individual signing for each of the PARTIES hereunder warrants and represents that he/she is an authorized agent of such PARTY, on whose benefit he/she is executing this Agreement and is authorized to execute the same.

n. Each PARTY agrees to execute such other and further instruments and documents as may be necessary or proper in order to complete the transactions contemplated by this Agreement, and further agrees to provide such other documents that may be necessary pursuant to this Agreement.

