MEMO

Item 14

To: Board of Directors

From: Jerry M. Lovato, P.E., Executive Engineer

Date: July 19, 2012

Re: Authorization to Advertise Request for Proposals (RFP) for Engineering Services to provide Emergency Action Plan mapping for Boca Negra Dam

State Engineer regulations require an Emergency Action Plan be prepared as a condition of approving the design and construction of a dam.

As such, I am requesting that the Board allow me to advertise for proposals for engineering services in the preparation of an Emergency Action Plan for the Boca Negra Dam.

The proposed legal notice with evaluation criteria and scope of work are provided for review, comment, and approval.

The proposed schedule for the engineering services contract is as follows:

July 24: Board Authorization to Advertise RFP
August 30: Proposals due at 10:00 a.m.
September 5: Selection Advisory Committees (SACs) to convene
September 27: SACs' recommendations to the Board
October 25: Negotiated contracts to the Board

This schedule will ensure that the requirements of the State Engineer are met by the completion of the dam.

Recommend: The Board approve the issuance of the RFP for Engineering Services to prepare an Emergency Action Plan for the Boca Negra Dam.

City of Albuquerque
Boca Negra Dam:
Staff advertised the project on Sunday April 22. To date, AMAFCA has issued six addendums on the project. The bid date has been changed to August 14, 2012.

Staff has prepared an RFP to address the Office of the State Engineer Dam Safety Bureau's concern with the Emergency Plan for the Boca Negra Dam.

Channel Road Along NDC:
The City of Albuquerque held a public meeting to discuss the project on July 16th. Mr. Kurt Wagener attended the meeting on behalf of AMAFCA.

AO Expo New Mexico:
Staff has continued to maintain the temporary check dams to address bacteria from nuisance flows. Expo New Mexico has not responded to AMAFCA's request for funding or additional information.

Bernalillo County
Sanchez Farm Tributary Storm Drains Update:
Bernalillo County has advertised the Goff Road Project that will incorporate the AMAFCA design report for the Sanchez Farm Tributary Storm Drains.

Public Outreach
Hahn Arroyo Project:
I participated in a television interview with KOAT to address ditch safety in flood control facilities.

Mr. Kevin Daggett participated in a television interview with KOAT to address AMAFCA readiness for this year's flood season.

US Fish and Wild Life Service
Price's Dairy:
Discussions with the Trust for Public Lands, USFWS and the Natural Resource Conservation Service (NRCS) concerning the funding needed to purchase of the Price's Dairy as an Urban Wildlife Refuge resulted in the realization that the NRCS funding would be detrimental to Bernalillo County, USFWS, and AMAFCA. The NRCS requirements are in direct conflict with the AMAFCA drainage easement. Because of the discussions, the NRCS funding is no longer being considered by the TPL.

For Information Only

Trails mtg pre 7-4-13 DRB Hearing

6-25-12

1 determine size of SD
engineering solutions
RCS asked BHI to figure it out.

42 cfs + roadway flows

AMAFCA concerned w/ time to peak
for all inputs

AMAFCA - Trails owes $1.9M,
50% or 75% storm will overtop downstream channel

RCS - wants a package to leverage Murtash to
get the SD and Dam constructed

AMAFCA doesn't own the analysis report
for the dam

AMAFCA will hold the city responsible
to updating the Bear Negra Dam report
if changing the flows

AMAFCA board mtg on Thursday

$150,000 to buy Design/model

RCS to contact Wilson to check on model application

Web pm 3 o'clock

SAD 228 plan set to Scott Steffen

6-27-12

call Dave Thompson next 10 Am tomorrow

orifice at 59" downstream of pnt K

assumed 30" 42 cfs.
42" 80 cfs

50% increase in pipe cost from 30" to 42"

Richard, if pipe constructed soon could take that into account to possibly reduce pond size

Dave Thompson to get his model to Dan on Monday

Scott have cost analysis done by Friday

PCS can guarantee $500K toward
Chinese SD

Murtagh still wants arbitrator
City may want bonds for the
storm drain

tentative 3:30 pm
pipe ~$500K
pond ? 7 ac-ft / 43560 ft² / ac = 300,000 ft³

30√300000 10,000 yds × 10/yd = $100,000 - $150,000

Tierra Vista doesn't expire until the end of July
expires July 14th

Brad - mtg on Tuesday, pick a time

AMAFCA Brd mtg 6-20-12

city still needs to pay the 74K,000

perceived
suggest that the city make up the
shortfall of $230,000

Dam 300 ac-ft
in the future, with proposed ponds/dams
upstream, Bosque Negra has excess capacity

6-20-12 Richard's atty
model run w/ 45 cfs
Judge felt there was health and safety concern

if deal falls apart the DRB won't approve
the ~~extension~~ ~~Final~~ Plat on 7-11-12
extension on Taos 1 and 2

is hydrology last on Building permits

6-20-12 city Attorney's office

meet tomorrow at 1:30 city Attorney's office

6-29-12

SIR for BOSQIC is for CANDIAN # 730078

April 2013

McHugh willing to accept the decision of the arbitrator

change IC, write Memorandum of agreement

the outfall SD in Uhmer

conf call - 3pm Monday

7-2-12

1. City has to follow AMAFCA's lead on pipe size
2. has to be a condition of the settlement - Arbitration must go away
3.

Cherne, Curtis

From: Martinez-Siemel, Maria
Sent: Tuesday, July 03, 2012 10:07 AM
To: Dourte, Richard H.
Cc: Cherne, Curtis
Subject: FW: Storm drain estimate
Attachments: CCE_Universe SD 2012-07-02_revised.pdf

From: Eisenberg, Jame J.
Sent: Monday, July 02, 2012 5:13 PM
To: Martinez-Siemel, Maria
Cc: Lozoya, Melissa R.
Subject: RE: Storm drain estimate

Revised estimates reflecting project length from Avenida De Jaimito to Rainbow, a distance of approximately 4,000 feet.

Estimate using 72" RCP is $2.4 million
Estimate using 42" RCP is $1.4 million
Estimate using 36" RCP is $1.3 million
Estimate using 30" RCP is $1.1 million

Thank you

From: Eisenberg, Jame J.
Sent: Monday, July 02, 2012 3:32 PM
To: Martinez-Siemel, Maria
Cc: Lozoya, Melissa R.
Subject: RE: Storm drain estimate

Attached is the additional estimate you requested for this same project reach using a 36-inch RCP.

Estimate using 72" RCP is $2.8 million
Estimate using 42" RCP is $1.6 million
Estimate using 36" RCP is $1.4 million
Estimate using 30" RCP is $1.2 million

These costs use an approximate trench length of 4,600 feet. Actual length may differ, depending on design.

Thank you

From: Eisenberg, Jame J.
Sent: Monday, July 02, 2012 2:29 PM
To: Martinez-Siemel, Maria
Cc: Lozoya, Melissa R.
Subject: RE: Storm drain estimate

Correction:
Estimate using 30" RCP is $1.2 million

From: Eisenberg, Jame J.
Sent: Monday, July 02, 2012 2:26 PM
To: Martinez-Siemel, Maria
Cc: Lozoya, Melissa R.
Subject: FW: Storm drain estimate

Additional estimates using 30-inch and 42-inch storm drains are attached. However, 30-inch and 42-inch pipes do not seem representative of pipes along this reach. For comparison - at the detention basin the Unser project used 90-inch storm drain. Please keep in mind that the pipe along Unser will probably start smaller upstream and increase in size as it takes on more flow. An estimate I received from Planning used a combination of 48-inch, 60-inch, and 72-inch storm drain. Please confirm that this is the data you want.

In the previous estimate rock blasting was incorporated into the trenching/backfill item. This cost was based on the winning bid for the Unser project completed last year. Costs from that project were around $90/LF for a slightly smaller pipe. Our 2009 *City Engineer's Estimated Unit Prices* gives a unit cost of $47.76/LF for trenching, backfilling, and compaction of pipe sizes larger than 60 inches (8 to 12 feet deep) without rock blasting.

Estimate using 72" RCP is $2.8 million
Estimate using 42" RCP is $1.6 million
Estimate using 72" RCP is $1.2 million

Thank you

From: Martinez-Siemel, Maria
Sent: Wednesday, June 27, 2012 2:51 PM
To: Eisenberg, Jame J.
Subject: Storm drain estimate

Hi Jame,

Would you please update the pipe estimates for a 30 and 42 inch pipe down Jaimito to the Boca Negra. Also, the trenching part seemed low after everything we have heard about the basalt. Could you walk me through that?

Thanks
MMS

CONSTRUCTION COST ESTIMATE
UNIVERSE STORM DRAIN - AVENIDA DE JAIMITO TO BOCA NEGRA DETENTION POND
July 2, 2012

72" Storm Drain

Item	Item Number	Description	Quantity	Unit	Unit Price	Amount
1	343 132	Arterial Pavement, Existing Remove & Replace, incl 2" extra asphalt thickness with machine laydown, & with processing existing subbase material any thickness, cip	4444	SY	$62	$275,528
2	701 2X	Trenching Backfilling & Compaction, rock blast, over 60" sewer pipe, over 8' to 12' in depth,pipe not incl ,compl	4000	LF	$100	$400 000
3	910 029	72" Reinforced Concrete Pipe Class III furnish & place in open trench, cip	3900	LF	$250	$975 000
4	910 068	Bend, 72" RCP, any degree, furnish & install in open trench, cip	6	EA	$3 703	$22 218
5	920 25X	Tee Manhole, 72" x 4' Dia Class III, including support saddle and steps risers, lid and PCC collar, all depths, cip	12	EA	$8 000	$96,000
6	603 X	Rip-rap Storm Drain Outfall	1	LS	$10,000	$10,000
		SUBTOTAL ITEMS 1-6				$1,778,746
7		20% CONTINGENCY				$355 749
8		Mobilization	5%	LS		$106,725
9		Demobilization	2%	LS		$42,690
		SUBTOTAL ITEMS 1-9				$2,283,910
		NMGRT	7%	LS		$159,874
		TOTAL				$2,443,784

42" Storm Drain

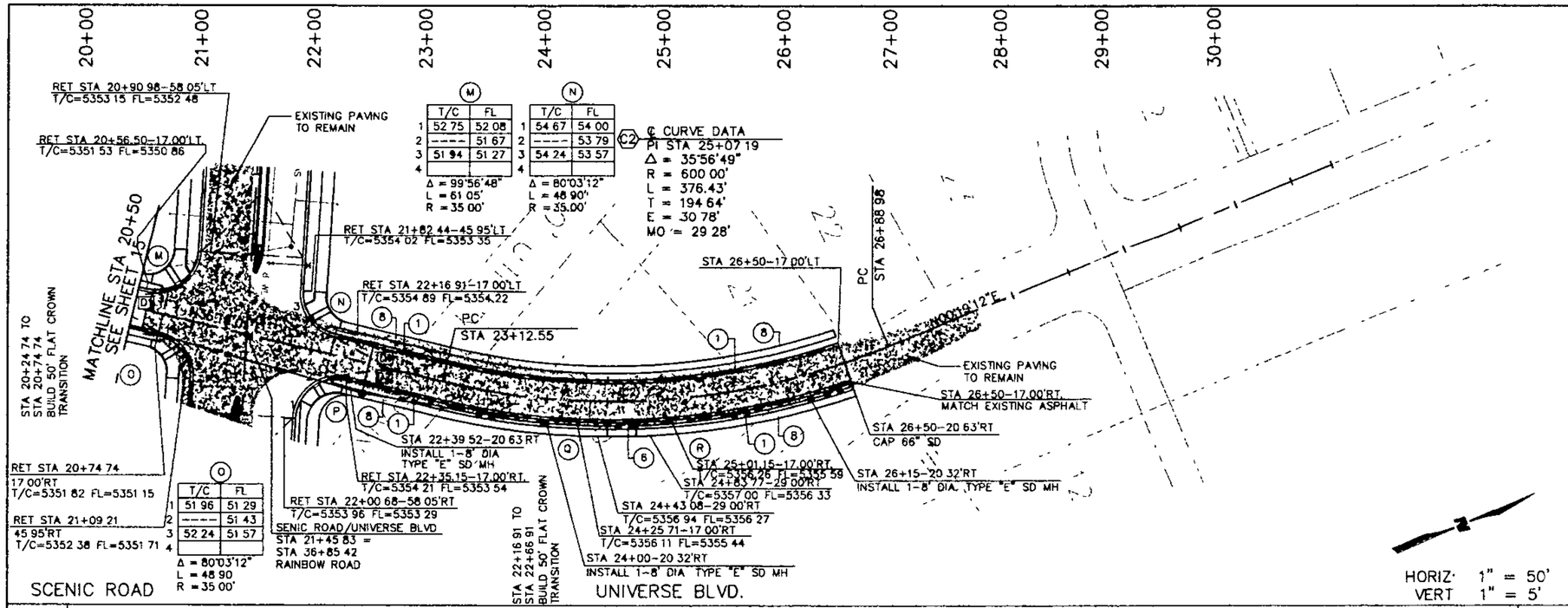
Item	Item Number	Description	Quantity	Unit	Unit Price	Amount
1	343 132	Arterial Pavement, Existing, Remove & Replace, incl 2" extra asphalt thickness, with machine laydown, & with processing existing subbase material, any thickness, cip	3333	SY	$62	$206 646
2	701 1X	Trenching, Backfilling, & Compaction, rock blast, 42" to 60" sewer pipe, over 8' to 12' in depth,pipe not incl compl	4000	LF	$90	$360,000
3	910 019	42" Reinforced Concrete Pipe Class III furnish & place in open trench, cip	3900	LF	$87	$339 300
4	910 066	Bend 42"-48" RCP, any degree, furnish & install in open trench cip	6	EA	$3,275	$19,650
5	920 14	Manhole 6' dia Type "C" or "E", 6' to 10' deep, cip SD 2101	12	EA	$4,075	$48,900
6	603 X	Rip-rap Storm Drain Outfall	1	LS	$20,000	$20,000
		SUBTOTAL ITEMS 1-6				$994,496
7		20% CONTINGENCY				$198,899
8		Mobilization	5%	LS		$59 670
9		Demobilization	2%	LS		$23 868
		SUBTOTAL ITEMS 1-9				$1,276,933
		NMGRT	7%	LS		$89 385
		TOTAL				$1,366,318

30" Storm Drain

Item	Item Number	Description	Quantity	Unit	Unit Price	Amount
1	343 132	Arterial Pavement, Existing, Remove & Replace, incl 2" extra asphalt thickness with machine laydown, & with processing existing subbase material, any thickness, cip	2888	SY	$62	$179,056
2	701 2X	Trenching, Backfilling & Compaction, rock blast, 18-36" sewer pipe, over 8' to 12' in depth,pipe not incl ,compl	4000	LF	$80	$320,000
3	910 013	30" Reinforced Concrete Pipe Class III furnish & place in open trench cip	3900	LF	$50	$195 000
4	910 06X	Bend, 30" RCP, any degree, furnish & install in open trench cip	6	EA	$3 000	$18,000
5	920 07	Manhole, 4' dia Type "C" or "E", 6' to 10' deep, cip SD 2101	12	EA	$2,797	$33,564
6	603 X	Rip-rap Storm Drain Outfall	1	LS	$20,000	$20,000
		SUBTOTAL ITEMS 1-6				$765,620
7		20% CONTINGENCY				$153 124
8		Mobilization	5%	LS		$45 937
9		Demobilization	2%	LS		$18,375
		SUBTOTAL ITEMS 1-9				$983,056
		NMGRT	7%	LS		$68,814
		TOTAL				$1,051,870

36" Storm Drain

Item	Item Number	Description	Quantity	Unit	Unit Price	Amount
1	343 132	Arterial Pavement Existing, Remove & Replace, incl 2" extra asphalt thickness with machine laydown, & with processing existing subbase material, any thickness, cip	3111	SY	$62	$192,882
2	701 2X	Trenching, Backfilling, & Compaction, rock blast, 18-36" sewer pipe, over 8' to 12' in depth,pipe not incl ,compl	4000	LF	$85	$340 000
3	910 017	36" Reinforced Concrete Pipe Class III furnish & place in open trench cip	3900	LF	$77	$300,300
4	910 06X	Bend, 26" RCP, any degree, furnish & install in open trench cip	6	EA	$3 100	$18,600
5	920 14	Manhole, 6' dia , Type "C" or "E" 6' to 10' deep, cip SD 2101	12	EA	$4,075	$48,900
6	603 X	Rip-rap Storm Drain Outfall	1	LS	$20,000	$20,000
		SUBTOTAL ITEMS 1-6				$920,682
7		20% CONTINGENCY				$184 136
8		Mobilization	5%	LS		$55,241
9		Demobilization	2%	LS		$22,096
		SUBTOTAL ITEMS 1-9				$1 182,156
		NMGRT	7%	LS		$82,751
		TOTAL				$1,264,907



	M T/C	M FL
1	52 75	52 08
2	-----	51 67
3	51 94	51 27
4		

Δ = 99°56'48"
L = 61 05'
R = 35 00'

	N T/C	N FL
1	54 67	54 00
2	-----	53 79
3	54 24	53 57
4		

Δ = 80°03'12"
L = 48 90'
R = 35.00'

C2 ℄ CURVE DATA
PI STA 25+07 19
Δ = 35°56'49"
R = 600 00'
L = 376.43'
T = 194 64'
E = 30 78'
MO = 29 28'

	O T/C	O FL
1	51 96	51 29
2	-----	51 43
3	52 24	51 57
4		

Δ = 80°03'12"
L = 48 90
R = 35 00'

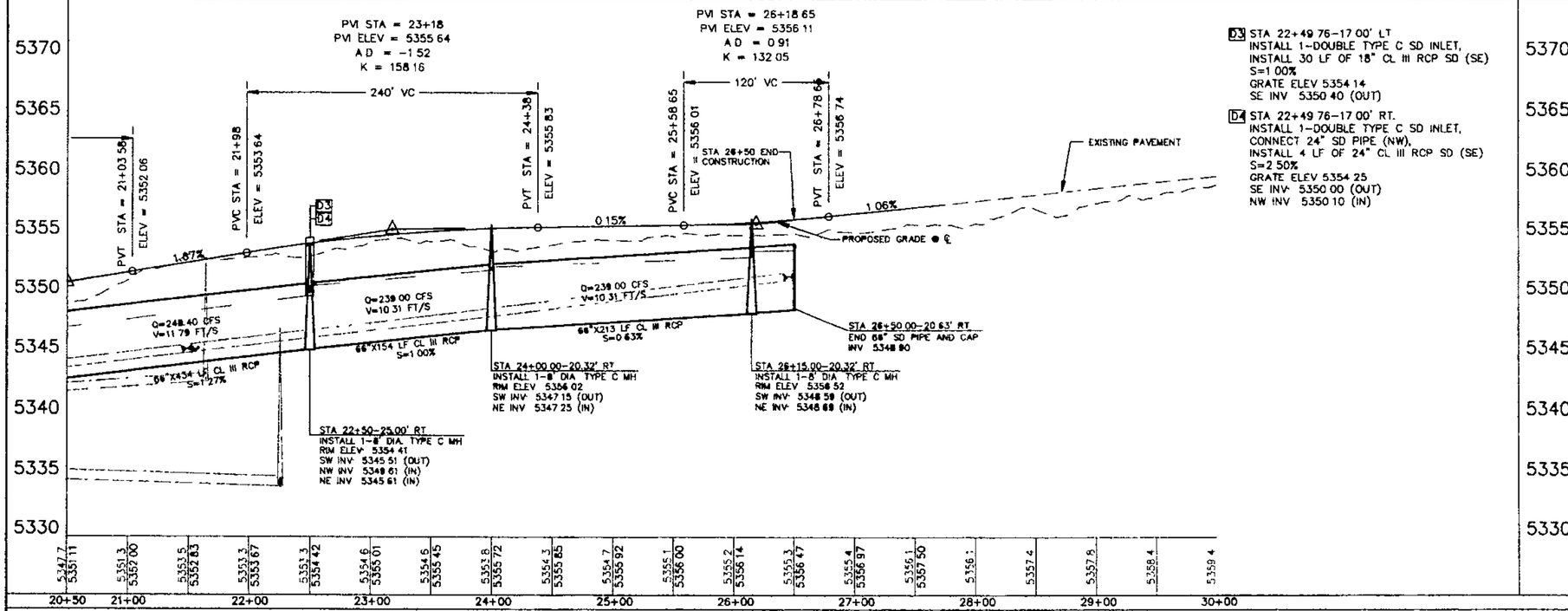
	P T/C	P FL
1	54 02	53 35
2	-----	53 42
3	54 15	53 48
4		

Δ = 99°56'48"
L = 61 05'
R = 35 00'

KEYED NOTES

1. BUILD STANDARD CURB & GUTTER AS PER COA STD DWG 2415A
2. BUILD PINNED CURB TYPE III AS PER COA STD DWG 2415B
3. BUILD MEDIAN NOSE PATTERNED PCC SEE NOTE 10 SHT 4
4. BUILD 6' WIDE VALLEY GUTTER AS PER COA STD DWG 2420
5. BUILD DRIVEPAD AS PER COA STD DWG 2425
7. BUILD ADA RAMP (DIRECTIONAL) WITH DETECTABLE WARNING SURFACE AS PER COA STD DWG 2426 AND SHEET 28
8. BUILD 6' WIDE SIDEWALK AS PER PER STD DWG 2430 AND SIDEWALK TABLE THIS SHEET
9. BUILD ADA RAMP WITH DETECTABLE WARNING SURFACE AS PER COA STD DWG 2441 CASE I AND DETAIL ON SHEET 28
10. BUILD 10' WIDE WALKING TRAIL PER TYPICAL SECTION ON SHT 4
11. BUILD 6' HIGH CMU WALL PER DETAIL ON SHT 28

DMD 1-18-12



D3 STA 22+49 76–17 00' LT
INSTALL 1–DOUBLE TYPE C SD INLET,
INSTALL 30 LF OF 18" CL III RCP SD (SE)
S=1 00%
GRATE ELEV 5354 14
SE INV 5350 40 (OUT)

D4 STA 22+49 76–17 00' RT.
INSTALL 1–DOUBLE TYPE C SD INLET,
CONNECT 24" SD PIPE (NW),
INSTALL 4 LF OF 24" CL III RCP SD (SE)
S=2 50%
GRATE ELEV 5354 25
SE INV 5350 00 (OUT)
NW INV 5350 10 (IN)

0 50 75 100
HORIZONTAL SCALE
0 5 7.5 10
VERTICAL SCALE

11"x17" SCALE 22"x34" SCALE
HORIZ 1"=100 HORIZ 1"=50
VERT. 1"=10' VERT 1"=5

WILSON & COMPANY
4900 LANC AVE NE
ALBUQUERQUE NEW MEXICO 87109
PH (505) 348-4000
FAX (505) 348-4072
www.wilsonco.com

AS-BUILT INFORMATION
CONTRACTOR / DATE
WORK STAKED BY / DATE
FIELD VERIFIED BY / DATE
DRAWINGS REVISED BY / DATE
CITY INSPECTOR / DATE

BENCH MARKS
ACS BRASS CAP, STAMPED "3-E10"
SET IN TOP OF CONCRETE POST PROJECTING 0.30 FT ABOVE GROUND LOCATED APPROX 225' E OF THE INTERSECTION OF RIM ROCK DR. NW AND MARIGOLD DR. NW (NAD 1983), X 1499059.806, Y 1512627.946
ELEVATION = 5318.89 FT. (NAVD 1988)

SURVEY INFORMATION
FIELD NOTES
NO. BY DATE

ENGINEER'S SEAL

NO.	DATE	REMARKS	BY
		REVISIONS	

WILSON & COMPANY, ENGINEERS & ARCHITECTS
DESIGNED BY DAS DATE JUNE 11
DRAWN BY STAFF DATE JUNE 11
CHECKED BY SAM DATE JUNE 11

CITY OF ALBUQUERQUE
DEPARTMENT OF MUNICIPAL DEVELOPMENT
ENGINEERING DIVISION

SPECIAL ASSESSMENT DISTRICT 228–VOL 2

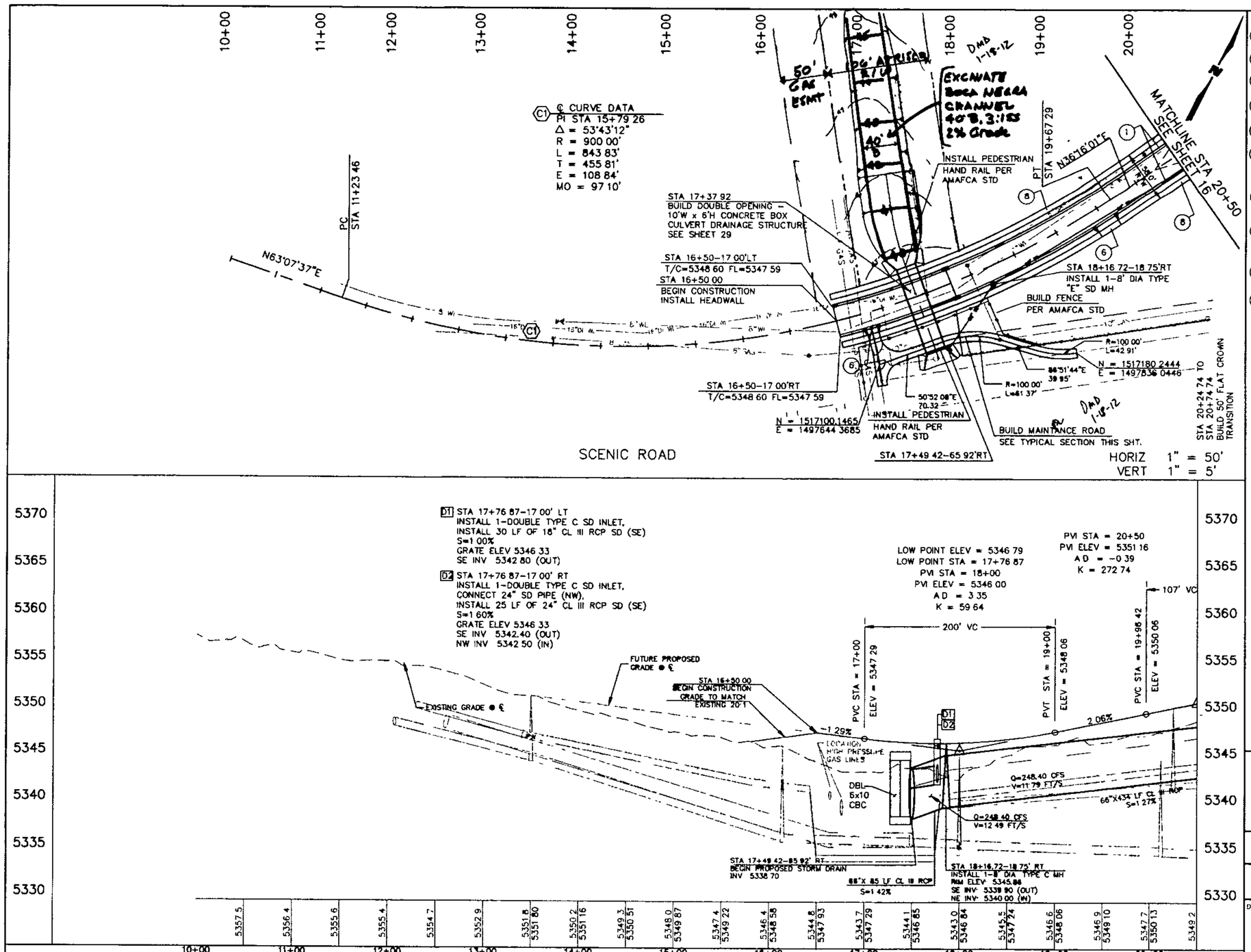
PAVING/STORM DRAIN PLAN & PROFILE
SCENIC ROAD / UNIVERSE BLVD.

Design Review Engineer / Date
City Engineer Approval / Date
Final Design Update
No. / Date / By
No. / Date / By

City Project No 693391
Zone Map No D–9, D–10
Sheet 16 Of 29

M:\RR\08-430-104-00\CADD\SHEETS\UNITS 14-25\PNP Road\PNP_Scenic Dr_UNIVERSL BLVD.dwg 12/30/2011 11 09 32 AM MST

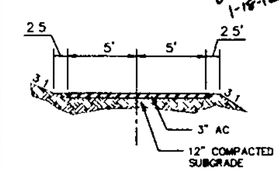
WCEA #0840010400
DECEMBER 2011



KEYED NOTES:

1. BUILD STANDARD CURB & GUTTER AS PER COA STD DWG 2415A
2. BUILD PINNED CURB TYPE III AS PER COA STD DWG 2415B
3. BUILD MEDIAN NOSE PATTERNED PCC SEE NOTE 10 SHT 4
4. BUILD 6' WIDE VALLEY GUTTER AS PER COA STD DWG 2420
6. BUILD DRIVEPAD AS PER COA STD DWG 2425
7. BUILD ADA RAMP (DIRECTIONAL) WITH DETECTABLE WARNING SURFACE AS PER COA STD DWG 2426 AND SHEET 28
8. BUILD 6' WIDE SIDEWALK AS PER PER STD DWG 2430 AND SIDEWALK TABLE THIS SHEET
9. BUILD ADA RAMP WITH DETECTABLE WARNING SURFACE AS PER COA STD DWG 2441 CASE I AND DETAIL ON SHEET 28
10. BUILD 10' WIDE WALKING TRAIL PER TYPICAL SECTION ON SHT 4
11. BUILD 6' HIGH CMU WALL PER DETAIL ON SHT 28

DMD 1-18-12



15' MAINTANCE ROAD

DMD 1-18-12

0 50 75 100
HORIZONTAL SCALE

0 5 7.5 10
VERTICAL SCALE

11"x17" SCALE HORIZ 1"=100' VERT 1"=10
22"x34" SCALE HORIZ 1"=50' VERT 1"=5

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AS-BUILT INFORMATION
BENCH MARKS
ACS BRASS CAP STAMPED "3-E10"
SET IN TOP OF CONCRETE POST PROJECTING 0.30 FT ABOVE GROUND LOCATED APPROX 225' E OF THE INTERSECTION OF RIM ROCK DR NW AND MARIGOLD DR NW
(NAD 1983), X 1499059 806, Y 1512627 946
MICRO-FILM INFORMATION
ELEVATION = 5318.89 FT (NAVD 1988)

SURVEY INFORMATION
FIELD NOTES

NO	BY	DATE

ENGINEER'S SEAL

NO	DATE	REMARKS	BY

REVISIONS

WILSON & COMPANY, ENGINEERS & ARCHITECTS

DESIGNED BY	DAS	DATE JUNE 11
DRAWN BY	STAFF	DATE JUNE 11
CHECKED BY	SJM	DATE JUNE 11

CITY OF ALBUQUERQUE
DEPARTMENT OF MUNICIPAL DEVELOPMENT
ENGINEERING DIVISION

SPECIAL ASSESSMENT DISTRICT 228-VOL 2

PAVING/STORM DRAIN PLAN & PROFILE

SCENIC ROAD

Design Review Committee | City Engineer Approval | Mo./Day/Yr. | Mo./Day/Yr. | Last Design Update

City Project No. 693391 | Zone Map No. D-9, D-10 | Sheet 15 of 29

WCEA #0840C10400
DECEMBER 2011

J:\RR\08-400-104-00\CADD\SHEETS\UNITS 14-25\PNP Road\PNP_Scenic Dr_UNIVERSE BLVD.dwg 1/4/2012 10:24:31 AM MST

AMENDMENT TO THE TRAILS UNIT II DRAINAGE MASTER PLAN

Albuquerque, New Mexico

AUGUST 2007

PREPARED FOR:

Longford Homes
7007 Jefferson St. NE, Suite A
Albuquerque, New Mexico 87109

PREPARED BY:

Wilson & Company, Engineers & Architects
2600 American Rd. SE Suite 100
Rio Rancho, NM 87124

WCEA File No. 07-600-001-00

WILSON
&COMPANY

No approval letter
provided at DRB

AMENDMENT TO THE TRAILS UNIT II DRAINAGE MASTER PLAN

Albuquerque, New Mexico

AUGUST 2007

I, Donald M. Duneman, do hereby certify that this report was prepared by me or under my direction and that I am a duly registered Professional Engineer under the laws of the State of New Mexico.

Donald M Duneman, P.E.
NM No. 17616

8/22/07
Date

DONALD M. DUNEMAN
NEW MEXICO
17616
LICENSED PROFESSIONAL ENGINEER

Executive Summary

Wilson & Company prepared this drainage master plan amendment under contract to The Trails, LLC. The document provides a basis for the design of storm water conveyance systems for the Trails Unit II along Universe Blvd. The objective of this amendment is to re-analyze the hydrologic characteristics for The Trails Unit II based on requirements of the approved Volcano Heights Sector Development Plan (VHSDP). Development unit densities within the Trails have increased from previously assumed values and basin boundaries have changed due to the VHSDP. Additionally, the allowable discharge from the Trails master plan area is being reduced from 200 c.f.s. to under 50 c.f.s. in order to decrease the cost of downstream infrastructure.

50cfs to Universe Blvd 2007

The "Master Drainage Study for The Trails Subdivision", dated December 2003, prepared by Bohannan-Huston, Inc (BHI Study) outlines the major drainage requirements for the entire Trails development. Wilson & Company has revised the BHI Study as the project progresses to more accurately model the drainage conditions. The latest revision to the Drainage Master Plan is included in this report as Plate 1 and Plate 2 for Developed and Interim Conditions, respectively (Appendix C).

The Hydrologic analysis conforms to Section 22.2 of the Albuquerque Development Process Manual. Hydrologic modeling was performed using AHYMO, version 1997.02. AHYMO input and summary files can be found in Appendix A and B for the Interim and Developed conditions, respectively.

Proposed Drainage Basins will be conveyed as follows:
Basins J, J1 and J4 are routed directly through Pond J.
Basins J2, J3, L2 and Ponds G and J outflow are routed directly through Pond L.
Basins L, L1 and Pond H outflow are routed directly through Pond K1.
Basin K and Ponds K1 and L outflow are routed directly through Pond K.

The master planned area will drain through a series of detention surge ponds to the southeast corner of the Trails project to reduce flows. In the fully developed conditions, a future storm drain system (currently under design, COA#761281) is scheduled to carry developed flows from the southeast corner of the Trails south to the Boca Negra Detention Dam. As previously mentioned, the maximum allowable discharge is now being restricted to 50 c.f.s. The current design will release a peak flowrate of approximately 48 c.f.s., while detaining approximately 21 acre-feet of storm-water runoff. See plate 1 for the overall drainage plan for developed conditions, including all hydrologic summary tables.

In the interim, historic flows will be released from the Universe Blvd. detention ponds to the east. The drainage area used to determine historic flows from the Trails was referenced from the approved Drainage Report for La Cuentista Subdivision, Wilson & Company, Nov. 2003. La Cuentista drainage basin 101 in the aforementioned report encompasses a 40 acre portion of the Trails. Historic flows for basin 101 are 0.5 c.f.s. per

acre, so approximately 20 c.f.s. is released from the Trails to this basin in the historic condition. See Plate 6 - Existing Conditions Basin Boundary Map for La Cuentista Subdivision for this existing drainage basin (Appendix C). It was determined, based on this analysis, that the revised ponds will detain fully developed flows from all of the Trails Units I & II in the interim, assuming that runoff from Unit III is retained offsite. The current design will release a peak flowrate of 19.73 c.f.s., while detaining approximately 21 acre-feet of storm-water runoff. See plate 2 for the overall drainage plan for interim conditions, including all hydrologic summary tables.

Storm-water Detention Surge Ponds were designed based on the fully developed conditions and evaluated for the interim conditions. Preliminary grading plans for Pond J, Pond L and Pond K are found in Appendix C (Plates 3, 4, 5)

Conclusion

The current stormwater system safely conveys runoff in both the fully developed condition and the interim condition. The interim condition analysis concludes that the current pond design can accommodate fully developed flows from both Units I and II, while runoff from Unit III is retained. Wilson & Company recommends that the proposed storm drain system undergo regular maintenance activities. This should include removing debris from grate inlets, as well as removing sediment buildup within the pipe system.

As a result of the interim condition analysis, temporary orifice plates shall be installed at Pond D, Pond E, Pond F, Pond G, Pond H and Pond L. In addition, temporary plugs shall be installed at Ponds J and K, with a temporary culvert at each pond allowing a maximum discharge of 20 c.f.s. to drain east as it has historically. See grading plans in Appendix C (plates 3, 4, 5). These temporary designs shall remain in place until the Universe storm drain to the Boca Negra Detention Dam is constructed.

Tim Eichenberg, Chairman
Danny Hernandez, Vice Chairman
Bruce M. Thomson, Secretary-Treasurer
Ronald D Brown, Assistant Secretary-Treasurer
Daniel F. Lyon, Director

Jerry M Lovato, P.E.
Executive Engineer

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 Prospect N.E., Albuquerque, NM 87107
Phone: (505) 884-2215 Fax: (505) 884-0214
Website: www.amafca.org

May 17, 2012

Mr. Michael Riordan, P.E.
Director, Department of Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87102

Ms. Jannelle Speake
KB Homes Phoenix, Inc.
4127 E. Van Buren Street, Suite 150
Phoenix, Arizona 85008

Mr. John Murtagh, P.E.
The Trails, LLC
Longford Group, Inc.
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120

Mr. Dan Aguirre, P.E.
Wilson & Company, Inc
4900 Lang Ave.
Albuquerque, NM 87109

Mr. Rick Beltramo, P.E.
Director of Engineering
Galway Construction, Inc
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: The Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements, dated September 22, 2005 (the "Agreement") – New Bid Date – June 14, 2012

Dear Mr. Riordan, Ms. Speake, Mr. Murtagh, Mr. Aguirre, and Mr. Beltamo:

On April 22, 2012, AMAFCA advertised the request for proposals to construct the Boca Negra Dam. To date, AMAFCA has issued four addendums on the project. On May 11, 2012 addendum four was issued that changed the bid date from May 17, 2012 to June 14, 2012.

On May 9, 2012, AMAFCA received information that the soil treatment that was specified for the area around the New Mexico Gas Company's (NMGC) high pressure gas lines was more expensive than what was estimated in the engineers estimate. The cost of the soil treatment was about one million dollars.

On May 11, 2012, I directed staff to change the bid date and send addendum four to the potential bidders. Since May 11th, AMAFCA staff has met with NMGC staff to discuss alternative methods to address consolidation of the soil around the high pressure gas

lines. AMAFCA will be installing a test section of pipe line treatment at the North Diversion Channel Outfall that will be evaluated by NMGC staff to ensure that the pipe line is not damaged and that maintenance activities are not affected by the alternative spoil treatment.

If you have any questions as to the scope of the project or the break out between the requisite bid lots, please call Kurt Wagener, AMAFCA's Project Manager at 884-2215. Kurt and I will be happy to meet to discuss this matter at your convenience.

Sincerely,
AMAFCA

Jerry M. Lovato, P.E.
Executive Engineer

Cc Richard Dourte, P.E., City Engineer, City of Albuquerque
Kurt Wagener, P.E., Field Engineer, AMAFCA

CITY OF ALBUQUERQUE

THREE HUNDRED YEARS
1706 • 2006
ALBUQUERQUE
Making History

January 10, 2006

Steve Salazar, PE
Wilson & Company
2600 American Rd, SE, Ste. 100
Rio Rancho, NM 87124

Re: Amendment to the Trails Unit II & III Subdivision Master Drainage Study
Engineer Stamp 12-23-05 (C9/D1)

Dear Mr. Salazar,

Based upon information provided in your submittal dated 12-23-05, the above referenced study is approved as a DMP for the development of the Trails Subdivision, Units 2 and 3. All subsequent subdivisions must adhere to this report or it must be amended as conditions change.

If you have any questions, you can contact me at 924-3986.

Sincerely,

Bradley L. Bingham

Bradley L. Bingham, PE
Principal Engineer, Planning Dept.
Development and Building Services

C: file

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

DRAINAGE REPORT

for

AMENDMENT TO THE TRAILS UNIT II & III DMP
Albuquerque, New Mexico

DECEMBER 2005

I, Steve J. Salazar, do hereby certify that this report was prepared by me or under my direction and that I am a duly registered Professional Engineer under the laws of the State of New Mexico.

Steve J. Salazar, P.E.
NM No. 16241

12/23/05
Date

STEVE J. SALAZAR
NEW MEXICO
16241
LICENSED PROFESSIONAL ENGINEER

Table of Contents

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I.	Introduction	3
II.	Project Description	3
III.	Existing Conditions	4
IV.	Developed Conditions	4
V.	Conclusion	5
VI.	Exhibits	5
VII.	Plates	10

List of Exhibits

Exhibit A: Vicinity Map

Exhibit B: FEMA Flood map with site

Exhibit C: Zone Atlas Sheet C-9-Z with site

Exhibit D: Soils Map

List of Plates

(Located in Pockets)

Plate 1: Overall Pond Grading & Drainage plan - Developed Conditions

Plate 2: Overall Pond Grading & Drainage plan - Future Developed Conditions (Drainage Master Plan)

List of Appendices

Appendix A: AHYMO Input and Output for Fully Developed Conditions

Appendix B: HYDRAFLOW Storm Drain Sizing Analysis

Introduction

Wilson & Company prepared this drainage report under contract to Longford Homes. The document provides the amendments for the design of storm water conveyance systems for Trails Unit II & III (subject property). The objective of this report is to analyze the hydrologic characteristics associated with the existing and developed conditions.

The "Master Drainage Study for The Trails Subdivision", dated December 2003, prepared by Bohannan-Huston, Inc (BHI Study) outlines the major drainage requirements for the entire Trails development. This DMP covers a large area surrounding the subject property. The master planned area will drain through a series of detention ponds and detention surge ponds to the southeast corner of the Trails project to reduce flows. As established in the "Amendment to The Trails Subdivision Master Drainage Study", dated May 5, 2004 and prepared by Wilson & Company, a future storm drain system (currently under design, COA#761281) is scheduled to carry developed flows from the southeast corner of the Trails south to the Boca Negra Detention Dam. Wilson & Company has revised the BHI Study as the project progresses to more accurately model the drainage conditions. This revised Drainage Master Plan is included in this report as Plate 2 (also referred to as the Overall Pond Grading & Drainage Plan for Future Developed Conditions). The Drainage Master Plan establishes revised Basins, Pond and Hydrologic summary data.

Project Description

The proposed development is located within the city limits of Albuquerque, New Mexico. The subject property consists of approximately 189.65 acres under The Trails Unit II and 164.95 acres of undeveloped land under The Trails Unit III, on the west side of Albuquerque, south of Ventana Ranch subdivision. The Trails Subdivision is located on Albuquerque's Northwest Mesa, west of Universe Boulevard and south of Paseo Del Norte. There is a 50 feet PNM Gas Easement on the east side of the tract, which runs parallel to Rainbow Blvd. See Exhibit A, Vicinity Map.

There are currently 5 tracts within the Trails Unit I Subdivision that are developed or under construction - Santa Fe at the Trails (Tract C of the Trails), Taos at the Trails (Tract D of the Trails), Heritage at the Trails Units I and II (Tract A & B of the Trails respectively), The Reserve at the Trails (Tract F of the Trails). Currently within Trails Unit II bulk plat, Santa Fe at the Trails Unit II (Tract 6 of the Trails Unit II) is in the City of Albuquerque development process. The Trails Unit II Infrastructure Plans (COA #730084) is also currently under construction, which includes the development of the backbone improvements including Woodmont Avenue, Oakridge Street, Rainbow Boulevard, Paseo Del Norte and Universe Boulevard within the boundaries of The Trails Unit II. Also included is the construction of all major drainage facilities necessary for the development of The Trails Unit II. We are including the Overall Drainage concept within the Trails Unit III bulk plat for future reference.

The subject property is located on Zone Atlas Sheet C-9-Z. See Exhibit C for site location on this Zone Atlas Sheet. The Trails Unit II & III is currently zoned R-D. No portion of subject property lies within the 100-year flood zone based on FIRM Map #35001C0111D dated September 20, 1996. See Exhibit B for site location on the Flood Insurance Rate Map.

Existing Conditions

The subject property (Trails Master-planned Area) consists of approximately 354.6 acres of undeveloped land on the west side of Albuquerque, south of Ventana Ranch subdivision. Currently, the site drains to the southeast with slopes ranging from 2% to 5% and is covered with native grasses, scrub brush, and exposed basaltic ridges. The soils are classified as Alemeda Sandy Loam (AmB) for slopes based on sheet 10 of Soil survey of Bernalillo County. See Exhibit D for site location on the Soils map. A shallow basaltic layer runs subsurface of the natural grade, and varies in depth from 0 ft to 9 ft.

Developed Conditions

(Refer to Plates 1 & 2 –Developed Conditions)

The Drainage system was designed based on the grades established in the grading & drainage plan, and by street flow capacity and storm drain requirements. Grading was affected mostly by the existing grading of Ponds and design of Woodmont Ave. & Rainbow Blvd per The Trails Unit II Construction Plans. The sole purpose of this drainage report is to revise the drainage conditions under Trails Unit II approved Plans (COA # 730084). Pond E within the approved Trails Unit II plans has been relocated from Tract 11 to a portion within Tract 12 and a portion within Tract 10 of The Trails Unit II bulk plat currently named Pond H. The volume of Pond E of the approved Trails Unit II is split between Pond E (Tract 12) & Pond H (Tract 10). See the Developed condition Sub-basin Analysis point summary of Overall Grading & Drainage Plan Developed Conditions of Plate 2.

The total developed onsite flows from Tract 11, which is 33.32cfs (Basin H1) is captured through a series of inlets and shall be routed to Pond H, which will be built as part of The Trails Unit II, City Project # 730084. Proposed offsite flows from the park to north of Tract 11 (Basin E1) are captured by inlets and routed into Pond E on northwest side of intersection of Woodmont Ave. and Rainbow Blvd. Developed flows on Rainbow Blvd (Basin H2) are captured by inlets on north side of intersection of Woodmont Ave. and Rainbow Blvd and then routed to Pond H. Developed offsite flows from Woodmont Ave to the north are captured by inlets on the Woodmont Avenue and then routed to Pond E. See plate 2, Overall Pond Grading and Drainage plan developed conditions. See Sub-Basin Analysis point summary under developed conditions in Plate 2, Overall Pond Grading and Drainage plan developed conditions.

In the interim conditions, Ponds E & H will be plugged to retain upstream flows from a 100 year 10 day event until COA # 730085 is built out. An undeveloped basin of 94.66 acres to the west of Tract 11 drains through Pond E, so as part of this development, a temporary detention pond will be built to accommodate these flows as per Tract 11

Drainage Report. This pond was designed for a 100 year 10 day volume of 3.39 AC-FT with a capacity of 3.8 AC-FT. See Plate 3, Grading and Drainage plan for Pond Design.

In the future developed conditions, Ponds E & H will be detention surge ponds. Upstream flows from Ponds E & H will be conveyed directly into the Universe storm drain system. According to the "Amendment to the Trails Subdivision Master Drainage Study", a maximum of flowrate of 200 cfs is allowed from the Trails Subdivision. According to the revised Drainage Master Plan, a maximum 100 year, 24 hour flowrate of 194 cfs will enter the Universe Blvd. storm drain system to the Boca Negra Dam, with a 100 year, 24 hour volume of 68.2 AC-FT. See Plate 2 for the Overall Pond Grading & Drainage Plan for Developed Conditions.

Once the storm drain from The Trails to the Boca Negra Detention Dam is completed as well as the construction of Boca Negra Dam, the plugs for all the ponds with in The Trails Unit II can be removed, creating a detention surge facility and eliminating the need to retain runoff from the Trails.

The hydrologic analysis for the interim and developed condition was completed using the Arid Lands Hydrologic Model (AHYMO) Version 1997.02. The 100-year 24-hour return frequency storm was used as the basis of analysis. (See Appendices A & B for input and output data). Methodology outlined in Section 22.2 of the City of Albuquerque Development Process Manual was also incorporated into this analysis. Street flows have been evaluated using Flow Master by Haested Methods. Street flows were analyzed for the use of roll type curb where capacities permitted. Inlets are located to prevent exceeding the street flow capacities per the DPM. See Appendix C for street capacity analysis. Storm Drain design and analysis was performed using *Hydraflow*. See Appendix D for *Hydraflow* output.

Conclusion

The analysis performed for this report demonstrates that the proposed system of streets and storm drainage improvements will safely convey and retain fully the 100-year storm runoff from the offsite and the onsite basins contributing to the site development. Wilson & Company recommends that the proposed storm drain system undergo regular maintenance activities. This should include removing debris from grate inlets, as well as removing sediment buildup within the pipe system. The future area contributing flow to the The Trails Unit II & III storm drainage system should be analyzed in greater detail at the time of development to ensure that the runoff is within the constraints of this design.

```
                                        AHYMO.SUM
    AHYMO PROGRAM SUMMARY TABLE (AHYMO_97) -                          - VERSION:
1997.02c       RUN DATE (MON/DAY/YR) =11/22/2005
    INPUT FILE = TRAILS.WPD
         USER NO.= AHYMO-C-9803c01UNMLIB-AH

                                   FROM  TO                      PEAK          RUNOFF
            TIME TO    CFS       PAGE =   1
                       HYDROGRAPH   ID   ID          AREA     DISCHARGE       VOLUME
  RUNOFF     PEAK      PER
    COMMAND        IDENTIFICATION   NO.  NO.       (SQ MI)      (CFS)         (AC-FT)
 (INCHES)  (HOURS)    ACRE     NOTATION

    *S THE TRAILS OVERALL DRAINAGE - FULLY DEVELOPED CONDITIONS
    *SUMMARY              1 MID. B. PIEDRAS- DEV CONDS WITH BULK - MODIFIED 7/95
    START
                              TIME=       .00
    RAINFALL  TYPE= 2
                              RAIN24=   2.660
    SEDIMENT BULK
                              PK BF =    1.00
    *S*
    *S*****************************************************************************
    *S*****************************************************************************
    *S************** COMPUTE ONSITE BASINS FROM THE TRAILS SUBDIVISION**************
    COMPUTE NM HYD      OFFSITE1   -    50        .19980        38.48        4.588
   .43051    2.050     .301 PER IMP=    .00
    ROUTE RESERVOIR   OFF.POND.1   50   53        .19980         9.40        4.588
   .43051    3.250     .073 AC-FT=    2.420
    COMPUTE NM HYD       BASIN.A   -    20        .10480       222.42        9.013
  1.61257    1.500    3.316 PER IMP=  50.00
    ADD HYD                  1.A 53&20  52        .30460       224.45       13.601
   .83721    1.500    1.151
    ROUTE RESERVOIR       POND.A   52   50        .30460        16.94       13.601
   .83721    2.400     .087 AC-FT=    6.375
    COMPUTE NM HYD       BASIN.D   -    25        .09110       151.97        7.835
  1.61257    1.550    2.606 PER IMP=  50.00
    ADD HYD                1.A.D 50&25  30        .39570       164.89       21.436
  1.01571    1.550     .651
    DIVIDE HYD          BYPASS.D   30   31        .27474        16.00       14.883
  1.01571    1.300     .091
                         SURGE.D  and   32        .12096       148.89        6.553
  1.01571    1.550    1.923
    ROUTE RESERVOIR       POND.D   30   50        .39570        23.56       21.436
  1.01571    2.700     .093 AC-FT=    5.387
    COMPUTE NM HYD       BASIN.C   -    20        .02110        44.81        1.815
  1.61257    1.500    3.319 PER IMP=  50.00
    ADD HYD               1.A.D.C 50&20  25        .41680        63.88       23.250
  1.04593    1.500     .239
    COMPUTE NM HYD       BASIN.F   -    20        .12960       274.98       11.146
  1.61257    1.500    3.315 PER IMP=  50.00
    ADD HYD             1.A.D.C.F 20&25  30        .54640       338.86       34.396
  1.18033    1.500     .969
    DIVIDE HYD          BYPASS.F   30   31        .41899        46.00       26.376
  1.18033    1.300     .172
                         SURGE.F  and   32        .12741       292.86        8.021
  1.18033    1.500    3.591
    ROUTE RESERVOIR       POND.F   30   50        .54640        33.92       34.396
  1.18033    2.450     .097 AC-FT=    9.405
    COMPUTE NM HYD       BASIN.G   -    20        .04990       105.96        4.292
  1.61257    1.500    3.318 PER IMP=  50.00
    ADD HYD            1.A.D.C.F.G 20&50  30        .59630       138.81       38.688
  1.21650    1.500     .364
    ROUTE RESERVOIR       POND.G   30   27        .59630        33.51       38.692
```

```
1.21664    3.400     .088 AC-FT=    3.656
  COMPUTE NM HYD     OFFSITE2   -    55        .08050        14.42        1.848
 .43051    2.050     .280 PER IMP=    .00
  ROUTE RESERVOIR    OFFPOND2   55   50        .08050         4.49        1.848
 .43051    3.200     .087 AC-FT=     .857
  COMPUTE NM HYD      BASIN.B   -    30        .04010        85.15        3.449
1.61257    1.500    3.318 PER IMP=  50.00
  ADD HYD                  2.B 50&30  35        .12060        85.67        5.297
 .82355    1.500    1.110
  ROUTE RESERVOIR       POND.B   35   50        .12060         3.38        5.297
 .82350    6.450     .044 AC-FT=    3.150
  COMPUTE NM HYD      BASIN.E   -    30        .07240       153.72        6.227
1.61257    1.500    3.317 PER IMP=  50.00
  COMPUTE NM HYD     BASIN.E1   -    32        .02480        31.45         .967
 .73104    1.500    1.981 PER IMP=   7.00
  ADD HYD                2.B.E 50&30  40        .19300       156.14       11.523
1.11950    1.500    1.264
  ADD HYD              2.B.E.E1 40&32  41        .21780       187.59       12.490
1.07527    1.500    1.346
  ROUTE RESERVOIR       POND.E   41   42        .21780        34.26       12.490
1.07527    2.000     .246 AC-FT=    3.547
  DIVIDE HYD          BYPASS.E   41   45        .15225        28.00        8.731
1.07527    1.350     .287
                       SURGE.E  and   46        .06555       159.59        3.759
1.07527    1.500    3.804
  COMPUTE NM HYD      BASIN.H1   -    33        .01830        32.46        1.101
1.12838    1.500    2.772 PER IMP=  20.20
  COMPUTE NM HYD      BASIN.H2   -    34        .00900        23.59        1.094
2.28007    1.500    4.096 PER IMP=  90.00
  ADD HYD                 H1.H2 33&34  35        .02730        56.06        2.196
1.50804    1.500    3.208
  ADD HYD          2.B.E.E1.H1. 42&35  40        .24510        85.85       14.686
1.12347    1.500     .547
  COMPUTE NM HYD       BASIN.H   -    20        .01161        26.30        1.109
1.79108    1.500    3.539 PER IMP=  60.00
  ADD HYD          2.B.E.H1.H2. 40&20  21        .25671       112.14       15.795
1.15366    1.500     .683
  ROUTE RESERVOIR       POND.H   21   30        .25671        35.28       15.802
1.15415    2.500     .215 AC-FT=    2.766
  DIVIDE HYD          BYPASS.H   21   35        .22158        37.00       13.634
1.15366    1.350     .261
                       SURGE.H  and   36        .03513        75.14        2.161
1.15366    1.500    3.342
```

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                                  FROM  TO                    PEAK        RUNOFF
          TIME TO    CFS      PAGE =   2
                     HYDROGRAPH   ID   ID        AREA     DISCHARGE      VOLUME
RUNOFF     PEAK      PER
  COMMAND        IDENTIFICATION   NO.  NO.      (SQ MI)      (CFS)       (AC-FT)
(INCHES)  (HOURS)    ACRE     NOTATION

  COMPUTE NM HYD      BASIN.L   -    20        .04224        78.21        3.633
1.61257    1.550    2.893 PER IMP=  50.00
  ADD HYD                 2BEHL 20&30  25        .29895       104.68       19.434
1.21892    1.550     .547
  COMPUTE NM HYD      BASIN.J   -    80        .05140        82.74        4.421
1.61257    1.600    2.515 PER IMP=  50.00
  ROUTE RESERVOIR       POND.J   80   90        .05140        21.36        4.421
1.61256    2.100     .649 AC-FT=    2.140
  COMPUTE NM HYD      BASIN.K   -    85        .07050       128.14        6.063
1.61257    1.550    2.840 PER IMP=  50.00
  ADD HYD                   J.K 90&85  91        .12190       136.13       10.484
1.61255    1.550    1.745
```

```
  ADD HYD              1ADCFG.JK 27&91  95          .71820        164.27       49.176
1.28384    1.550      .357
  ROUTE RESERVOIR        POND.K   95   70          .71820        101.37       49.176
1.28384    1.850      .221 AC-FT=    2.150
  DIVIDE HYD           BYPASS.K   95   97          .68793         80.00       47.103
1.28384    1.450      .182
                        SURGE.K  and   98          .03027         84.27        2.073
1.28384    1.550     4.350
  ADD HYD             TRAILS.ALL 25&70  **        1.01715        181.75       68.610
1.26476    1.600      .279
  *S*****************************************************************************
  *S****RUNOFF FROM THE TRAILS IS CONVEYED TO THE BOCA NEGRA DETENTION FACILITY
  *S****VIA UNIVERSE SD PER "AMENDMENT TO THE TRAILS SUBDIVISION MASTER DRAINAGE S
  *S****DATED MAY 5, 2004 BY WILSON & CO.
  *S*****************************************************************************
  *S****END OF THE TRAILS DRAINAGE ANALYSIS
  FINISH
```

Storm Sewer Summary Report

Line No.	Line ID	Flow rate (cfs)	Line size (in)	Line length (ft)	Invert EL Dn (ft)	Invert EL Up (ft)	Line slope (%)	HGL down (ft)	HGL up (ft)	Minor loss (ft)	HGL Junct (ft)	Dns line No.
1		94.70	48 c	400.0	5411.74	5412.94	0 300	5422.00*	5423.74*	0.88	5424.62	End
2		48.90	30 c	305.8	5413.04	5430.49	5.706	5424.62	5432.78	0.25	5432.78	1
3		48.90	30 c	317.4	5430.59	5433.93	1.053	5433.09*	5437.60*	1.54	5439.15	2
4		34.30	24 c	154.0	5434.03	5434.80	0.500	5439.15*	5442.69*	1.04	5443.73	3
5		34.30	24 c	220.1	5434.90	5436 00	0.500	5443.73*	5448.79*	1.85	5450.64	4
6		32.50	30 c	201.1	5413 04	5414 05	0.502	5424.82*	5426 09*	0.68	5426.77	1
7		13.30	24 c	116.7	5413.04	5413.62	0.497	5425.23*	5425.63*	0.28	5425.91	1

Project File: SD-RAINBOW-SURGE.stm	Number of lines: 7	Run Date: 12-21-2005

NOTES: c = cir; e = ellip; b = box; Return period = 100 Yrs. ; *Surcharged (HGL above crown).

Cherne, Curtis

From: Whitcomb, Blake

Sent: Thursday, November 29, 2012 1:25 PM

To: Curran, Kevin J.; Marcus@roblesrael.com; tim@flynnobrien.com; Ric Leverick; Brian Mulqueen

Cc: bpaul@realcapitalsolutions.com; Dourte, Richard H.; Loyd, Tony J.; John Murtagh (jmurtagh@gcinm.com); Kelly Calhoun (kcalhoun@gcinm.com); Rick Beltramo (rbeltramo@gcinm.com); jlovato@amafca.org; Cherne, Curtis ; Cloud, Jack W.

Subject: Receipt of Executed Settlement Agreement and MOA Amendment

Greetings All,

I have received executed copies of the Boca Negra Dam Settlement Agreement from all parties. I also have executed copies of the Amendment to the MOA from the three parties to the original MOA. Accordingly, the clock has begun on the seven days allowed for payment to AMAFCA under paragraphs 1 and 2 of the Settlement Agreement. In addition, the Trails needs to withdraw its demand for arbitration as required by paragraph 4. Finally, AMAFCA needs to deliver signed plats to the City as required by paragraph 6.

As payments are made and other settlement obligations are fulfilled, please provide notice to the other parties to the Settlement Agreement. I will attempt to keep everyone informed of our progress while we work through all of the settlement commitments.

I will assemble packets containing the executed document for disbursement to the parties. I can either mail those packets or have them ready for pick up at my office. Please tell me what you would like done with your document packets.

RCS and the Trails, please have a representative contact the City's Impact Fee Administrator (Tony Loyd (505) 924-3934) regarding the development agreements for impact fee credits.

If you have any questions, please feel free to contact me by telephone or email.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
F: (505) 768-4525
bwhitcomb@cabq.gov

Confidentiality Note
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Tim Eichenberg, Chairman
Danny Hernandez, Vice Chairman
Bruce M. Thomson, Secretary-Treasurer
Ronald D Brown, Assistant Secretary-Treasurer
Daniel F. Lyon, Director

Jerry M. Lovato, P.E.
Executive Engineer

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 Prospect N.E., Albuquerque, NM 87107
Phone. (505) 884-2215 Fax: (505) 884-0214
Website: www.amafca.org

August 8, 2012

Cole file for
[illegible] 9.0 to [illegible]
Scott Shiffer

To: Mr. Jack Cloud, PE,
Chair, Development Review Board
City of Albuquerque.
PO Box 1293
Albuquerque, NM 87102

Re: DRB # 1008797, Taos at the Trails Unit 2
DRB# 1008798, Taos at the Trails Unit 2
DRB# 1008799, Lot 9A, The Trails Unit 2
DRB# 1008800, Tierra Vista at the Trails, Unit 2

Dear Mr. Cloud,

AMAFCA is very close to beginning construction of the Boca Negra Dam, the ultimate outfall for the above named developments. Any project that impacts the design, construction or schedule of that project must be reviewed by AMAFCA. Previously, we had concerns that the drainage plan revisions requested and approved may impact the size of the facility. Those concerns have since been allayed. Therefore, AMAFCA has no objection to the approval of the Preliminary Plats. By Ordinance, AMAFCA has signature authority on Final Plats and, in order to do so, must be assured that the drainage infrastructure requirements are met. Our responsibility is to the community as a whole.

? APS and others should be able to drain

If you would like to discuss this further, I can be reached at 884-2215.

Sincerely,
AMAFCA

Bradley L. Bingham

no objection to PP

Bradley L. Bingham, P.E.
Acting Executive Engineer

Cc: Lynn Mazur, AMAFCA

~~Lot~~ Richard Smith to call Dave to see Brad a copy of the Trails DMP

Memorandum of Agreement

Comes now the City of Albuquerque ("City"), The Trails, LLC ("Trails"), and RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") and agree as follows:

1. Trails affirms its obligations under the Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("Boca Negra Dam Agreement"). The precise nature and amount of such obligations are currently subject to arbitration. Trails will pay and perform its obligations as determined by the arbitration.

2. RCS agrees to expand existing interim Pond K to adequately retain developed flows from the Trails Development consistent with the 100-~~Year 10-Day~~ Rainfall Event. This expansion will be completed prior to issuance of building permits.

(1) Scott to provide volume ← plug SD for vacating Pond B → pure FS build

3. Within two (2) years of final execution of this Memorandum, Trails agrees to complete construction of the Universe Storm Drain described in Bohannan Huston's summary (attached hereto as "Exhibit A") to serve as the drainage outfall for the Trails Development. Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Universe Storm Drain. The Trails will obtain City approval for construction drawings from the Design Review Committee ("DRC") for the Universe Storm Drain within six (6) months of the execution of this Memorandum.

4. Trails' federal lawsuit 12-CV-00357 will be stayed pending final execution of this Memorandum. Within five (5) days of final execution of this Memorandum, the Trails shall file a motion and order to dismiss that suit with prejudice.

5. The City Engineer shall recommend to the Development Review Board ("DRB") that Subdivision Improvement Agreement ("SIA") 730081 be extended for up to two (2) years and the corresponding infrastructure lists be revised to more specifically include Trails' obligations under the Boca Negra Dam Agreement per Paragraph 1 above. In connection therewith, Trails shall have the $1.25 Million bond held by City under the current SIA 730081 and the $250,000 bond held by City under the current SIA 730085 reissued in a form acceptable to the City and expressly applied to financially secure Trails' obligations under the Boca Negra Dam Agreement.

6. The City Engineer shall also recommend that SIA 730~~085~~ 78 be extended for two (2) years and that the corresponding infrastructure list be amended to include the Universe Storm Drain as described in Exhibit A. Trails will provide a bond in a

(2) Scott provide HGL

Add extra for rock

form acceptable to City in the amount of $606,483 financially securing the Trails' obligations under SIA 730085.

7. The City Engineer agrees that the foregoing is sufficient to resolve the concerns of the City Engineer regarding final plat approval for Taos and Tierra Vista subdivisions currently pending and scheduled for a final approval hearing on August 9 2012. RCS and Trails acknowledge that there may be additional conditions associated with such approval of the Taos subdivision and agree to comply with reasonable requirements regarding conveyances or dedications of real property as part of the re-platting approval of the referenced subdivisions.

Cantata Universe outfall

8. With respect to Cantata, RCS agrees to construct the storm drain pipe from ~~Oakridge~~ St. to Pond "K" within Universe Blvd. ("Cantata Storm Drain") as identified on the infrastructure list for SIA 730078. Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Cantata Storm Drain. RCS will obtain City approval for construction drawings from the DRC for the Cantata Storm Drain within six (6) months of the execution of this Memorandum. ~~Additionally, an approved interim drainage solution is required prior to issuance of any building or paving permits for the Cantata Development.~~

9. The City will resume issuing building permits for Cantata based upon the commitments confirmed herein; however, RCS acknowledges and agrees that no certificates of occupancy for such new building permits at Cantata will be issued by the City until the Cantata Storm Drain construction is completed and accepted by the City Engineer.

10. The City has requested a new grading plan for Cantata RCS reflecting the change of zoning from park to multi-family for Tract A, adjacent to Cantata. Trails, ~~the owner~~ of ~~Tract A~~, will submit the revised grading plan to the City within two (2) months of the final execution of this Memorandum.

11. Within two (2) months of the final execution of this Memorandum, RCS shall submit to the City for approval revised drainage reports for the Trails Development that incorporate the foregoing changes. The Trail Drain mak n

12. RCS will withdraw its appeal of the DRB actions denying the preliminary plat extensions and final plat requests for the Taos and Tierra Vista subdivisions.

13. All parties mutually agree to act in good faith in exercising their duties and fulfilling their obligations under this agreement.

August 8th DRB

~~1 yr tierra vista 2~~

~~60 days on other~~

or 30 days on all 4 then ask for 1 yr

THE CITY OF ALBUQUERQUE

By: _____

Printed Name: _____

Title: _____ Date: _____

CITY'S NOTARY

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person:] _____, [title or capacity, for instance, "President" or "Owner":] _____ of the City of Albuquerque.

_____
Notary Public

My Commission Expires:
_____

RCS – CANTATA RESIDENCES I, LLC

By: _____

Printed Name: _____

Title: _____ Date: _____

RCS – CANTATA RESIDENCES I, LLC'S NOTARY

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person:] _____, [title or capacity, for instance, "President" or "Owner":] _____ of RCS – Cantata Residences I, LLC

_____
Notary Public

My Commission Expires:
_____

RCS – TAOS, LLC

By: _____

Printed Name: _____

Title: _____ Date: _____

RCS – TAOS, LLC'S NOTARY

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person:] _____, [title or capacity, for instance, "President" or "Owner":] _____ of RCS – Taos, LLC

_____
Notary Public

My Commission Expires:
_____

RCS – TRAILS 9-A, LLC

By: _____

Printed Name: _____

Title: _____ Date: _____

RCS – TRAILS 9-A, LLC'S NOTARY

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person:] _____, [title or capacity, for instance, "President" or "Owner":] _____ of RCS – Trails 9-A, LLC

_____
Notary Public

My Commission Expires:
_____

THE TRAILS, LLC

By: _____

Printed Name: _____

Title: _____ Date: _____

THE TRAILS' NOTARY

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person:] _____, [title or capacity, for instance, "President" or "Owner":] _____ of The Trails, LLC.

_____
Notary Public

My Commission Expires:
_____

Boca Negra Detention Dam and Outfall Pipe

Cost Sharing Allocation Based on Project Elements
From Engineers Estimate 05/09/12

Project Elements					Total Cost	AMAFCA	KB HOME	TRAILS	City
Boca Negra Detention Dam & Outlet Pipe									
25% 33.5% 31.5% 10% AMAFCA/KB/TRAILS/City									
Dam & Outlet Pipe		1	LS	4,445,104	4,445,104	1,111,276	1,489,110	1,400,208	444,510
Design, Fixed Fee					137,180	34,295	45,955	43,212	13,718
Construction Management, 8%					355,608	88,902	119,129	112,017	35,561
Right of Way					977,420	244,355	327,436	307,887	97,742
Subtotal					**5,915,311**	**1,478,828**	**1,981,629**	**1,863,323**	**591,531**
Bike Trail Underpass and Hi Flow Outlet									
50% 0.0% 0.0% 50% AMAFCA/KB/TRAILS/City									
Crossing Structure		1	LS	807,193	807,194	403,597	0	0	403,597
Design, Fixed Fee					23,800	11,900	0	0	11,900
Construction Management, 8%					64,576	32,288	0	0	32,288
Right of Way					14,123	7,062	0	0	7,062
Subtotal					**909,693**	**454,847**	**0**	**0**	**454,847**
Unser Blvd in Front of Dam - Full cross Section, four lanes paved									
0% 0.0% 0.0% 100% AMAFCA/KB/TRAILS/City									
Roadway and Trail		1	LS	651,973	651,973	0	0	0	651,973
Design, Fixed Fee					25,900	0	0	0	25,900
Construction Management, 8%					52,158	0	0	0	52,158
Right of Way					34,893	0	0	0	34,893
Subtotal					**764,924**	**0**	**0**	**0**	**764,924**
FEMA LOMR									
0% 50.0% 50.0% 0% AMAFCA/KB/TRAILS/City									
Engineering Design & Submittal for FEMA CLOMR/LOMR					20,000	0	10,000	10,000	0
FEMA Review Fees					7,400	0	3,700	3,700	0
					27,400	**0**	**13,700**	**13,700**	**0**
Unser Blvd BID LOT IIIB SEWER INTERCEPTOR									
0%, 0% 0.0% 0.0% 100% ABCWUA									
Sewer Interceptor		1	LS	0	0	0	0	0	0
Design, Fixed Fee				Paid Direct by ABCWUA	0	0	0	0	0
Construction Management, 8%					0	0	0	0	0
Right of Way					0	0	0	0	0
Subtotal					**0**	**0**	**0**	**0**	**0**
Total Project Costs					**7,617,329**	**1,933,674**	**1,995,329**	**1,877,023**	**1,811,302**
						25 4%	26.2%	24 6%	23 8%

		Project Cost Contributions by Party					
Project Cost Sharing Elements		**AMAFCA**	**KB HOME**	**TRAILS**	**City**	**ABCWUA**	
Construction	5,904,271	1,461,333	1,995,329	1,733,023	1,811,302	0	Cash for Constr
Design	186,880			144,000			Design by Priva
Constr Mgt.	472,342	472,342					Cash for CM se
Right of Way	1,026,436						Right of Way D
FEMA Analysis and Submtl	20,000			0			FEMA Analysis
FEMA Fees	7,400						FEMA Fees
	7,617,329	**1,933,674**	**1,995,329**	**1,877,023**	**1,811,302**	**0**	

CITY OF ALBUQUERQUE

Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

June 22, 2012

Brian Paul
Real Capital Solutions
Vice President, Homebuilding Division
371 Centennial Parkway, Suite 200
Louisville, CO 80027

Re: Settlement Discussion Regarding Building Permits for Trails Subdivisions

Dear Brian:

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

Thank you for meeting with us on June 21, 2012. We appreciate the candid proposals you offered as resolutions to this matter. The purpose of this letter is to summarize the proposed resolution, as discussed at the meeting. We earnestly hope that we can reach a mutually agreeable solution that provides RCS with building permits and the citizens of Albuquerque with needed storm drainage infrastructure.

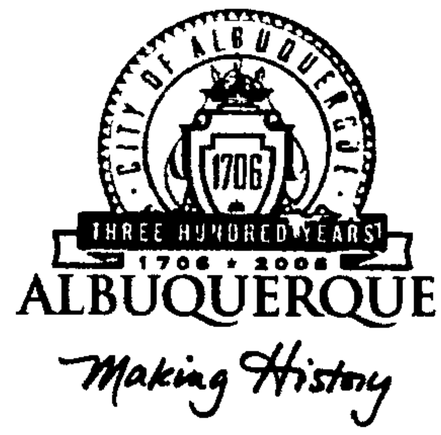
The City acknowledges the urgency of the situation and is aware of the potential economic consequences for both parties in the event a resolution is not reached within the next two weeks.

Accordingly, the City proposes as a condition for the approval of building permits for the Trails Subdivisions, the following:

1. RCS will arrange, in conjunction with the Trails, LLC and its bonding company (Developers Indemnity), to pledge the existing bonds in the amount of $1.5 million toward the construction of the Boca Negra Dam.

2 While the construction of the Boca Negra Dam and Universe Storm Drain is proceeding, RCS will arrange, in conjunction with the Trails, LLC, to enlarge the existing interim ponds to safely accommodate storm water run-off.

3. The City will agree to a downsizing of the Universe Storm Drain. It is anticipated that the downsizing will significantly reduce the



construction cost of the storm drain, currently estimated to be $2.8 million. The City and RCS acknowledge and agree that the specific size of the storm drain pipe will need to be determined by an analysis prepared by RCS and reviewed and approved by the City Engineer.

4. RCS, in conjunction with the Trails, LLC, will agree to construct the downsized Universe Storm Drain from the Trails Subdivisions to the Boca Negra Dam. Additionally, if necessary to accommodate the storm drain's reduced capacity, RCS, in conjunction with the Trails, LLC, will agree to the expansion of permanent ponding structures and grant additional easements to the City in order to accommodate the ponds' increased size.

In view of the time constraints to finalize and implement the foregoing, the City completely endorses your request to designate a full-time point person to facilitate a swift resolution. Once we agree to proceed under this proposed resolution, the City will immediately appoint a representative to expedite our joint efforts.

Thank you again for your principled commitment to an equitable resolution of this matter.

Sincerely,

Kevin J. Curran
Managing Attorney
Real Estate and Land Use Division
City Attorney's Office

cc: Rob J. Perry, Esq., Chief Administrative Officer
Michael Riordan, Director, Municipal Development
Richard Dourte, PE, City Engineer
Greg Smith, Esq., Assistant Director, Municipal Development
Maria Siemel-Martinez, Esq., Attorney, Municipal Development
Blake Whitcomb, Esq., Assistant City Attorney
Tim Flynn-O'Brien, Esq., Attorney for RCS
Marcus J. Rael, Jr., Esq., Attorney for AMAFCA
Vanessa Alarid, HBA Director of Government Affairs
Jim Folkman, HBA Executive Vice President

P.O. Box 1293
Albuquerque
New Mexico 87103
www.cabq.gov

UNIVERSE STORM DRAIN OUTFALL
THE TRAILS
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
7/9/2012

Item No.	Short Description	Estimate Unit Price	Unit	Quantity	Estimate Amount
	STORM DRAIN				
204.010	FILL, EXCAV, BF & COMP, U, >2'	$7.00	CY	2148	$15,040.00
204.XXX	SELECT FILL	$5.00	CY	2801	$14,000.00
701.100	BACKFILL, 18-36" SWR, <8'	$14.00	LF	2985	$41,790.00
701.110	BACKFILL, 18-36" SWR, 8-12'	$18.27	LF	800	$14,620.00
701.XXX	ROCK EXCAVATION, BLASTING	$15.00	CY	4100	$61,500.00
910.013	30" RCP, III	$44.00	LF	3368	$148,190.00
910.017	36" RCP, III	$68.00	LF	417	$28,360.00
920.010	MH, 4' DIA, C, <6' D	$1,810.00	EA	2	$3,620.00
920.070	MH, 4' DIA, C or E	$2,800.00	EA	4	$11,200.00
920.080	MH, 4' DIA, C or E, >10'-14'D	$3,580.00	EA	1	$3,580.00
920.140	MH, 6' DIA, C or E, 6-10' D	$4,075.48	EA	1	$4,080.00
	DRY UTILITY CROSSING ALLOW	$10,000.00	EA	1	$10,000.00
	SUBTOTAL STORM DRAIN				$355,980.00

SUBTOTAL HARD COSTS	$355,980
CONTINGENCIES (20%)	$71,196
SUBTOTAL CONSTRUCTION (Hard Costs)	$427,176
MOB/DEMOB (5%)	$21,359
NPDES/SWPPP (0.63%)	$2,691
ENGINEERING FEE (10%)	$42,718
TESTING FEE (2%)	$8,544
CONSTRUCTION STAKING (3%)	$12,815
INSPECTION FEE (4%)	$21,359
NMGRT (7.0000%)	$29,902
CITY REVIEW FEE (3.25%)	$13,883
TOTAL THE TRAILS UNIVERSE STORM DRAIN (Hard & Soft Costs)	$580,447

This estimate of construction costs is only an opinion. BHI cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from this opinion.

P:\20110333\CD\Universe SD\Estimate\TRAILS UNIVERSE STORM DRAIN ESTIMATE.xls

Glenn,
Thanks for the pics and the follow-up analysis. I agree the design capacities of the culvert and the storm drain are essentially the same.

I'm going to need curb and gutter along the western edge of balloon Fiesta Pkwy and possibly some hardscape/erosion control from the end of curb and gutter to the rundown "tiles". Please provide justification if you feel the erosion control is unnecessary.

Since there is currently no curb and gutter and it is about 130 linear feet, the work should be done per Work Order

Curtis

From: Glenn Broughton [mailto:gbrought@bhinc.com]
Sent: Monday, June 18, 2012 9:37 AM
To: Cherne, Curtis
Subject: Presbyterian Systems Office - Citicorp Site B17/D003

Curtis,

I appreciate you taking the time to meet with me last week. I wanted to follow up with you on the culvert crossing Balloon Fiesta Parkway near the northwest corner of the Presbyterian site. The culvert crossing is 6-48" CMP. This culvert was constructed with the Balloon Fiesta road project (COA project # 520290). The upstream storm drain, energy dissipater, and armored channel were constructed with the Citicorp project (COA project # 546991).

The culverts are in pretty good condition and the inlet is clean. I have attached some pictures from my site visit.

I calculated the capacity of the existing culvert. Based on the record drawings there is an available head of 6.5'. Based on my site visit it appears that the available head may actually be greater than shown on the record drawings. The analysis shows that this culvert is inlet controlled and has a capacity of 670 cfs. The upstream storm drain has a fully developed flow of 680 cfs. The design capacities of the culvert and storm drain are essentially the same.

Please let me know if you have any questions on this.

Thank you,

Glenn Broughton, P.E., LEED AP
Senior Project Manager
Community Development & Planning
Direct line: 505-798-7872

Bohannan Huston
Courtyard I

6-20-12

Napkin pipe size for trails

~~200 cfs @ .5%~~

$$Q = \frac{1.486}{.013} A R^{2/3} S^{.5}$$

24"

$$Q = \frac{1.486}{.013} (7.07 ft^2) .75^{2/3} (.005)^{.5}$$

$$\boxed{Q = 47 \text{ cfs}}$$

42"

$$Q = 114.308 A R^{2/3} S^{.5}$$

$$50 = 114.308 (9.62 ft^2) .875^{.667} (.005)^{.5}$$

$$\boxed{Q = 71 \text{ cfs}}$$

18 cfs for culverts

city unit cost quick

SAO 228

ITEM NO.	SHORT DESCRIPTION	QUANTITY	UNIT	EST. UNIT PRICE	ESTIMATED EXTENDED PRICE	EST. UNIT PRICE	ESTIMATED EXTENDED PRICE
201.01	SITE CLEAR & GRUB	6	AC	$1,281.93	$7,691.58	$1,865.00	$11,190.00
201.061	EROS CNTRL SILT FNCE	4600	LF	$2.17	$9,982.00	$2.17	$9,982.00
201.061	EROS CNTRL SILT FNCE	400	LF	$2.17	$868.00	$2.17	$868.00
202.02	ROCK, BLAST, EXCAV & DISP	2961	CY	$33.41	$98,927.01	$51.00	$151,011.00
343.132	ART PVMT,R&R,W/M	50	SY	$61.43	$3,071.50	$61.43	$3,071.50
501.01	STRUCT, EXCAV/BF & COMP	10	CY	$15.00	$150.00	$15.00	$150.00
510.11	STR CONC. 4000 RPCC, FORM	116	CY	$612.43	$71,041.88	$612.43	$71,041.88
510.12	WALL FTG, RPCC	52	CY	$482.00	$25,064.00	$482.00	$25,064.00
603.01	WIRE-ENCLOSED RIPRAP, CIP.	100	CY	$130.00	$13,000.00	$130.00	$13,000.00
603.04	GVL FILTER MATL	50	CY	$43.75	$2,187.50	$43.75	$2,187.50
603.05	FILTER CLOTH	2700	SF	$0.11	$297.00	$0.11	$297.00
701.15	TRCH, BF, 42"-60" SWR, <8'	1592	LF	$28.59	$45,515.28	$42.00	$66,864.00
701.16	TRCH, BF, 42"-60" SWR, 8'-12'	435	LF	$34.52	$15,016.20	$52.00	$22,620.00
701.17	TRCH, BF, 42"-60" SWR, 12'-16'	492	LF	$36.39	$17,903.88	$67.00	$32,964.00
701.2	TRCH, BF, > 60" SWR, 8'-12'	1933	LF	$47.76	$92,320.08	$60.00	$115,980.00
701.2	TRCH, BF, > 60" SWR, 8'-12'	386	LF	$47.76	$18,435.36	$60.00	$23,160.00
910.021	48" RCP, III	1335	LF	$111.70	$149,119.50	$111.70	$149,119.50
910.025	60" RCP, III	1184	LF	$183.48	$217,240.32	$183.48	$217,240.32
910.029	72" RCP, III	386	LF	$250.80	$96,808.80	$250.80	$96,808.80
910.029	72" RCP, III	1933	LF	$250.80	$484,796.40	$250.80	$484,796.40
910.068	BND, 72" RCP	6	EA	$3,703.86	$22,223.16	$3,703.86	$22,223.16
920.14	MH, 6' DIA, C or E, 6-10' D	3	EA	$4,075.48	$12,226.44	$3,714.00	$11,142.00
920.21	MH, 8'DIA, C or E, 6'-10' D	4	EA	$8,338.77	$33,355.08	$5,792.00	$23,168.00
920.22	MH, 8'DIA, C or E, 10'-14' D	1	EA	$10,771.10	$10,771.10	$7,072.00	$7,072.00
920.23	MH, 8'DIA, XTRA D, 14'-18' D	1	VF	$605.00	$605.00	$605.00	$605.00
920.25x	MH, 4'DIA, TEE MH ON 72" RCP SD, CIP.	6	EA	$4,500.00	$27,000.00	$4,500.00	$27,000.00
XXX.xxx	CONSTRUCTION TRFC CNTRL & BAR COMP	1	LS	$29,500.00	$29,500.00	$29,500.00	$29,500.00
				SUBTOTAL	$1,505,117.07		$1,618,126.06
				10% CONTINGENCY	$150,511.71		$161,812.61
				TOTAL	$1,655,628.78		$1,779,938.67

ITEM NO.	SHORT DESCRIPTION	QUANTITY	UNIT	EST. UNIT PRICE	ESTIMATED EXTENDED PRICE	EST. UNIT PRICE	ESTIMATED EXTENDED PRICE
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201.061	EROS CNTRL SILT FNCE	400	LF	$2.17	$868.00	$2.17	$868.00
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343.132	ART PVMT,R&R,W/M	50	SY	$61.43	$3,071.50	$61.43	$3,071.50
501.01	STRUCT, EXCAV/BF & COMP	10	CY	$15.00	$150.00	$15.00	$150.00
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603.01	WIRE-ENCLOSED RIPRAP, CIP.	100	CY	$130.00	$13,000.00	$130.00	$13,000.00
603.04	GVL FILTER MATL	50	CY	$43.75	$2,187.50	$43.75	$2,187.50
603.05	FILTER CLOTH	2700	SF	$0.11	$297.00	$0.11	$297.00
701.15	TRCH, BF, 42"-60" SWR, <8'	1592	LF	$28.59	$45,515.28	$42.00	$66,864.00
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701.2	TRCH, BF, > 60" SWR, 8'-12'	386	LF	$47.76	$18,435.36	$60.00	$23,160.00
910.021	48" RCP, III	1335	LF	$111.70	$149,119.50	$111.70	$149,119.50
910.025	60" RCP, III	1184	LF	$183.48	$217,240.32	$183.48	$217,240.32
910.029	72" RCP, III	386	LF	$250.80	$96,808.80	$250.80	$96,808.80
910.029	72" RCP, III	1933	LF	$250.80	$484,796.40	$250.80	$484,796.40
910.068	BND, 72" RCP	6	EA	$3,703.86	$22,223.16	$3,703.86	$22,223.16
920.14	MH, 6' DIA, C or E, 6-10' D	3	EA	$4,075.48	$12,226.44	$3,714.00	$11,142.00
920.21	MH, 8'DIA, C or E, 6'-10' D	4	EA	$8,338.77	$33,355.08	$5,792.00	$23,168.00
920.22	MH, 8'DIA, C or E, 10'-14' D	1	EA	$10,771.10	$10,771.10	$7,072.00	$7,072.00
920.23	MH, 8'DIA, XTRA D, 14'-18' D	1	VF	$605.00	$605.00	$605.00	$605.00
920.25x	MH, 4'DIA, TEE MH ON 72" RCP SD, CIP.	6	EA	$4,500.00	$27,000.00	$4,500.00	$27,000.00
XXX.xxx	CONSTRUCTION TRFC CNTRL & BAR COMP	1	LS	$29,500.00	$29,500.00	$29,500.00	$29,500.00
				SUBTOTAL	$1,505,117.07		$1,618,126.06
				10% CONTINGENCY	$150,511.71		$161,812.61
				TOTAL	$1,655,628.78		$1,779,938.67

WO 76|281 pulled after preliminary

ENGINEER'S ESTIMATE

OFF-SITE STORM DRAIN IMPROVEMENTS

THE TRAILS-OFFSITE STORM DRAIN

JULY 13th, 2005

PRICES ARE FROM COA BID TAB SUMMARY 1998 PLUS 18% INFLATION RATE

Item Number	Long Description	Unit	Estimated Quantity	Estimated Unit Price	Estimated Extended Price
201.010	Site Clearing and Grubbing, compl.	AC	6	$695.17	$4,171.02
201.061	Erosion Control Silt Fence, 3' high, w/5' steel posts @ 10' on center, cip.	LF	4,600	$3.69	$16,974.00
202.020	Rock, blast, excavate & dispose, compl.	CY	2,921	$71.57	$209,055.97
343.132	Arterial Pavement, Existing, Remove & Replace, incl 2" extra asphalt thickness, with machine laydown, & with processing existing subbase material, any thickness, cip	SY	50	$32 00	$1,600.00
701.150	Trenching, Backfilling, & Compaction, for 42" to 60" sewer pipe, up to 8' in depth, pipe not incl., compl.	LF	1,592	$29.06	$46,263.52
701.160	Trenching, Backfilling, & Compaction, 42" to 60" sewer pipe, over 8' to 12' in depth,pipe not incl.,compl.	LF	435	$32.83	$14,281.05
701.170	Trenching, Backfilling, & Compaction , 42" to 60" sewer pipe,12' to 16' in depth, pipe not incl., compl.	LF	492	$49.19	$24,201.48
701.200	Trenching, Backfilling, & Compaction, over 60" sewer pipe, over 8' to 12' in depth,pipe not incl.,compl.	LF	1,933	$48.61	$93,963.13
910.021	48" Reinforced Concrete Pipe, Class III, furnish & place in open trench, cip.	LF	1,335	$81.00	$108,135.00
910.025	60" Reinforced Concrete Pipe, Class III, furnish & place in open trench, cip.	LF	1,184	$115.50	$136,752.00
910.029	72" Reinforced Concrete Pipe, Class III, furnish & place in open trench, cip	LF	1,933	$165.75	$320,394.75
910.068	Bend, 72" RCP, any degree, furnish & install in open trench, cip.	EA	6	$3,200.00	$19,200 00
920.140	Manhole, 6' dia., Type "C" or "E", 6'-10' deep, cip. SD2101	EA	3	$3,153.55	$9,460.65
920.210	Manhole, 8' dia., Type "C" or "E", 6' to 10' deep, cip. SD2101	EA	4.0	$5,401.04	$21,604.16
920.220	Manhole, 8' dia , Type "C" or "E", 10' to 14' deep, cip. SD2101	EA	1	$6,741.15	$6,741.15
920.230	Manhole, 8' dia., Type "C" or "E", added cost for each foot between 14' to 18' deep, cip. SD 2101	VF	1	$673.00	$673.00
920.25X	Manhole, 4' dia , Tee Manhole on 72" RCP Storm Drain, cip.	EA	6	$4,500.00	$27,000.00
XXX.XXX	Construction Traffic Control & Barricading, compl	LS	1	$29,500.00	$29,500.00
			Sub-Total		$1,089,970.88
		10%	Contingency		$108,997.09
			Total Estimated Construction Cost		$1,198,967.97

ENGINEER'S ESTIMATE

OFF-SITE STORM DRAIN IMPROVEMENTS

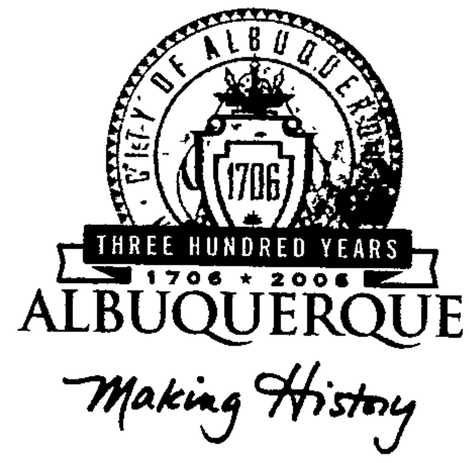
THE TRAILS-OFFSITE STORM DRAIN - **DEFERRED ITEMS**

JULY 13th, 2005

PRICES ARE FROM COA BID TAB SUMMARY 1998 PLUS 18% INFLATION RATE

Item Number	Long Description	Unit	Estimated Quantity	Estimated Unit Price	Estimated Extended Price
201.061	Erosion Control Silt Fence, 3' high, w/5' steel posts @ 10' on center, cip.	LF	400	$3.69	$1,476.00
202.020	Rock, blast, excavate & dispose, compl.	CY	0	$71.57	$0 00
501.010	Excavation, Backfill, and Compaction, related to construction of structures such as box culverts, wing walls, etc., cip.	CY	10	$14.05	$146.12
510.110	Structural, Reinforced PC Concrete, 4000 psi, incl. formwork, cip.	CY	116	$425.74	$49,172.97
510.120	Wall Footing, Reinforced PC Concrete, incl. formwork, cip.	CY	52	$343.68	$17,871.36
603.010	Wire-enclosed Riprap, cip	CY	100	$130.00	$13,000.00
603.040	Gravel Filter Material, delivered,graded & compacted, cip.	CY	50	$30.00	$1,500.00
603.050	Filter Cloth, cip	SF	2,700	$0.60	$1,620.00
701.200	Trenching, Backfilling, & Compaction, over 60" sewer pipe, over 8' to 12' in depth,pipe not incl.,compl.	LF	386	$48.61	$18,763.46
910.029	72" Reinforced Concrete Pipe, Class III, furnish & place in open trench, cip.	LF	386	$165.75	$63,979.50
			Sub-Total		$167,529.41
		10%	Contingency		$16,752.94
			Total Estimated Construction Cost		$184,282.35

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

January 24, 2012

SENT: VIA CERTIFIED MAIL

Mitch Petras, Senior Claims Examiner
Developer Surety and Indemnity Company
17780 Fintch, Suite 200
Irvine, CA 92614

Re: Demand on Subdivision Bond No. 823502S for The Trails, City of Albuquerque Project No. 730081 in the amount of $1,250,000.00

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

Dear Mr. Petras,

On March 11, 2011, the City of Albuquerque ("City") made demand on the above referenced Subdivision Bond. It has been more than ten (10) months and we still have not heard from you regarding honoring the terms of the Subdivision Bond. If the Subdivision Bond is not funded by February 27, 2012, the City will pursue its legal remedies against Developer Surety and Indemnity Company for the collection of this sum.

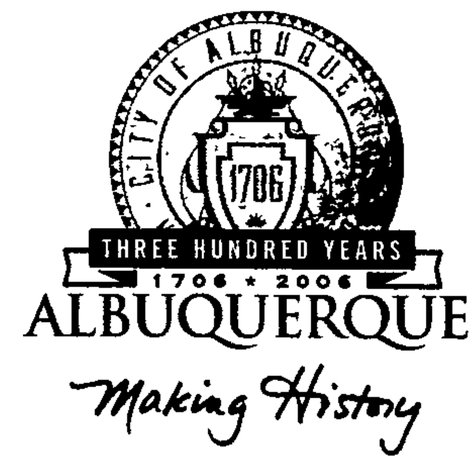
Sincerely,

Kevin J. Curran
Managing Assistant City Attorney

KJC/jer

cc: Richard Dourte, City Engineer
Deborah Stover, Planning Director
Jane Rael, DRC Manager
Marcus Rael, AMAFCA
CPN 730085 file

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

January 24, 2012

SENT: VIA CERTIFIED MAIL

Mitch Petras, Senior Claims Examiner
Developer Surety and Indemnity Company
17780 Fintch, Suite 200
Irvine, CA 92614

Re: Demand on Subdivision Bond No. 823505S & 823501S for Longford @ the Trails, City of Albuquerque Project No. 730085 in the amounts of $328,771.65 & $250,000.00 respectfully

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

Dear Mr. Petras,

On March 14, 2010, the City of Albuquerque ("City") made demand on the above referenced Subdivision Bond. On April 13, 2010, you sent a letter that the principal was arranging for an extension of time for the completion of the bonded improvements. The principle did not arrange for an extension of time. Please proceed with the City's claim.

Sincerely,

Kevin J. Curran
Managing Assistant City Attorney

KJC/jer

cc: Richard Dourte, City Engineer
Deborah Stover, Planning Director
Jane Rael, DRC Manager
CPN 730085 file

MEMO

Item 8b

Supplemental

To: Board of Directors

From: Jerry M. Lovato, P.E., Executive Engineer

Date: February 20, 2012

Re: Pending Litigation

As stated in the mail out memo, Longford Homes has concerns with the legitimacy of the four party agreement. Friday night I received an email attachment from Mr. Rick Beltramo that formalized Longford Homes (The Trails) concerns (see attached letter).

AMAFCA has submitted the design for final approval to the Office of the State Engineer and it is my intent to request the Board's approval at the March 22nd to allow staff to advertise the project for bids. I am providing this information to the Board in anticipation that Longford Homes will request that the project be put on hold until their concerns are fully expressed and dealt with.

At the January Board Meeting, the Board was briefed on how important the Boca Negra Dam is to the region to address development to date and to allow future development in the area to proceed. AMAFCA and the City of Albuquerque (COA) proceeded with or allowed construction of projects assuming that the Boca Negra Dam would be built sooner than later.

Also at the January Board Meeting, the Board was briefed on the possibility of the COA using financial guarantees held by the COA for regional drainage mitigation identified in assorted infrastructure lists.

The COA does not want AMAFCA to engage in a friendly lawsuit to obtain the funding. The COA would rather enter into an agreement which would identify that the funding received from the bonds (financial guarantees) would be used to complete the construction of the Boca Negra Dam. The COA has sent a demand letter for two bonds that add up to $1.5 million. These bonds belong to Longford.

After reviewing the agreement and the above referenced letter, I offer the following comments:

1. Attorney Leverick states that the scope of work was substantially changed but is not specific as to what and how scope changed.

2. The agreement clearly states that AMAFCA would advertise and award the construction "upon receipt of certified and stamped ready-to-bid plans". VISTA and TRAILS were responsible for the design and delivery of the planset. They were also responsible for the dedication of ROW for the Dam site. AMAFCA could not advertise the project because TRAILS failed to provide said plans and property by the February 2006 timeframe stated in the agreement and re-stated in the letter. Furthermore, the TRAILS dedicated the land for the Dam site in June 2011. Said delay was at the discretion of TRAILS.

3. Project delays were <u>not</u> totally outside of TRAILS control since there was considerable "non-occurrence" on their part. That should not make the agreement void. Construction cost escalation also should not render the contract void.

4. Nowhere in the agreement does it state that the worthless value of impact fee credits would nullify the agreement.

5. The Bateman Act does not apply because the City and AMAFCA have already spent monies exceeding the original amount stated in the estimate shown on Exhibit B.

6. AMAFCA has no control over the value or disbursement schedule of impact fee credits. The moratorium was a decision made by the City Council and the value of impact fee credits are market driven; again, outside of AMAFCA's control.

7. It is agreed that the area has seen development since the execution of the agreement. If there were a way to exact participation in the costs of the "regional drainage facility", it should be looked into. It is also agreed that the relative drainage contribution is less than the cost contribution.

8. The construction of the Boca Negra Dam is <u>very</u> important to AMAFCA and the downstream residents. It has been a 5-year-and-counting project that offers needed flood protection. While the agreement may not be fair to Longford and KB, renegotiating the contract may create time-delays that the residents downstream cannot afford.

For Information Only

MEMO

Item 8b

To: Board of Directors

From: Jerry M. Lovato, P.E., Executive Engineer

Date: January 20, 2012

Re: Pending Litigation

The Boca Negra Dam Project is the subject of an agreement between AMAFCA, the City of Albuquerque and two private developers. The agreement identifies property transfers, funding for the design, construction, construction management, submittal of a FEMA LOMR and the maintenance and operation of the dam, Unser Boulevard, the bike trail and Rainbow Drive.

Since the last Board Meeting, the City of Albuquerque has guaranteed payment to Wilson and Company for work done to date that was not paid for by Longford. Wilson & Company provided signed and stamped plan sets to AMAFCA on February 10, 2012. The design plans and specification were hand delivered on February 14th to the Dam Safety Bureau.

The issue concerning AMAFCA at this point is obtaining full funding from all the parties to construct the dam before the award of the contract. AMAFCA and the City of Albuquerque have stated their funding is available, now. Longford and KB homes have not responded directly to the question. As such, the City of Albuquerque put both parties on notice that subdivision bonds may be called early last year. KB Homes in Phoenix is now talking to the City of Albuquerque concerning the funding.

The City of Albuquerque has called on two bonds belonging to Longford. The financial guarantees are for the Trails Subdivision.

Longford has had a meeting with Richard Dourte concerning the legitimacy of the four party agreement and has given both the City and AMAFCA a copy of a legal opinion from an attorney.

If more information becomes available, it will be the subject of a late mail out.

For Information Only

310 060611

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX: (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

February 9, 2012

VIA ELECTRONIC MAIL

Mr. John Murtagh
Longford Group, Inc.
3077 E. Warm Springs Road,
Las Vegas, Nevada 89120

Mr. Rick Beltramo
Director of Engineering
Galway Construction, Inc.
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 23, 2005

Dear John and Rick:

I have reviewed the above-referenced Agreement and a project schedule chart prepared by Rick tracking certain key events occurring with respect to the project following the execution of the Agreement. I have also given some consideration to the discussions we have had relative to the Agreement and the project, and to some of the supplemental information provided to me by Rick concerning the project.

You have asked for some bullet points relative to my initial legal conclusions concerning the Agreement. This short letter is provided with the understanding that we were just recently engaged to represent The Trails LLC with respect to its legal rights and obligations under the Agreement and have not spent as much time as necessary to complete our review of documents including correspondence we deem necessary to give final opinions relative to the above.

Based on the foregoing and our initial review of the Agreement and the matters identified above, we are of the opinion that:

- The scope of work was substantially changed on or after fall 2006. This appears to have occurred without approval in writing by The Trails LLC. Section 6.11 of the Agreement provides that it may be modified only in writing

signed by all parties. This change in the scope of work is not unenforceable. Further, per Restatement of the Law, Second, Contracts, § 265, Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary."

- The cost of work has substantially increased based in part on the change in the scope of work ("additions to the scope of the project" including "a master planned sanitary sewer interceptor" and "paving the full four lane section of Unser Blvd. for the entire project reach," cost increases "region wide" and "incomplete estimate that was used during the development of the Agreement." Letter of John P. Kelly dated November 2006). These increased costs are not chargeable to The Trails for (a) changes in the scope of work not agreed to, or (b) increased costs in the project (now pending advertisement for bids) for over 5 years based on the initial assumption, Section 2.2 of the Agreement, that the time to plan, permit, bid and award the construction contract for this project would take only 5 months ending February 2006.

- Delay of the project, as noted in November 2006 letter from John P. Kelly, had by then already resulted in substantial cost increases. There has now been an additional five year delay in the project, resulting in, as we understand it, further substantial projected cost increases. Restatement of the Law, Second, Contracts, § 261, "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary."

- Value of the excess impact fee credits to The Trails LLC (acting essentially as a bank for part of the project costs in consideration of the excess credits) substantially undermined by the City's enactment and continuing resolutions implementing and continuing its impact fee ordinance moratorium, raising the issue of failure of consideration. See, City Ordinance amending SECTION 14-19-1-12 R.O.A. 1994, effective July 1, 2009, and thereafter. "When there is a failure of consideration, a contract, valid when formed, becomes unenforceable because the performance bargained for has not been rendered."

- Project delays outside the control of The Trails LLC have resulted in project delays well in excess of the estimated project time of one year. At this point in time, the advertisement for bids has still not occurred and the construction contract has not been let. This was to have occurred by February 2006. See, Section 2.2 of the Agreement. The project time scope was one year. At a minimum, this raises the issue of whether the Agreement is valid given the underlying expectations of the parties that this would be a one year project. It

raises a host of failed underlying implied conditions (best example, the economy when the Agreement was executed). It also raises other issues such as the New Mexico Bateman Act which generally renders void any public contract committing a city, county or local body from committing public funds to a project beyond one year. Per §6-6-11 New Mexico Statutes Annotated, "It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void." We believe that this would render void the Agreement beyond the City's fiscal year ending June 30, 2006 and may render void the Agreement if (a) the Bateman Act applies to AMAFCA (no case law on this point, but we believe it does) and AMAFCA had not sold bonds sufficient to fund its share of the cost of work by the end of its fiscal year following the execution of the Agreement.

The Agreement calls for arbitration of any dispute. Calling The Trails LLC's bond will result in a demand for arbitration, with the bonding company being directed to not honor the demand on the bond pending completion of the arbitration. Worse case, the bonding company would interplead the bond into an arbitrator's trust account or the Second Judicial District Court pending a final award or decision in the arbitration.

The suggestion by the City of calling the bond would only frustrate The Trails LLC's stated intention of wanting to sit down with the parties involved, including the City and AMAFCA and all new parties benefitted by the proposed project, to revisit the Agreement especially in light of the undeniably long project delays, large cost increases, and substantial changes to the scope of work.

Respectfully yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

Tim Eichenberg, Chairman
Danny Hernandez, Vice Chairman
Bruce M. Thomson, Secretary-Treasurer
Ronald D. Brown, Assistant Secretary-Treasurer
Daniel F. Lyon, Director

Jerry M. Lovato, P.E.
Executive Engineer

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 Prospect N.E., Albuquerque, NM 87107
Phone: (505) 884-2215 Fax. (505) 884-0214
Website: www.amafca.org

310 060611

February 14, 2012

Mr. Michael Riordan, P.E.
Director, Department of Municipal
Development
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87102

Ms. Jannelle Speake
KB Homes Phoenix, Inc.
4127 E. Van Buren Street, Suite 150
Phoenix, Arizona 85008

Mr. John Murtagh, P.E.
The Trails, LLC
Longford Group, Inc.
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120

Mr. Dan Aguirre, P.E.
Wilson & Company, Inc
4900 Lang Ave.
Albuquerque, NM 87109

Mr. Rick Beltramo, P.E.
Director of Engineering
Galway Construction, Inc
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: The Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements, dated September 22, 2005 (the "Agreement") – Delivery of Dam Plan Set to Office of the State Engineer for Final Approval

Dear Mr. Riordan, Ms. Speake, Mr. Murtagh, Mr. Aguirre, and Mr. Beltamo:

On June 7, 2011, I requested, in writing, that all parties notify AMAFCA, in writing, if there were any issues that would prevent the plat, design report or the construction documents from being completed, signed, and submitted to the Office of the State Engineer (OSE). In addition, I requested that each party review the estimate and confirm, in writing, their ability to contribute the required funding in the timeframe mentioned in the letter. I received two correspondences related to my requests, one from the City of Albuquerque indicating that they could fully fund their portion of the project and one from Wilson & Company indicating that the Engineer stamp and signature would be withheld until Wilson & Company was fully compensated for work done to date. I took the lack of response from the other parties as tacit approval of the information contained in the letter, dated June 7, 2011.

AMAFCA received the final design documents from Wilson & Company and a check for $2,306, the design review fee, on June 1, 2011. AMAFCA hand delivered the documents to the OSE on June 1, 2011. The OSE reviewed the submittal and requested additional information, which has been addressed by Wilson & Company. Two key components of the submittal were missing; the required plat showing sufficient right of way interests held by AMAFCA for the construction, operation, and maintenance of the dam, and the signature and stamp of the Engineer of Record.

I noted that the parcels to be dedicated per the Agreement by The Trails, LLC, still needed to be dedicated to AMAFCA in the June 7, 2011 correspondence. Most of the land has been dedicated, except for lot 19. Because lot 19 was not dedicated to AMAFCA, as it was originally proposed, it required Wilson & Company to redesign the dam. As a result of the re-design, the documents needed to be re-submitted to the OSE. Since June 2011, Wilson and Company has been working on the plat. The plat was approved by the Development Review Board and filed for public record last week.

The only outstanding item that needed to be addressed before a complete package could be submitted to the OSE was the signature and stamp of the Engineer of Record. The City of Albuquerque, working with Wilson & Company, secured the signature and stamp last week.

I am happy to report that today, February 14, 2012; AMAFCA hand delivered the final design, construction documents and the construction drawings to the OSE for approval.

That said, AMAFCA staff will be pursuing permission to advertise the project for construction as soon as possible, but most likely by the first week of April. As part of the bidding process, AMAFCA will need to develop a revised engineer's estimate for the project. As you might expect, specific element costs have gone up since June 7, 2011, the date of the last engineer's estimate for the project.

Below you will find the same costs and contributions identified in the June 7, 2011 correspondence. I have used 8% to estimate the construction management services, per section 2.5, 3.6, 4.5, and 5.3 of the agreement.

The matrix shows that the approximate "Cash to Project Account" contributions for each party are as follows:

AMAFCA	$1,384,295
City of Albuquerque	636,136*
The Trails LLC	1,223,395
KB Home New Mexico	1,068,749
Grand Total	$4,312,574

* Does not reflect City credit for construction of Trail Underpass/High Flow Outlet

AMAFCA plans to bid this project as soon as possible, with the bid opening most likely in May, 2012. Per the Agreement, the contributions from The Trails LLC and KB Home New Mexico will be due seven days before the expected award date of May 24, 2012. The City's contribution will be due 45 days after award of the construction contract. Per section 6.5 of the agreement;

I request that KB Homes Phoenix and The Trails LLC / Longford Group review the costs and the schedule above and confirm, in writing, your ability to contribute the required funding.

With this letter I am confirming that AMAFCA and the City of Albuquerque are ready to make their contribution per the Agreement.

If you have any questions as to the scope of the project or the break out between the requisite bid lots, please call Kurt Wagener, AMAFCA's Project Manager at 884-2215. Kurt and I will be happy to meet to discuss this matter at your convenience.

I plan to update all parties after we get final approval from the OSE and when the Engineer's Estimate is updated to reflect current costs.

Sincerely,
AMAFCA

Jerry M. Lovato, P.E.
Executive Engineer

Cc Richard Dourte, P.E., City Engineer, City of Albuquerque
Kurt Wagener, P.E., Field Engineer, AMAFCA

CITY OF ALBUQUERQUE

February 27, 2012

Richard Beltramo, PE,
The Trails, LLC
6330 Riverside Plaza Lane NW, Suite 160
Albuquerque, New Mexico, 87120

Re: Boca Negra Dam and Outfall Pipe Agreement ("Agreement")

Dear Mr. Beltramo,

This is in response to your e-mail dated February 22, 2012 regarding the above referenced Agreement. As you are aware the development approvals for the Trails subdivision developments were granted on the condition that the subdivisions would have a permanent drainage outfall to the Boca Negra Dam. Under the Agreement the Trails LLC ("Trails") is responsible for the design and construction costs of the permanent outfall for the Trails developments. The City relied on the representations made by the Trails LLC in the Agreement in granting the approvals for the Trails developments.

The City is in receipt of two letters regarding the Agreement, one letter is from Mr. Richard Leverick Esq. on behalf of Trails, and one letter is from you. Mr. Leverick's letter opines based on several theories, that the Agreement is invalid or otherwise unenforceable. The letter from you requests that the Agreement be amended ostensibly for the purpose of relieving the Trails of its obligations under the Agreement. The permanent outfall for the developments is a necessary requirement. In view of the positions and opinions contained in the letters referenced above, it is reasonable for the City to conclude that the Trails does not intend to construct the permanent outfall previously agreed to by the Trails and relied on by the City of Albuquerque in granting the subdivision approvals.

Under these circumstances the City will require additional time to evaluate alternative permanent drainage solutions before proceeding with any subsequent approvals including building permits, plan reviews and the acceptance of City infrastructure.

Sincerely,

Richard Dourte, PE
City Engineer

Cc: Marcus Rael, Esq., AMAFCA
Deborah Stover, Planning Director
Matthew Conrad, Associate Planning Director
Michael Riordan, PE, Acting DMD Director
Ed Adams, PE, DMD
Gregory Smith, Esq., DMD
Kevin Curran, Esq., Legal Department
Brent Ricks, Esq., Legal Department
Maria Martinez-Siemel, Esq., Legal Department
Curtis Cherne, PE, City Hydrologist, Planning

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

The Trails

February 17, 2012

Jerry Lovato
Executive Engineer
Albuquerque Metropolitan
Arroyo Flood Control Authority
2600 Prospect Ave., N.E.
Albuquerque, New Mexico, 87107

Jannelle Speake
KB Home Phoenix
4127 E. Van Buren Street, Suite 150
Phoenix, AZ 85008

Michael Riordan
Director, Department of Municipal Development
City Of Albuquerque
P.O. box 1293
Albuquerque, New Mexico, 87102

Re: Boca Negra Dam - Request to Amend Agreement

Dear Project Partners:

The purpose of this letter is to inform the partners of our concerns and challenges due to the Boca Negra Dam Project (BND). We believe that the project is not progressing in the spirit and intent of the original agreement and for several reasons needs to be amended. At some time, possibly March, we would like to present our concerns to the AMAFCA Board and formally pursue amending the agreement.

When the contract was executed in 2005, it was anticipated that the project would be completed by the end of 2006. With direction from Wilson Engineering, The Trails purchased 8.8 acres of land for dedication to AMAFCA at the proposed dam location in 2004 (appraised at $880,000) and paid Wilson Engineering approximately $140,000 in engineering design fees with the understanding that the City would reimburse The Trails on a timely basis with impact fees credits according to the Impact Fee Ordinance in place at the time of the execution of the Agreement. At that time, the average roadway and drainage impact fees for a single family home was approximately $3,700 per house.

The Trails

Since we executed the Agreement in 2005, over six years have passed, with a new dam construction estimate that requires The Trails to pay an additional $600,000, not in a small part due to several redesigns initiated by AMAFCA and the City. Also, The City delayed giving us any impact fee credits until November 2011, over six years after we acquired the property for AMAFCA's use. Additionally, since the Agreement was executed, the impact fee credits that were granted to the Trails have been devalued by 50% because of the reduction by 50% by the City for any new impact fees by other builders.

Also, because of the six year delay in the dam completion, The Trails redesigned its drainage outflow to the Unser Blvd. watershed, and we have spent hundreds of thousands of dollars in other drainage facilities to detain and retain developed flows on site and to redirect the flow to the new watershed.

When the Agreement was executed in 2005, there were no other parties to share the benefit and cost with. Since then, the City has created several Sector Plans and Special Assessment Districts in the Boca Negra Dam area, Unser Blvd., Rainbow Blvd. and Paseo Del Norte Blvd. were extended, and the Volcano Vista school complex has been completed. The characteristics of the area have changed substantially since 2005. Many new and eventual users of storm drainage facilities now have the ability to pay for any regional public improvements, including the dam through Sector Plan PIDs and new SADs that are being created in the area.

The Trails contributes less than 3% of the total storm water drainage into the dam, but is expected to pay for over 30% of the total cost. The vast majority of the land owners have no requirement to pay any amount to the project. I suggest that we meet with the City, locate all the beneficiaries of the dam, quantify the flows generated by the properties, and use the Sector Plans and SADs to more uniformly measure equitable amounts to be charged to each beneficiary.

We recently met with the City Department of Municipal Development to discuss our concerns. The City has requested that we suggest what we consider an appropriate amendment to the agreement. We are currently working on that effort. Mr. Lovato has offered to support a meeting of the partners to consider our concerns and proposal. In the near future we will coordinate such a meeting.

We have contracted the services of our attorney to review our opinion. Attached is a copy of Mr. Leverick's letter on the subject.

The Trails

Should you have any questions or need any additional information I can be contacted at 761-9911.

Sincerely,

Rick Beltramo
The Trails, LLC

Attachments

Cc: John Murtagh, The Trails
Kurt Wagner, AMAFCA
Richard Dourte, City Of Albuquerque
Curtis Cherne, City of Albuquerque
Richard M. Leverick, Leverick and Musselman, LLC

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

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A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

February 9, 2012

VIA ELECTRONIC MAIL

Mr. John Murtagh
Longford Group, Inc.
3077 E. Warm Springs Road,
Las Vegas, Nevada 89120

Mr. Rick Beltramo
Director of Engineering
Galway Construction, Inc.
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 23, 2005

Dear John and Rick:

I have reviewed the above-referenced Agreement and a project schedule chart prepared by Rick tracking certain key events occurring with respect to the project following the execution of the Agreement. I have also given some consideration to the discussions we have had relative to the Agreement and the project, and to some of the supplemental information provided to me by Rick concerning the project.

You have asked for some bullet points relative to my initial legal conclusions concerning the Agreement. This short letter is provided with the understanding that we were just recently engaged to represent The Trails LLC with respect to its legal rights and obligations under the Agreement and have not spent as much time as necessary to complete our review of documents including correspondence we deem necessary to give final opinions relative to the above.

Based on the foregoing and our initial review of the Agreement and the matters identified above, we are of the opinion that:

- The scope of work was substantially changed on or after fall 2006. This appears to have occurred without approval in writing by The Trails LLC. Section 6.11 of the Agreement provides that it may be modified only in writing

signed by all parties. This change in the scope of work is not unenforceable. Further, per Restatement of the Law, Second, Contracts, § 265, Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary."

- The cost of work has substantially increased based in part on the change in the scope of work ("additions to the scope of the project" including "a master planned sanitary sewer interceptor" and "paving the full four lane section of Unser Blvd. for the entire project reach," cost increases "region wide" and "incomplete estimate that was used during the development of the Agreement." Letter of John P. Kelly dated November 2006). These increased costs are not chargeable to The Trails for (a) changes in the scope of work not agreed to, or (b) increased costs in the project (now pending advertisement for bids) for over 5 years based on the initial assumption, Section 2.2 of the Agreement, that the time to plan, permit, bid and award the construction contract for this project would take only 5 months ending February 2006.

- Delay of the project, as noted in November 2006 letter from John P. Kelly, had by then already resulted in substantial cost increases. There has now been an additional five year delay in the project, resulting in, as we understand it, further substantial projected cost increases. Restatement of the Law, Second, Contracts, § 261, "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary."

- Value of the excess impact fee credits to The Trails LLC (acting essentially as a bank for part of the project costs in consideration of the excess credits) substantially undermined by the City's enactment and continuing resolutions implementing and continuing its impact fee ordinance moratorium, raising the issue of failure of consideration. See, City Ordinance amending SECTION 14-19-1-12 R.O.A. 1994, effective July 1, 2009, and thereafter. "When there is a failure of consideration, a contract, valid when formed, becomes unenforceable because the performance bargained for has not been rendered."

- Project delays outside the control of The Trails LLC have resulted in project delays well in excess of the estimated project time of one year. At this point in time, the advertisement for bids has still not occurred and the construction contract has not been let. This was to have occurred by February 2006. See, Section 2.2 of the Agreement. The project time scope was one year. At a minimum, this raises the issue of whether the Agreement is valid given the underlying expectations of the parties that this would be a one year project. It

raises a host of failed underlying implied conditions (best example, the economy when the Agreement was executed). It also raises other issues such as the New Mexico Bateman Act which generally renders void any public contract committing a city, county or local body from committing public funds to a project beyond one year. Per §6-6-11 New Mexico Statutes Annotated, "It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void." We believe that this would render void the Agreement beyond the City's fiscal year ending June 30, 2006 and may render void the Agreement if (a) the Bateman Act applies to AMAFCA (no case law on this point, but we believe it does) and AMAFCA had not sold bonds sufficient to fund its share of the cost of work by the end of its fiscal year following the execution of the Agreement.

The Agreement calls for arbitration of any dispute. Calling The Trails LLC's bond will result in a demand for arbitration, with the bonding company being directed to not honor the demand on the bond pending completion of the arbitration. Worse case, the bonding company would interplead the bond into an arbitrator's trust account or the Second Judicial District Court pending a final award or decision in the arbitration.

The suggestion by the City of calling the bond would only frustrate The Trails LLC's stated intention of wanting to sit down with the parties involved, including the City and AMAFCA and all new parties benefitted by the proposed project, to revisit the Agreement especially in light of the undeniably long project delays, large cost increases, and substantial changes to the scope of work.

Respectfully yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

2005-31

Agreement to Provide Design, Construction and Maintenance for
Boca Negra Detention Dam and Outfall Pipe
and Adjacent Unser Blvd. Improvements

THIS AGREEMENT is made and entered into this 22nd day of September, 2005, by and among the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico ("AMAFCA"), the City of Albuquerque, a New Mexico municipal corporation, ("CITY"), Vista Vieja Investments LLC, a New Mexico Limited Liability Corporation ("VISTA"), and The Trails LLC, a Nevada Limited Liability Company ("TRAILS"), all collectively referred to as the "PARTIES".

1. **WHEREAS,** the Boca Negra Watershed Drainage Management Plan, by Resource Technology, Inc., May 2005, adopted by the AMAFCA Board of Directors via Resolution 2005-7, "Boca Negra Drainage Management Plan", on May 26, 2005, ("DMP") calls for a flood control dam to be constructed near the top of Boca Negra Canyon just upstream of the future Unser Blvd.; and

2. **WHEREAS,** the Record of Decision for the Final Environmental Impact Statement dated December, 1993, for the Unser Middle Transportation Corridor, by the City of Albuquerque in cooperation with the U.S. Department of the Interior, National Park Service, dated December 20, 1993, identified that the existing Unser Blvd crossing through Boca Negra Canyon would be limited in use to "utility, drainage and trail purposes", and the City currently plans to build a grade separated multi-use trail connection near this location and a parking area for trail users, to serve the Boca Negra Unit of the Petroglyph National Monument, as well as areas to the west, and to use the existing Unser crossing through Boca Negra Canyon for the Boca Negra Detention Dam Outfall Pipe; and

3. **WHEREAS,** the CITY desires to construct this as a multi-use trail underpass and also desires to construct the two lane section of Unser Blvd., as well as related utility work coincident with the Boca Negra Dam and Outfall Pipe Project; and

4. **WHEREAS,** the CITY Open Space Division, in its capacity as land owner and management agency for the Boca Negra Unit of Petroglyph National Monument, has requested that the Boca Negra Canyon continue to experience flood flow events while being protected from the more frequent runoff events resulting from development in the Boca Negra watershed, and while allowing a portion of the frequent runoff events to be used by the riparian vegetation in Boca Negra Canyon; and

5. **WHEREAS,** the Boca Negra Detention Dam can be designed to allow this flow regime by use of a dual stage outlet system, where low flows will be directed to a outlet pipe running from the Dam to the Boca Negra Arroyo right of way at Atrisco Blvd, with trickle flows diverted from this outlet pipe to locations within the Boca Negra Canyon, and higher outlet flows will pass through the multi-use trail underpass and be directed to the Boca Negra Canyon in the historic arroyo flow path; and

6. **WHEREAS,** VISTA is currently developing the "Vista Vieja" subdivision, which is southwest of the site of the proposed Boca Negra Detention Dam, and for which the dam will serve as the subdivision's primary storm water outfall; and

7. **WHEREAS,** TRAILS is currently developing the "Trails" subdivision, which is north of the site of the proposed Boca Negra Detention Dam, and for which the dam will serve as the subdivision's only storm water outfall; and

8. **WHEREAS,** AMAFCA, the CITY, VISTA and TRAILS desire to establish an Agreement for construction of the Boca Negra Dam and Outfall Pipe as described in the DMP, for the construction of the multi-use trail underpass/high flow outlet and the two lane section of Unser Blvd, collectively the "PROJECT"; as generally shown on Exhibit A; and

9. **WHEREAS,** AMAFCA, the CITY, VISTA and TRAILS are willing to share in the costs of the design, construction, construction engineering services, right of way, and

FEMA flood map revisions on a percentage basis, as described herein and summarized at Exhibit B; and

10. **WHEREAS**, AMAFCA is agreeable to assumption of maintenance of the completed Boca Negra Detention Dam and Outfall Pipe after acceptance of same by AMAFCA; and

11. **WHEREAS**, the CITY is agreeable to assumption of maintenance of the completed Unser Blvd., multi-use trail underpass/high flow outlet and multi use trails included in the PROJECT after acceptance of same by CITY; and

12. **WHEREAS**, the CITY has enacted a Drainage Facilities Impact Fees Ordinance (0-04-72) under which VISTA and TRAILS may receive credits for their share of construction of the PROJECT, if eligible for impact fee credits, against impact fees otherwise due; and

13. **WHEREAS**, AMAFCA's "District Wide Drainage Facility and Planning Review," prepared by ASCG, Inc., June 2004, identified this PROJECT as a Class "D" project, indicating a project needed in conjunction with other development in the area; and

14. **WHEREAS**, AMAFCA's FY 2005 Project Schedule, adopted by the AMAFCA Board of Directors on August 26, 2004, recognized the need and regional impact of the PROJECT and identified $1,000,000 (One Million Dollars) in funding in FY-06 for the PROJECT; and

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

SECTION 1. The purpose of the Agreement is to:

1.1. Provide for the design of the PROJECT, dedication of right of way, and submittal of a FEMA Conditional Letter of Map Revision ("CLOMR") and Letter of Map Revision ("LOMR") and payment of FEMA review fees, to be funded by VISTA and TRAILS.

1.2 Provide for cash contributions by the CITY, VISTA and TRAILS to AMAFCA to pay for each party's share of construction of and construction engineering services for the PROJECT.

1.3 Provide for AMAFCA's cash contribution for AMAFCA's share of construction and construction engineering services for the project.

1.4. Provide for AMAFCA to act as contracting agency for the PROJECT and related construction engineering services.

1.5 Provide for AMAFCA to accept the Boca Negra Detention Dam and Outfall for maintenance and for the CITY to accept maintenance of the Multi-use trail underpass and high flow outlet, the low flow trickle pipes, as well as Unser Blvd and all multi-use trails built as part of the PROJECT.

1.6 Outline the CITY process by which VISTA and TRAILS may receive credits for the value of the construction of the PROJECT, if eligible for impact fee credits, and, if eligible, the value of the dedication of the land for the PROJECT by VISTA and TRAILS.

SECTION 2. AMAFCA agrees to:

2.1 Review and, if appropriate, approve plans and specifications for PROJECT, as prepared by VISTA's and TRAILS' engineer. It is understood by the PARTIES that the plans and specifications for the PROJECT will include four bid lots with separate bid proposals and separate quantity take-offs as follows:

1. The Boca Negra Detention Dam and Outfall Pipe Bid Lot (the "Dam Bid Lot"), to include site clearing and grubbing, relocation of the existing 24-inch water line that runs from the well site to 81st Street, foundation treatment, key trench, rock excavation, dam embankment, dual stage principal spillway outlet structure with concrete cylinder pipe principal spillway outfall pipes with anti-seep collars through the dam embankment to include the 42-inch diameter RCP outfall pipe down to the Boca Negra Arroyo each of Atrisco Blvd, appurtenant manholes, transition structure, energy dissipater and plunge pool at the end of the outfall pipe, and three trickle flow diversions from the outfall pipe to the Boca Negra Canyon at locations to be determined during design, necessary junction box(es) and other appurtenances, the emergency spillway, the 72-inch Unser Blvd storm drain penetration of sufficient length to prevent further disturbance to the dam embankment when the storm drain is installed, native revegetative seeding with gravel mulch on the dam embankment, and native revegetative seeding with straw mulch in all other disturbed areas, access control fencing and gates, and grading of future parking areas and recreation fields within the reservoir area.

2. The Multi-Use Trail Underpass/High Flow Outlet Bid Lot (the "Trail/ Outlet Bid Lot", to include the twenty five foot wide multi-use trail underpass and dual crossing structure, including concrete wing walls, appurtenant guardrail, necessary backfill over the structure, the multi-use trail within the Unser Blvd. right of way, the high flow outlet channel to its transition to the existing arroyo at the head of Boca Negra Canyon, way, and related traffic control for the Bid Lot.

3. The Unser Blvd. Roadway Bid Lot (the "Unser Bid Lot", to include clearing and grubbing, the 21-inch master planned sanitary sewer line, the 24-inch master planned water line and the 42-inch storm drain within the Unser Blvd. right of way which will connect to the Boca Negra Detention Dam Outfall Pipe, roadway embankment, curb and gutter, subgrade preparation, base course, two lanes of arterial paving, native revegetative seeding with gravel mulch on the roadway embankment, and native revegetative seeding with straw mulch in all other disturbed areas, repaving one lane of the existing roadway in Atrisco Blvd over the alignment of the principal spillway outlet pipe, and any multi-use trail included within the project beyond that in the Trail/Outlet Bid Lot.

4. The General Project Bid Lot (the "General Bid Lot"), to include items of the contract that are applicable to the entire PROJECT, rather than any of the three above Bid Lots, including, but not limited to, bid items for mobilization, surveying and construction staking, storm water pollution prevention plan, care and diversion of water and project signage. For purposes of allocating project cost, items in the General Bid Lot will be allocated among the first three Bid Lots based on their respective construction costs.

2.2 Within the October 2005 to February 2006 timeframe, and upon receipt of certified and stamped ready-to-bid construction plans from VISTA and TRAILS, advertise, accept bids and award the construction contract for the PROJECT, with the actual costs of the PROJECT (design, construction engineering and construction, right of way, and FEMA CLOMR/LOMR analysis, submittal and review fees) to be split by AMAFCA, VISTA, TRAILS and the CITY as summarized in Exhibit B. Advertisement and bidding shall be according to the normal AMAFCA procedures for public bidding of public infrastructure projects.

2.3 Establish and administer a separate interest bearing checking account for the PROJECT ("Project Account"). All contributions for the PROJECT from AMAFCA, CITY, VISTA and TRAILS will be deposited in the Project Account. PROJECT expenses for construction, construction engineering, and any other related construction expenses, will be disbursed from the Project Account. The account will be invested by AMAFCA in the New Mexico State Short Term Fund, with any interest accrued to be first used on any overruns in the construction engineering or construction costs and as further described in Section 6.3.

2.4 Invoice VISTA, TRAILS and the CITY for their respective initial contributions for construction engineering services and construction of the PROJECT, as described in Sections 3.6, 4.2, and 5.2.

2.5 Provide $993,167.00 to the Project Account as AMAFCA's primary portion of its funding for the PROJECT. This amount is an estimated amount based on 25% of the total cost of the Dam Bid Lot and 50% of the Trail/Outlet Bid Lot (including design, construction engineering, right of way and construction). The amount described above for the AMAFCA share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

2.6 Provide full time inspection of the PROJECT including administration, testing, and inspection or other supervision of construction and certification thereof, by a registered engineer and testing firm procured via request for proposals for engineering services by AMAFCA to assure construction is in conformance with the plans and specifications. AMAFCA will invite the CITY to assign up to two members to the Selection Advisory Committee for the evaluation of the proposals received.

2.7 Accept the Boca Negra Detention Dam and Outfall Pipe and related storm water quality structures, if applicable, for continuous maintenance upon satisfactory completion of

construction and confirm acceptance of same in writing by AMAFCA's Executive Engineer.

2.8 Require its contractor to provide liability insurance during the period of construction naming CITY, VISTA and TRAILS as an additional insured's. The amount of the liability insurance shall be at least $1,000,000.00.

2.9 Upon approval of the final pay estimates for the PROJECT and for AMAFCA's engineering consultant providing the construction engineering services, AMAFCA will invoice VISTA, TRAILS and the CITY for any overruns (after applying interest earned in the Project Account as described in Section 6.3) in the construction and construction engineering costs of the PROJECT, or will reimburse VISTA, TRAILS and the CITY for any under runs in the construction and construction engineering costs of the PROJECT, with the provision that the design amount of $186,880.00, the right of way amount of $1,026,436.00, and the FEMA CLOMR/LOMR analysis, submittal and review fees amount of $27,400.00 are fixed. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

2.10 Provide to VISTA's and TRAILS' engineer the PROJECT record drawings, certifications, geotechnical testing results, and written acceptance of the Boca Negra Detention Dam and Outfall Pipe for use in the FEMA LOMR submittal.

2.11 Accept dedication of all required rights-of-way for the Boca Negra Detention Dam in fee simple with warranty covenants, free and clear of liens, claims and encumbrances, and subject to title exceptions acceptable to AMAFCA. Dedication of all rights of way shall be due at the same time or earlier as the initial funding contributions from VISTA and TRAILS.

2.12 License use of the AMAFCA right of way at the Boca Negra Detention Dam to the City of Albuquerque for recreational uses, with the form of the license to be substantially the

same as was approved by AMAFCA on April 21, 2005 for the CITY's recreational use of Kinney Dam. Multi-use trails installed within the AMAFCA right-of-way will be licensed via and subject to the terms and conditions of the existing "First Amendment to License Agreement City Trails Systems on AMAFCA R/W", between AMAFCA and the CITY, dated May 13th, 2003.

SECTION 3. VISTA, at its sole expense and liability, agrees to:

3.1 In conjunction with TRAILS and using the same engineering consultant, provide to AMAFCA the following:

a. The design of the PROJECT, including separate design analysis report, geotechnical investigation report and ready-to-bid, construction plans, contract documents and specifications, approved by AMAFCA, the New Mexico Office of the State Engineer Dam Safety Bureau and the CITY Development Review Committee.

b. All necessary submittals and Agency approvals for the PROJECT, including but not limited to CITY Development Review Board and Design Review Committee, New Mexico Office of the State Engineer Dam Safety Bureau, U.S. Army Corps of Engineers Section 404 permit and New Mexico State Historic Preservation Officer Cultural and Archaeological Clearances. Applicable New Mexico Office of the State Engineer review and permitting fees shall be paid by VISTA.

c. The plans and specifications for the PROJECT shall include four bid lots with separate bid proposals and separate quantity take-offs as described in Section 2.1.

3.2 In conjunction with TRAILS and using the same engineering consultant, submit to (and pay all required review fees) the FEMA CLOMR showing the revised floodplain to be contained within the PROJECT and transition section.

3.3 In conjunction with TRAILS and using the same engineering consultant, provide final plans and specifications for construction of the PROJECT to the CITY and AMAFCA for review and, if appropriate, approval prior to construction.

3.4 In conjunction with TRAILS, dedicate to AMAFCA, the Boca Negra Detention Dam site in fee simple with warranty covenants, free and clear of liens, claims and encumbrances, and subject to title exceptions acceptable to AMAFCA. Dedication of all rights of way shall be due at the same time or earlier as the initial funding contributions from VISTA.

3.5. In conjunction with TRAILS and using the same engineering consultant, upon final approval of the PROJECT design, provide stamped, certified plans and specifications to AMAFCA in hard copy (mylar for the plans) and digital format, for AMAFCA's use in procuring construction of the PROJECT.

3.6 Pay to AMAFCA the amount of $321,500.00 seven (7) days prior to award of a construction contract, which amount shall be VISTA's primary portion of its funding for the PROJECT. This amount is an estimated amount based on 33.5% of the total cost of the Dam Bid Lot, (including design, construction engineering, construction, right of way) and 50% of the FEMA CLOMR/LOMR analysis, submittal and review fees, less a credit in the amount of $93,440.00 representing VISTA'S design costs, less a credit in the amount of $644,471.00 representing VISTA's right of way costs, and less a credit in the amount of $13,700.00 representing VISTA'S costs for the FEMA CLOMR/LOMR analysis, submittal and review fees. The amount described above for the VISTA share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

3.7 Subject to AMAFCA approval of a grading and drainage plan, VISTA shall excavate approximately 40,000 cubic yards from the Boca Negra Detention Dam reservoir area for

use on the adjacent Vista Vieja subdivision. This material shall be removed by a date no later than 30 days prior to AMAFCA's intended award of bids for construction of the PROJECT, in order to allow sufficient time for survey of cross sections to establish final quantities for the Dam Bid Lot. Should VISTA not remove at least 75% of this material by this time, VISTA's contribution shall be increased by the lump sum of $80,000.00, and the material shall become the property of AMAFCA

3.8 Pay to AMAFCA, within 30 days of receipt of invoice from AMAFCA, VISTA's share of any overruns in the Dam Bid Lot, based on VISTA providing 33.5% of the Dam Bid Lot costs, as described in Section 3.6, with the provision that AMAFCA's actual construction engineering costs will be allocated between the Bid Lots by the relative costs of these Bid Lots and that interest accrued in the Project Account will be applied as described in Section 6.3. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

3.9 In conjunction with TRAILS and using the same engineering consultant, upon completion of construction and receipt of project certifications, geotechnical testing results and record drawings from AMAFCA, submit to FEMA a LOMR to revise the 100-year floodplain to show that it is contained within the constructed PROJECT.

3.10 VISTA acknowledges and agrees that the PROJECT and the dedication of land for the PROJECT shall not be eligible for drainage impact fee credit until and unless the PROJECT is listed on the CITY's CCIP.

3.11 Install the Vista Vieja storm drain from the Vista Vieja subdivision to the Boca Negra Detention Dam, designed to accept upstream flows per the DMP, with construction to include the outlet to the Dam reservoir area, appropriate storm water quality facilities and energy dissipater.

3.12 VISTA agrees to install storm water quality debris removal structures on any and all current and future storm drain connections to the PROJECT as related to the Vista Vieja Subdivision. Design of structure(s) shall be coordinated with AMAFCA, and may be located within the Boca Negra Detention Dam right of way. If the debris removal structure is a manhole type facility within the PROJECT right of way, AMAFCA will maintain such structure.

SECTION 4. TRAILS at its sole expense and liability, agrees to:

4.1 In conjunction with VISTA and using the same engineering consultant, provide to AMAFCA the following:

a. The design of the PROJECT, including separate design analysis report, geotechnical investigation report and ready-to-bid, construction plans, contract documents and specifications, approved by AMAFCA, the New Mexico Office of the State Engineer Dam Safety Bureau and the CITY Development Review Committee.

b. All necessary submittals and Agency approvals for the PROJECT, including but not limited to CITY Development Review Board and Design Review Committee, New Mexico Office of the State Engineer Dam Safety Bureau, U.S. Army Corps of Engineers Section 404 permit and New Mexico State Historic Preservation Officer Cultural and Archaeological Clearances. Applicable New Mexico Office of the State Engineer review and permitting fees shall be paid by VISTA.

c. The plans and specifications for the PROJECT shall include four bid lots with separate bid proposals and separate quantity take-offs as described in Section 2.1.

4.2 In conjunction with VISTA and using the same engineering consultant, submit to (and pay all required review fees) the FEMA CLOMR showing the revised floodplain to be contained within the PROJECT and transition section.

4.3 In conjunction with VISTA and using the same engineering consultant, provide final plans and specifications for construction of the PROJECT to the CITY and AMAFCA for review and, if appropriate, approval prior to construction.

4.4 In conjunction with VISTA, dedicate to AMAFCA, the Boca Negra Detention Dam site in fee simple with warranty covenants, free and clear of liens, claims and encumbrances, and subject to title exceptions acceptable to AMAFCA. . Dedication of all rights of way shall be due at the same time or earlier as the initial funding contribution from TRAILS.

4.5 Pay to AMAFCA the amount of $520,757.00 seven (7) days prior to award of a construction contract, which amount shall be TRAILS' primary portion of its funding for the PROJECT. This amount is an estimated amount based on 31.5% of the total cost of the Dam Bid Lot (including design, construction engineering, construction, right of way) and 50% of the FEMA CLOMR/LOMR analysis, submittal and review fees, less a credit in the amount of $93,440.00 representing TRAILS' share of design costs, less a credit in the amount of $381,965.00 representing TRAILS' right of way costs, and less a credit in the amount of $13,700.00 representing TRAILS' share of the costs for the FEMA CLOMR/LOMR analysis, submittal and review fees. The amount described above for the TRAILS share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

4.6 After completion of the PROJECT, pay to AMAFCA, within 30 days of receipt of invoice from AMAFCA, TRAILS' share of any overruns in the Dam Bid Lot, based on TRAILS providing 31.5% of the Dam Bid Lot Costs as described in Section 4.2, with the provision that AMAFCA's actual construction engineering costs will be allocated

between the Bid Lots by the relative costs of these Bid Lots and that interest accrued in the Project Account will be applied as described in Section 6.3. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

4.7 In conjunction with VISTA and using the same engineering consultant, upon completion of construction and receipt of project certifications, geotechnical testing results and record drawings from AMAFCA, submit to FEMA a LOMR to revise the 100-year floodplain to show that it is contained within the constructed PROJECT.

4.8 Install the Universe Storm Drain, from the Trails Subdivision to the Boca Negra Detention Dam, designed to accept upstream flows per the DMP, with construction to include the inlet to the Dam reservoir area and appropriate storm water quality facilities and energy dissipater.

4.9 TRAILS agrees to install storm water quality debris removal facilities on any and all current and/or future storm drain connections to the PROJECT, as related to the Trails Subdivision. Design of structure(s) shall be coordinated with AMAFCA, and may be located within the Boca Negra Detention Dam right of way. If the debris removal structure is a manhole type facility within the PROJECT right of way, AMAFCA will maintain such structure.

4.10 TRAILS acknowledges and agrees that the PROJECT and dedication of land for the PROJECT shall not be eligible for drainage impact fee credits until and unless the Project is listed on the CITY's CCIP.

SECTION 5. CITY agrees to:

5.1. Review and, if appropriate, approve plans and specifications for PROJECT, as prepared by VISTA's and TRAILS' engineer.

5.2 Dedicate a drainage easement suitable to AMAFCA and generally in the form attached at Exhibit C for the Boca Negra Detention Dam Outfall Pipe and energy dissipater.

5.3. Pay to AMAFCA the amount of $979,197.00 within 45 days of receipt of invoice from AMAFCA, which invoice may be submitted anytime after award of bids for construction of the PROJECT. This amount shall be the CITY's primary portion of its funding for the PROJECT. This amount is an estimated amount based on 10% of the total cost of the Dam Bid Lot, 50% of the Trail/Outlet Bid Lot and 100% of the Unser Bid Lot (including design, construction engineering, right of way and construction). The amount described above for the CITY share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

5.4 Pay to AMAFCA, within 45 days of receipt of invoice from AMAFCA, CITY's share of any overruns in the PROJECT, based on CITY providing 10% of the total cost of the Dam Bid Lot, 50% of the Trail/Outlet Bid Lot and 100% of the Unser Bid Lot, including design, construction engineering, right of way and construction costs, as described in Section 5.2, with the provision that AMAFCA's actual construction engineering costs will be allocated between the Bid Lots by the relative costs of these Bid Lots and that interest accrued in the Project Account will be applied as described in Section 6.3. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

5.5. Grant impact fee credits to VISTA and to TRAILS for the value of the construction of the PROJECT, only if the PROJECT, or portions thereof, and the value of the dedication of the land for the PROJECT by VISTA and TRAILS are eligible for impact fee credits, against drainage facilities impact fees pursuant to the CITY's Drainage Facilities Impact Fees Ordinance. If the PROJECT or portions thereof become eligible for impact fee credits, the impact fee credits shall be granted pursuant to the following terms and conditions:

1. Credits shall only be granted to VISTA and TRAILS for the value of the construction of the PROJECT and the value of the dedication of the land for the PROJECT by VISTA and TRAILS;

2. The value of the dedication of the land for the PROJECT shall be based on the fair market value of the property prior to any increase in value resulting from subdivision or development approval and shall be demonstrated by an appraisal prepared by an appraiser acceptable to the CITY;

3. The value of the construction of the PROJECT shall at the option of the VISTA and TRAILS be based on:

A. The fair market value of the completed PROJECT at the time of acceptance by AMAFCA and the CITY demonstrated by an appraisal prepared by an appraiser acceptable to the CITY, less AMAFCA's and the CITY's share of the cost PROJECT; or

B. The actual design and construction cost of the completed PROJECT, including testing, surveying, construction management and inspection demonstrated by documentation acceptable to the CITY, less AMAFCA's and the CITY's share of the cost of the PROJECT; and

C. The PARTIES agree that the estimated value of the credits will be based on the actual design and construction cost of the PROJECT, less AMAFCA's and the CITY's share of the cost of the PROJECT, and the fair market value of the dedication of the land for the PROJECT by VISTA and TRAILS.

4. Credits shall first be applied against drainage impact fees imposed on the Vista Vieja Subdivision being developed by VISTA and the Trails Subdivision being developed by TRAILS.

5. If the value of the credits exceeds the amount of drainage impact fees otherwise due, the excess credits shall become the property of VISTA and TRAILS subject to the following conditions for disposition:

A. Excess credits shall only be applied to offset impact fees for the same category of improvement and for projects within the same service area for which the credits were granted;

B. Excess credits shall not be used to offset impact fees for other categories of improvements other than drainage improvements;

C. Excess credits shall be freely assignable by VISTA and TRAILS subject to prior written notice to the CITY;

D. VISTA and TRAILS may request cash reimbursement for excess credits from the CITY; however, the CITY shall not be obligated to reimburse VISTA or TRAILS for any such excess credits;

E. Excess credits shall not accrue interest and shall not be considered public money or constitute a liability of the CITY for any purpose whatsoever, except to offset impact fees as set forth in this Agreement, and

F. Excess credits shall expire if not used or redeemed within seven (7) years after issuance.

6. The credits shall be granted and become effective on the date of acceptance of the PROJECT by AMAFCA and the CITY, in accordance with the Drainage Impact Fee Ordinance.

7. In the event the City does not assess impact fees against the Vista Vieja Subdivision being developed by VISTA and the Trails Subdivision being developed by TRAILS, VISTA and TRAILS shall not be eligible to receive impact fee credits pursuant to this Agreement.

8. Grant impact fee credits to CITY and to AMAFCA for the value of their actual funding for the construction of the PROJECT, only if the PROJECT, or portions thereof, are eligible for impact fee credits, against drainage facilities impact fees pursuant to the CITY's Drainage Facilities Impact Fees Ordinance. If the PROJECT or portions thereof become eligible for impact fee credits, the impact fee credits shall be granted pursuant to the Ordinance.

5.6 Accept the multi-use trail underpass and high flow outlet, the low flow trickle pipes, as well as Unser Blvd and all multi-use trails built as part of the PROJECT, for continuous maintenance upon satisfactory completion of construction and confirm acceptance of same in writing by CITY.

SECTION 6. All PARTIES agree:

6.1 That they are splitting the project costs as provided herein to include design, construction engineering, construction, right of way, FEMA CLOMR/LOMR and FEMA review fees, in accordance with Exhibit C. For purposes of allocating the costs, the design fee of $186,880.00, the right of way value of $1,026,436.00, and the FEMA CLOMR/LOMR analysis, submittal and review fees of $27,400.00 are considered fixed.

6.2 This Agreement does not relieve the VISTA or TRAILS of the requirement to construct (or financially guarantee construction of) such facilities that AMAFCA and the CITY may deem necessary for the Vista Vieja Subdivision and the Trails Subdivision.

6.3 Any interest accrued on monies collected by AMAFCA for the PROJECT shall be first used on any overruns in the construction engineering or construction costs of the PROJECT. If the interest earned on the Project Account is greater than the total over runs, the interest will be applied without prorating it to each Bid Lot. Any remaining interest earned on the Project Account will then be disbursed to AMAFCA, CITY, VISTA and TRAILS in a prorated manner based on the initial contributions made to the Project Account. If the interest earned on the Project Account is less that the total over runs, the interest will be applied in a prorated manner based on the relative costs of each PROJECT Bid Lot, prior to determining additional payments due by the PARTIES.

6.4 All PARTIES will strive for prompt action and timely response.

6.5 If any situation arises which adversely affects any PARTY's participation in this Agreement, or meeting the construction bid schedule identified in Section 2.2, said PARTY will immediately notify the other PARTIES in writing.

6.6 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.

6.7 Unresolvable differences shall be referred to binding arbitration under the provisions of the New Mexico Uniform Arbitration Act.

6.8. All storm drainage facilities will be designed and constructed to current CITY, AMAFCA and New Mexico Office of the State Engineer Dam Safety Bureau standards and, as constructed, shall meet all applicable codes.

6.9 All trail and roadway facilities will be designed and constructed to current City standard specifications and, as constructed, shall meet all applicable codes.

6.10. This Agreement shall inure to the benefit of and be binding upon the undersigned PARTIES and their respective successors and assigns. Whenever in this Agreement a reference to VISTA or TRAILS is made, such references shall be deemed to include a reference to successor owners of the MESA or TRAILS property that is subject to he terms of this Agreement.

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

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

6.13 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.

6.14. 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 one PARTY to the other:

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

Vista Vieja Investments LLC
8300 Carmel Dr., N.E.
Albuquerque, NM 87122
Fax (505) 828-9901
Attn: Scott Schiabor

City of Albuquerque
Director, Dept. Municipal Development
P.O. Box 1293
Albuquerque, NM 87102
Fax: (505) 768-2310

The Trails LLC
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120
Fax (702) 454-8715
Attn: John Murtagh

With copy to:
City of Albuquerque
City Engineer
600 2nd Street NW, Suite 201
Albuquerque, NM 87102
Fax: (505) 924-3864

6.15 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.

6.16 It is specifically agreed among 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.

6.17. As between the CITY and AMAFCA, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its employees. The liability of the CITY and AMAFCA shall in all cases be subject to the limitations and immunities of the New Mexico Tort Claims Act, Section 44-4-1, et. seq., NMSA 1978, as amended.

6.18. In the event of a dispute between VISTA and/or TRAILS and AMAFCA, or VISTA and/or TRAILS and the CITY, regarding this Agreement, the prevailing PARTY shall be entitled to reimbursement of its costs and reasonable attorney's fees. In the event of a dispute between the CITY and AMAFCA, each PARTY shall be responsible for its own costs and attorney's fees.

6.19 Funds for this project are contingent upon AMAFCA's successful sale of General Obligation Bonds.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year set forth above.

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico

Ronald D. Brown, Chair
Board of Directors

ATTEST:

Tim Eichenberg, Secretary/Treasurer
Board of Directors

5/26/05
(date)

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

This instrument was acknowledged before me on May 26, 2005 by Ronald D. Brown, Chair of the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico.

Pamela S. Woodruff
Notary Public

My commission expires:

9-22-08

OFFICIAL SEAL
PAMELA S. WOODRUFF
Notary Public
State of New Mexico
My Commission Expires 9-22-08

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

City of Albuquerque

James Lewis, Chief Administrative Officer — Date 9/21/05

John R. Castillo, P.E., Director
Department of Municipal Development — Date 9/9/5

Reviewed as to Form:

City Attorney — Date 9-20-5

Attest:

City Clerk — Date 9-22-05

ACKNOWLEDGMENT

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

This instrument was acknowledged before me on September 21, 2005, by James Lewis, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation.

Notary Public

My Commission Expires:
1-27-06

Agreement to Provide Design, Construction and Maintenance for
Boca Negra Detention Dam and Outfall Pipe
and Adjacent Unser Blvd. Improvements

Vista Vieja Investments LLC

By: _____ Date: 6/22/05
Scott Schiabor, Managing Member

ACKNOWLEDGEMENT FOR CORPORATION

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

This instrument was acknowledged before me on June 22, 2005 by Scott Schiabor, as Managing Member of Vista Vieja Investments LLC, on behalf of said New Mexico Limited Liability Corporation.

_____
Notary Public

My Commission Expires:
5/19/06

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

The Trails LLC

By: _____ Date: 6/16/05

Name: John K. Murtagh, Managing Member

ACKNOWLEDGEMENT FOR CORPORATION

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

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

This instrument was acknowledged before me on June 16th, 2005 by John K. Murtagh, Managing Member of The Trails LLC on behalf of said Limited Liability Company.

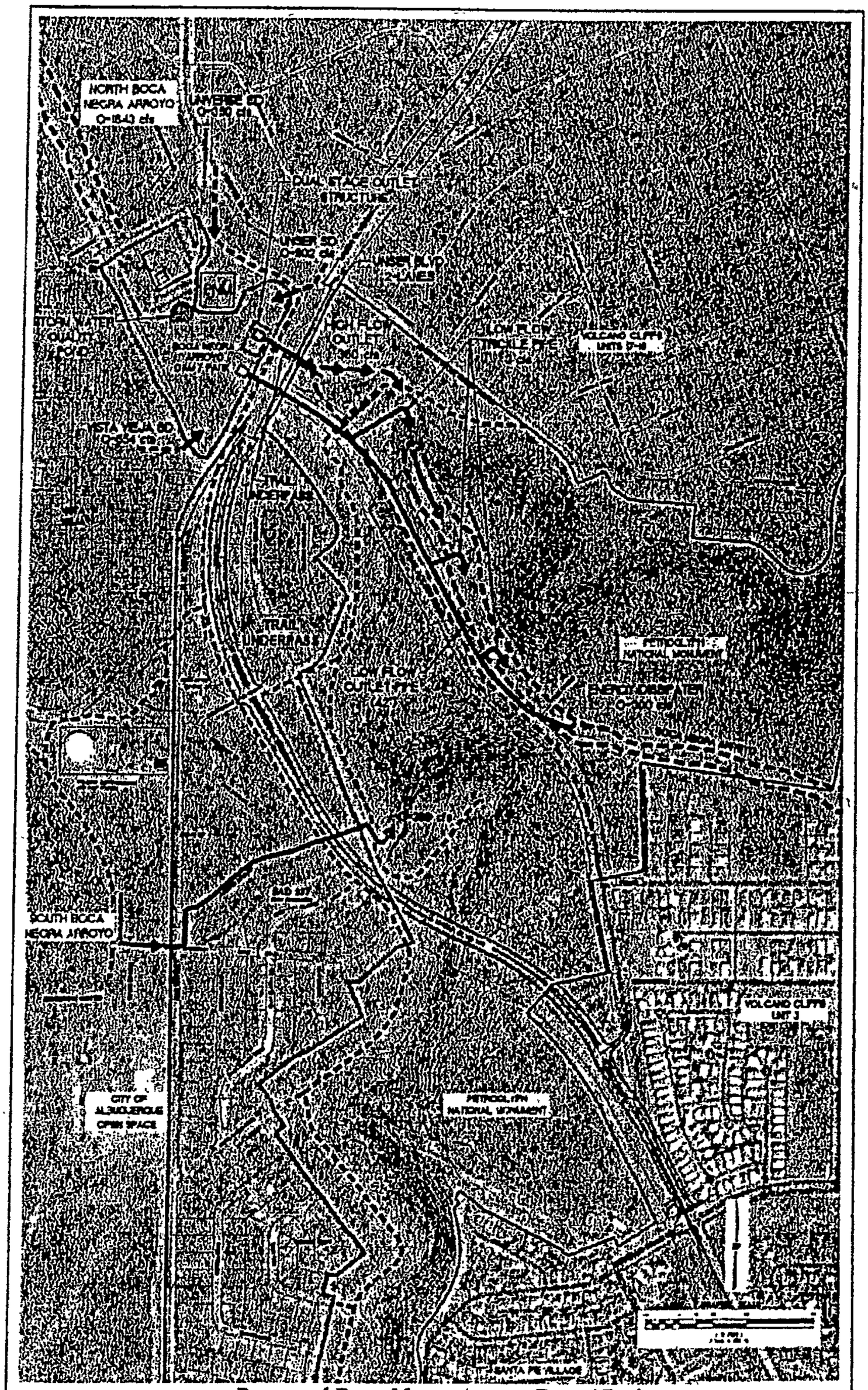
Donna Lawson
Notary Public

My Commission Expires:

12-1-08

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

Exhibit A



Proposed Boca Negra Arroyo Dam / Park

Exhibit B

Boca Negra Detention Dam and Outfall Pipe

Cost Sharing Allocation Based on Project Elements
May 18, 2005

Project Elements				Total Cost	AMAFCA	MESA	LONGFORD	City
Boca Negra Detention Dam & Outlet Pipe								
25% 33.5% 31.5% 10% AMAFCA/Mesa/Longford/City								
Dam & Outlet Pipe	1	LS	1,900,000	1,900,000	475,000	636,500	598,500	190,000
Design, 7.22%				137,180	33,250	44,555	41,895	13,300
Construction Management, 8%				152,000	38,000	50,920	47,880	15,200
Right of Way				977,420	244,355	327,436	307,887	97,742
Subtotal				3,166,600	790,605	1,059,411	996,162	316,242
Bike Trail Underpass and Hi Flow Outlet								
50% 0.0% 0.0% 50% AMAFCA/Mesa/Longford/City								
Crossing Structure	1	LS	340,000	340,000	170,000	0	0	170,000
Design, 7%				23,800	11,900	0	0	11,900
Construction Management, 8%				27,200	13,600	0	0	13,600
Right of Way				14,123	7,062	0	0	7,062
Subtotal				405,123	202,562	0	0	202,562
Unser Blvd in Front of Dam - Full cross Section; two lanes paved								
0% 0.0% 0.0% 100% AMAFCA/Mesa/Longford/City								
Roadway and Trail	1	LS	370,000	370,000	0	0	0	370,000
Design, 7%				25,900	0	0	0	25,900
Construction Management, 8%				29,600	0	0	0	29,600
Right of Way				34,893	0	0	0	34,893
Subtotal				460,393	0	0	0	460,393
FEMA LOMR								
0% 50.0% 50.0% 0% AMAFCA/Mesa/Longford/City								
Engineering Design & Submittal for FEMA CLOMR/LOMR				20,000	0	10,000	10,000	0
FEMA Review Fees				7,400	0	3,700	3,700	0
				27,400	0	13,700	13,700	0
Total Project Costs				4,059,516	993,167	1,073,111	1,009,862	979,197
					24.5%	26.4%	24.9%	24.1%

Project Cost Sharing Elements		Project Cost Contributions by Party: AMAFCA	MESA	LONGFORD	City	
Construction	2,610,000	784,367	321,500	520,757	979,197	Cash for Construction
Design	186,880	0	93,440	93,440		Design by Private
Constr. Mgt.	208,800	208,800				Cash for CM services
Right of Way	1,026,436		644,471	381,965		Right of Way Dedication
FEMA Analysis and Submtl	20,000		10,000	10,000		FEMA Analysis and Submtl
FEMA Fees	7,400		3,700	3,700		FEMA Fees
	4,059,516	993,167	1,073,111	1,009,862	979,197	

Exhibit C, Page 1 of 2

GRANT OF PERMANENT EASEMENT FOR STORM DRAINAGE WORKS

Grant of Permanent Easement, between the City of Albuquerque, a New Mexico municipal corporation ("Grantor"), whose address is P.O. Box 1293, Albuquerque, New Mexico, 87103 and the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico ("AMAFCA"), whose address is 2600 Prospect Ave. NE, Albuquerque, New Mexico, 87107, collectively ("the Parties").

Grantor grants to AMAFCA, and its successors and assigns, an exclusive, permanent easement ("Easement") in, over, upon and across the real property described on Exhibit "A" attached hereto ("Property") for the construction, installation, maintenance, repair, modification, replacement and operation of storm drainage improvements associated with the Boca Negra Detention Dam Outfall Pipe, together with the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if AMAFCA determines they interfere with the appropriate use of this Easement.

Grantor hereby reserves for itself and its successors and assigns the right to construct, operate and maintain roadway improvements and related appurtenances, including bicycle trails, within the Property subject to the review and written approval by AMAFCA, said approval not to be unreasonably withheld. In the event Grantor constructs any improvements ("Improvements") within the Property, AMAFCA has the right to enter upon the Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate.

The grant and other provisions of this Easement constitute covenants running with the Property for the benefit of the AMAFCA and its successors and assigns until terminated.

To have and to hold the said right and Easement for the uses and purposes aforesaid unto the AMAFCA, its successors and assigns, forever, as specifically provided herein. Any portion of the Easement granted herein shall revert to the Grantor, its successors or assigns, as and to the extent said portion of Easement is declared unnecessary for storm drainage purposes by AMAFCA, its successors and assigns. Any reversion shall be conveyed by Quitclaim Deed.

This Easement shall not be effective until approved by the City Engineer in the signature block below

Revised Exhibit C Acknowledged:

Party Name	Initial	Date
AMAFCA	JPK	9-6-05
CITY	[illegible]	9/9/5
VISTA	[illegible]	9-8-05
TRAILS	DM	9/9/05

Exhibit C, Page 2 of 2

WITNESS my hand and seal this _____ day of _____, 2005.

Approved:

_____
City Engineer

_____
Date

Approved As To Form

_____
City Attorney

_____
Date

Reviewed By:

_____
John R. Castillo, Director, Department of
Municipal Development

_____
Date

GRANTOR: City of Albuquerque

By: _____
James B. Lewis, Chief Administrative Officer

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on ____ day of _____, 2005, by James B. Lewis as Chief Administrative Officer of the City Of Albuquerque, a municipal corporation, on behalf of said corporation.

_____
Notary Public

My Commission Expires:

_____

2005-31

November 28, 2005

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL
AUTHORITY
Attention: John Kelly, P.E.
Executive Engineer
2066 Prospect Avenue, N.E.
Albuquerque, New Mexico 87107

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd., Improvements, dated September 22, 2005 ("Agreement@)

Dear Mr. Kelly:

KB HOME New Mexico Inc. has signed an agreement to and is contemplating the purchase of certain real estate in the City of Albuquerque described as the Vista Vieja Subdivision, Tracts One through Four, which is owned by VISTA VIEJA INVESTMENTS, LLC ("VISTA VIEJA"), and which includes the interests of VISTA VIEJA in the above-referenced Agreement. The property will be acquired through two closings, of which the First Closing comprises Tracts One and Two. As of the First Closing, KB HOME will be the successor to VISTA VIEJA as to rights and obligations through a partial assignment as to Tracts One and Two.

As a part of KB HOME's due diligence, we write to obtain your confirmation that the Agreement has not been amended, is current and in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA thereunder, and that AMAFCA is willing to accept KB HOME as VISTA VIEJA's successor under the partial assignment.

KB HOME NEW MEXICO INC. 6330 RIVERSIDE PLAZA LN NW STE 200 ALBUQUERQUE, NM 87120
TEL 505 353 5300 FAX 505 897 4479 KBHOME COM

If these facts are correct, we shall appreciate your signing the acknowledgment to that effect stated below and returning a copy of this letter to us.

Thank you for your cooperation in this matter.

Sincerely,

Robert H. Coleman, Ph.D.
Director of Land Development and Forward Planning

Acknowledgment:

The undersigned hereby acknowledges that the above-referenced Agreement has not been amended, is current and in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA INVESTMENTS, LLC thereunder, and AMAFCA accepts KB HOME New Mexico Inc. as the partial assignee of VISTA VIEJA INVESTMENTS, LLC.

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTRAL
AUTHORITY

By John P Kelly
John Kelly, P.E.
Executive Engineer

Date: 11-29-05

DIXON, SCHOLL & BAILEY, P.A.

A Professional Association of Lawyers and Counselors

Gerald G. Dixon jdixon@dsblaw.com

November 30, 2006

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL
AUTHORITY
Attention: John Kelly, P.E.
Executive Engineer
2066 Prospect Avenue, N.E.
Albuquerque, New Mexico 87107

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd., Improvements, dated September 22, 2005 ("Agreement")

Dear Mr. Kelly:

KB HOME New Mexico Inc. has signed an agreement to and is contemplating the purchase of certain real estate in the City of Albuquerque described in the Bulk Land Plat as Vista Vieja Subdivision, Tracts One through Four, which is owned by VISTA VIEJA INVESTMENTS, LLC ("VISTA VIEJA"), and which includes the interests of VISTA VIEJA in the above-referenced Agreement. The first of the two closings occurred on December 1, 2005. The second closing is contemplated to occur on December 1, 2006. The second closing comprises Tracts Three and Four. As of the second closing, KB HOME will be the successor to VISTA VIEJA of its rights and obligations under the referenced Agreement through the Complete Assignment of the above-referenced Agreement as to Tracts Three and Four. It should be noted that at the second closing, as a part of a "land bank" arrangement for the benefit of, and as an accommodation to KB HOME, Salls Brothers Construction, Inc., as assignee of KB HOME, will hold title to Tracts Three and Four, subject to an option agreement in favor of KB HOME. KB HOME will remain the assignee of all rights and obligations under the referenced Agreement.

707 BROADWAY, N.E., SUITE 505 • ALBUQUERQUE, NEW MEXICO 87102
P.O. BOX 26746 • ALBUQUERQUE, NEW MEXICO 87125-6746
(505) 244-3890 • FAX (505) 244-3889
HTTP://DSBLAW.LAWOFFICE.COM

As a part of KB HOME's due diligence, we write to obtain your confirmation that the Agreement has not been amended, is current and is in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA thereunder, and that AMAFCA is willing to accept KB HOME as VISTA VIEJA's successor under the partial assignment.

If these facts are correct, we shall appreciate your signing the acknowledgment to that effect stated below and returning a copy of this letter to us.

Thank you for your cooperation in this matter.

Sincerely,

Gerald G. Dixon
Dixon Scholl & Bailey, P.A.

Acknowledgment:

The undersigned hereby acknowledges that the above-referenced Agreement has not been amended, is current and in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA INVESTMENTS, LLC, thereunder and AMAFCA accepts KB HOME New Mexico Inc. as the assignee of all of the rights, obligations and interests of VISTA VIEJA INVESTEMNTS, LLC, in and to the Agreement.

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTRAL
AUTHORITY

By John P. Kelly
John Kelly, P.E.
Executive Engineer

Date: 11-30-06

COMPLETE ASSIGNMENT OF AGREEMENT TO PROVIDE DESIGN, CONSTRUCTION AND MAINTENANCE FOR BOCA NEGRA DETENTION DAM AND OUTFALL PIPE AND ADJACENT UNSER BLVD. IMPROVEMENTS

This Complete Assignment of Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("Complete Assignment") is made and entered into by and between VISTA VIEJA INVESTMENTS, LLC ("VISTA"), and KB HOME NEW MEXICO INC. ("ASSIGNEE"), with reference to the following facts:

Recitals

WHEREAS, VISTA is one of the parties to that certain Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements, dated September 22, 2005, by and among ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, THE CITY OF ALBUQUERQUE, VISTA VIEJA INVESTMENTS, LLC, and THE TRAILS LLC. ("Agreement");

WHEREAS, VISTA, as Seller, has entered into that certain Purchase Agreement and Escrow Instructions (Vista Vieja), dated June 27, 2005 ("Purchase Agreement"), with KB HOME NEW MEXICO INC., a New Mexico corporation ("KB HOME"), as Buyer, for the purchase and sale of that certain property described in Exhibit A, which is attached hereto and made a part hereof; which purchase and sale will be accomplished in two separate purchase-and-sale transactions described in the Purchase Agreement as the "First Closing" and the "Second Closing," the First Closing describes the conveyance of fee title to Tract 1 and Tract 2, as shown on the Bulk Land Plat of Vista Vieja Subdivision, filed on April 21, 2005, and recorded in Book 2005C, at page 122, of the records of Bernalillo County, New Mexico, a copy of which is attached hereto, made a part hereof, and labeled "Exhibit B" ("Bulk Land Plat"); Tract 1 and Tract 2, as more specifically identified in the Preliminary Plats attached hereto, made a part hereof, and labeled "Exhibit B-1" and "Exhibit B-2," respectively, shall include approximately 142 Lots and 4 Open Space Parcels (described in the Preliminary Plat as Tract 1 and Parcels A, B, and C) to be dedicated to the Homeowners Association; Tract 2 shall comprise approximately 160 Lots and 5 parcels as shown in the Preliminary Plat; the Second Closing describes the conveyance of fee title to Tract 3 and Tract 4, as shown on the Bulk Land Plat; the First Closing comprised the acquisition of Tract 1 and Tract 2 by Assignee, and the Second Closing shall comprise the acquisition of Tract 3 and Tract 4 by Assignee;

WHEREAS, the First Closing was consummated without incident on December 1, 2005, and with each party paying and performing all obligations incumbent upon it through the date of the First Closing;

WHEREAS, VISTA warrants to KB HOME that, to the best of its knowledge, all of the terms of the Agreement are in full force and effect, there have been no amendments to the Agreement, no party thereto, including but not limited to VISTA, is in default thereunder, no event of default thereunder by any party thereto, has occurred, there is no reasonable expectation of the declaration of an event of default by any party thereto, all obligations on the part of VISTA thereunder have been timely performed, and VISTA has provided to KB HOME all financial data, correspondence, and any other documentation in its possession relating to the Agreement;

WHEREAS, VISTA desires to assign to Assignee all of the right, title, and interest of VISTA in the Agreement, and to delegate to Assignee all of its duties under the Agreement;

WHEREAS, Assignee assumes all of the obligations of VISTA under the Agreement, agrees to assume, pay, and perform the Agreement according to its terms, and to protect, defend, hold harmless, and indemnity VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith;

WHEREAS, upon the completion of the Second Closing, presently scheduled for December 1, 2006, VISTA shall remit, convey, or assign in full to Assignee any and all credits theretofore received by VISTA from AMAFCA or Assignee prior to the Second Closing, and Assignee shall be entitled to receive and retain all subsequent credits to which it will be entitled under the Agreement; and

WHEREAS, Assignee intends to assign at the Second Closing all of its right, title, and interest in and to the Purchase Agreement to SALLS BROTHERS CONSTRUCTION, INC., a New Mexico corporation, solely as a part of a "land bank" arrangement for the benefit of, and as an accommodation to, Assignee. Assignee will hold an option to purchase the land comprising Tract 3 and Tract 4. Assignee will remain liable for the payment and performance in full as the Assignee in this Complete Assignment. Following Assignee's assignment to SALLS BROTHERS CONSTRUCTION, INC., Assignee shall be and remain liable for the payment and performance in full of the obligations of VISTA under the Agreement, and Assignee shall protect, defend, hold harmless, and indemnify VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection with the Agreement.

NOW, THEREFORE, in consideration of their mutual agreements herein set forth, it is agreed by and among the parties hereto as follows:

1. VISTA shall, and does hereby, assign to Assignee all of the right, title, and interest of VISTA in the Agreement, and VISTA shall, and does hereby, delegate to Assignee all of the obligations of VISTA under the Agreement.

2. Assignee hereby assumes all of the obligations of VISTA under the Agreement and agrees to assume, pay, and perform the Agreement according to its terms, and to protect, defend, hold harmless, and indemnify VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith.

3. For all claims arising out of events relating to the Agreement occurring after the date of this Complete Assignment, Assignee hereby agrees to protect, defend, hold harmless, and indemnify VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith. For all claims arising out of events on Tract 3 and Tract 4 of Vista Vieja Subdivision relating to the Agreement and occurring prior to the date of this Complete Assignment, VISTA agrees to protect, defend, hold harmless, and indemnify Assignee from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith. Neither party shall be entitled to indemnity for its own acts or omissions.

4. VISTA has assigned, and does hereby assign, all of the credits to which it has been, is, or will be entitled under the Agreement completely assigned hereby, and which credits, if received by VISTA, VISTA agrees to promptly remit, convey, or assign in full to Assignee.

5. Upon the completion of the Second Closing, VISTA shall remit, convey, or assign in full to Assignee any and all credits theretofore received by VISTA from AMAFCA or Assignee prior to the Second Closing; and from and after the Second Closing Assignee shall be entitled to receive and retain all credits to which it will be entitled under the Agreement.

6. The Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Complete Assignment on this 1st day of December, 2006.

VISTA VIEJA INVESTMENTS, LLC

By _____
Robert G. Sahd
Manager

KB HOME NEW MEXICO INC.

By _____
Vice President

ACKNOWLEDGEMENTS

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

This instrument was acknowledged before me on Dec 1, 2006, by ROBERT G. SAHD, Manager of VISTA VIEJA INVESTMENTS, LLC, a New Mexico limited liability company.

(SEAL)

My commission expires:

7/24/10

Notary Public

STATE OF NEW MEXICO
My Commission Expires 12/17/08

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

This instrument was acknowledged before me on December 1, 2006, by Robert Young, as VP of KB HOME NEW MEXICO INC., a New Mexico corporation.

(SEAL)

My commission expires:

12/17/08

Notary Public

CONSENT AND APPROVAL

The undersigned, SALLS BROTHERS CONSTRUCTION, INC., hereby consents to and approves of the foregoing Complete Assignment.

SALLS BROTHERS CONSTRUCTION, INC.
a New Mexico corporation

By: _____
Name: FRED H. SALLS
Its: PRESIDENT

Exhibit A
To

COMPLETE ASSIGNMENT OF AGREEMENT TO PROVIDE DESIGN, CONSTRUCTION AND MAINTENANCE FOR BOCA NEGRA DETENTION DAM AND OUTFALL PIPE AND ADJACENT UNSER BLVD. IMPROVEMENTS

Legal Description of the Property

158.8919 acres more or less, as shown on the Bulk Land Plat of Vista Vieja Subdivision Recorded in Book 2005C, Page 122, Reception No. 2005055012 of the real estate records of the Clerk of Bernalillo County, New Mexico, on April 21, 2005.

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX: (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

February 9, 2012

VIA ELECTRONIC MAIL

Mr. John Murtagh
Longford Group, Inc.
3077 E. Warm Springs Road,
Las Vegas, Nevada 89120

Mr. Rick Beltramo
Director of Engineering
Galway Construction, Inc.
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 23, 2005

Dear John and Rick:

I have reviewed the above-referenced Agreement and a project schedule chart prepared by Rick tracking certain key events occurring with respect to the project following the execution of the Agreement. I have also given some consideration to the discussions we have had relative to the Agreement and the project, and to some of the supplemental information provided to me by Rick concerning the project.

You have asked for some bullet points relative to my initial legal conclusions concerning the Agreement. This short letter is provided with the understanding that we were just recently engaged to represent The Trails LLC with respect to its legal rights and obligations under the Agreement and have not spent as much time as necessary to complete our review of documents including correspondence we deem necessary to give final opinions relative to the above.

Based on the foregoing and our initial review of the Agreement and the matters identified above, we are of the opinion that:

- The scope of work was substantially changed on or after fall 2006. This appears to have occurred without approval in writing by The Trails LLC. Section 6.11 of the Agreement provides that it may be modified only in writing

signed by all parties. This change in the scope of work is not unenforceable. Further, per Restatement of the Law, Second, Contracts, § 265, Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary."

- The cost of work has substantially increased based in part on the change in the scope of work ("additions to the scope of the project" including "a master planned sanitary sewer interceptor" and "paving the full four lane section of Unser Blvd. for the entire project reach," cost increases "region wide" and "incomplete estimate that was used during the development of the Agreement." Letter of John P. Kelly dated November 2006). These increased costs are not chargeable to The Trails for (a) changes in the scope of work not agreed to, or (b) increased costs in the project (now pending advertisement for bids) for over 5 years based on the initial assumption, Section 2.2 of the Agreement, that the time to plan, permit, bid and award the construction contract for this project would take only 5 months ending February 2006.

- Delay of the project, as noted in November 2006 letter from John P. Kelly, had by then already resulted in substantial cost increases. There has now been an additional five year delay in the project, resulting in, as we understand it, further substantial projected cost increases. Restatement of the Law, Second, Contracts, § 261, "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary."

- Value of the excess impact fee credits to The Trails LLC (acting essentially as a bank for part of the project costs in consideration of the excess credits) substantially undermined by the City's enactment and continuing resolutions implementing and continuing its impact fee ordinance moratorium, raising the issue of failure of consideration. See, City Ordinance amending SECTION 14-19-1-12 R.O.A. 1994, effective July 1, 2009, and thereafter. "When there is a failure of consideration, a contract, valid when formed, becomes unenforceable because the performance bargained for has not been rendered."

- Project delays outside the control of The Trails LLC have resulted in project delays well in excess of the estimated project time of one year. At this point in time, the advertisement for bids has still not occurred and the construction contract has not been let. This was to have occurred by February 2006. See, Section 2.2 of the Agreement. The project time scope was one year. At a minimum, this raises the issue of whether the Agreement is valid given the underlying expectations of the parties that this would be a one year project. It

raises a host of failed underlying implied conditions (best example, the economy when the Agreement was executed). It also raises other issues such as the New Mexico Bateman Act which generally renders void any public contract committing a city, county or local body from committing public funds to a project beyond one year. Per §6-6-11 New Mexico Statutes Annotated, "It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void." We believe that this would render void the Agreement beyond the City's fiscal year ending June 30, 2006 and may render void the Agreement if (a) the Bateman Act applies to AMAFCA (no case law on this point, but we believe it does) and AMAFCA had not sold bonds sufficient to fund its share of the cost of work by the end of its fiscal year following the execution of the Agreement.

The Agreement calls for arbitration of any dispute. Calling The Trails LLC's bond will result in a demand for arbitration, with the bonding company being directed to not honor the demand on the bond pending completion of the arbitration. Worse case, the bonding company would interplead the bond into an arbitrator's trust account or the Second Judicial District Court pending a final award or decision in the arbitration.

The suggestion by the City of calling the bond would only frustrate The Trails LLC's stated intention of wanting to sit down with the parties involved, including the City and AMAFCA and all new parties benefitted by the proposed project, to revisit the Agreement especially in light of the undeniably long project delays, large cost increases, and substantial changes to the scope of work.

Respectfully yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

Current DRC
Project No _____

ORIGINAL

Date Submitted June 26, 2007
Date Site Plan Approved 6/27/07
Date Preliminary Plat Approved. 6/27/07
Date Preliminary Plat Expires 6/27/08

DRB Project No 1002962
Application no. 07DRB-00613

Figure 12

INFRASTRUCTURE LIST

EXHIBIT "A"
TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

CANTATA AT THE TRAILS

Following is a summary of PUBLIC and PRIVATE infrastructure required to be constructed or financially guaranteed for the above development This Listing is not necessarily a complete listing During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees All such revisions require approval by the DRC Chair, the User Department and agent/owner If such approvals are obtained, these revisions to the listing will be incorporated administratively In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
			PUBLIC ROADWAY IMPROVEMENTS						
		30' F-EOP	(1) ARTERIAL PAVING W/ PCC CURB & GUTTER ON EAST ONLY MEDIAN CURB & GUTTER	UNIVERSE BLVD	OAKRIDGE STREET	TREELINE AVENUE	/	/	/
		6' WIDE	PCC SIDEWALK ON EAST SIDE	UNIVERSE BLVD	OAKRIDGE STREET	TREELINE AVENUE	/	/	/
		24' F-EOP	(2) ARTERIAL PAVING W/ PCC CURB & GUTTER ON WEST SIDE ONLY	OAKRIDGE STREET	TREELINE AVENUE	UNIVERSE BLVD	/	/	/
		6' WIDE	PCC SIDEWALK ON WEST SIDE	OAKRIDGE STREET	TREELINE AVENUE	UNIVERSE BLVD	/	/	/
		34' F-EOP	(3) ARTERIAL PAVING W/ PCC CURB & GUTTER ON NORTH SIDE ONLY	TREELINE AVENUE	OAKRIDGE STREET	UNIVERSE BLVD	/	/	/
		6' WIDE	PCC SIDEWALK ON NORTH SIDE	TREELINE AVENUE	OAKRIDGE STREET	UNIVERSE BLVD	/	/	/
		30' F-F	DRIVEWAY CUT	OAKRIDGE STREET	CANATA STREET		/	/	/
		11' WIDE	MODIFY MEDIAN FOR LEFT TURN	OAKRIDGE STREET	OAKRIDGE STREET	CANATA STREET	/	/	/

6-24-12 Approved extension 5-25-11

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
			PUBLIC WATERLINE IMPROVEMENTS (NMUI)						
		8" DIA	(3) WATERLINE CONNECTION FH'S, MJ'S, AND RJ'S	TREELINE AVENUE	OAKRIDGE STREET	UNIVERSE BLVD	/	/	/
		8" DIA	WATERLINE CONNECTION FH'S, MJ'S, AND RJ'S	SONATA STREET	200' EAST OF CANTATA	WEST TERMINUS	/	/	/
		8" DIA	WATERLINE CONNECTION FH'S, MJ'S, AND RJ'S	PUBLIC WTR AND SAS EASEMENTS (w/in PRIVATE ALLEYS)	TREELINE AVENUE	OAKRIDGE STREET	/	/	/
			PUBLIC SANITARY SEWER IMPROVEMENTS (NMUI)						
		8" DIA	(3) SANITARY SEWER W/ MH's	TREELINE AVENUE	OAKRIDGE STREET	UNIVERSE BLVD	/	/	/
		8" DIA	SANITARY SEWER W/ MH's	SONATA STREET	200' EAST OF CANTATA	WEST TERMINUS	/	/	/
		8" DIA	SANITARY SEWER W/ MH's	PUBLIC WTR AND SAS EASEMENTS (w/in PRIVATE ALLEYS)	TREELINE AVENUE	OAKRIDGE STREET	/	/	/
			PUBLIC STORM DRAIN IMPROVEMENTS						
		18"-36"	(3) STORM DRAIN PIPE W/ MH's	TREELINE AVENUE	CANTATA STREET	UNIVERSE BLVD	/	/	/
B-1		18"-54" ~~NO FG~~	STORM DRAIN PIPE W/ MH's ~~put on 730084 - taos of the details, pr procedure~~ ~~then remove it from WO. so it is~~	UNIVERSE BLVD	OAKRIDGE STREET	POND K	/	/	/
		2 05 AC-FT	POND J	WEST SIDE OF UNIVERSE BLVD ~~not FG~~			/	/	/
		9 5 AC-FT	POND K not in Engineer's estimate	WEST SIDE OF UNIVERSE BLVD ~~FG before BP's~~ 730,000			/	/	/
		NOTES	A GRADING AND DRAINAGE CERTIFICATION OF THE APPROVED GRADING PLAN IS REQUIRED PRIOR TO THE RELEASE OF FINANCIAL GUARANTEES.						
			PRIVATE STORM DRAIN IMPROVEMENTS						
		18"-30" DIA	STORM DRAIN PIPE W/ INLETS	CANTATA STREET	TREELINE AVENUE	700' NORTH	/	/	/
		18"-30" DIA	STORM DRAIN PIPE W/ INLETS	SONATA STREET	CANTATA STREET	200' EAST	/	/	/

(1) UNIVERSE BLVD IMPROVEMENTS CONSTRUCTED WITH CPN 730084
(2) OAKRIDGE STREET IMPROVEMENTS CONSTRUCTED WITH CPN 730084
(3) TREELINE AVE IMPROVEMENTS CONSTRUCTED WITH CPN 730087

SCOTT STEFFEN, PE PREPARED BY: PRINT NAME	6/27/07 DRB CHAIR DATE	Christina Sandoval 6/27/07 PARKS & GENERAL SERVICES DATE	
BOHANNAN HUSTON INC FIRM	6-27-07 TRANSPORTATION DEVELOPMENT DATE	AMAFCA DATE	
6/27/07 SIGNATURE DATE	6/27/07 UTILITY DEVELOPMENT DATE	6/27/07 CITY ENGINEER DATE	
MAXIMUM TIME ALLOW TO CONSTRUCT IMPROVEMENTS WITHOUT A DRB EXTENSION	NEW MEXICO UTILITIES INC DATE	DATE	

DESIGN REVIEW COMMITTEE REVISIONS				
REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT/OWNER

Current DRC
Project Number.

ORIGINAL

FIGURE 12

INFRASTRUCTURE LIST

Date Submitted: 04/04/07
Date Site Plan Approved: 04/04/07
Date Preliminary Plat Approved: N/A
Date Preliminary Plat Expires: N/A
DRB Project No.: 1002962
DRB Application No.: 07-DRB-00358

EXHIBIT "A"
TO SUBDIVISION IMPROVEMENTS AGREEMENT
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

△1 01-26-09

LDS Ventana Meetinghouse

Tract 10-A, The Trails, Unit 2

Following is a summary of PUBLIC/PRIVATE Infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that appurtenant items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that appurtenant or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and agent/owner. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

SIA Sequence #	COA DRC Project #	Size	Type of Improvement	Location	From	To	Private Inspector	City Inspector	City Cnst Engineer
		50'+Trans	Left Turn Lane in Exist. Median	Woodmont	TBD @ DRC	Woodmont Entrance	/	/	/
		150'	Right Turn Taper	Rainbow	150' South of Entry	Rainbow Entrance	/	/	/
		6'	Sidewalk Along Rainbow Taper	Rainbow	150' South of Entry	Rainbow Entrance	/	/	/
		8"	Public (NMUI) Fire Hydrant & Line	Center of Site	Woodmont	FH Location	/	/	/
		~~4~~	~~Sidewalk~~	~~Future Indian Hills~~	~~Rd Woodmont~~	~~SE Corner of Site~~ △1			

NOTES

1 Street Lights per DPM Standards

2 Engineer's Certification of Grading and Drainage is Required for F.G. Release

AGENT / OWNER

J. Graeme Means
NAME (print)

Jeff Mortensen & Assoc.
FIRM

J. Graeme Means 3/16/07
SIGNATURE - date

MAXIMUM TIME ALLOWED TO CONSTRUCT THE IMPROVEMENTS WITHOUT A DRB EXTENSION: _____

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

J. Mortensen 4/04/07
DRB CHAIR - date

Christina Sandoval 4/4/07
PARKS & GENERAL SERVICES - date

4-4-07
TRANSPORTATION DEVELOPMENT - date

AMAFCA - date

William J. Baker 4/4/07
UTILITY DEVELOPMENT - date

4-3-07
NMUI - date

4/4/07
CITY ENGINEER - date

_____ - date

DESIGN REVIEW COMMITTEE REVISIONS

REVISION	DATE	DRC CHAIR	USER DEPARTMENT	AGENT /OWNER
△1	01-26-09			J.S. ROGERS ARCHITECTS P.C.

revised 07/01/01

127,378.48 12-2-11 B-2

paving and util

Contractor at The Trails Fac

~~350,000~~

859,000 on B-1

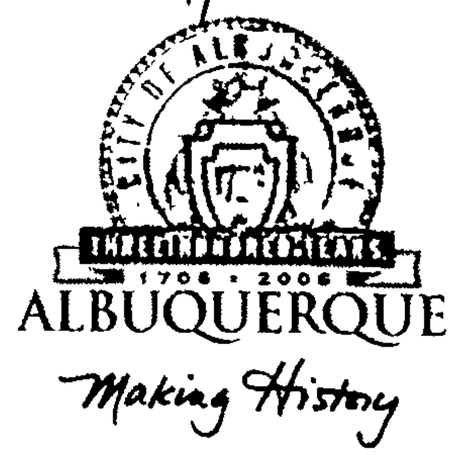
for 50 in Universe from

pond K to Oakridge

RCS Contractor Resolution

C09/D001Y

CITY OF ALBUQUERQUE



Office of the City Attorney
David J. Tourek, City Attorney
PO Box 2248
Albuquerque, NM 87103
Phone 505- 768-4500 Fax 505 768-4525

August 10, 2012

Timothy V. Flynn-O'Brien
817 Gold Ave SW
Albuquerque, NM 87102-3014

Richard Leverick
5120 San Francisco Rd NE Ste. B
Albuquerque, NM 87109-4610

Re: Memorandum of Agreement

Dear Counsel:

Please find enclosed a fully executed Memorandum of Agreement in connection with the Trails Development. Thank you.

Sincerely,

Kevin Curran

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

CC: Richard Durate
Maria Martinez-Siemel via email
Blake Whitcomb via email

Memorandum of Agreement

Comes now the City of Albuquerque ("City"), The Trails, LLC ("Trails"), and RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") and agree as follows:

1. Trails affirms its obligations under the Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("Boca Negra Dam Agreement"). The precise nature and amount of such obligations are currently subject to arbitration. Trails will pay and perform its obligations as determined by the arbitration.

2. RCS agrees to comply with the recommendation from Mr. Scott Steffen, PE dated August 1, 2012 attached hereto as "Exhibit A".

3. Within two (2) years of final execution of this Memorandum, Trails agrees to complete construction of the Universe Storm Drain described in Bohannan Huston's summary (attached hereto as "Exhibit B") to serve as the drainage outfall for the Trails Development. Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Universe Storm Drain. The Trails will obtain City approval for construction drawings from the Design Review Committee ("DRC") for the Universe Storm Drain within six (6) months of the execution of this Memorandum.

4. Trails' federal lawsuit 12-CV-00357 will be stayed pending final execution of this Memorandum. Within five (5) days of final execution of this Memorandum, the Trails shall file a motion and order to dismiss that suit with prejudice. This dismissal shall not preclude the Trails from a claim made or which could be made in the arbitration or for claims arising out of impact fee credit issues.

5. The City Engineer shall recommend to the Development Review Board ("DRB") that Subdivision Improvement Agreements ("SIA") 730081 and 730085 be extended for up to two (2) years and amended to incorporate the Trails' obligations under the Boca Negra Dam Agreement per Paragraph 1 above. In connection therewith, Trails shall cause the bond company that issued the $1.25 Million bond held by City under SIA 730081 and the $250,000 bond held by City under SIA 730085 to issue corresponding bond riders, in a form reasonably acceptable to the City, acknowledging the foregoing SIA amendments.

6. RCS – Cantata Residences I, LLC shall amend the infrastructure list for SIA 730078 to include the Universe Storm Drain as described in Exhibit B. RCS will provide a bond in a form acceptable to City in the amount of $724,864.28 financially securing the Universe Storm Drain.

7. The City Engineer agrees that the foregoing is sufficient to resolve the concerns of the City Engineer regarding final plat approval for Taos and Tierra Vista subdivisions currently pending and scheduled for a final approval hearing on August 8, 2012. RCS and Trails acknowledge that there may be additional conditions associated with such approval of the Taos subdivision and agree to comply with reasonable requirements regarding conveyances or dedications of real property as part of the re-platting approval of the referenced subdivisions.

8. With respect to Cantata, RCS agrees to construct the storm drain pipe fromCantata Universe outfall to Treeline within Universe Blvd. ("Cantata Storm Drain") as shown on "Exhibit C". Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Cantata Storm Drain. RCS will obtain City approval for construction drawings from the DRC for the Cantata Storm Drain within six (6) months of the execution of this Memorandum.

9. The City will resume issuing building permits for Cantata based upon the commitments confirmed herein; however, RCS acknowledges and agrees that no certificates of occupancy for such new building permits at Cantata will be issued by the City until the Cantata Storm Drain construction is completed and accepted by the City Engineer.

10. The City has requested a new grading plan for Cantata reflecting the change of zoning from park to multi-family for Tract A, adjacent to Cantata. RCS will submit the revised grading plan to the City within two (2) months of the final execution of this Memorandum.

11. Within one (1) month of the final execution of this Memorandum, RCS shall submit to the City for approval a revised drainage report for the Trails Drainage Master Plan that incorporate the foregoing changes.

12. RCS will withdraw or consent to remand its appeal of the DRB actions denying the preliminary plat extensions and final plat requests for the Taos and Tierra Vista subdivisions.

13. All parties mutually agree to act in good faith in exercising their duties and fulfilling their obligations under this agreement.

14. This Memorandum may be executed in counterparts, each of which shall be deemed an original and together which shall be deemed one instrument.

THE CITY OF ALBUQUERQUE

By: _____

Printed Name: Robert J. Perry

Title: Cheif Administrative Officer Date: 8/10/12

CITY'S NOTARY

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

This instrument was acknowledged before me on this 10th day of August, 2012, by [name of person:] Robert J. Perry, [title or capacity, for instance, "President" or "Owner":] CAO of the City of Albuquerque.

Notary Public

My Commission Expires:
2/17/13

OFFICIAL SEAL
Marc E. Chavez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 2/17/13

RCS – CANTATA RESIDENCES I, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – CANTATA RESIDENCES I, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 7th day of August, 2012, by [name of person:] Sharon K. Eshima, [title or capacity, for instance, "President" or "Owner":] Manager of RCS – Cantata Residences I, LLC

Notary Public

My Commission Expires:
12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TAOS, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – TAOS, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

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_____
Notary Public

My Commission Expires:
12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TRAILS 9-A, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – TRAILS 9-A, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

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_____
Notary Public

My Commission Expires:
12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

THE TRAILS, LLC, by Longford Group, Inc., its Manager

By: _____

Printed Name: Kelly Calhoun

Title: Secretary Date: 8/7/12

THE TRAILS' NOTARY

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

This instrument was acknowledged before me on this 7th day of Aug., 2012, by [name of person:] _____, [title or capacity, for instance, "President" or "Owner":] Secretary of ~~The Trails, LLC~~. Longford Group, Inc, Manager of the Trails, LLC.

_____
Notary Public

My Commission Expires:
1/25/16

OFFICIAL SEAL
Sara S. Hummel
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1/25/16

Longford at the Trails, LLC, hereby joins that certain Memorandum of Agreement by and among the City of Albuquerque ("City"), The Trails, LLC ("Trails"), and RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") made and delivered on August 7, 2012, by RCS and The Trails for purposes of committing to the terms of committing to the City and RCS its obligation, as the party to SIA 730085, to cause the bonding company which issued the bond for SIA 730085 to issue a corresponding bond rider in form reasonably acceptable to the City acknowledging the amendment to SIA 730085 as contemplated by the terms of Paragraph 5 of the Memorandum of Agreement.

LONGFORD AT THE TRAILS, LLC by Longford Group Inc., its Manager

By: _____

Printed Name: Kelly Calhoun

Title: Secretary Date: 8/7/12

LONGFORD AT THE TRAILS' NOTARY

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

This instrument was acknowledged before me on this 7th day of Aug, 2012 by [name of person:] Kelly Calhoun, [title or capacity, for instance, "President" or "Owner":] _____ of ~~Longford at the Trails, LLC.~~ Longford Group Inc, Manager of Longford at the Trails LLC

_____
Notary Public

My Commission Expires:
1/25/16

OFFICIAL SEAL
Sara S. Hummel
NOTARY PUBLIC
STATE OF NEW MEXICO
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Bohannan Huston

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335

www.bhinc.com

voice 505.823.1000
facsimile 505.798.7988
toll free 800.877.5332

August 1, 2012

Mr. Richard Dourte
City Engineer
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102

Re: Memorandum of Agreement, The Trails

Dear Richard:

This letter provides our recommendation for interim retention ponding for the Trails Development in support of the Memorandum of Agreement related to the construction of interim and permanent drainage infrastructure for the Trails. The developed tracts within the Trails currently drain to one of two interim retention ponds on the east side of Universe Boulevard known as Ponds J and K. The majority of the flows go to Pond K. In order to reduce the flow to Pond K on an interim basis, until the Universe storm drain outfall is constructed, we recommend that Pond D be converted from a surge pond to a retention pond.

In support of this recommendation I visited Pond D in the field on 7/31/12 and conclude the following based on visual observation and review of the Trails AHYMO analysis:

- The condition of Pond D appears to be similar to the as-built condition dated 4/9/07.
- The 100-year, 24-hour storm volume entering Pond D is close to the storage volume of Pond D.
- If Pond D were to spill the flows would be contained within a low lying area of undeveloped land north of the Santa Fe 3 at the Trails subdivision. This area provides additional storage volume that is equal to or greater than what exists in Pond D.
- If the low lying area were to spill, it is my opinion that runoff would enter Oakridge Street to the east or into Santa Fe 3 through a landscape/pedestrian access tract before threatening existing houses in Santa Fe 3. Flows in Santa Fe 3 would be collected by existing storm drain in Tijeras Creek Road.

In order to reduce the flows to Pond K we recommend the following:

- Plug the 24-inch storm drain outfall in the manhole in Pond D
- Remove the plug in the Pond D manhole once the Universe storm drain is operational.

If you have questions or require additional information, please contact me at 823-1000.

Sincerely,

Scott J. Steffen, P.E.
Vice President
Community Development & Planning

Engineering ▲
Spatial Data ▲
Advanced Technologies ▲

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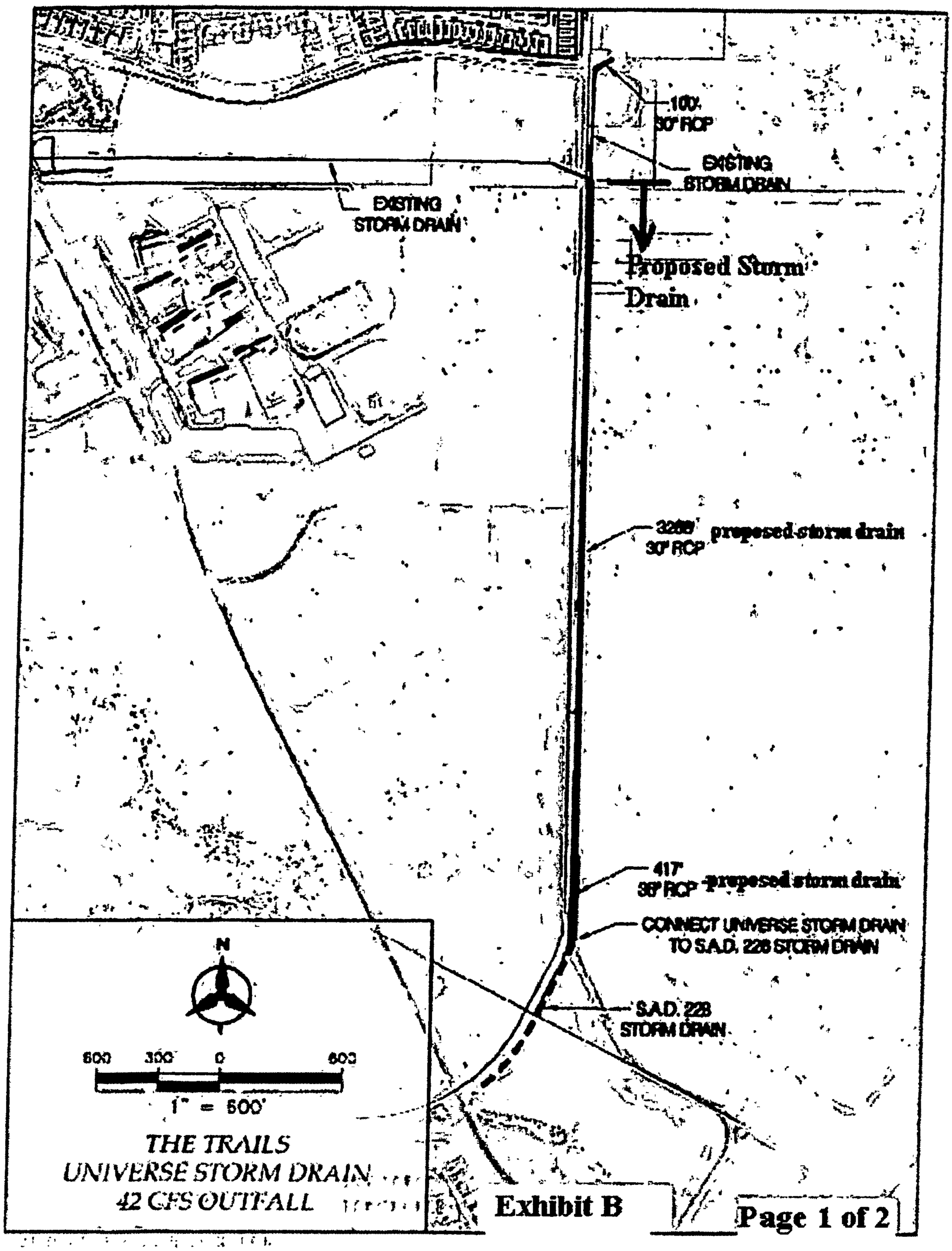
EXHIBIT "A"


100'
30" RCP
EXISTING
STORM DRAIN
EXISTING
STORM DRAIN
Proposed Storm
Drain
3288'
30" RCP
proposed storm drain
417'
36" RCP
proposed storm drain
CONNECT UNIVERSE STORM DRAIN
TO S.A.D. 228 STORM DRAIN
S.A.D. 228
STORM DRAIN
N
600
300
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600
1" = 500'
THE TRAILS
UNIVERSE STORM DRAIN
42 CFS OUTFALL

Exhibit B

UNIVERSE STORM DRAIN OUTFALL
THE TRAILS
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
7/31/2012

Item No.	Short Description	Estimate Unit Price	Unit	Quantity	Estimate Amount
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204.XXX	SELECT FILL	$5.00	CY	2801	$14,000.00
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701.110	BACKFILL,18-36" SWR,8-12'	$18.27	LF	800	$14,620.00
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	DRY UTILITY CROSSING ALLOW	$10,000.00	EA	1	$10,000.00
	SUBTOTAL STORM DRAIN				$431,461.00
4.010	STKG		%		$10,679.00
5.050	MOB		%		$17,799.00
30.020	NPDES PERMITTING		%		$2,243.00

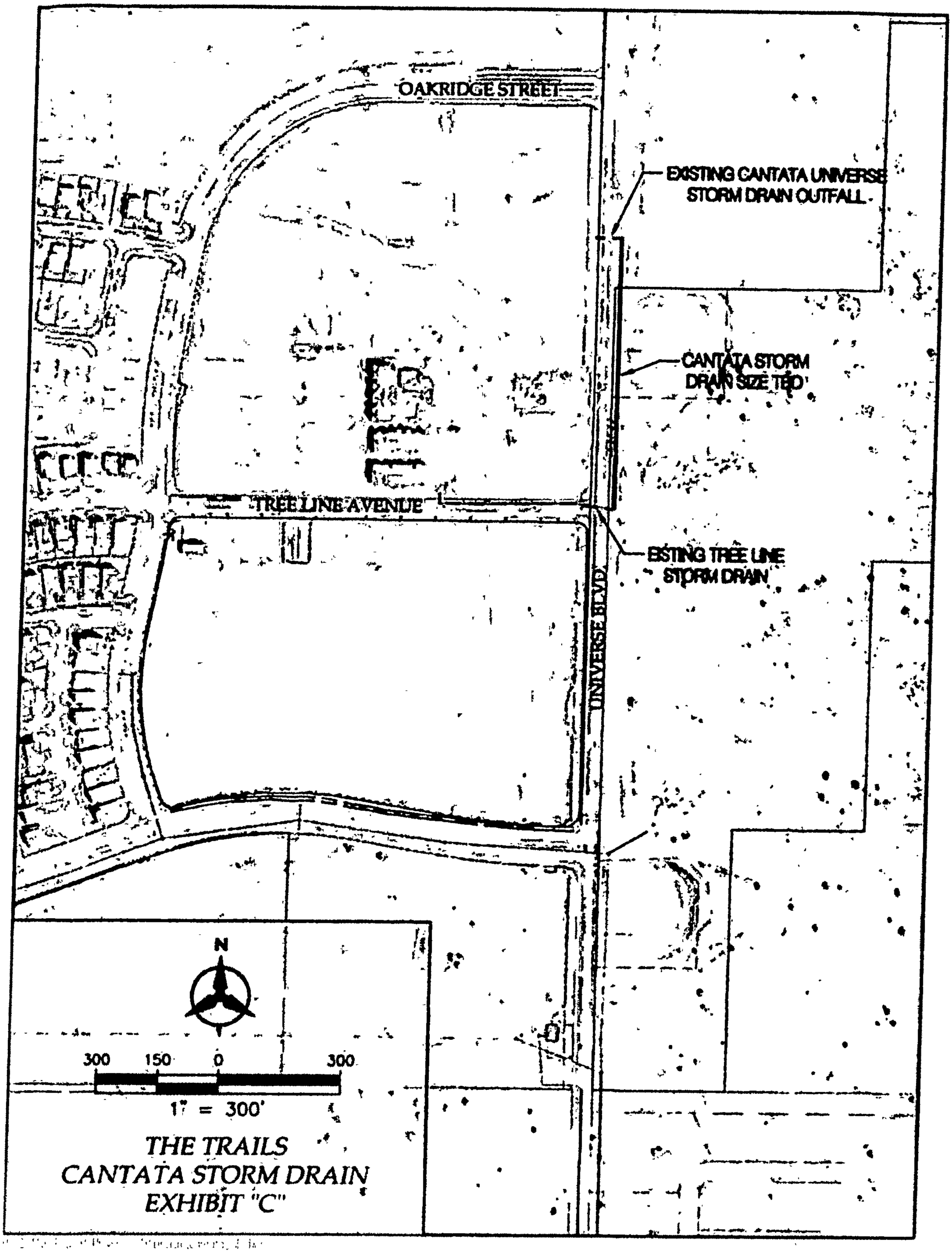
FINANCIAL GUARANTY

APPROVED ESTIMATE AMOUNT	$462,182
CONTINGENCY (10%)	$46,218
SUBTOTAL	$508,400
NMGRT (7.00%)	$35,588
SUBTOTAL	$543,988
ENGINEERING FEE (6.6%)	$35,903
TESTING FEE (0.0%)	$0
SUBTOTAL	$579,891
FINANCIAL GUARANTY RATE (1.25)	
TOTAL FINANCIAL GUARANTY REQUIRED	$724,864

This estimate of construction costs is only an opinion. BHI cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from this opinion.

P:\2011\0333\CDP\Universe SD\Estimate\TRAILS UNIVERSE STORM DRAIN ESTIMATE.xls

Exhibit B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EXISTING CANTATA UNIVERSE STORM DRAIN OUTFALL
CANTATA STORM DRAIN SIZE TBD
TREE LINE AVENUE
EXISTING TREE LINE STORM DRAIN
UNIVERSE BLVD.
N
300 150 0 300
1" = 300'
THE TRAILS
CANTATA STORM DRAIN
EXHIBIT "C"

730078

Memorandum of Agreement

Comes now the City of Albuquerque ("City"), The Trails, LLC ("Trails"), and RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") and agree as follows:

1. Trails affirms its obligations under the Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("Boca Negra Dam Agreement"). The precise nature and amount of such obligations are currently subject to arbitration. Trails will pay and perform its obligations as determined by the arbitration.

2. RCS agrees to comply with the recommendation from Mr. Scott Steffen, PE dated August 1, 2012 attached hereto as "Exhibit A".

3. Within two (2) years of final execution of this Memorandum, Trails agrees to complete construction of the Universe Storm Drain described in Bohannan Huston's summary (attached hereto as "Exhibit B") to serve as the drainage outfall for the Trails Development. Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Universe Storm Drain. The Trails will obtain City approval for construction drawings from the Design Review Committee ("DRC") for the Universe Storm Drain within six (6) months of the execution of this Memorandum.

4. Trails' federal lawsuit 12-CV-00357 will be stayed pending final execution of this Memorandum. Within five (5) days of final execution of this Memorandum, the Trails shall file a motion and order to dismiss that suit with prejudice. This dismissal shall not preclude the Trails from a claim made or which could be made in the arbitration or for claims arising out of impact fee credit issues.

5. The City Engineer shall recommend to the Development Review Board ("DRB") that Subdivision Improvement Agreements ("SIA") 730081 and 730085 be extended for up to two (2) years and amended to incorporate the Trails' obligations under the Boca Negra Dam Agreement per Paragraph 1 above. In connection therewith, Trails shall cause the bond company that issued the $1.25 Million bond held by City under SIA 730081 and the $250,000 bond held by City under SIA 730085 to issue corresponding bond riders, in a form reasonably acceptable to the City, acknowledging the foregoing SIA amendments.

6. RCS – Cantata Residences I, LLC shall amend the infrastructure list for SIA 730078 to include the Universe Storm Drain as described in Exhibit B. RCS will provide a bond in a form acceptable to City in the amount of $724,864.28 financially securing the Universe Storm Drain.

Doc# 2012083962
08/17/2012 02 12 PM Page 1 of 10
MEMO R $25 00 M Toulouse Oliver, Bernalillo County

7. The City Engineer agrees that the foregoing is sufficient to resolve the concerns of the City Engineer regarding final plat approval for Taos and Tierra Vista subdivisions currently pending and scheduled for a final approval hearing on August 8, 2012. RCS and Trails acknowledge that there may be additional conditions associated with such approval of the Taos subdivision and agree to comply with reasonable requirements regarding conveyances or dedications of real property as part of the re-platting approval of the referenced subdivisions.

8. With respect to Cantata, RCS agrees to construct the storm drain pipe fromCantata Universe outfall to Treeline within Universe Blvd. ("Cantata Storm Drain") as shown on "Exhibit C". Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Cantata Storm Drain. RCS will obtain City approval for construction drawings from the DRC for the Cantata Storm Drain within six (6) months of the execution of this Memorandum.

9. The City will resume issuing building permits for Cantata based upon the commitments confirmed herein; however, RCS acknowledges and agrees that no certificates of occupancy for such new building permits at Cantata will be issued by the City until the Cantata Storm Drain construction is completed and accepted by the City Engineer.

10. The City has requested a new grading plan for Cantata reflecting the change of zoning from park to multi-family for Tract A, adjacent to Cantata. RCS will submit the revised grading plan to the City within two (2) months of the final execution of this Memorandum.

11. Within one (1) month of the final execution of this Memorandum, RCS shall submit to the City for approval a revised drainage report for the Trails Drainage Master Plan that incorporate the foregoing changes.

12. RCS will withdraw or consent to remand its appeal of the DRB actions denying the preliminary plat extensions and final plat requests for the Taos and Tierra Vista subdivisions.

13. All parties mutually agree to act in good faith in exercising their duties and fulfilling their obligations under this agreement.

14. This Memorandum may be executed in counterparts, each of which shall be deemed an original and together which shall be deemed one instrument.

THE CITY OF ALBUQUERQUE

By: _____

Printed Name: Robert J. Perry

Title: Cheif Administrative Officer Date: 8/10/12

CITY'S NOTARY

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

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Marc E. Chavez
Notary Public

My Commission Expires:
2/17/13

OFFICIAL SEAL
Marc E. Chavez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 2/17/13

RCS – CANTATA RESIDENCES I, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – CANTATA RESIDENCES I, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 7th day of August, 2012 by [name of person:] Sharon K. Eshima, [title or capacity, for instance, "President" or "Owner":] Manager of RCS – Cantata Residences I, LLC

_____
Notary Public

My Commission Expires:
12/16/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TAOS, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – TAOS, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

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Notary Public

My Commission Expires:
12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TRAILS 9-A, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – TRAILS 9-A, LLC'S NOTARY

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Notary Public

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12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

THE TRAILS, LLC, by Longford Group, Inc., its Manager

By: _____

Printed Name: Kelly Calhoun

Title: Secretary Date: 8/7/12

THE TRAILS' NOTARY

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Notary Public

My Commission Expires:
1/25/16

OFFICIAL SEAL
Sara S. Hummel
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1/25/16

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LONGFORD AT THE TRAILS, LLC

By: _____

Printed Name: Kelly Calhoun

Title: Secretary Date: 8/7/12

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Notary Public

My Commission Expires:
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Bohannan Huston

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Albuquerque, NM
87109-4335

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voice: 505.823.1000
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toll free: 800.877.5332

August 1, 2012

Mr. Richard Dourte
City Engineer
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102

Re: Memorandum of Agreement, The Trails

Dear Richard:

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In support of this recommendation I visited Pond D in the field on 7/31/12 and conclude the following based on visual observation and review of the Trails AHYMO analysis:

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If you have questions or require additional information, please contact me at 823-1000.

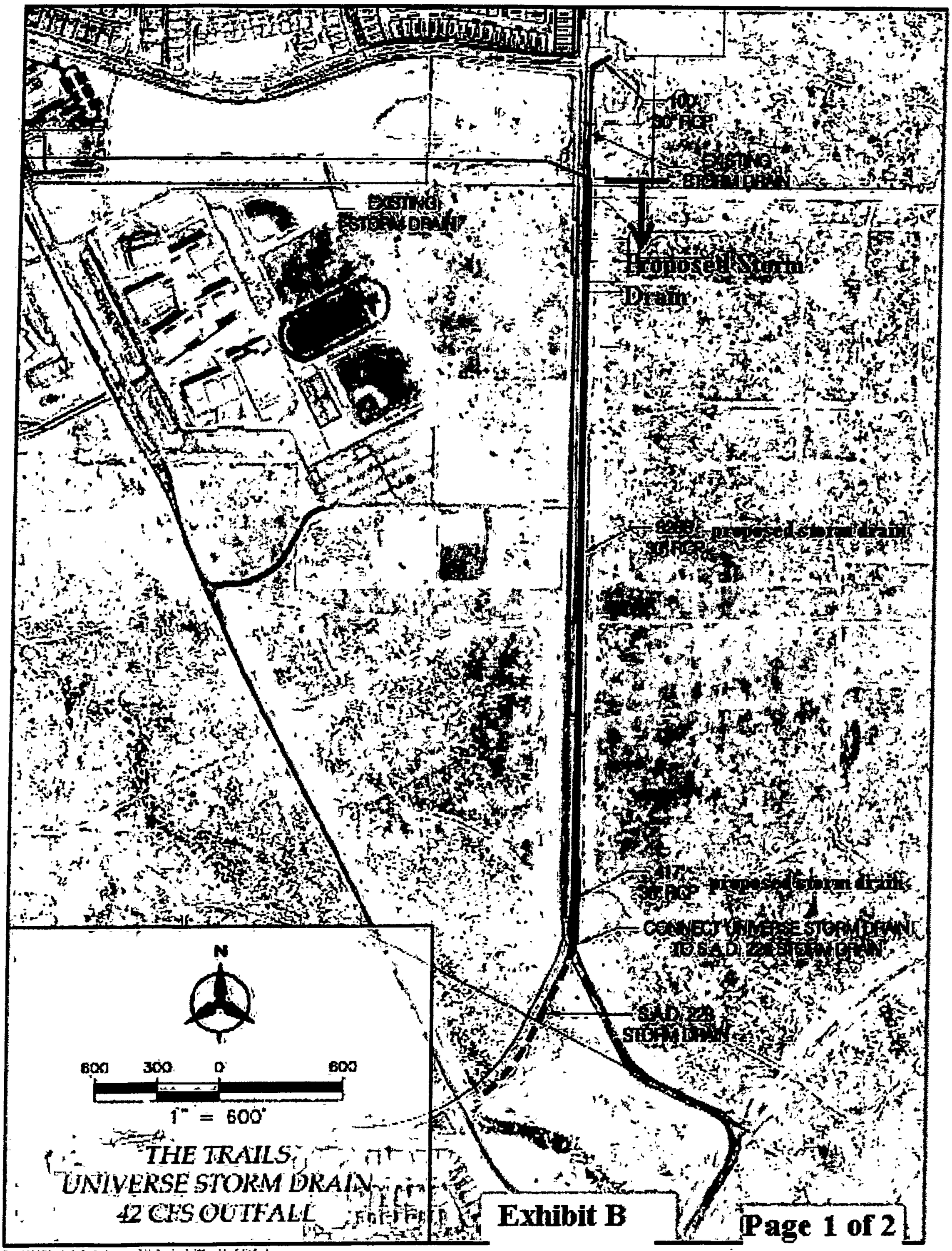
Sincerely,

Scott J. Steffen, P.E.
Vice President
Community Development & Planning

Engineering ▲
Spatial Data ▲
Advanced Technologies ▲

P:\20130108\Correspondence\Letters\20130108 Trails Pond D Ltr.Docx

EXHIBIT "A"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42 CFS OUTFALL

Exhibit B

UNIVERSE STORM DRAIN OUTFALL
THE TRAILS
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
7/31/2012

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30.020	NPDES PERMITTING		%		$2,243.00

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SUBTOTAL	$543,988
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TESTING FEE (0.0%)	$0
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FINANCIAL GUARANTY RATE (1.25)	
TOTAL FINANCIAL GUARANTY REQUIRED	$724,864

This estimate of construction costs is only an opinion. BHI cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from this opinion.

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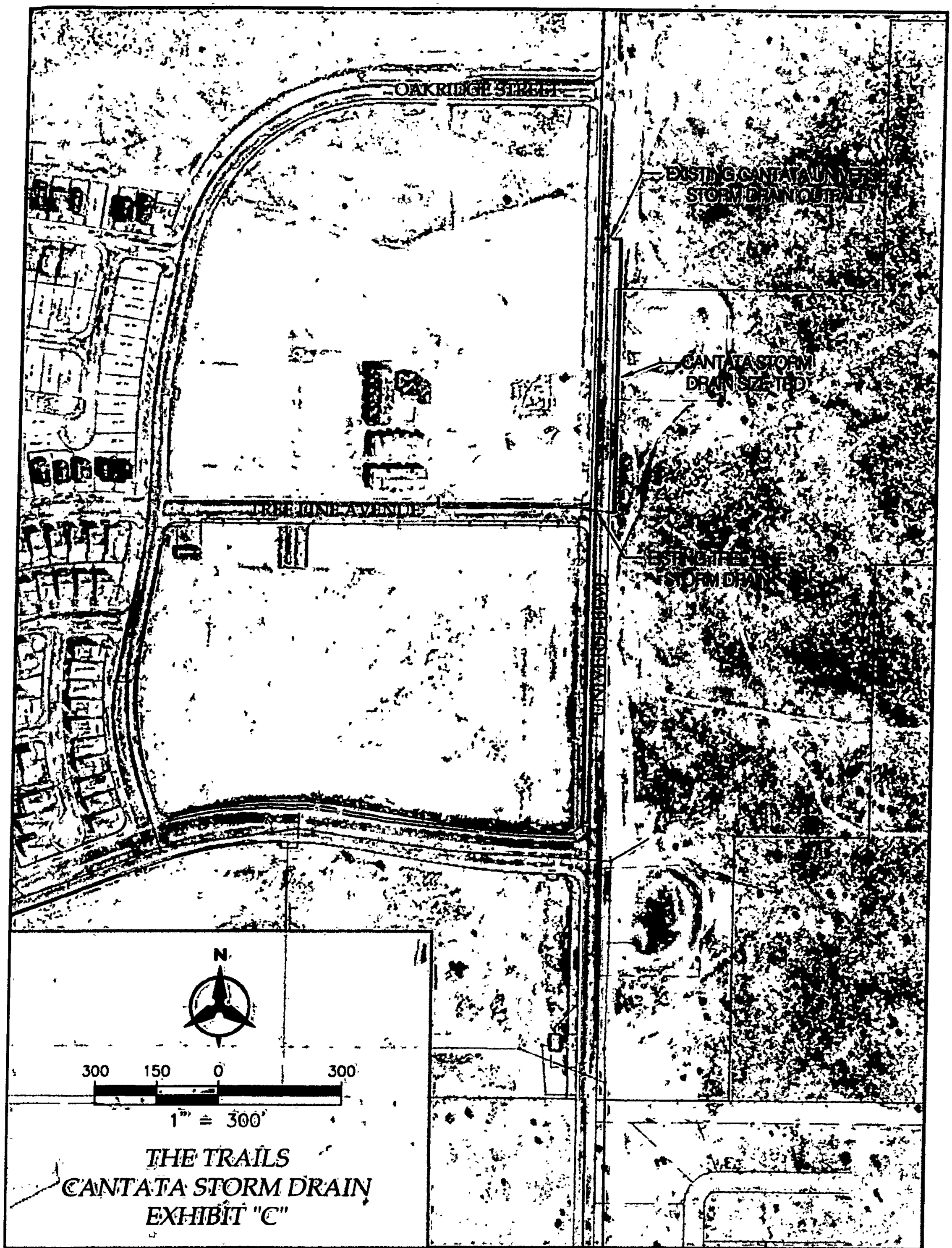
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UNIVERSITY BLVD
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300 150 0 300
1" = 300'
THE TRAILS
CANTATA STORM DRAIN
EXHIBIT "C"

Settlement Agreement
6-1-13
KB Homes (Vista Vieja)

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of the 7th day of ~~May~~ June, 2013 (the "Effective Date") by and among the **ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico ("AMAFCA"),** the **CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "City")** and **KB HOME NEW MEXICO INC., a New Mexico corporation ("KB").**

BACKGROUND INFORMATION.

A. KB, as successor to Vista Vieja Investments, LLC ("Vista") is a party to that certain Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 22, 2005, originally entered into by and among AMAFCA, the City, Vista, and The Trails, LLC, a Nevada limited liability company (the "Dam Agreement");

B. Pursuant to the Dam Agreement, KB and the Trails, LLC were obligated to provide approved design plans to AMAFCA for the Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements (the "Project");

C. Pursuant to the Dam Agreement, KB was obligated to pay a percentage of the design and construction costs of the Project;

D. As a result of design changes required by the New Mexico State Engineer, change orders and delays, the cost of the Project escalated substantially; and,

E. KB has asserted claims against AMAFCA and the City resulting from the spiraling costs of the Project.

F. The parties agree to settle all claims under the Dam Agreement.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Background Information. The Background Information is incorporated herein.

2. Dam Agreement. The City, AMAFCA and KB agree that KB's sole remaining obligation pursuant to the Dam Agreement shall be the payment of One Million One Thousand Nine Hundred Twenty and No/100 Dollars ($1,001,920.00) in immediately available funds, payable to AMAFCA within five (5) business days after the Effective Date of this Agreement (the "KB Payment"). Notwithstanding anything to the contrary in the Dam Agreement, AMAFCA and the City hereby waive, effective as of receipt of the KB Payment, any and all claims for additional contributions to the cost of the design, construction and maintenance of the Project. The City and AMAFCA further agree that any additional costs for construction and construction management over and beyond the lump sum contributions from KB and the Trials, LLC will be borne by City and AMAFCA on a 50:50 cost share basis.

3. Financial Guarantee. Upon receipt of the KB Payment, the City

further agrees to execute a partial release (with the only remaining obligation thereunder being the future half-street improvements to Scenic Rd. which are part of Off-Site Roads, as defined below) of the Subdivision Improvement Agreement entered into by and between the City and KB related to Unit 2 of the Vista Vieja Subdivision dated September 21, 2006, filed in the Bernalillo County, New Mexico real estate records on September 22, 2006, as Document No. 2006144692 (the "Vista Vieja Unit 2 SIA"), and to release in full the $1,347,168.54 financial guaranty posted by KB to secure the obligations pursuant to the Vista Vieja Unit 2 SIA (other than KB's Unit 2 portion of Off-Site Roads, which is guaranteed separately). The City will also concurrently execute a pending Landscape Maintenance Agreement under the Vista Vieja Unit 2 SIA.

4. Anderson Heights Unit 9 Plat. KB intends to file an application with the City's Development Review Board ("DRB") to simultaneously: (a) vacate the final plat for the Anderson Heights Unit 9 Subdivision filed in the Bernalillo County, New Mexico real estate records on October 9, 2007, as Document No. 2007142916 (the "Unit 9 Subdivision") by submitting a new plat for this property ("Vacation Plat"), which removes the existing lots but leaves the dedicated right-of-way as is, and (b) submit an amended preliminary plat for the Unit 9 Subdivision with revised lot sizes more suited to current market conditions, but not to relocate the roadways or revise the infrastructure associated with the Unit 9 Subdivision (the "Amended Plat"). The City Engineer agrees to support the simultaneous approval of the Unit 9 Subdivision vacation, the Vacation Plat, and the Amended

Plat. With regard to right-of-way or other infrastructure requirements remaining as obligations under the Vacation Plat, the City Engineer agrees to accept a municipal lien against the Unit 9 Subdivision property as a financial guarantee for that infrastructure. However, when KB submits a final plat subdividing the Vacation Plat, KB must replace that municipal lien with a bond, letter of credit, or other financial guarantee acceptable to the City Attorney's Office. Provided that the roadway and infrastructure layout is not changed between the time of the Vacation Plat and the approval of a subsequent final plat for the Unit 9 Subdivision, the City Engineer agrees that, subject to the City's review and approval of any revisions needed to conform to any change in the City's design standards or regulations for the associated infrastructure, the approved engineering plans under the current Unit 9 Subdivision final plat will remain effective for such subsequent final plat and not require further approval. KB understands and acknowledges that many of these approvals must be made independently by the DRB at a public hearing following notice and public input. If the Unit 9 Subdivision plat is vacated, then the Unit 9 Subdivision Improvement Agreement and the outstanding financial guaranty for the Unit 9 infrastructure will be released, after the recording of a new Subdivision Improvement Agreement supported by a municipal lien for any remaining infrastructure requirements related to the Vacation Plat.

5. Vista Vieja Off-Site Road Obligations. Pursuant to the Vista Vieja Unit 2 SIA and the Subdivision Improvement Agreements for Vista Vieja Units 3 and 4, entered into by and between KB and the City and both dated October 12,

2006, and both filed in the Bernalillo County, New Mexico real estate records on October 12, 2006, as Document No. 2006156276 and Document No. 2006156278, respectively, KB has committed to construct half-street improvements to the portions of Scenic Road depicted on Exhibit "A" and "B" attached hereto, and half-street improvements to the portion of Albericoqui Place, depicted on Exhibit "A" (collectively, the "Off-Site Roads"). The City Engineer agrees that KB shall not be obligated to construct its portions of the Off-Site Roads until construction begins on the adjacent half-street improvements to the portions of the Off-Site Roads.

6. Release of Claims. KB, AMAFCA and the City hereby waive, release, and forever discharge all claims arising out of or relating to the Dam Agreement, excepting any claims based on the obligations of the parties that are created by this Agreement.

7. Governing Laws. Except as otherwise specifically provided herein, this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Mexico.

8. Notices. "Notice" means any notice, demand, request, or other communication or document to be provided under this Agreement to a party. The notice shall be in writing and shall be given to the party at its address or telecopy number set forth below or at such other address or telecopy number as the party may later specify for that purpose by notice to the other party. Each notice shall, for all purposes, be deemed given and received: (a) if given by telecopy, when the telecopy is transmitted to the party's telecopy number specified below and

confirmation of complete receipt is received by that transmitting party during normal business hours or on the next business day if not confirmed during normal business hours; (b) if hand delivered to a party against receipted copy, when the copy of the notice is receipted; (c) if given by a nationally recognized and reputable overnight delivery service, the day on which the notice is actually received by the party; or (d) if given by any other means or if given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service, at the address of the party specified below:

AMAFCA:

Albuquerque Metropolitan Arroyo Flood Control Authority
2600 Prospect Avenue, NE
Albuquerque, New Mexico 87107

City:

Chief Administrative Officer
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87103

KB:

KB Home
Attn: General Counsel
10990 Wilshire Blvd., 7th Floor
Los Angeles, CA

9. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and all prior understandings, oral or in writing, by the parties hereto with respect to this agreement. No variations, modifications,

supplements, waivers or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

10. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstance shall not be affected thereby and such provisions shall be enforced to the greatest extent permitted by law.

12. Attorneys' Fees. In the event any action is instituted by any party for the purpose of enforcing or interpreting any provision of this Agreement, the prevailing party in such action shall be entitled to its reasonable attorneys' fees and costs.

13. Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the undersigned parties and their respective successors and assigns. Whenever in this Agreement a reference to any party is made, such reference shall be deemed to include a reference to the successors and permitted assigns of such party.

14. Authority. 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.

15. Further Assurances. 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.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts shall constitute but one and the same instrument which may sufficiently be evidenced by one counterpart.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as of the date first written above.

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico

By:_____
Its: Exec Manager

CITY OF ALBUQUERQUE, a New Mexico municipal corporation

By:_____
Its: Robert J. Perry
Chief Administrative Officer

KB HOME NEW MEXICO INC., a New Mexico corporation ("KB").

By: Shawn Chilcoat
Its: Division President

730078

Memorandum of Agreement

Comes now the City of Albuquerque ("City"), The Trails, LLC ("Trails"), and RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") and agree as follows:

1. Trails affirms its obligations under the Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("Boca Negra Dam Agreement"). The precise nature and amount of such obligations are currently subject to arbitration. Trails will pay and perform its obligations as determined by the arbitration.

2. RCS agrees to comply with the recommendation from Mr. Scott Steffen, PE dated August 1, 2012 attached hereto as "Exhibit A".

3. Within two (2) years of final execution of this Memorandum, Trails agrees to complete construction of the Universe Storm Drain described in Bohannan Huston's summary (attached hereto as "Exhibit B") to serve as the drainage outfall for the Trails Development. Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Universe Storm Drain. The Trails will obtain City approval for construction drawings from the Design Review Committee ("DRC") for the Universe Storm Drain within six (6) months of the execution of this Memorandum.

4. Trails' federal lawsuit 12-CV-00357 will be stayed pending final execution of this Memorandum. Within five (5) days of final execution of this Memorandum, the Trails shall file a motion and order to dismiss that suit with prejudice. This dismissal shall not preclude the Trails from a claim made or which could be made in the arbitration or for claims arising out of impact fee credit issues.

5. The City Engineer shall recommend to the Development Review Board ("DRB") that Subdivision Improvement Agreements ("SIA") 730081 and 730085 be extended for up to two (2) years and amended to incorporate the Trails' obligations under the Boca Negra Dam Agreement per Paragraph 1 above. In connection therewith, Trails shall cause the bond company that issued the $1.25 Million bond held by City under SIA 730081 and the $250,000 bond held by City under SIA 730085 to issue corresponding bond riders, in a form reasonably acceptable to the City, acknowledging the foregoing SIA amendments.

6. RCS – Cantata Residences I, LLC shall amend the infrastructure list for SIA 730078 to include the Universe Storm Drain as described in Exhibit B. RCS will provide a bond in a form acceptable to City in the amount of $724,864.28 financially securing the Universe Storm Drain.

Doc# 2012083962
08/17/2012 02:12 PM Page: 1 of 10
MEMO R:$25.00 M. Toulouse Oliver, Bernalillo County

8-10-12
TRAILS & RCS Agreed

7. The City Engineer agrees that the foregoing is sufficient to resolve the concerns of the City Engineer regarding final plat approval for Taos and Tierra Vista subdivisions currently pending and scheduled for a final approval hearing on August 8, 2012. RCS and Trails acknowledge that there may be additional conditions associated with such approval of the Taos subdivision and agree to comply with reasonable requirements regarding conveyances or dedications of real property as part of the re-platting approval of the referenced subdivisions.

8. With respect to Cantata, RCS agrees to construct the storm drain pipe fromCantata Universe outfall to Treeline within Universe Blvd. ("Cantata Storm Drain") as shown on "Exhibit C". Within two (2) months of final execution of this Memorandum, RCS will submit to the City Engineer for approval an engineering design for the Cantata Storm Drain. RCS will obtain City approval for construction drawings from the DRC for the Cantata Storm Drain within six (6) months of the execution of this Memorandum.

9. The City will resume issuing building permits for Cantata based upon the commitments confirmed herein; however, RCS acknowledges and agrees that no certificates of occupancy for such new building permits at Cantata will be issued by the City until the Cantata Storm Drain construction is completed and accepted by the City Engineer.

10. The City has requested a new grading plan for Cantata reflecting the change of zoning from park to multi-family for Tract A, adjacent to Cantata. RCS will submit the revised grading plan to the City within two (2) months of the final execution of this Memorandum.

11. Within one (1) month of the final execution of this Memorandum, RCS shall submit to the City for approval a revised drainage report for the Trails Drainage Master Plan that incorporate the foregoing changes.

12. RCS will withdraw or consent to remand its appeal of the DRB actions denying the preliminary plat extensions and final plat requests for the Taos and Tierra Vista subdivisions.

13. All parties mutually agree to act in good faith in exercising their duties and fulfilling their obligations under this agreement.

14. This Memorandum may be executed in counterparts, each of which shall be deemed an original and together which shall be deemed one instrument.

THE CITY OF ALBUQUERQUE

By: _____

Printed Name: Robert J. Perry

Title: Cheif Administrative Officer Date: 8/10/12

CITY'S NOTARY

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

This instrument was acknowledged before me on this 10th day of August, 2012, by [name of person:] Robert J. Perry, [title or capacity, for instance, "President" or "Owner":] CAO of the City of Albuquerque.

Marc E. Chavez
Notary Public

My Commission Expires:
2/17/13

OFFICIAL SEAL
Marc E. Chavez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 2/17/13

RCS – CANTATA RESIDENCES I, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – CANTATA RESIDENCES I, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 7th day of August, 2012 by [name of person:] Sharon K. Eshima, [title or capacity, for instance, "President" or "Owner":] Manager of RCS – Cantata Residences I, LLC

_____
Notary Public

My Commission Expires:
12/16/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TAOS, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – TAOS, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 7th day of August, 2012, by [name of person:] Sharon K. Eshima, [title or capacity, for instance, "President" or "Owner":] Manager of RCS – Taos, LLC

_____
Notary Public

My Commission Expires:
12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TRAILS 9-A, LLC

By: _____

Printed Name: Sharon K. Eshima

Title: Manager Date: August 7, 2012

RCS – TRAILS 9-A, LLC'S NOTARY

STATE OF COLORADO)
)ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 7th day of August, 2012, by [name of person:] Sharon K. Eshima, [title or capacity, for instance, "President" or "Owner":] Manager of RCS – Trails 9-A, LLC

_____
Notary Public

My Commission Expires:
12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

THE TRAILS, LLC, by Longford Group, Inc., its Manager

By: _____

Printed Name: Kelly Calhoun

Title: Secretary Date: 8/7/12

THE TRAILS' NOTARY

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

This instrument was acknowledged before me on this 7th day of Aug., 2012, by [name of person:] Kelly Calhoun, [title or capacity, for instance, "President" or "Owner":] Secretary of ~~The Trails, LL~~C. Longford Group, Inc., Manager of the Trails, LLC.

_____
Notary Public

My Commission Expires:
1/25/16

OFFICIAL SEAL
Sara S. Hummel
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1/25/16

Longford at the Trails, LLC, hereby joins that certain Memorandum of Agreement by and among the City of Albuquerque ("City"), The Trails, LLC ("Trails"), and RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") made and delivered on August 7, 2012, by RCS and The Trails for purposes of committing to the terms of committing to the City and RCS its obligation, as the party to SIA 730085, to cause the bonding company which issued the bond for SIA 730085 to issue a corresponding bond rider in form reasonably acceptable to the City acknowledging the amendment to SIA 730085 as contemplated by the terms of Paragraph 5 of the Memorandum of Agreement.

LONGFORD AT THE TRAILS, LLC

By: _____

Printed Name: Kelly Calhoun

Title: Secretary Date: 8/7/12

LONGFORD AT THE TRAILS' NOTARY

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

This instrument was acknowledged before me on this 7th day of Aug, 2012, by [name of person:] Kelly Calhoun, [title or capacity, for instance, "President" or "Owner":] Secretary of ~~Longford at the Trails, LLC~~. Longford Group, Inc., Manager of Longford at the Trails, LLC

Sara S. Hummel
Notary Public

My Commission Expires:
1/25/16

OFFICIAL SEAL
Sara S. Hummel
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 1/25/16

Bohannan Huston

Courtyard I
7500 Jefferson St. NE
Albuquerque, NM
87109-4335

www.bhinc.com

voice: 505.823.1000
facsimile: 505.798.7988
toll free: 800.877.5332

August 1, 2012

Mr. Richard Dourte
City Engineer
City of Albuquerque
600 2nd Street NW
Albuquerque, NM 87102

Re: Memorandum of Agreement, The Trails

Dear Richard:

This letter provides our recommendation for interim retention ponding for the Trails Development in support of the Memorandum of Agreement related to the construction of interim and permanent drainage infrastructure for the Trails. The developed tracts within the Trails currently drain to one of two interim retention ponds on the east side of Universe Boulevard known as Ponds J and K. The majority of the flows go to Pond K. In order to reduce the flow to Pond K on an interim basis, until the Universe storm drain outfall is constructed, we recommend that Pond D be converted from a surge pond to a retention pond.

In support of this recommendation I visited Pond D in the field on 7/31/12 and conclude the following based on visual observation and review of the Trails AHYMO analysis:

- The condition of Pond D appears to be similar to the as-built condition dated 4/9/07.
- The 100-year, 24-hour storm volume entering Pond D is close to the storage volume of Pond D.
- If Pond D were to spill the flows would be contained within a low lying area of undeveloped land north of the Santa Fe 3 at the Trails subdivision. This area provides additional storage volume that is equal to or greater than what exists in Pond D.
- If the low lying area were to spill, it is my opinion that runoff would enter Oakridge Street to the east or into Santa Fe 3 through a landscape/pedestrian access tract before threatening existing houses in Santa Fe 3. Flows in Santa Fe 3 would be collected by existing storm drain in Tijeras Creek Road.

In order to reduce the flows to Pond K we recommend the following:

- Plug the 24-inch storm drain outfall in the manhole in Pond D
- Remove the plug in the Pond D manhole once the Universe storm drain is operational.

If you have questions or require additional information, please contact me at 823-1000.

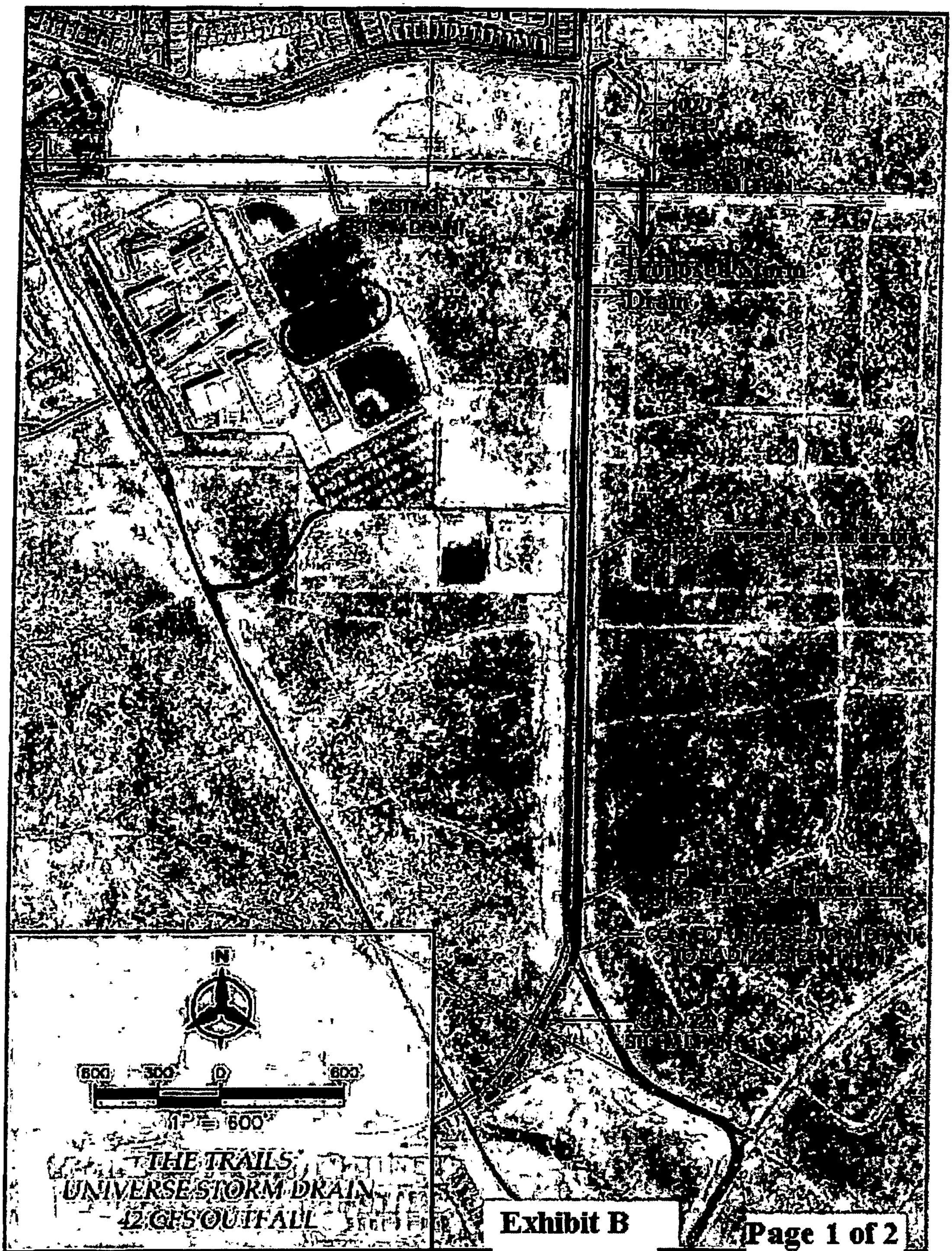
Sincerely,

Scott J. Steffen, P.E.
Vice President
Community Development & Planning

Engineering ▲
Spatial Data ▲
Advanced Technologies ▲

P:\20130108\Correspondence\Letters\20130108 Trails Pond D Ltr.Docx

EXHIBIT "A"


N
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1" = 600'
THE TRAILS
UNIVERSE STORM DRAIN
42 CFS OUTFALL

Exhibit B

UNIVERSE STORM DRAIN OUTFALL
THE TRAILS
ENGINEER'S OPINION OF PROBABLE CONSTRUCTION COST
7/31/2012

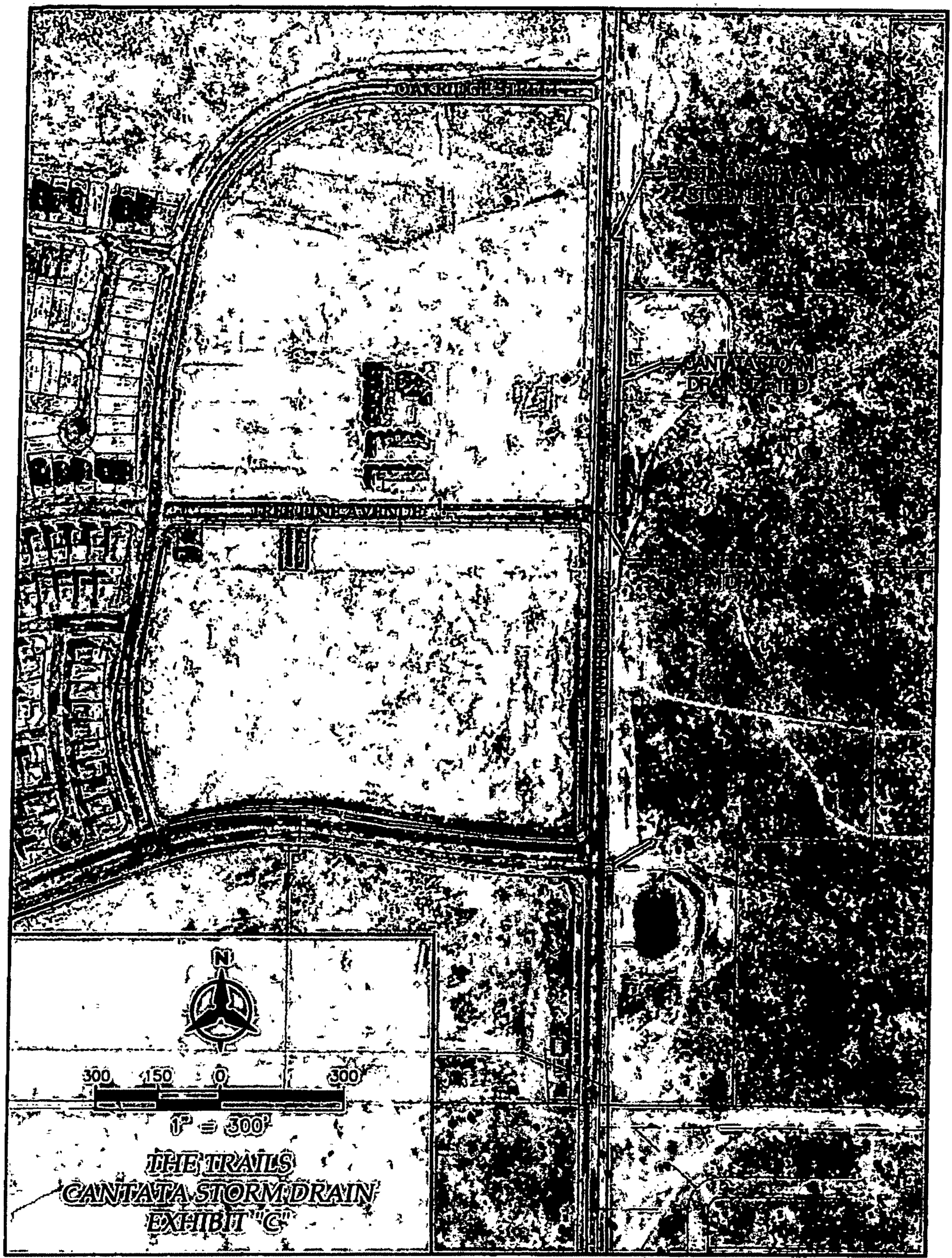
Item No.	Short Description	Estimate Unit Price	Unit	Quantity	Estimate Amount
	STORM DRAIN				
204.010	FILL, EXCAV, BF & COMP, U, >2'	$7.00	CY	2148	$15,040.00
204.XXX	SELECT FILL	$5.00	CY	2801	$14,000.00
701.100	BACKFILL, 18-36" SWR, <8'	$14.00	LF	2985	$41,790.00
701.110	BACKFILL,18-36" SWR,8-12'	$18.27	LF	800	$14,620.00
701.XXX	ROCK EXCAVATION, BLASTING	$33.41	CY	4100	$136,981.00
910.013	30" RCP, III	$44.00	LF	3368	$148,190.00
910.017	36" RCP, III	$68.00	LF	417	$28,360.00
920.010	MH, 4' DIA, C, <6' D	$1,810.00	EA	2	$3,620.00
920.070	MH, 4' DIA, C or E	$2,800.00	EA	4	$11,200.00
920.080	MH, 4' DIA, C or E,>10'-14'D	$3,580.00	EA	1	$3,580.00
920.140	MH, 6' DIA, C or E, 6-10' D	$4,075.48	EA	1	$4,080.00
	DRY UTILITY CROSSING ALLOW	$10,000.00	EA	1	$10,000.00
	SUBTOTAL STORM DRAIN				$431,461.00
4.010	STKG		%		$10,679.00
6.050	MOB		%		$17,799.00
30.020	NPDES PERMITTING		%		$2,243.00

FINANCIAL GUARANTY

APPROVED ESTIMATE AMOUNT	$462,182
CONTINGENCY (10%)	$46,218
SUBTOTAL	$508,400
NMGRT (7.00%)	$35,588
SUBTOTAL	$543,988
ENGINEERING FEE (6.6%)	$35,903
TESTING FEE (0.0%)	$0
SUBTOTAL	$579,891
FINANCIAL GUARANTY RATE (1.25)	
TOTAL FINANCIAL GUARANTY REQUIRED	$724,864

This estimate of construction costs is only an opinion. BHI cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from this opinion.

P:\20110333-CDP\Universe SD\Estimate\TRAILS UNIVERSE STORM DRAIN ESTIMATE.xls


OAKRIDGE STREET
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300
1" = 300'
THE TRAILS
CANTATA STORM DRAIN
EXHIBIT "C"

SCANNED BY PLANNING

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT

CONSTRUCTION PLANS
FOR

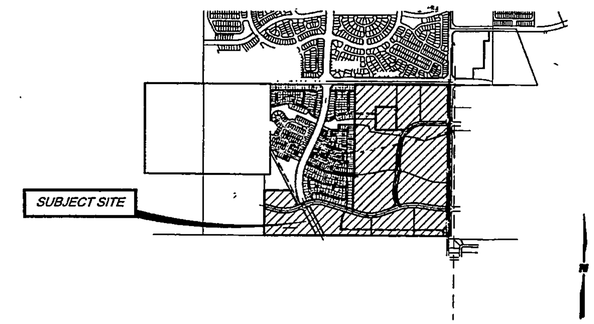
THE TRAILS UNIT II

GRADING, PAVING, UTILITIES, & STORM DRAIN

Isaacson & Arfman, P.A. is responsible for the design of Sheets 52-55 which were changed, ordered in on 04/20/07

GENEVIEVE L. DORATO, NEW MEXICO (15088) LICENSED PROFESSIONAL ENGINEER

5/2/07



VICINITY MAP
C-9-Z

INDEX TO DRAWINGS
RECORD DRAWINGS

SHEET No.	DESCRIPTION
1	COVER
2A–2C	SUBDIVISION PLAT
3	EROSION CONTROL PLAN
4	OVERALL POND GRADING PLAN
5–7	TYPICAL PAVING SECTIONS
8–13	POND GRADING PLANS
14	COMPOSITE PAVING PLAN
15–16	RAINBOW BLVD. PAVING & STORM DRAIN PLAN & PROFILE
17–20 {17A, 17B}	WOODMONT AVE. PAVING & STORM DRAIN PLAN & PROFILE
21–23	OAKRIDGE ST. PAVING & STORM DRAIN PLAN & PROFILE
~~24–26~~	~~PASEO DEL NORTE BLVD PAVING & STORM DRAIN PLAN & PROFILE~~
27–30 {27A, 28A, 29A}	UNIVERSE BLVD PAVING & STORM DRAIN PLAN & PROFILE
31–32	TRACT 4 SD EASEMENT STORM DRAIN PLAN & PROFILE
33	FUTURE TREELINE AVE STORM DRAIN PLAN & PROFILE
34	TRACT 6 SD EASEMENT STORM DRAIN PLAN & PROFILE
35	COMPOSITE UTILITY PLAN
36	UTILITY CROSSINGS SECTIONS
37–45	WATER, SEWER, STORM DRAIN EASEMENT PLAN & PROFILE
46	RAINBOW BLVD SIGNING & STRIPING PLAN
47–48	WOODMONT AVE SIGNING & STRIPING PLAN
~~49~~	~~PASEO DEL NORTE PERMANENT SIGNING & STRIPING PLAN~~
50–51	UNIVERSE BLVD PERMANENT SIGNING & STRIPING PLAN
52–55	WOODMONT AVE PAVING

NOT TO BE BUILT W/ THIS PROJECT

NOT TO BE BUILT W/ THIS PROJECT

I, PATRICK CONLEY of the firm of Smith Engineering Company, a Registered Professional Engineer in the State of New Mexico, do hereby state that to the best of my knowledge and belief, the infrastructure for this project as shown on the plans has been constructed in general accordance with the project plans and in general accordance with the City of Albuquerque Standard Specifications for Public Works Construction (including all updates), and that the general intent of the plans has been met except as noted on the as-built construction drawings. The infrastructure construction has been observed by a qualified person from Smith Engineering Company and this statement covers infrastructure installation that was observed while a representative from Smith Engineering was on site. This statement is based on site observations by Smith Engineering Company personnel and on as-built information provided to Smith Engineering Company. EVAN HUGG (Surveyor's name), NMPS 17078 (PS#).

PATRICK J. CONLEY, NEW MEXICO, 10144, LICENSED PROFESSIONAL ENGINEER — 4/23/07

DRAINAGE CERTIFICATION

I, Steve J. Salazar, NMPE 16241, OF THE FIRM Wilson & Company, Inc., HEREBY CERTIFY THAT THIS PROJECT HAS BEEN CONSTRUCTED IN SUBSTANTIAL COMPLIANCE WITH AND IN ACCORDANCE WITH THE DESIGN INTENT OF THE APPROVED AMENDEMENT TO THE TRAILS UNIT II & III SUBDIVISION MASTER DRAINAGE STUDY DATED 12-23-05. THE RECORD INFORMATION EDITED ONTO THE ORIGINAL DESIGN DOCUMENT HAS BEEN OBTAINED BY Russ P. Hugg, NMPS 9750, OF THE FIRM Survtek.

I FURTHER CERTIFY THA1 I HAVE PERSONALLY VISITED THE PROJECT SITE ON MAY 4TH, 2007 AND HAVE DETERMINED BY VISUAL INSPECTION THAT THE SURVEY DATA PROVIDED IS REPRESENTATIVE OF ACTUAL SITE CONDITIONS AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS CERTIFICATION IS SUBMITTED IN SUPPORT OF A REQUEST FOR PERMANENT CERTIFICATE OF OCCUPANCY.

THE RECORD INFORMATION PRESENTED HEREON IS NOT NECESSARILY COMPLETE AND INTENDED ONLY TO VERIFY SUBSTANTIAL COMPLIANCE OF THE GRADING AND DRAINAGE ASPECTS OF THIS PROJECT IN RELATION TO APPROVED SUBDIVISION DRAINGE STUDY. THOSE RELYING ON THIS RECORD DOCUMENT ARE ADVISED TO OBTAIN INDEPENDENT VERIFICATION OF ITS ACCURACY BEFORE USING IT FOR ANY OTHER PURPOSE.

STEVE J. SALAZAR, NEW MEXICO, 16241, LICENSED PROFESSIONAL ENGINEER

Steve J. Salazar, NMPE 16241
5/10/07
DATE

SURVEYORS CERTIFICATION

I, Russ P. Hugg, New Mexico Professional Surveyor Number 9750, Hereby Certify that the as-built information shown hereon is the result of an actual field survey performed by me or under my direct supervision and that the same is true and correct to the best of my knowledge and belief.

Russ P. Hugg
NMPS No. 9750
4-9 20 07

PROFESSIONAL SURVEYOR, STATE OF NEW MEXICO, No. 9750, RUSS P. HUGG

UTILITY COMPANY CONTACTS

NEW MEXICO UTILITIES
(Water & Sanitary Sewer)
Bob Gay
4700 Irving Blvd., NW
Suite 201
Albuquerque, New Mexico 87114
(505) 898-2681

PNM ELECTRIC
4201 Edith Blvd. NE
Albuquerque, New Mexico 87107
Rocky Ferren
(505) 241-0525

QWEST
201 3rd Street, NW Suite 700
Albuquerque, New Mexico 87102
David Muller
(505) 245-8704

Comcast Digital Cable
Rita Erickson
4811 Menibel Pl., NE
Albuquerque, NM 87107
(505) 761-6235

AMAFCA
Executive Engineer
John Kelly
2800 Prospect Ave., NE
Albuquerque, New Mexico 87107
(505) 884-2215

PNM GAS
4625 Edith Blvd., NE
Albuquerque, New Mexico 87107
Elisabeth Gable
(505) 241-7745

AT&T
Dave Crowel
111 3rd ST., NW
Albuquerque, New Mexico 87103
(505) 842-2911

NOTE

APPROVAL SIGNATURES REQUIRED FOR ENTITIES OTHER THAN CITY OF ALBUQUERQUE ARE PROVIDED ON INDIVIDUAL SHEETS.

NOTE

THE ENGINEER HAS UNDERTAKEN LIMITED FIELD VERIFICATION OF THE LOCATION, DEPTH, SIZE, OR TYPE OF EXISTING UNDERGROUND UTILITY LINES, MAKES NO REPRESENTATION PERTAINING THERETO AND ASSUMES NO RESPONSIBILITY OR LIABILITY THEREFORE. THE CONTRACTOR SHALL INFORM ITSELF OF THE LOCATION OF ANY UTILITY LINE IN OR NEAR THE AREA OF THE WORK IN ADVANCE OF AND DURING EXCAVATION WORK. THE CONTRACTOR IS FULLY RESPONSIBLE FOR ANY AND ALL DAMAGE CAUSED BY ITS FAILURE TO LOCATE, IDENTIFY, AND PRESERVE ANY AND ALL EXISTING UTILITIES. THE CONTRACTOR SHALL COMPLY WITH STATE STATUTES, MUNICIPAL AND LOCAL ORDINANCES, RULES AND REGULATIONS PERTAINING TO THE LOCATION OF THESE LINES AND FACILITIES IN PLANNING AND CONDUCTING EXCAVATION, WHETHER BY CALLING OR NOTIFYING THE UTILITIES, COMPLYING WITH "BLUE STAKES" PROCEDURES, OR OTHERWISE.

TRAFFIC CONTROL

TRAFFIC CONTROL FOR CONSTRUCTION SHALL BE IN ACCORDANCE WITH SECTION 2800 TEMPORARY TRAFFIC CONTROL OF THE CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2003 EDITION AS AMENDED THRU UPDATE NO. 7. CONTRACTOR SHALL SUBMIT CONSTRUCTION PHASING SCHEDULE FOR APPROVAL FROM DESIGN ENGINEER PRIOR TO CONSTRUCTION.

FIVE (5) WORKING DAYS PRIOR TO BEGINNING CONSTRUCTION THE CONTRACTOR SHALL SUBMIT TO THE CONSTRUCTION + COORDINATION DIVISION A DETAILED CONSTRUCTION SCHEDULE. TWO (2) WORKING DAYS PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL OBTAIN A BARRICADING PERMIT FROM THE CONSTRUCTION COORDINATION DIVISION. CONTRACTOR SHALL NOTIFY BARRICADE ENGINEER (924-3400) PRIOR TO OCCUPYING AN INTERSECTION. SEE SECTION 19 OF THE SPECIFICATIONS. ALL STREET STRIPING ALTERED OR DESTROYED SHALL BE REPLACED WITH PLASTIC REFLECTORIZED PAVEMENT MARKINGS BY CONTRACTOR TO LOCATION AS EXISTING OR AS SHOWN IN THIS PLAN SET.

NOTE

THESE DRAWINGS DO NOT INCLUDE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY WHICH SHALL REMAIN THE RESPONSIBILITY OF THE CONTRACTOR.

NOTE

THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, ARE INTENDED FOR USE ON THIS PROJECT AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF WILSON & COMPANY. IN THE EVENT OF UNAUTHORIZED USE, THE USER ASSUMES ALL RESPONSIBILITY AND LIABILITY WHICH RESULTS.

APPROVED AS RECORD DRAWINGS
DESIGN REVIEW SECTION
CITY CONSTRUCTION ENGINEER
DATE: 5-5-2008

GENERAL NOTES

1. ALL WORK DETAILED ON THESE PLANS TO BE PERFORMED UNDER THIS CONTRACT SHALL, EXCEPT AS OTHERWISE STATED OR PROVIDED HEREIN, BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 2003 EDITION AS AMENDED THRU UPDATE NO. 7.
2. CONTRACTOR SHALL NOTIFY THE PROJECT ENGINEER NOT LESS THAN SEVEN (7) DAYS PRIOR TO STARTING WORK IN ORDER THAT THE ENGINEER MAY TAKE NECESSARY MEASURES TO INSURE THE PRESERVATION OF SURVEY MONUMENTS. CONTRACTOR SHALL NOT DISTURB PERMANENT SURVEY MONUMENTS WITHOUT THE CONSENT OF THE ENGINEER, AND SHALL BEAR THE EXPENSE OF REPLACING ANY THAT MAY BE DISTURBED WITHOUT PERMISSION. REPLACEMENT SHALL BE DONE ONLY BY THE CITY SURVEY SECTION. WHEN A CHANGE IS MADE IN ANY ROADWAY IN WHICH A PERMANENT SURVEY MONUMENT IS LOCATED, CONTRACTOR SHALL, AT HIS OWN EXPENSE, ADJUST THE MONUMENT COVER TO THE NEW GRADE UNLESS OTHERWISE SPECIFIED. REFER TO SECTION 4.4 OF GENERAL CONDITIONS OF THE CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
3. FIVE (5) WORKING DAYS PRIOR TO BEGINNING CONSTRUCTION, THE CONTRACTOR SHALL SUBMIT TO THE CONSTRUCTION COORDINATION DIVISION A DETAILED CONSTRUCTION SCHEDULE. TWO (2) WORKING DAYS PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL OBTAIN A BARRICADING PERMIT FROM THE CONSTRUCTION COORDINATION DIVISION. CONTRACTOR SHALL NOTIFY BARRICADE ENGINEER (924-3400) PRIOR TO OCCUPYING AN INTERSECTION. SEE SECTION 19 OF THE SPECIFICATIONS.
4. TWO (2) WORKING DAYS PRIOR TO ANY EXCAVATION, CONTRACTOR MUST CONTACT NEW MEXICO ONE CALL SYSTEM, INC. (260-1990) FOR LOCATION OF EXISTING UTILITIES
5. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL EXCAVATE AND VERIFY THE HORIZONTAL AND VERTICAL LOCATIONS OF ALL OBSTRUCTIONS AND EXISTING PAVEMENT. SHOULD A CONFLICT EXIST, THE CONTRACTOR SHALL NOTIFY THE ENGINEER OR SURVEYOR SO THAT THE CONFLICT CAN BE RESOLVED WITH A MINIMUM OF DELAY.
6. ALL UTILITY WORK SHALL BE CONSTRUCTED IN ACCORDANCE WITH NEW MEXICO UTILITIES, INC. SPECIFICATIONS FOR WATER AND WASTE WATER FACILITIES (MOST RECENT REVISIONS). (NMUI 898-2661)
7. THE CONTRACTOR SHALL NOTIFY NEW MEXICO UTILITIES (898-2661) THREE WORKING DAYS PRIOR TO BEGINNING THE CONSTRUCTION OF THE UTILITIES.
8. THE PUBLIC WATER LINE MUST BE A MINIMUM OF 18" ABOVE THE SEWER LINE AT ALL CROSSINGS.
9. THE CONTRACTOR SHALL FURNISH EMD'S ON ALL WATER AND SEWER SERVICE STUBS, CAPS AND PLUGS.
10. ALL UTILITIES AND UTILITY SERVICE LINES SHALL BE INSTALLED PRIOR TO PAVING.
11. BACKFILL COMPACTION SHALL BE ACCORDING TO SPECIFIED STREET USE.
12. TACK COAT REQUIREMENTS SHALL BE DETERMINED BY THE ENGINEER.
13. SIDEWALKS AND WHEELCHAIR RAMPS WITHIN THE CURB RETURNS SHALL BE CONSTRUCTED WHEREVER A NEW CURB RETURN IS CONSTRUCTED.
14. IF CURB IS DEPRESSED FOR A DRIVEPAD OR A HANDICAP RAMP, THE DRIVEPAD OR RAMP SHALL BE CONSTRUCTED PRIOR TO ACCEPTANCE OF THE CURB AND GUTTER.
15. ALL STREET STRIPING ALTERED OR DESTROYED SHALL BE REPLACED BY CONTRACTOR WITH PLASTIC REFLECTORIZED PAVEMENT MARKINGS IN EXISTING STRIPING LOCATIONS UNLESS OTHERWISE INDICATED BY THIS PLAN SET.
16. ANY WORK AFFECTING AN ARTERIAL ROADWAY REQUIRES 24 HOUR CONSTRUCTION.
17. THE CONTRACTOR SHALL BE RESPONSIBLE FOR REPAIR, OR REMOVAL AND REPLACEMENT, OF ANY PAVEMENT, PAVEMENT MARKINGS, CURB AND GUTTER, DRIVEPADS, SIDEWALK, WHEELCHAIR RAMP OR ANY OTHER EXISTING IMPROVEMENTS DAMAGED BY THE CONTRACTOR'S OPERATIONS.
18. FOR STORM DRAIN CONSTRUCTION, RCP PIPE SHALL NOT BE GROUTED PRIOR TO FINAL INSPECTION. FINAL INSPECTION WILL DETERMINE JOINTS TO BE GROUTED FOR FINAL ACCEPTANCE OF THE CONSTRUCTION.
19. EXCAVATION, TRENCHING AND SHORING ACTIVITIES MUST BE CARRIED OUT IN ACCORDANCE WITH OSHA 29 CFR 1926.650 SUBPART P. THE CONTRACTOR SHALL BE RESPONSIBLE FOR HIS EMPLOYEES SAFETY.
20. WARNING---EXISTING UTILITY LINE LOCATIONS ARE SHOWN IN AN APPROXIMATE MANNER ONLY, AND SUCH LINES MAY EXIST WHERE NONE ARE SHOWN. THE LOCATION OF ANY SUCH EXISTING LINES IS BASED UPON INFORMATION PROVIDED BY THE UTILITY COMPANY, THE OWNER, OR BY OTHERS, AND THE INFORMATION MAY BE INCOMPLETE OR MAY BE OBSOLETE BY THE TIME CONSTRUCTION COMMENCES.

   THE ENGINEER HAS UNDERTAKEN NO FIELD VERIFICATION OF THE LOCATION, DEPTH, SIZE, OR TYPE OF EXISTING UNDERGROUND UTILITY LINES, MAKES NO REPRESENTATION PERTAINING THERETO, AND ASSUMES NO RESPONSIBILITY OR LIABILITY THEREFOR. THE CONTRACTOR SHALL INFORM ITSELF OF THE LOCATION OF ANY UTILITY LINE IN OR NEAR THE AREA OF THE WORK IN ADVANCE OF AND DURING EXCAVATION WORK. THE CONTRACTOR IS FULLY RESPONSIBLE FOR ANY AND ALL DAMAGE CAUSED BY ITS FAILURE TO LOCATE, IDENTIFY, AND PRESERVE ANY AND ALL EXISTING UTILITIES. THE CONTRACTOR SHALL COMPLY WITH STATE STATUTES, MUNICIPAL AND LOCAL ORDINANCES, RULES AND REGULATIONS PERTAINING TO THE LOCATION OF THESE LINES AND FACILITIES, IN PLANNING AND CONDUCTING EXCAVATION, WHETHER BY CALLING OR NOTIFYING THE UTILITIES, COMPLYING WITH "BLUE STAKES" PROCEDURES, OR OTHERWISE.

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 898-8021

RECORD DRAWING
DRB CASE No. 1002962

REV	SHEETS	CITY ENGINEER	DATE	USER DEPARTMENT	DATE	USER DEPARTMENT	DATE
5	52-55			MMO	4/20/07		
4	24-26, 49	[illegible]	4-11-07	MMO	4/11/07	Bradley L. Bizzell	4/11/07
3	27A-29A	[illegible]	4-11-07	Bradley L. Bizzell	4/11/07		
1,2	17-17B, 27-29, 41-44			Bradley L. Bizzell	4/18/06		

ENGINEERS STAMP & SIGNATURE — STEVE J. SALAZAR, NEW MEXICO, 16241, LICENSED PROFESSIONAL ENGINEER

APPROVALS	ENGINEER	DATE
DRC Chairman		4-16-07
Transportation		5/2/07
Water/Wastewater	[illegible]	5/2/07
Hydrology	[illegible]	5/2/07
NMUI		5-2-07
AMAFCA		
Constr. Coord.		4-16-07

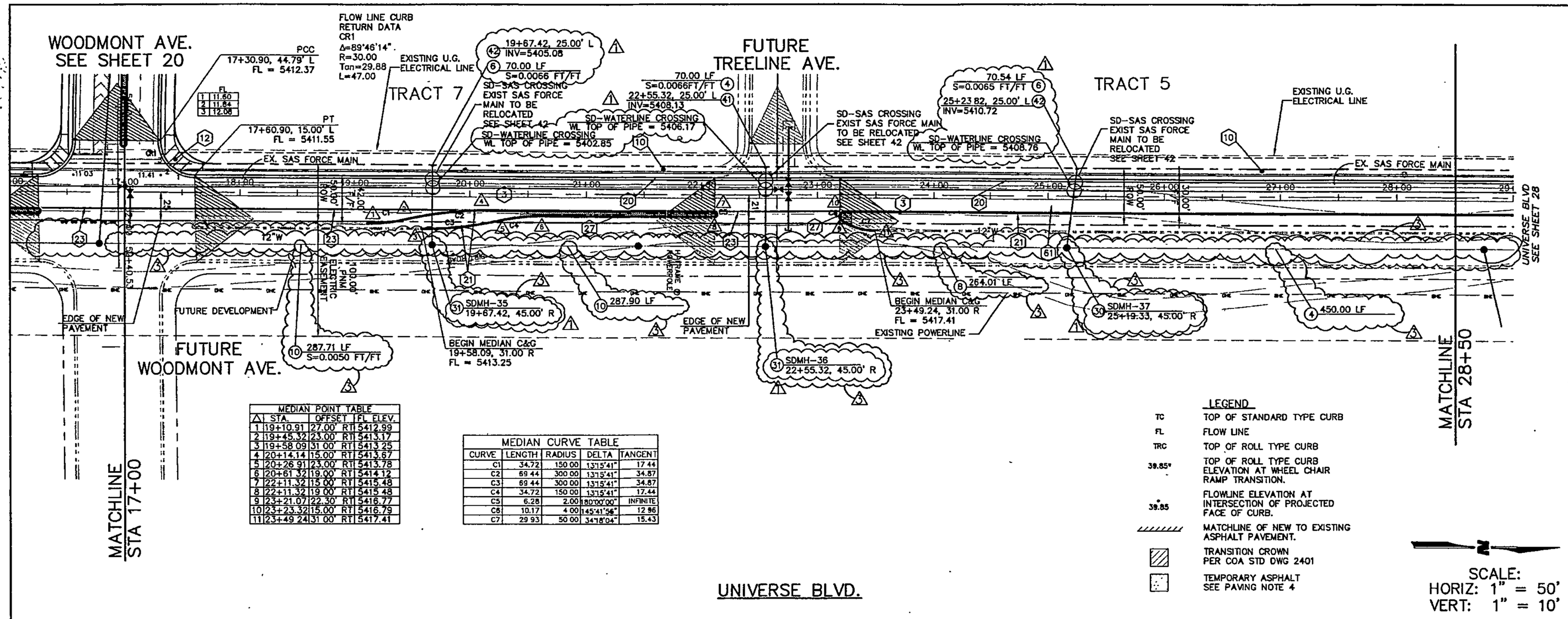
****
APPROVED FOR CONSTRUCTION

City Engineer — Date 5-30-06

City Project No. 730084

Sheet 1 Of 55.5T

P:\Projects\X4218005\M\sheets\A-GENERAL\01COVER.dwg 3/31/2005 8:31 24 AM MST



MEDIAN POINT TABLE			
△ STA.	OFFSET		FL ELEV.
1 19+10.91	27.00'	RT	5412.99
2 19+45.32	23.00'	RT	5413.17
3 19+58.09	31.00'	RT	5413.25
4 20+14.14	15.00'	RT	5413.67
5 20+26.91	23.00'	RT	5413.78
6 20+61.32	19.00'	RT	5414.12
7 22+11.32	15.00'	RT	5415.48
8 22+11.32	19.00'	RT	5415.48
9 23+21.07	22.30'	RT	5416.77
10 23+23.32	15.00'	RT	5416.79
11 23+49.24	31.00'	RT	5417.41

MEDIAN CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	TANGENT
C1	34.72	150.00	13°15'41"	17.44
C2	69.44	300.00	13°15'41"	34.87
C3	69.44	300.00	13°15'41"	34.87
C4	34.72	150.00	13°15'41"	17.44
C5	6.28	2.00	180°00'00"	INFINITE
C6	10.17	4.00	145°41'56"	12.96
C7	29.93	50.00	34°18'04"	15.43

LEGEND

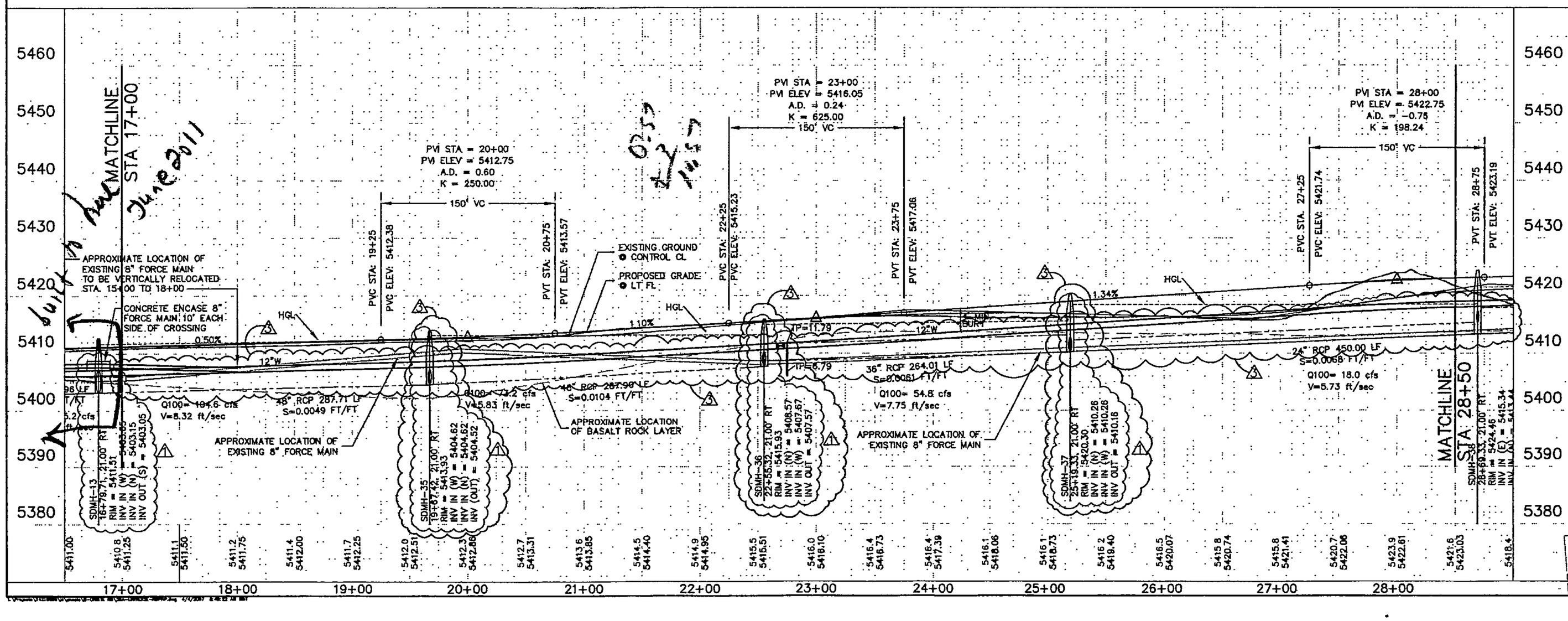
TC	TOP OF STANDARD TYPE CURB
FL	FLOW LINE
TRC	TOP OF ROLL TYPE CURB
39.85V	TOP OF ROLL TYPE CURB ELEVATION AT WHEEL CHAIR RAMP TRANSITION.
39.85	FLOWLINE ELEVATION AT INTERSECTION OF PROJECTED FACE OF CURB.
	MATCHLINE OF NEW TO EXISTING ASPHALT PAVEMENT.
	TRANSITION CROWN PER COA STD DWG 2401
	TEMPORARY ASPHALT SEE PAVING NOTE 4

PAVING CONSTRUCTION NOTES

I.D.#	DESCRIPTION
3	BUILD ARTERIAL ASPHALT PAVING, PER TYPICAL SECTION (SEE SHEET 5)
10	BUILD 6' PCC SIDEWALK, PER COA STD. DTL. 2430
12	BUILD PCC WHEELCHAIR RAMP, PER COA STD. DETAIL 2441, CASE #2
14	INSTALL 6' PCC VALLEY GUTTER, PER COA STD. DETAIL 2420
20	INSTALL 8" PCC STD. CURB AND GUTTER, PER COA DETAIL 2415A
21	BUILD PCC MEDIAN CURB AND GUTTER, PER COA DETAIL 2415B
23	BUILD TEMP ASPHALT CURB TYPE C PER COA STD DWG 2415B
27	BUILD TEXTURED CONCRETE MEDIAN PAVEMENT, PER COA STD. DWG. 2408 & 2501
50	BUILD 8' ASPHALT PEDESTRIAN TRAIL PER DETAIL SEE SHEET 7
61	REMOVE AND DISPOSE EXISTING ASPHALT PAVEMENT

STORM DRAIN CONSTRUCTION NOTES

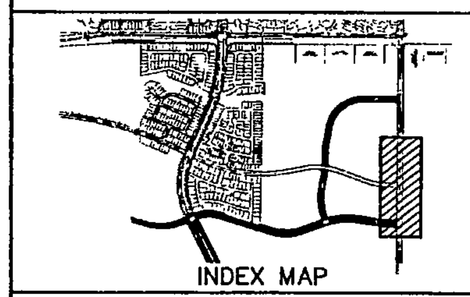
I.D.#	DESCRIPTION
4	INSTALL 24" STORM DRAIN PIPE
6	INSTALL 30" STORM DRAIN PIPE
8	INSTALL 36" STORM DRAIN PIPE
10	INSTALL 48" STORM DRAIN PIPE
30	INSTALL 4' DIA. MANHOLE PER COA STD. DTL. 2101
31	INSTALL 6' DIA. MANHOLE PER COA STD. DTL. 2101
41	INSTALL 24" STORM DRAIN PLUG
42	INSTALL 30" STORM DRAIN PLUG



RECORD DRAWING

GENERAL NOTES

1. ALL CURB RETURNS HAVE 30' RADIUS AT THEORETICAL FACE OF CURB (FLOWLINE) PER COA STD DWG 2415A, UNLESS OTHER- WISE INDICATED
2. ALL STATIONS AND OFFSETS ARE TO THEORETICAL FACE OF CURB (FLOWLINE) PER COA STD DWG 2415A, UNLESS OTHER- WISE INDICATED
3. ALL CURB LAYOUT DATA IS AT THEORETICAL FACE OF CURB (FLOWLINE) PER COA STD DWG 2415A, UNLESS OTHER- WISE INDICATED. CURB LAYOUT THAT IS A DIRECT OFFSET OF PLATTED BASELINE IS NOT SHOWN
4. ADJUST ALL MANHOLE RIMS AND VALVE COVERS PER COA STD. DWG. 2460



WILSON & COMPANY
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87124
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CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

THE TRAILS UNIT II
PAVING AND STORM DRAIN PLAN & PROFILE
UNIVERSE BLVD.

Design Review Committee: APPROVED APR 18 2007 DESIGN REVIEW COMMITTEE
City Engineer Approval: APPROVED APR 18 2007 CITY ENGINEER
Last Design Update: Mo./Day/Yr. Mo./Day/Yr.

City Project No. 730084 | Zone Map No. C-9-Z | Sheet 28A Of 51

AS-BUILT INFORMATION
CONTRACTOR: Sunv-Tek DATE 12/06
WORK STAKED BY: Sunv-Tek DATE 2/07
INSPECTOR'S REDLINES BY: SGE DATE 2/07
FIELD VERIFICATION BY: Sunv-Tek DATE 3/07
DRAWINGS CORRECTED BY: Sunv-Tek DATE 3/07
MICRO-FILM INFORMATION
RECORDED BY: DATE
NO.

BENCH MARKS
ACS BRASS TABLET STAMPED "2-B10 1980"
Geographic Position (NAD 1927)
N.M. State Plane Coordinates (Central Zone)
X= 357,543.73 Y= 1,527,976.48
Ground-to-Grid Factor = 0.99996354
A∠ = -00°16'30"
SLD 1929 Elevation = 5429.35

SURVEY INFORMATION
FIELD NOTES
NO. | BY | DATE

ENGINEER'S SEAL
SALAZAR NEW MEXICO 6624 PROFESSIONAL ENGINEER

NO.	DATE	REMARKS	BY
1	8/11/06	SD CHANGE ORDER	
2	4/02/07	DELETE MAINLINE SD FROM PROJECT.	

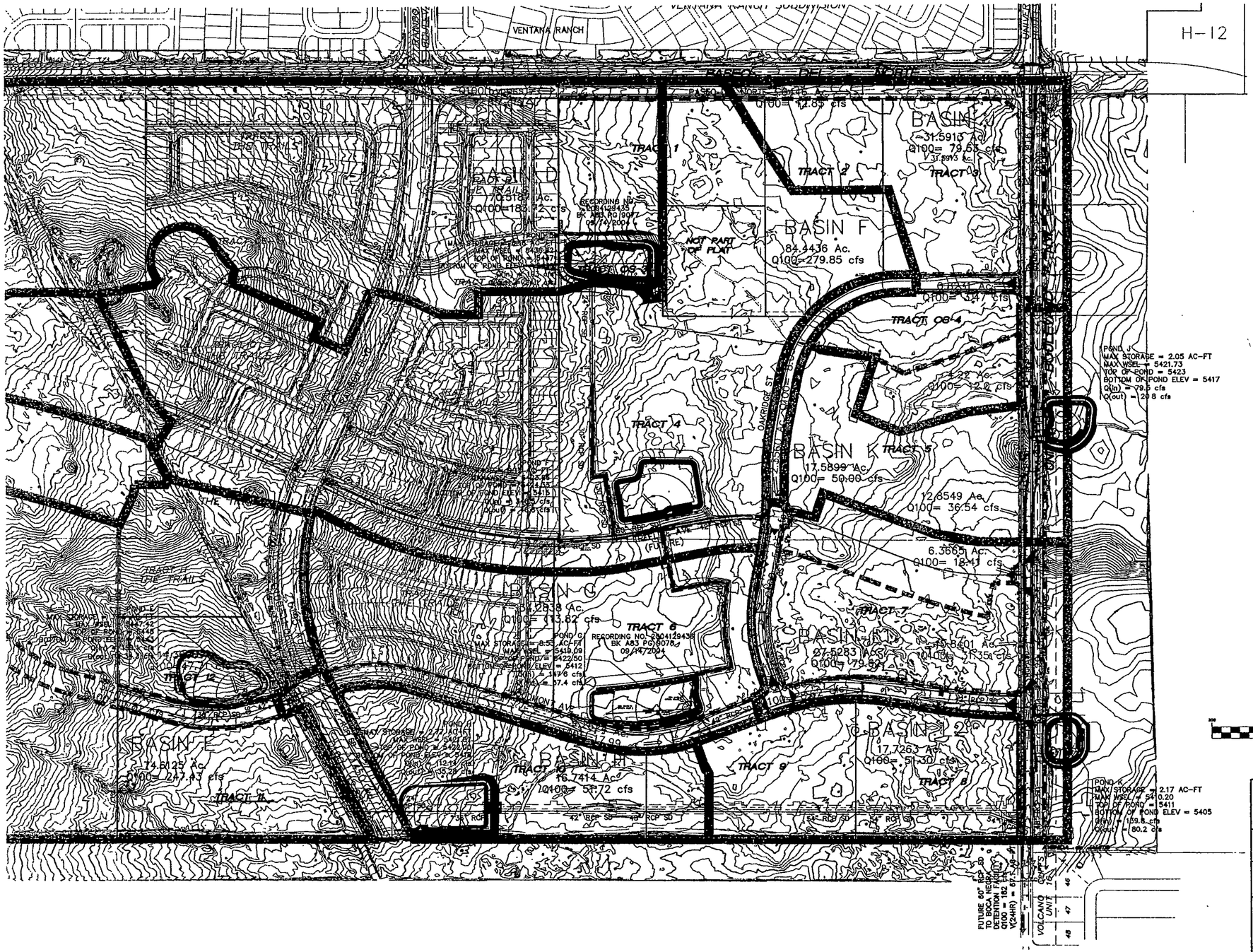
REVISIONS

WILSON & COMPANY, ENGINEERS & ARCHITECTS
DESIGNED BY DMD DATE JAN 05
DRAWN BY DMD DATE JAN 05
CHECKED BY SJS DATE JAN 05

SCANNED BY PLANNING

June 2011

SCANNED BY PLANNING



LEGEND

BASIN BOUNDARY

FLOW DIRECTION

AS-BUILT INFORMATION

		DATE
CONTRACTOR		
WORK STAKED BY		DATE
INSPECTOR'S ACCEPTANCE BY		DATE
FIELD VERIFICATION BY		DATE
DRAWINGS CORRECTED BY		DATE

MICRO-FILM INFORMATION

RECORDED BY DATE

NO.

BENCH MARKS

ACS BRASS TABLET STAMPED "2-B10 1980"

Geographic Position (NAD 1927)

N.M. State Plane Coordinates (Central Zone)

X= 357,543.73 Y= 1,527,976.48

Ground-to-Grid Factor = 0.99966354

∆α = -0016'30"

SLD 1929 Elevation = 5429.35

SURVEY INFORMATION

FIELD NOTES

NO.	BY	DATE

ENGINEER'S SEAL

SALAZAR NEW MEXICO 16243 LICENSED PROFESSIONAL ENGINEER

NO.	DATE	REMARKS	BY
		REVISIONS	

WILSON & COMPANY, ENGINEERS & ARCHITECTS

		DATE
DESIGNED BY	DMD	JAN 05
DRAWN BY	DMD	JAN 05
CHECKED BY	SJS	JAN 05

WILSON & COMPANY
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RIO RANCHO, NEW MEXICO
87124
(505) 898-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

THE TRAILS UNIT II
OVERALL POND GRADING & DRAINAGE PLAN

Design Review Committee: APPROVED JAN 13 2006 DESIGN REVIEW COMMITTEE

City Engineer Approval: APPROVED JAN 30 2006 CITY ENGINEER

Last Design Update | Mo./Day/Yr. | Mo./Day/Yr.

City Project No.	Zone Map No.	Sheet	Of
730084	C-9-Z	4	51

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ask Blake or Tursky

SETTLEMENT AGREEMENT

THIS AGREEMENT ("Settlement Agreement") is entered into by and among the City of Albuquerque ("City"), The Trails, LLC ("Trails"), RCS – Cantata Residences I, LLC, RCS – Taos, LLC and RCS – Trails 9-A, LLC (collectively referred to as "RCS") and the Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), hereinafter individually referred to as "Party" or collectively as "the Parties".

RECITALS

WHEREAS, the Trails has made demand for arbitration of its obligations under the terms of the Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("BND Agreement"); and

WHEREAS, all of the Parties except RCS submitted to arbitration of the BND Agreement before Arbitrator Timothy M. Sheehan, Esq. (the "Arbitration"); and

WHEREAS, AMAFCA filed the lawsuit (the "Second Judicial District Court Suit") captioned The Albuquerque Metropolitan Arroyo Flood Control Authority v. RCS-NM, LLC, RCS-Cantata Residences I, LLC, RCS-Taos, LLC, RCS-Trails 9-A, LLC, and Real Capital Solutions, Case No. CV-2012-09278, to compel RCS to be joined in the arbitration contending, among other things, that RCS is a successor to the Trails; and

WHEREAS, RCS has opposed joinder to the arbitration and the contentions underlying the Second Judicial District Court Suit; and

WHEREAS, AMAFCA has demanded payment from the Trails in the amount of $1,160,000.00 as the Trails and/or RCS construction payment obligation under the BND Agreement; and

WHEREAS, the amount of such obligations have at all times been disputed; and

WHEREAS, the Parties wish to settle this matter to avoid the further expense of litigation; and

WHEREAS, the Parties wish to proceed with construction of the Boca Negra Dam without delay.

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

AGREEMENT

1. The Trails shall make one lump sum payment to AMAFCA in the amount of Five Hundred Thousand Dollars and 00/100 ($500,000.00). Payment shall be made by the Trails

within seven (7) business days of the final execution of this Settlement Agreement. Payment shall be by cashier's check, wire transfer or certified funds payable to _____. Simultaneously with the payment of said amount the City shall deliver to the Trails an impact fee credit agreement executed by the City in favor of the Trails for not less than Six Hundred Twenty-One Thousand Three Hundred Twenty-Four Dollars and 21/100 ($621,324.21) in drainage impact fees; provided, however, (i) the City acknowledges that an additional Twenty-Three Thousand Seven Hundred Thirty-Two Dollars and 94/100 ($23,732.94) is claimed by the Trails as eligible for impact fee credits for design fee payments to Wilson and Co. Inc., and (ii) the City will act in good faith in delivering all impact fee credits owed to the Trails, subject to submission of appropriate documentation of creditable payments by the Trails. In the event the Trails fails to make full payment as set forth herein, but AMAFCA has complied with the terms of this Settlement Agreement contained in Paragraphs 5 and 6 below, including AMAFCA filing of the notice of dismissal further discussed in Paragraph 5 below with the Second Judicial District Court and delivery of the signed final plats further discussed in Paragraph 6 below to the City for final approval and recording, AMAFCA shall be entitled to a judgment against the Trails in an amount equal to Five Hundred and Eighty Thousand Dollars and 00/100 ($580,000.00), which sum represents any and all obligations which the Trails is liable for under the BND Agreement less (a) the payment which RCS has agreed to make hereunder pursuant to Paragraph 2 below and (b) the obligations of the Trails under Paragraph 4.7 of the BND Agreement which obligation has been satisfied by the terms of that Memorandum of Agreement by and among the City, the Trails, and RCS, executed as of August 10, 2012, as amended by that certain First Amendment to Memorandum Agreement between said parties executed as of November ___, 2012 (collectively, the "MOA"). Any amounts received from the Trails as a result of any judgment entered against it pursuant to this paragraph shall not affect or otherwise diminish the amounts owed by any other Party as set forth herein. Any amounts received from the Trails as a result of any judgment entered against it pursuant to this paragraph shall entitle it to drainage impact fee credits from the City for the amounts paid, and the City shall execute and deliver an impact fee credit agreement for such credits promptly upon being provided proof of payment made by Trails against any such judgment.

2. RCS shall make one lump sum payment to AMAFCA in the amount of Five Hundred and Eighty Thousand Dollars and 00/100 ($580,000.00). Payment shall be made by RCS within seven (7) business days of the final execution of this Settlement Agreement. Payment shall be by cashier's check, wire transfer or certified funds payable to _____ _____. This payment shall constitute a full payment of any obligation of RCS or any successor under the terms of the BND Agreement. Simultaneously with the payment of said amount the City shall deliver to RCS an impact fee credit agreement executed by the City in favor of RCS, for Five Hundred and Eighty Thousand Dollars and 00/100 ($580,000.00) in drainage impact fees.

3. The City shall make one lump sum payment to AMAFCA in the amount of Forty Thousand Dollars and 00/100 ($40,000.00). Payment shall be made by the City within thirty (30) days of receipt of an invoice for such amount from AMAFCA.

4. Upon execution of this Settlement Agreement, the Trails shall withdraw its demand for arbitration of its obligations under the BND Agreement with prejudice; provided, such withdrawal with prejudice shall not affect, foreclose, or otherwise diminish any claims that it may have against the City with respect to impact fee issues arising or connected to land dedications or payments made by the Trails in connection with the Boca Negra Dam Agreement.

5. Upon receipt of the payments from RCS as set forth in Paragraphs 2 herein, AMAFCA shall dismiss with prejudice the Second Judicial District Court Suit.

6. AMAFCA consents to the design and construction of the Universe Storm Drain as provided for in the MOA and agrees not to dispute the design and construction specifications therein. AMAFCA will approve and sign the final plats within the Trails subdivisions previously approved by the City, which consist of Taos Units 1 and 2, and Tierra Vista Unit 1. Such AMAFCA-signed plats will be delivered to the City within twenty-four hours of the full execution of this Agreement and the City will file the signed final plats within five (5) days of the date when the payment described in Paragraph 2 of this Agreement is made by RCS. AMAFCA agrees, per the terms of this Agreement and the MOA, that all off-site drainage mitigation and the planned interim drainage facilities will be and are deemed sufficient for all projects at the Trails Units 1, 2, and 3A. AMAFCA shall not refuse or delay its execution of any future final plats within the Trails subdivisions due to any concerns related to the Boca Negra Dam Agreement, the Universe Storm Drain or the Trails Drainage Master Plan. The City acknowledges, by affirmations of the City Engineer and City Hydrologist, that the Trails subdivisions Units 1, 2 and 3A as planned require the off-site portion of the Universe Storm Drain (south of Avenida de Jaimito) to provide a minimum capacity of 42 cfs. As further discussed in the MOA, the issuance of a 2-year performance guarantee by RCS for the installation of the off-site portion of the Universe Storm Drain and the Universe Storm Drain, when completed in accordance with the MOA, shall be sufficient for City off-site storm drain requirements for subdivisions within the Trails Units 1, 2 and 3A as planned. The City agrees that RCS or the Trails may increase the size of the drainage pipe for the Universe Storm Drain pipe and create capacity beyond that currently required for development of the Trails Units 1, 2 and 3A, for use by the Trails Unit 4. The minimum capacity increase in the Universe Storm Drain for the Trails Unit 4 shall be 20 cfs, subject to ponding requirements for Unit 4 permanent onsite drainage detention in accordance with an approved drainage report. Nothing in this paragraph should be construed to modify requirements contained within the MOA or existing subdivision improvement agreements between the City and RCS or the Trails with respect to other off-site work required thereunder.

7. The Trails shall withdraw its demand for arbitration of its obligations under the Boca Negra Dam Agreement with prejudice; provided, such withdrawal with prejudice shall not affect, foreclose, or otherwise diminish any claims that it may have against the City with respect to impact fee issues arising or connected to land dedications or payments made by the Trails in connection with the Boca Negra Dam Agreement.

8. AMAFCA agrees to diligently pursue construction of the Boca Negra Dam and to only use the monies received as a result of this Settlement Agreement for the construction of the Boca Negra Dam.

9. Each Party acknowledges and agrees that it has carefully read this Settlement Agreement, knows and understands the contents hereof, and signs this Settlement Agreement freely. The persons executing this Settlement Agreement on behalf of each Party warrants and represents that they have the legal authority and capacity to execute this Settlement Agreement on behalf of the Party for whom each such person is signing and to bind such party to the terms and conditions of this Settlement Agreement. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party hereto.

10. The Parties acknowledge and agree that there have been no representations, promises, agreements, or understandings made to or by any Party hereto that are inconsistent with anything in this Settlement Agreement.

11. The settlement evidenced by this Settlement Agreement is a compromise to avoid the expense of litigation and to terminate all controversy and/or claims of whatever nature, known or unknown. It is understood and agreed that this Settlement Agreement is entered into solely for the purpose of compromising and settling all matters in dispute, and this settlement is not and cannot be construed as an admission of liability or as evidence of liability, of any nature whatsoever, by the Parties, by whom liability and/or wrongdoing has at all times been expressly denied. Each Party acknowledges that this Settlement Agreement does not constitute, nor shall it be construed to be, an admission by any Party of the merit or the lack of merit of any claims or defenses of the Parties, or of any fault or liability.

12. No provision hereof may be waived unless in writing signed by all of the Parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Settlement Agreement may be modified or amended only by a written agreement executed by the Parties.

13. In any action between the Parties regarding this Settlement Agreement, the prevailing party in any such action shall be entitled to its reasonable attorney's fees and costs incurred as a result thereof. Each party to this Settlement Agreement agrees to bear its own fees and costs incurred to date in the Arbitration or in the Second Judicial District Court Suit.

14. The Parties, and each of them, acknowledge that they have had the opportunity to be represented by and rely on counsel of their own choosing, and/or have been represented by and have relied upon counsel of their own choosing, in the negotiations for the preparation of this Settlement Agreement, that they have read this Agreement, have had its contents fully explained to them by such counsel and/or have had the opportunity to obtain such an explanation, and are fully aware of and understand all of its terms and the legal consequences thereof. Each of the Parties acknowledges that they have, either directly or through their respective counsel, participated in the preparation of this Settlement Agreement, and it is agreed

that no provision hereof shall be construed against any party hereto by virtue of the activities of that Party or his or its attorneys.

15. This Settlement Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New Mexico without reference to conflict of laws principles, rules, laws, regulations or decisions.

16. This Settlement Agreement constitutes the written agreements expressing the entire agreements and understanding between the Parties hereto concerning the subject matter hereof and supersedes and replaces all prior proposals, offers, negotiations, discussions, and/or proposed agreements, written or oral.

17. The Parties agree and acknowledge that this Settlement Agreement and its terms are contractual and not a mere recital and that this Settlement Agreement shall be final and binding on each of them, their heirs, successors, and assigns, and shall inure to the benefit of the Parties. This Settlement Agreement is strictly between the signatories below and does not and is not intended to create in the public, or any member thereof, any rights whatsoever.

18. It is the Parties' intent to release each other Party from any and all liability to the maximum extent permitted by law.

19. The Parties agree and acknowledge that facts may hereafter be discovered which are different from or in addition to those now known or believed to be true about the claims to which this Settlement Agreement applies. The Parties agree and acknowledge that this Settlement Agreement shall be, and will remain, effective in all respects, notwithstanding the discovery of such different or additional facts.

20. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and together which shall be deemed one instrument.

21. A copy of this Agreement shall have the same force and effect as the original.

22. All parties mutually agree to act in good faith in exercising their duties and fulfilling their obligations under this Settlement Agreement.

[Signatures begin on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement.

CITY OF ALBUQUERQUE

11/28/12

By: _____ Date: 11/28/12
Robert J. Perry, Chief Administrative Officer

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on this 28th day of November, 2012, by Robert J. Perry, Chief Administrative Officer of the City of Albuquerque, on behalf of such entity.

_____
Notary Public

My Commission Expires:

April 24, 2014

RCS – CANTATA RESIDENCES I, LLC

By: _____ Date: _____

Name & Title: _____

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person] _____, [title or capacity] _____ of RCS – Cantata Residences I, LLC, on behalf of such entity.

_____
Notary Public

My Commission Expires:

_____

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement.

CITY OF ALBUQUERQUE

By: _____ Date: _____
Robert J. Perry, Chief Administrative Officer

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by Robert J. Perry, Chief Administrative Officer of the City of Albuquerque, on behalf of such entity.

_____
Notary Public

My Commission Expires:

_____

RCS – CANTATA RESIDENCES I, LLC

By: _____ Date: November 26, 2012

Name & Title: Sharon K. Eshima, Manager

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 26th day of November, 2012 by [name of person] Sharon K. Eshima, [title or capacity] Manager of RCS – Cantata Residences I, LLC, on behalf of such entity.

_____
Notary Public

My Commission Expires:

12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TAOS, LLC

By: _____ Date: November 26, 2012

Name & Title: Sharon K. Eshima, Manager

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 26th day of November, 2012 by [name of person] Sharon K. Eshima, [title or capacity] Manager of RCS – Taos, LLC, on behalf of such entity.

_____
Notary Public

My Commission Expires:

12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

RCS – TRAILS 9-A, LLC

By: _____ Date: November 26, 2012

Name & Title: Sharon K. Eshima, Manager

ACKNOWLEDGEMENT

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

This instrument was acknowledged before me on this 26th day of November, 2012 by [name of person] Sharon K. Eshima, [title or capacity] Manager of RCS – Trails 9-A, LLC, on behalf of such entity.

_____
Notary Public

My Commission Expires:

12/14/2013

ANDREA MARQUEZ
Notary Public
State of Colorado

THE TRAILS, LLC

By: _____ Date: 11/26/12

Name & Title: JOHN MULLACH, MANAGER

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on this 26 day of Nov, 2012 by [name of person] John K Mullach, [title or capacity] Manager of The Trails, LLC, on behalf of such entity.

_____
Notary Public

My Commission Expires:

1/25/14

OFFICIAL SEAL
Sara S. Hummel
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: _____

AMAFCA

By: _____ Date: _____
Jerry M. Lovato, P.E., Executive Engineer

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by Jerry M. Lovato, P.E., Executive Engineer of AMAFCA, on behalf of such entity.

_____
Notary Public

My Commission Expires:

_____

THE TRAILS, LLC

By: _____ Date: _____

Name & Title: _____

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on this _____ day of_____, 20___, by [name of person] _____, [title or capacity] _____ of The Trails, LLC, on behalf of such entity.

_____
Notary Public

My Commission Expires:

_____

AMAFCA

By: _____ Date: 11/29/2012
Jerry M. Lovato, P.E., Executive Engineer

ACKNOWLEDGEMENT

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

This instrument was acknowledged before me on this 29th day of November, 2012, by Jerry M. Lovato, P.E., Executive Engineer of AMAFCA, on behalf of such entity.

Amy E. Gutierrez
Notary Public

My Commission Expires:

February 11, 2015

OFFICIAL SEAL
Amy E. Gutierrez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: February 11, 2015

Cherne, Curtis

From: Rick Beltramo <rbeltramo@gcinm.com>
Sent: Monday, April 07, 2014 1:20 PM
To: Cherne, Curtis
Subject: RE: Receipt of Executed Settlement Agreement and MOA Amendment
Attachments: DOC040714.pdf

Categories: Red Category

Curtis,

Attached is page 3 of the settlement Agreement with the pertinent language highlighted.

We requested that some allowance for Unit 4 be incorporated into the outfall pipe design. The City Engineer (Richard) agreed and required a minimum of 20cfs. Therefore the pipe was design for (42 +20) 62 cfs.

RLB.

From: Cherne, Curtis [mailto:CCherne@cabq.gov]
Sent: Monday, April 07, 2014 1:07 PM
To: Rick Beltramo
Cc: Olson, Greg
Subject: RE: Receipt of Executed Settlement Agreement and MOA Amendment

Rick,
I don't see any signatures in the agreement where it discusses 62 cfs. I have contacted City legal to see if they have an executed agreement.

Curtis

From: Rick Beltramo [mailto:rbeltramo@gcinm.com]
Sent: Friday, April 04, 2014 4:01 PM
To: Cherne, Curtis
Subject: FW: Receipt of Executed Settlement Agreement and MOA Amendment

Executed amendment with 62 cfs. RLB.

From: Kelly Calhoun
Sent: Friday, April 04, 2014 3:47 PM
To: Rick Beltramo
Subject: FW: Receipt of Executed Settlement Agreement and MOA Amendment

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From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Thursday, November 29, 2012 4:06 PM
To: Kelly Calhoun
Cc: rleverick@levemuss.com
Subject: RE: Receipt of Executed Settlement Agreement and MOA Amendment

Kelly,

Please see attached pdf copies of executed agreements. Please feel free to contact me with any other questions or concerns you have. Also, how would you like to receive the hard copies?

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney

From: Kelly Calhoun [mailto:kcalhoun@gcinm.com]
Sent: Thursday, November 29, 2012 4:03 PM
To: Whitcomb, Blake
Cc: rleverick@levemuss.com
Subject: RE: Receipt of Executed Settlement Agreement and MOA Amendment

Blake

Would you be able to email us a scanned copy with all the signatures?

Thanks

Kelly

From: Whitcomb, Blake [mailto:bwhitcomb@cabq.gov]
Sent: Thursday, November 29, 2012 1:25 PM
To: Curran, Kevin J.; Marcus@roblesrael.com; tim@flynnobrien.com; Ric Leverick; Brian Mulqueen
Cc: bpaul@realcapitalsolutions.com; Dourte, Richard H.; Loyd, Tony J.; John Murtagh; Kelly Calhoun; Rick Beltramo; jlovato@amafca.org; Cherne, Curtis ; Cloud, Jack W.
Subject: Receipt of Executed Settlement Agreement and MOA Amendment

Greetings All,

I have received executed copies of the Boca Negra Dam Settlement Agreement from all parties. I also have executed copies of the Amendment to the MOA from the three parties to the original MOA. Accordingly, the clock has begun on the seven days allowed for payment to AMAFCA under paragraphs 1 and 2 of the Settlement Agreement. In addition, the Trails needs to withdraw its demand for arbitration as required by paragraph 4. Finally, AMAFCA needs to deliver signed plats to the City as required by paragraph 6.

As payments are made and other settlement obligations are fulfilled, please provide notice to the other parties to the Settlement Agreement. I will attempt to keep everyone informed of our progress while we work through all of the settlement commitments.

4. Upon execution of this Settlement Agreement, the Trails shall withdraw its demand for arbitration of its obligations under the BND Agreement with prejudice; provided, such withdrawal with prejudice shall not affect, foreclose, or otherwise diminish any claims that it may have against the City with respect to impact fee issues arising or connected to land dedications or payments made by the Trails in connection with the Boca Negra Dam Agreement.

5. Upon receipt of the payments from RCS as set forth in Paragraphs 2 herein, AMAFCA shall dismiss with prejudice the Second Judicial District Court Suit.

6. AMAFCA consents to the design and construction of the Universe Storm Drain as provided for in the MOA and agrees not to dispute the design and construction specifications therein. AMAFCA will approve and sign the final plats within the Trails subdivisions previously approved by the City, which consist of Taos Units 1 and 2, and Tierra Vista Unit 1. Such AMAFCA-signed plats will be delivered to the City within twenty-four hours of the full execution of this Agreement and the City will file the signed final plats within five (5) days of the date when the payment described in Paragraph 2 of this Agreement is made by RCS. AMAFCA agrees, per the terms of this Agreement and the MOA, that all off-site drainage mitigation and the planned interim drainage facilities will be and are deemed sufficient for all projects at the Trails Units 1, 2, and 3A. AMAFCA shall not refuse or delay its execution of any future final plats within the Trails subdivisions due to any concerns related to the Boca Negra Dam Agreement, the Universe Storm Drain or the Trails Drainage Master Plan. The City acknowledges, by affirmations of the City Engineer and City Hydrologist, that the Trails subdivisions Units 1, 2 and 3A as planned require the off-site portion of the Universe Storm Drain (south of Avenida de Jaimito) to provide a minimum capacity of 42 cfs. As further discussed in the MOA, the issuance of a 2-year performance guarantee by RCS for the installation of the off-site portion of the Universe Storm Drain and the Universe Storm Drain, when completed in accordance with the MOA, shall be sufficient for City off-site storm drain requirements for subdivisions within the Trails Units 1, 2 and 3A as planned. The City agrees that RCS or the Trails may increase the size of the drainage pipe for the Universe Storm Drain pipe and create capacity beyond that currently required for development of the Trails Units 1, 2 and 3A, for use by the Trails Unit 4. The minimum capacity increase in the Universe Storm Drain for the Trails Unit 4 shall be 20 cfs, subject to ponding requirements for Unit 4 permanent onsite drainage detention in accordance with an approved drainage report. Nothing in this paragraph should be construed to modify requirements contained within the MOA or existing subdivision improvement agreements between the City and RCS or the Trails with respect to other off-site work required thereunder.

7. The Trails shall withdraw its demand for arbitration of its obligations under the Boca Negra Dam Agreement with prejudice; provided, such withdrawal with prejudice shall not affect, foreclose, or otherwise diminish any claims that it may have against the City with respect to impact fee issues arising or connected to land dedications or payments made by the Trails in connection with the Boca Negra Dam Agreement.

I will assemble packets containing the executed document for disbursement to the parties. I can either mail those packets or have them ready for pick up at my office. Please tell me what you would like done with your document packets.

RCS and the Trails, please have a representative contact the City's Impact Fee Administrator (Tony Loyd (505) 924-3934) regarding the development agreements for impact fee credits.

If you have any questions, please feel free to contact me by telephone or email.

Sincerely,

Blake Whitcomb
Assistant City Attorney
Real Estate & Land Use
Office of the City Attorney
1 Civic Plaza NW, 4th Floor
P.O. Box 2248
Albuquerque, NM 87103

P: (505) 768-4654
F: (505) 768-4525
bwhitcomb@cabq.gov

Confidentiality Note
The information contained in this message and all attachments is confidential or legally privileged, to be read, used and relied upon only by the intended recipient. If you are not the intended recipient, you are hereby notified that any unauthorized disclosure, copying, distribution or action taken in reliance on the contents of this transmission is strictly prohibited. If you received this message in error, please notify Blake Whitcomb, bwhitcomb@cabq.gov, 505-768-4654, and destroy the message immediately.

When recorded, return to:

Thomas A. Robinson
Longford Group, Inc.
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120

Commerce Title Company
of New Mexico, LLC Cece
GF# Courtesy
738482

DECLARATION AND GRANT OF TEMPORARY DRAINAGE EASEMENT

This Declaration and Grant of Temporary Drainage Easement ("Declaration") is made this 15th day of July 2004 by The Trails, LLC, a Nevada limited liability company ("Declarant").

RECITALS

A. Declarant desires to record this Declaration to establish a blanket drainage easement on Parcel B for the benefit of Parcel A over that certain area of Parcel B more particularly described in Exhibit A (the "Easement Area").

B. Centex Homes, a Nevada general partnership ("Centex"), is the owner of the real property described on Exhibit B attached hereto and incorporated herein ("Parcel A").

C. Declarant is the owner of the real property described on Exhibit C attached hereto and incorporated herein ("Parcel B").

NOW, THEREFORE, Declarant hereby declares that the easement created herein shall run with the land and benefit all subsequent owners, successors and assigns of Parcel A or any portion thereof only for the duration of such easement as provided herein.

1. Drainage Easement. Declarant hereby establishes a temporary, blanket drainage easement in favor of Parcel A and its owners and their successors and assigns over, upon, across and under the Easement Area on Parcel B for the purpose of receiving drainage and water flows from Parcel A and for creating, installing, operating, maintaining, repairing and replacing a retention pond ("Retention Pond") within the Easement Area to collect such drainage and water flows (the "Easement"). The Easement shall include the incidental rights of access upon, over and across Parcel B as reasonably necessary for the purpose of exercising the easement rights granted herein and the right to install, operate, maintain, repair and replace drainage lines, facilities and related structures necessary for the operation of the Retention Pond.

2. Conditions of Easement: Construction, Maintenance and Removal of Retention Pond As a material consideration and an inducement for Declarant to grant the easement rights expressly set forth in Section 1 above (collectively, the "Easement Rights"), Centex acknowledges and agrees as set forth below.

   (a) Insurance. Before exercising any of the Easement Rights or entering onto

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Parcel B, Centex shall obtain and maintain comprehensive general liability insurance covering all of the activities it will perform on Parcel B and in connection with exercising any of the Easement Rights in an amount not less than Two Million Dollars ($2,000,000) aggregate. Such insurance policy shall name as additional insureds the individuals and entities designated by Declarant and shall provide that such policy cannot be cancelled without first providing at least thirty (30) days prior written notice to the additional insureds.

(b) City of Albuquerque and Declarant Pre-Approval. At least forty-five (45) days before commencing any work on Parcel B, Centex shall provide Declarant with an engineering and drainage plan approved by the City of Albuquerque and a schedule describing all work that will be performed on Parcel B for Declarant's approval, which approval shall not be unreasonably withheld, conditioned or delayed. No approval granted by Declarant shall constitute or be deemed a representation, warranty or affirmation that any work to be performed by Centex conforms to any applicable laws, building codes or construction standards and shall in no way relieve Centex from its obligation to comply with all laws and to perform the work in a proper and safe manner nor give rise to any liability on the part of Declarant arising or resulting from such approval.

(c) Compliance with Laws. Centex shall at all times comply with all applicable laws, rules, regulations, ordinances and governmental requirements relevant to the construction, operation, maintenance, repair and removal of the Retention Pond and to Centex's exercise of any of the Easements Rights.

(d) Sole Cost and Expense of Centex. Centex shall be solely responsible for all costs and expenses arising or resulting from Centex's construction, operation, maintenance, repair and removal of the Retention Pond and exercise of any of the Easements Rights. These shall include, but not be limited to, the cost of surveys, construction plans, grading, excavating, fill dirt, materials, equipment, labor, insurance, permits, bonds, operation, maintenance, repair and removal. Centex shall not use any of the existing soil or dirt but shall import any fill dirt needed for the Retention Pond or exercise of the Easement Rights.

(e) No Nuisance. In the course of operating the Retention Pond and otherwise exercising the Easement Rights, Centex shall not do anything that would constitute a public or private nuisance and shall use its best efforts toprevent and eliminate the creation or emission of any odors from the Retention Pond.

(f) No Encumbrances. Centex shall prevent the imposition of any mechanic's or materialman's liens, security instruments or any other encumbrances against Parcel B without the express, prior written approval of Declarant. In the event that any such encumbrances are placed against Parcel B without the express, prior written approval of Declarant, Centex shall cause the removal of any such encumbrance(s) at its sole cost and expense within fifteen (15) days of learning of any such encumbrance(s). If Centex fails to remove any such encumbrance(s) within the specified time, Declarant may take any and all action

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to remove the encumbrance(s) and charge all costs and expenses in connection therewith to Centex, which shall pay all such amounts within fifteen (15) days of receiving notice thereof from Declarant.

(g) Co-Existence with Slope Easement. Centex acknowledges that a slope easement has been or will be established on Parcel B for the benefit of Parcel A. Centex shall not interfere with or disrupt the creation or existence of the slope easement and shall cooperate with Declarant and third parties as necessary to permit the mutual construction and operation of both the slope easement and the Retention Pond.

(h) Remedies. Centex acknowledges and agrees that Declarant shall have recourse to all remedies in the event that Centex breaches this Declaration, including, without limitation, the remedy of specific performance.

(i) Agreement by Centex. By virtue of exercising any of the Easement Rights, Centex will be deemed to have agreed with and accepted all of the terms and conditions of this Declaration.

3. Reservations From Easement. Declarant hereby reserves for itself and its successors, assigns and designees all rights in and to Parcel B that are not expressly granted in Section 1 above, including without limitation the right upon thirty (30) days advance notice to Centex, its successors or assigns (a) to perform work on, over, across and under Parcel B, (b) to place fill dirt on Parcel B, and (c) to install, maintain, operate, repair and replace drainage, sewer, water and other utility lines and facilities on, over, across and under Parcel B, so long as Declarant does not materially diminish the effectiveness of the Easement granted herein.

4. Termination of Easement. Notwithstanding anything to the contrary, the Easement and this Declaration shall automatically terminate upon the recordation of a bulk plat whose area includes Parcel B. Such termination shall occur without the need for any consent, approval, notice, filing, recording or any other act, condition or event whatsoever. Promptly after receiving notice from Declarant following termination of the Easement, Centex shall diligently begin removing the Retention Pond and any other facilities or items constructed or placed by Centex on Parcel B as instructed by Declarant. Centex acknowledges that Parcel B will be developed following termination of the Easement and therefore agrees to expedite the removal of items as instructed by Declarant and to complete such removal work no later than ninety (90) days after termination of the Easement.

5. No Merger. Notwithstanding the union of (a) the fee simple title to any of the Parcels, the Easement Area or any portion thereof or any other real property of Declarant with (b) any right, title or interest in the Easement, it is the intention of Declarant that the separation of such fee simple estate and such right, title or interest in the Easement shall be maintained, and that a merger shall not take place without the express prior written consent of Declarant.

6. No Public Dedication or Rights. Nothing herein shall be deemed to be a gift or dedication of any portion of any Parcel, the Easement Area or the Easement to the general public or for any public use or purpose whatsoever.

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7. Notices. Any notice or other communication to be given or served upon any party hereto in connection with this Declaration must be in writing, and delivered to the other parties by any one of the following acceptable methods: (a) in person to the attention of the individual noted below, (b) by facsimile transmission (with the original and a copy of the facsimile confirmation following in the United States mail), (c) by overnight delivery service, or (d) by certified mail, return receipt requested. If such notice is given in person or via facsimile transmission, such notice will be deemed given on the next business day after transmission or delivery. If such notice is given by overnight delivery service, such notice is deemed received the on the next business day following delivery to the delivery service of such notice. If such notice is given by certified mail, such notice is deemed delivered upon the date shown on the return receipt request. Notice or other communication shall be delivered or addressed to the parties at the following addresses:

Declarant:	The Trails, LLC c/o Longford Group, Inc., Manager Attn: Mike Mandilakis/Thomas Robinson 3077 East Warm Springs Road Las Vegas, Nevada 89120 Telephone: (702) 454-5300 Cell: (702) 419-5019 Facsimile: (702) 454-8715 E-Mail: mmandilakis@longfordgroup.com trobinson@longfordgroup.com
With a copy to:	John K. Murtagh, President Longford Group, Inc., Manager 3077 East Warm Springs Road Las Vegas, Nevada 89120 Telephone: (702) 454-5300 Facsimile: (702) 454-8715 E-Mail: jmurtagh@longfordgroup.com
Centex Homes:	Centex Homes 5120 Masthead NE Albuquerque, New Mexico 87109 Attn: Virgil Polk/Rick Bressan Telephone: (505) 761-9606 Facsimile: (505) 761-9850 E-Mail: vpolk@centexhomes.com and rbressan@centexhomes.com

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With a copy to:

Centex Homes - Southwest Region Office
Koll Perimeter Center
Building B, 8665 East Hartford Drive, Suite 217
Scottsdale, Arizona 85255
Attn: Darrell Sherman, Esq.
Telephone: (480) 889-0893 (Sherman)
Facsimile: (480) 889-0672

8. Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

9. Legal Action and Attorney's Fees. If any legal action is commenced by any party to enforce any provision of this Declaration, the losing party will pay to the prevailing party all actual expenses incurred by the prevailing party, including costs and attorney's fees. The prevailing party is the party who receives substantially the relief sought, whether by judgment, summary judgment, dismissal, settlement, or otherwise.

IN WITNESS WHEREOF, Declarant has hereunto affixed the following signature as of the date first above written.

THE TRAILS, LLC

By: Longford Group, Inc., Its Manager

By: _____
Mike Mandilakis, Vice President

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

On July 15, 2004, before me the undersigned, a NOTARY PUBLIC in and for said County and State, personally appeared Mike Mandilakis known to me to be the person described in and who executed the foregoing instrument, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal.

Rebecca J. Monette
Notary Public

My Commission Expires: 8/23/2005

Notary Seal / Stamp

OFFICIAL SEAL
REBECCA J. MONETTE
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 8/23/2005

Maru Herrera Bern Co. DEC R 27.00
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Page: 5 of 10
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Maru Herrera Bern. Co. DEC R 27.00
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6112581
Page: 6 of 10
07/15/2004 12:20P
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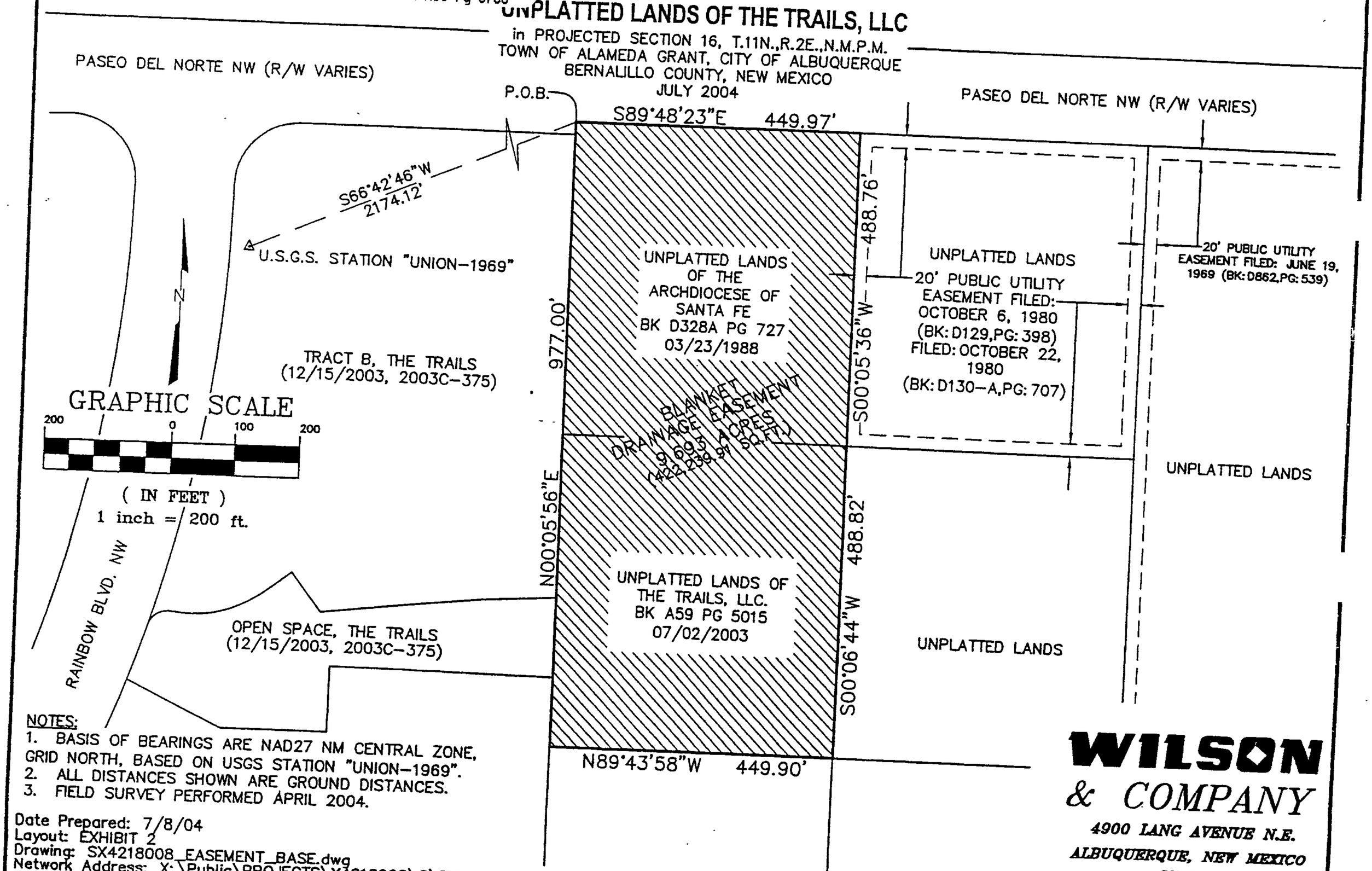
EXHIBIT A

ving BLANKET DRAINAGE EASEMENT within

UNPLATTED LANDS OF THE TRAILS, LLC

in PROJECTED SECTION 16, T.11N.,R.2E.,N.M.P.M.
TOWN OF ALAMEDA GRANT, CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
JULY 2004



NOTES:
1. BASIS OF BEARINGS ARE NAD27 NM CENTRAL ZONE, GRID NORTH, BASED ON USGS STATION "UNION-1969".
2. ALL DISTANCES SHOWN ARE GROUND DISTANCES.
3. FIELD SURVEY PERFORMED APRIL 2004.

Date Prepared: 7/8/04
Layout: EXHIBIT 2
Drawing: SX4218008_EASEMENT_BASE.dwg
Network Address: X:\Public\PROJECTS\X4218008\S\THE TRAILS

WILSON
& COMPANY
4900 LANG AVENUE N.E.
ALBUQUERQUE, NEW MEXICO
87109
(505) 348-4000

EXHIBIT A

LEGAL DESCRIPTION
(BLANKET DRAINAGE EASEMENT)

Being that certain parcel of land to be designated as a **"BLANKET DRAINAGE EASEMENT"** situate within projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, being comprised of unplatted lands of The Archdiocese of Santa Fe as described in book D328A, page 727, as document no. 1988024973, filed for record with the Bernalillo County Clerk on March 23, 1988, and unplatted lands of The Trails, LLC., as described in book A59, page 5015, as document no. 2003115266, filed for record with the Bernalillo County Clerk on July 2, 2003 and being more particularly described as follows:

Commencing at the TRUE POINT OF BEGINNING being the Northwest corner of said comprised parcel herein described, and being a point on the Southerly right of way line of Paseo Del Norte NW; whence, the U.S.G.S. triangulation station "Union-1969" having NAD 27 New Mexico Central Zone State Plane Coordinate values of X=353,409.02 feet and Y=1,523,440.96 feet, bears **S.66°42'46"W.**, a distance of **2,174.12** feet; thence, from said point of beginning, along said Southerly right of way line,

S.89°48'23"E., a distance of **449.97** feet to the Northeast corner of said comprised parcel herein described; thence, leaving said Southerly right of way line,

S.00°05'36"W., a distance of **488.76** feet to an angle point; thence,

S.00°06'44"W., a distance of **488.82** feet to the Southeast corner of said comprised parcel herein described; thence,

N.89°43'58"W., a distance of **449.90** feet to the Southwest corner of said comprised parcel herein described, being a point on the East line of a Bulk Land Plat identified as THE TRAILS (Filed: 12/15/2003, Book: 2003C, Page: 375); thence, along said East line,

N.00°05'56"E., a distance of **977.00** feet to the Northwest corner of said parcel herein described and being the **POINT OF BEGINNING**; said parcel herein described containing an area of **422,239.91** square feet (9.693 acres), more or less.

End of Description

SEE ATTACHED SKETCH

Christopher A. Medina, N.M.P.S. No. 15702

July 9, 2004
Date

CHRISTOPHER A. MEDINA
NEW MEXICO
15702
LICENSED PROFESSIONAL SURVEYOR

SHEET 1 OF 2

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Page: 7 of 10
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Mary Herrera Bern Co. DEC R 27.00

EXHIBIT "B"

Tract lettered "B" of the Plat of THE TRAILS a replat of a Portion of Tract 4, Black Ranch, Albuquerque, New Mexico, as the is shown and designated on the plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on December 15, 2003, in Book 2003, page 375.

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Maru Herrera Bern. Co. DEC R 27.00

EXHIBIT C

A tract of land situate within the Town of Alameda Grant, projected Section 17, Township 11 North, Range 2 East, New Mexico Principal Meridian, Bernalillo County, New Mexico being a portion of TRACT 4, BLACK RANCH and being more particularly described as follows:

BEGINNING at the southeast corner of the herein described tract, from whence the USGLO/ACS Monument "CC 16/15 TA" bears S 29° 40' 16" E, 3218.75 feet;
THENCE N 89° 47' 21" W, 450.00 feet to the southwest corner;
THENCE N 00° 02' 32" E, 488.74 feet to the northwest corner;
THENCE S 89° 48' 49" E, 449.93 feet to the northeast corner;
THENCE S 00° 02' 02" W, 488.93 feet to the point of beginning and containing 5.0496 acres more or less.

Maru Herrera Bern. Co. DEC R 27.00
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EXHIBIT "C"

LEGAL DESCRIPTION

Commencing at the TRUE POINT OF BEGINNING being the Northwest corner of said comprised parcel herein described, and being a point on the Southerly right of way line of Paseo Del Norte NW; whence, the U.S.G.S. triangulation station "Union-1969" having NAD 27 New Mexico Central Zone State Plane Coordinate values of X=353,409.02 feet and Y=1,523,440.96 feet, bears S.66°42'46"W., a distance of 2,174.12 feet; thence, from said point of beginning, along said Southerly right of way line,

S.89°48'23"E., a distance of 449.97 feet to the Northeast corner of said comprised parcel herein described; thence, leaving said Southerly right of way line,

S.00°05'36"W., a distance of 488.76 feet to an angle point; thence,

S.00°06'44"W., a distance of 488.82 feet to the Southeast corner of said comprised parcel herein described; thence,

N.89°43'58"W., a distance of 449.90 feet to the Southwest corner of said comprised parcel herein described, being a point on the East line of a Bulk Land Plat identified as THE TRAILS (Filed: 12/15/2003, Book: 2003C, Page: 375); thence, along said East line,

N.00°05'56"E., a distance of 977.00 feet to the Northwest corner of said parcel herein described and being the **POINT OF BEGINNING**; said parcel herein described containing an area of 422,239.91 square feet (9.693 acres), more or less.

End of Description

Mary Herrera Bern. Co. DEC R 27.00
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COA#: 15CUST
A&C: POND E

DM 8/8/05
8-10-05

AGREEMENT AND COVENANT
(Drainage)

This Agreement and Covenant ("Agreement") by and among the City of Albuquerque, a New Mexico municipal corporation ("City"), The Trails, LLC, a Nevada limited liability company ("User"), and The Trails Community Association, Inc., a New Mexico non-profit corporation ("Association"), is made in Albuquerque, New Mexico and is entered into as of the date of the recording of this Agreement with the Bernalillo County Clerk.

1. Recitals. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"TRACT 11" of The Trails Unit 2 as the same is shown and designated on the plat entitled "Bulk Land Plat of The Trails Unit 2 (being a replat of Tracts G and J of The Trails and unplatted deed parcels) within the Town of Alameda Grant in Projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico," which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Book 2004c, Page 332.

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described in Exhibit A attached hereto and incorporated herein.

The User wishes to construct upon, improve or repair and to maintain temporary drainage facilities and areas, including without limitation drainage ponds, (collectively, "Improvement") on the City's Property (or already has done so), as such Improvement is more particularly depicted on the diagram attached hereto as Exhibit B and incorporated herein.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan identified as "Grading and Drainage Report C9-D1" on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

Mary Herrera Bern. Co. AGRE R 23.00
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5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. Written notice required or permitted under this Agreement shall be sent to the parties at the address for such party set forth below:

To User: The Trails, LLC
c/o Longford Group, Inc.
3077 E. Warm Springs Road
Las Vegas, Nevada 89120

To Association: The Trails Community Association, Inc.
7007 Jefferson Blvd., NE, Suite A
Albuquerque, New Mexico 87109

Notice may be given to User or Association either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within 3 days after the notice is mailed if there is no actual evidence of receipt. The address set forth above may be changed by the relevant party giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

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and association

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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

16. 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.

17. 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.

18. Agreement by Association. Association agrees to assume responsibility for each and every one of User's obligations under this Agreement at such time as User assigns or otherwise transfers its responsibilities hereunder to Association.

CITY OF ALBUQUERQUE:

By: _____
Chief Administrative Officer

Dated: 8-26-05

USER:

THE TRAILS LLC, a Nevada limited liability company

By: Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
David A. Murtagh, Division President

Dated: May 16, 2005

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

Trails\Unit 2\Tract 11\Temp Drainage

Mary Herrera Bern. Co. AGRE R 23.00
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Page: 3 of 8
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[CONTINUED SIGNATURE PAGE TO AGREEMENT AND COVENANT]

ASSOCIATION:

The Trails Community Association, Inc., a New Mexico non-profit corporation

By: _____
Tracy Murphy, President

Dated: May 16, 2005

APPROVED:

_____
City Engineer

Dated: 8-26-05

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on August 26, 2005, by Richard Dourte for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria V. Saavedra
Notary Public
My Commission Expires:
11-25-2007

Mary Herrera Bern. Co. AGRE R 23.00 2005127390 6323439 Page: 4 of 8 08/31/2005 02:15P Bk-A102 Pg-7019

Trails\Unit 2\Tract 11\Temp Drainage

USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on May 16th, 2005, by David A. Murtagh, Division President of Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Donna Lawson
Notary Public

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires 12-1-08

My Commission Expires: 12-1-08

ASSOCIATION'S ACKNOWLEDGMENT

STATE OF NEVADA)
) **ss.**
COUNTY OF CLARK)

This instrument was acknowledged before me on May 17, 2005, by Tracy Murphy, President of The Trails Community Association, Inc., a New Mexico non-profit corporation.

Crystal House
Notary Public

My Commission Expires:
5/5/07

CRYSTAL HOUSE
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 05-5-2007
CERTIFICATE NO: 03-81924-1

Mary Herrera Bern. Co. AGRE R 23.00
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Trails\Unit 2\Tract 11\Temp Drainage

LEGAL DESCRIPTION - Drainage Easement within Tract 11, Trails Unit 2

An Easement within that certain parcel of land situate within the Town of Alameda Grant in projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprising a Southerly portion of Tract 11 of the Trails Unit 2 as the same is shown and designated on the plat entitled "BULK LAND PLAT OF THE TRAILS UNIT 2 (BEING A REPLAT OF TRACTS G AND J, THE TRAILS AND UNPLATTED DEED PARCELS) WITHIN THE TOWN OF ALAMEDA GRANT IN PROJECTED SECTION 16, TOWNSHIP 11 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE,BERNALILLO COUNTY, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Plat Book 2004C, Page 332 more particularly described by survey performed by Russ P.Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 27) grid bearings and ground distances as follows:

BEGINNING at the Southeast corner of said Tract 11 (a 5/8" Rebar and cap stamped "L.S. 9750" found in place), also being a point of intersection of the South Boundary of the Town of Alameda Grant with the Westerly right of way line of Rainbow Boulevard N.W.; Thence running as an easement:

N 89° 44' 33" W ,	665.35 feet along said South Boundary of the Town of Alameda Grant to the Southwest corner of the easement herein described; Thence,
N 00° 15' 27" E ,	148.53 feet to the Northeast corner of the easement herein described; Thence,
S 89° 40' 18" E ,	303.40 feet to a point; Thence,
N 00° 15' 27" E ,	138.54 feet to a point; Thence,
N 73° 14' 51" E ,	191.88 feet to a point on the Easterly line of said Tract 11 and a point on said Westerly right of way line of Rainbow Boulevard N.W., said point being the Northeast corner of the easement herein described; Thence,
S 27° 16' 18" E ,	386.54 feet along said Westerly right of way line of Rainbow Boulevard N.W. to the Southeast corner and point of beginning of the easement herein described.

PROFESSIONAL SURVEYOR
STATE OF
No. 9750
NEW MEXICO
RUSS P. HUGG

Mary Herrera Bern. Co. AGRE R 23.00
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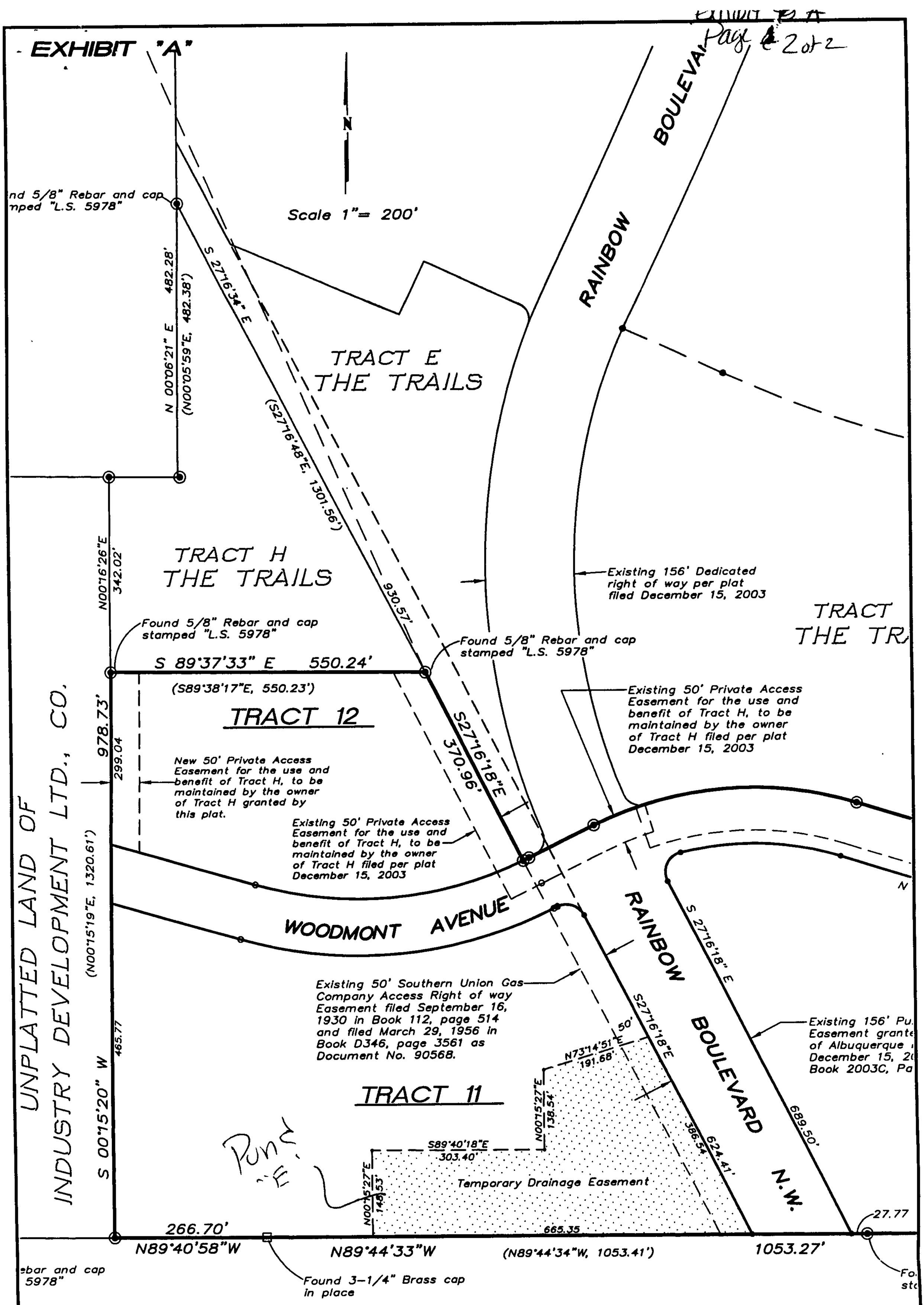
EXHIBIT "A"



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Mary Herrera Bern. Co. AGRE R 23.00

050003

SURV TEK, INC.
Consulting Surveyors
5643 Paradise Blvd. N.W. Albuquerque, New Mexico 87114
Phone: 505-897-3366
Fax: 505-897-3377

GRAPHIC SCALE

0 100 200 400

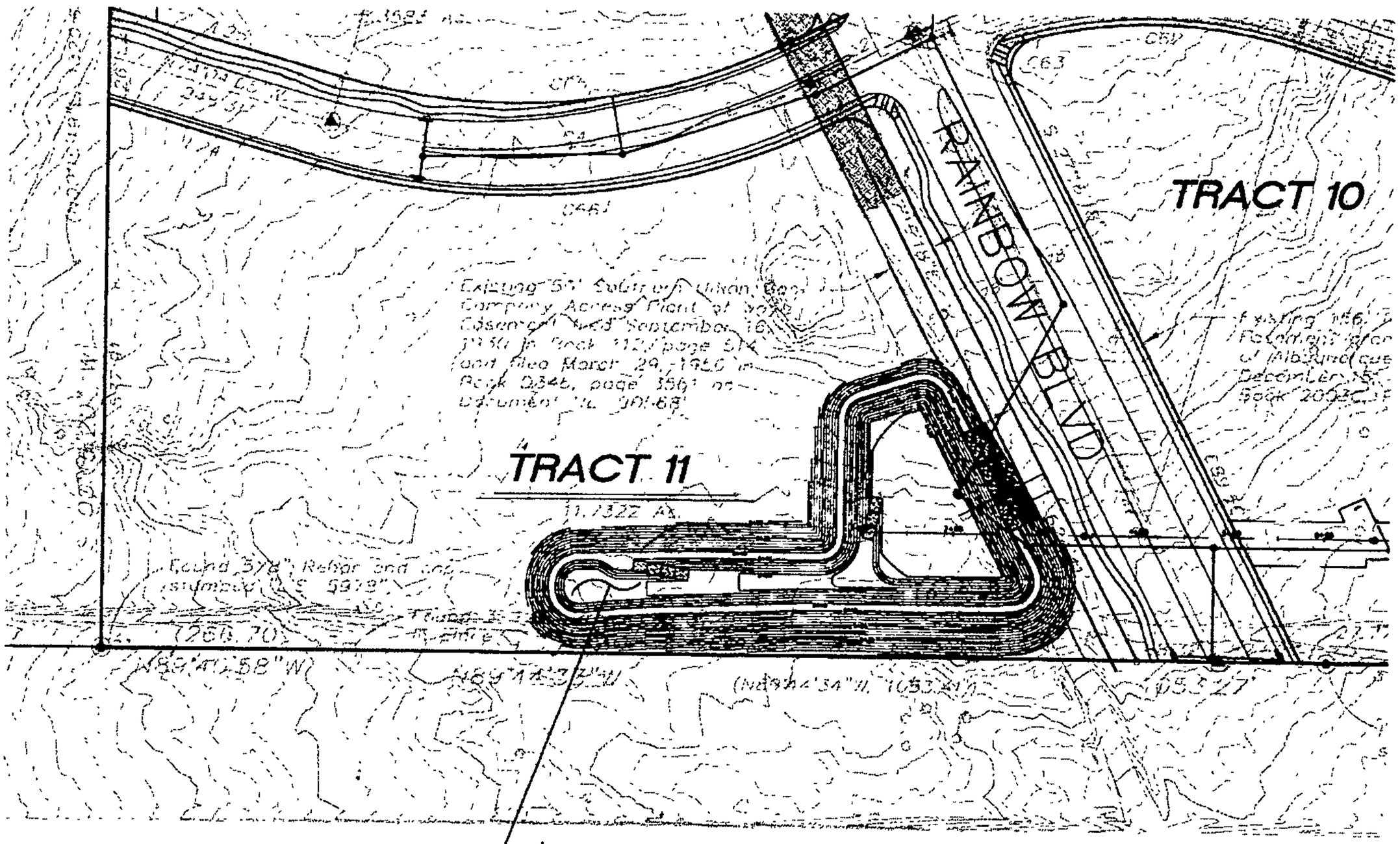
(IN FEET)
1 inch = 200 ft.

N

EXHIBIT "B"

DRAINAGE EASEMENT within BULK LAND PLAT, THE TRAILS UNIT II CITY OF ALBUQUERQUE BERNALILLO COUNTY, NEW MEXICO

DM 8/8/05
8-10-05



POND E
MAX STORAGE = 6.38 AC-FT
MAX WSEL = 5439.16
TOP OF POND = 5439.50
BOTTOM OF POND ELEV = 5429
Q(in) = 249.0 cfs
Q(out) = 24.6 cfs

DM 8/8/05

S:\X4218008\W\exhibits\A & C EXHIBITS.DWG\01-31-05

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 898-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

EXHIBIT "B"
POND E 8-10-05

DESIGN S.J.S	WCEA NO. X4218008	DATE MARCH 2005	
DRAWN D.D	PROJECT NO. 730084	SHEET NO 1 OF 1	
CHECK S.J.S			

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Page: 8 of 8
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Mary Herrera Bern. Co. AGRE R 23.00

1500

~~730081~~
738481

TEMPORARY EASEMENT
(C9-D5) (1) 9/15/04

Grant of Temporary Easement, between **THE TRAILS, LLC, a Nevada limited liability company** ("Grantor"), whose address is 3077 E. Warm Springs Road, Las Vegas, Nevada, 89120, and the City of Albuquerque, a New Mexico municipal corporation ("City"), whose address is P.O. Box 1293, Albuquerque, New Mexico, 87103.

Grantor grants to the City a temporary easement ("Easement") in, over, upon and across the real property described on Exhibit "A" attached hereto ("Property") for the construction, installation, maintenance, repair, modification, replacement and operation of a temporary drainage pond, together with the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if the City determines they interfere with the appropriate use of this Easement.

In the event Grantor constructs any improvements "(Improvements") within the Easement, the City has the right to enter upon Grantors property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the City. If the Work effects any Improvements or encroachments made by the Grantor, the City will not be financially or otherwise responsible for rebuilding or repairing the Improvements or encroachments. If in the opinion of the City, the Work to be performed by the City could endanger the structural integrity or otherwise damage the Improvements or encroachments, the Grantor shall, at its own expense, take whatever protective measures are required to safeguard the Improvements or encroachments.

Grantor covenants and warrants that Grantor is the owner in fee simple of the Property, that Grantor has a good lawful right to convey the Property or any part thereof and that Grantor will forever warrant and defend the title to the Property against all claims from all persons or entities.

The grant and other provisions of this Easement constitute covenants running with the Property for the benefit of the City and its successors and assigns until terminated.

This Easement shall not be effective until approved by the City Engineer for the City in the signature block below.

WITNESS its hand and seal this 9th day of August, 2004.

GRANTOR:

THE TRAILS, LLC, a Nevada limited liability company

By: The Longford Group, Inc., a Nevada corporation,
Its Manager

By: _____
John K. Murtagh
Its: President
Dated: August 9, 2004

APPROVED:

Richard Dourte
City Engineer
Dated 9/24/04

Agrekjc/PermEasement2003

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Mary Herrera Bern. Co. EASE R 15.00

CORPORATION

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

This instrument was acknowledged before me on 9th day of August, 2004, by John K. Murtagh, President of The Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Crystal House
Notary Public

My Commission Expires:
5/5/07

(EXHIBIT "A" ATTACHED)

H:\Trails LLC\JAM\Legal Docs\temporyeasementdrainage2.doc\August 9, 2004

CRYSTAL HOUSE
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 05-5-2007
CERTIFICATE NO: 03-61924-1

Mary Herrera Bern. Co EASE R 15.00

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Page: 2 of 4
09/20/2004 04:32P
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Agrekjc/PermEasement2003

EXHIBIT A

LEGAL DESCRIPTION
(BLANKET DRAINAGE EASEMENT)

Being that certain parcel of land to be designated as a "BLANKET DRAINAGE EASEMENT" situate within projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, being comprised of a portion of unplatted lands of Volcano Six Limited as described in book A68, page 6412, filed for record with the Bernalillo County Clerk on November 14, 2003, and being more particularly described as follows.

Commencing at the TRUE POINT OF BEGINNING being the Northeast corner of said parcel herein described, and being a point on the Southerly right of way line of Paseo Del Norte NW; whence, the U.S.G.S. triangulation station "Union-1969" having NAD 27 New Mexico Central Zone State Plane Coordinate values of X=353,409.02 feet and Y=1,523,440.96 feet, bears S.12°50'03"E., a distance of 887.68 feet; thence, from said point of beginning,

S.00°05'55"W., a distance of 250.00 feet to the Southeast corner of the parcel herein described also being a point on the Westerly line of Tract A as the same is shown and designated on the Bulk Land Plat of The Trails filed in book 2003C, page 375, on December 15, 2003, with the County Clerk of Bernalillo County, thence,

N.89°42'23"W., a distance of 300.00 feet to the Southwest corner of the parcel herein described, thence,

N.00°05'55"E., a distance of 250.00 feet to a point on the Southerly right-of-way line of Paseo Del Norte NW and the Northwest corner of the parcel herein described; thence, along the said Southerly right-of-way line,

S.89°42'23"E., a distance of 300.00 feet to the Northeast corner of said parcel herein described, being the **POINT OF BEGINNING**; said parcel herein described containing an area of 75,000.43 square feet (1.722 acres), more or less.

End of Description

SEE ATTACHED SKETCH

Christopher A. Medina, N.M.P.S No. 15702

July 9, 2004
Date

SHEET 1 OF 2

CHRISTOPHER A. MEDINA
NEW MEXICO
15702
LICENSED PROFESSIONAL SURVEYOR

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Agrekjc/PermEasement2003

Mary Herrera Bern. Co. EASE R 15.00

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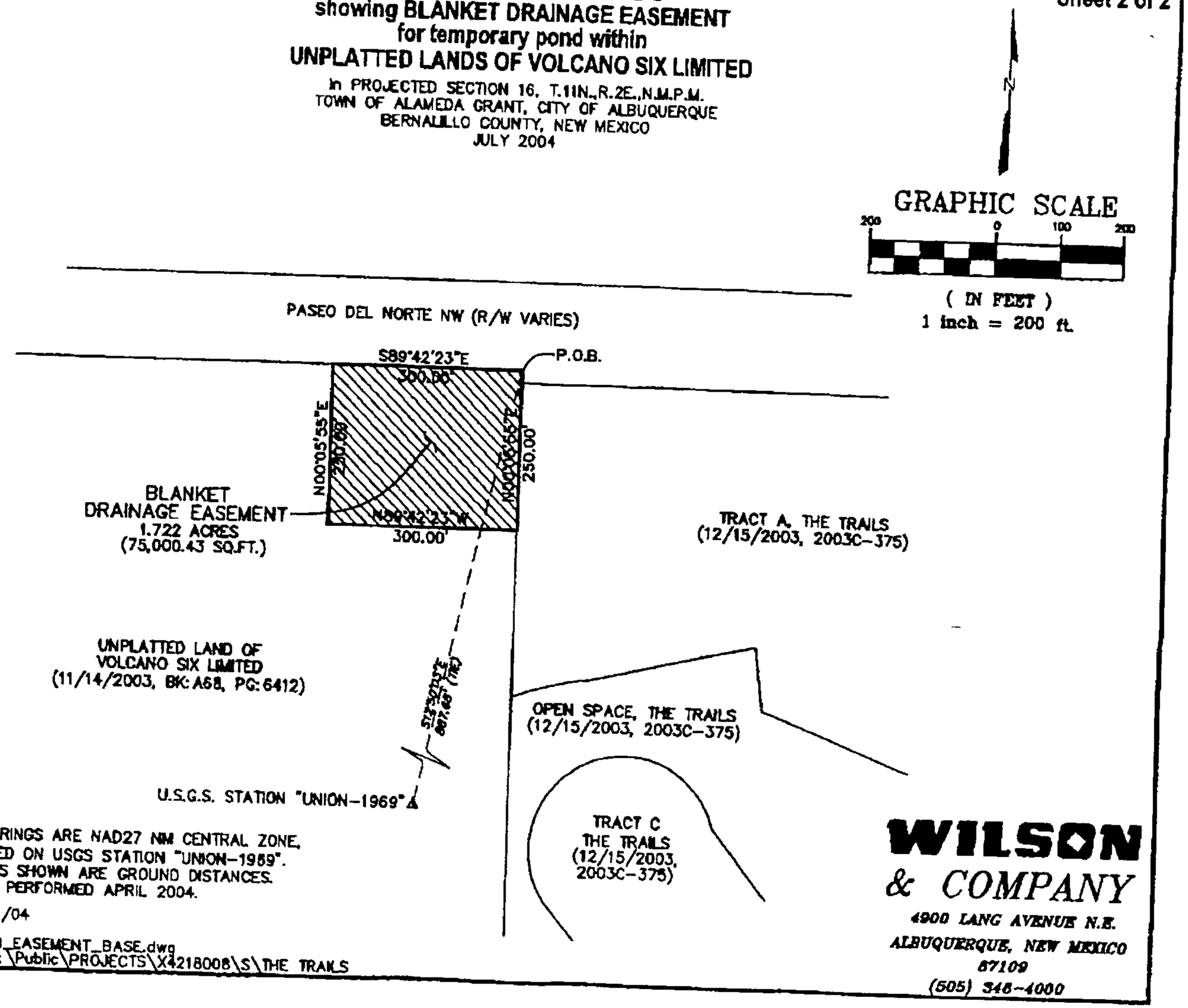
No. 0144 P. 2
JUL. 3. 2004 7:47PM WILSON & COMPANY

EXHIBIT A

showing BLANKET DRAINAGE EASEMENT
for temporary pond within
UNPLATTED LANDS OF VOLCANO SIX LIMITED

in PROJECTED SECTION 16, T.11N.,R.2E.,N.M.P.M.
TOWN OF ALAMEDA GRANT, CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
JULY 2004



NOTES:
1. BASIS OF BEARINGS ARE NAD27 NM CENTRAL ZONE, GRID NORTH, BASED ON USGS STATION "UNION-1969".
2. ALL DISTANCES SHOWN ARE GROUND DISTANCES.
3. FIELD SURVEY PERFORMED APRIL 2004.

Date Prepared: 7/8/04
Layout: EXHIBIT 1
Drawing: SX4218008_EASEMENT_BASE.dwg
Network Address: X:\Public\PROJECTS\X4218008\S\THE TRAILS

WILSON
& COMPANY
4900 LANG AVENUE N.E.
ALBUQUERQUE, NEW MEXICO
87109
(505) 348-4000

25.00

738481

AGREEMENT AND COVENANT
(C9-D5) (1)
9/15/04

This Agreement and Covenant, between the City of Albuquerque, New Mexico ("City") and THE TRAILS, LLC, a Nevada limited liability company ("User") is made in Albuquerque, New Mexico and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk.

1. Recital. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as: (give legal description and filing information)

SEE EXHIBIT "C" ATTACHED HERETO

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described as:

SEE EXHIBIT "B" ATTACHED HERETO

The User wishes to construct upon, improve or repair and to maintain the following improvement ("Improvement") on the City's Property (or already has done so): Temporary Retention Pond

A sketch of the proposed or existing Improvement is attached as Exhibit A and made a part of this Agreement.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan C9-D5 on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will be solely responsible for

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Mary Herrera Bern. Co. AGRE R 25.00

paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the

Improvement will not reduce the amount assessed by the City.

10. Notice. For purposes of giving formal written notice to the User, User's address is:

The Trails, LLC
c/o The Longford Group, Inc.
3077 E. Warm Springs Road
Las Vegas, Nevada 89120

Notice may be given to the User either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by the User within 3 days after the notice is mailed if there is no actual evidence of receipt. The User may change User's address by giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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

Mary Herrera Bern Co. AGRE R 25.00
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16. 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.

17. 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.

CITY OF ALBUQUERQUE:

By: _____

Chief Administrative Officer
Dated: 9-15-04

USER:

THE TRAILS LLC, a Nevada limited liability company

By: The Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
John K. Murtagh
Title: President
Dated: August 9, 2004

APPROVED:

_____ 8/24/04
City Engineer

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on September 15, 2004 by Richard Dourte for Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria D. Saavedra
Notary Public
My Commission Expires:
11-25-2007

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USER'S ACKNOWLEDGMENT

STATE OF NEVADA)
) **ss.**
COUNTY OF CLARK)

This instrument was acknowledged before me on August 9, 2004, by John K. Murtagh, President of The Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a New Mexico limited liability company.

Crystal House
Notary Public

CRYSTAL HOUSE
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 05-5-2007
CERTIFICATE NO: 03-81924-1

My Commission Expires:
5/5/07

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Page: 6 of 9
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Mary Herrera Bern. Co AGRE R 25.00 Bk-A84 Pg-1907

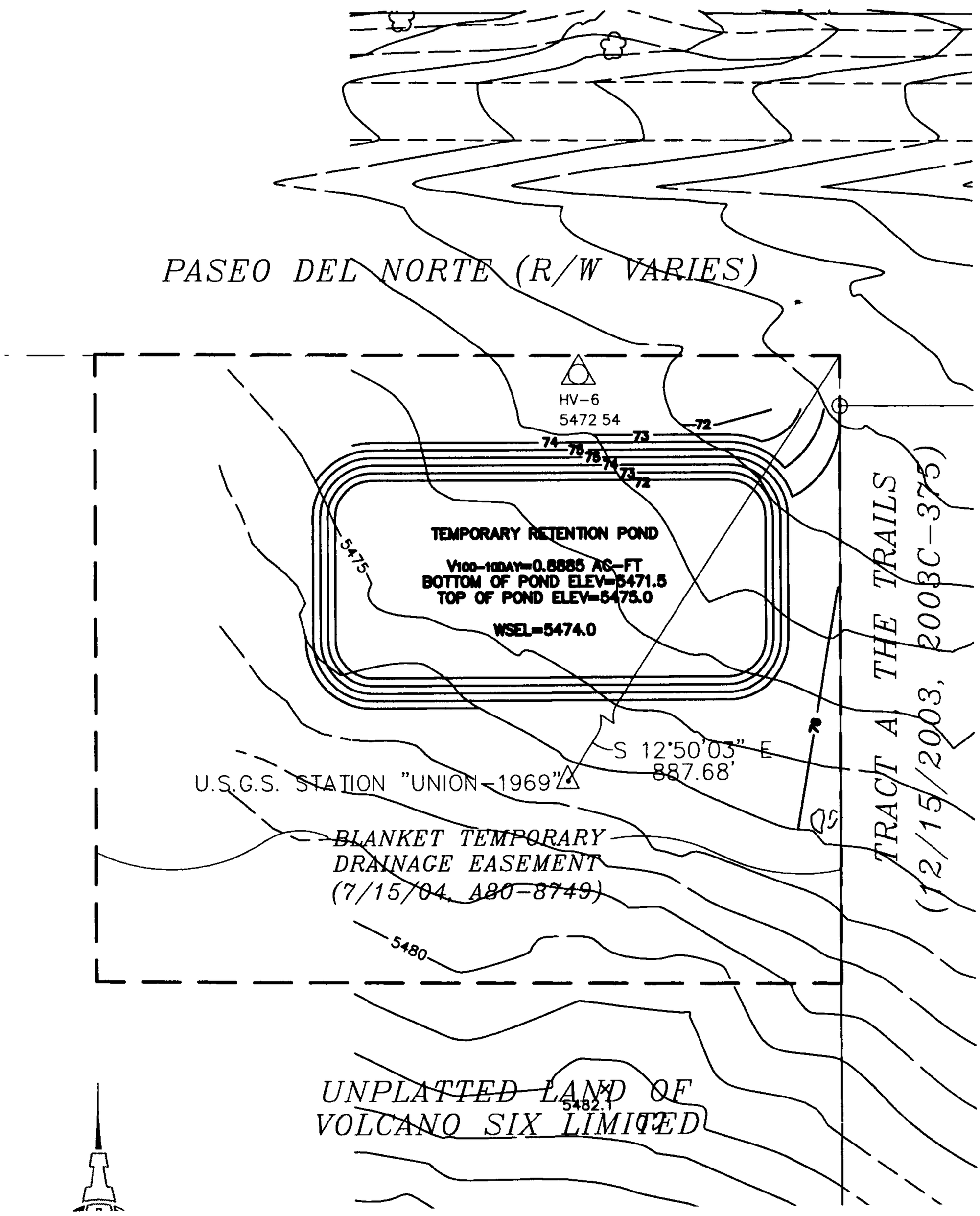

EXHIBIT B1

LEGAL DESCRIPTION
(BLANKET DRAINAGE EASEMENT)

Being that certain parcel of land to be designated as a **"BLANKET DRAINAGE EASEMENT"** situate within projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico, being comprised of a portion of unplatted lands of Volcano Six Limited as described in book A68, page 6412, filed for record with the Bernalillo County Clerk on November 14, 2003, and being more particularly described as follows:

Commencing at the TRUE POINT OF BEGINNING being the Northeast corner of said parcel herein described, and being a point on the Southerly right of way line of Paseo Del Norte NW; whence, the U.S.G.S. triangulation station "Union-1969" having NAD 27 New Mexico Central Zone State Plane Coordinate values of X=353,409.02 feet and Y=1,523,440.96 feet, bears S.12°50'03"E., a distance of 887.68 feet; thence, from said point of beginning,

S.00°05'55"W., a distance of 250.00 feet to the Southeast corner of the parcel herein described also being a point on the Westerly line of Tract A as the same is shown and designated on the Bulk Land Plat of The Trails filed in book 2003C, page 375, on December 15, 2003, with the County Clerk of Bernalillo County; thence,

N.89°42'23"W., a distance of 300.00 feet to the Southwest corner of the parcel herein described; thence,

N.00°05'55"E., a distance of 250.00 feet to a point on the Southerly right-of-way line of Paseo Del Norte NW and the Northwest corner of the parcel herein described; thence, along the said Southerly right-of-way line,

S.89°42'23"E., a distance of 300.00 feet to the Northeast corner of said parcel herein described, being the **POINT OF BEGINNING**; said parcel herein described containing an area of 75,000.43 square feet (1.722 acres), more or less.

End of Description

SEE ATTACHED SKETCH

Christopher A. Medina, N.M.P.S. No. 15702

July 9, 2004
Date

SHEET 1 OF 2

CHRISTOPHER A. MEDINA LICENSED PROFESSIONAL SURVEYOR NEW MEXICO 15702

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Mary Herrera Bern. Co. AGRE R 25.00 Bk-A84 Pg-1987

EXHIBIT B2

A tract of land situate within the Town of Alameda Grant, projected sections 16 and 17, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico being a portion of TRACTS 4 AND 5, BLACK RANCH as the same is described in "WARRANTY DEED" filed for record on September 25, 1984 in Book D222A, Pages 174 and 175 and being more particularly described as follows:

BEGINNING at the southeast corner of the herein described tract, from whence the USGLO/ACS Monument "CC 16/15 TA" bears S 70° 44' 56" E, 4070.27 feet;

THENCE N 89° 39' 55" W, 1448.22 feet to a point;
THENCE N 89° 41' 41" W, 1249.59 feet to the southwest corner;
THENCE N 00° 02' 46" W, 1945.30 feet to the northwest corner;
THENCE S 89° 46' 57" E, 1254.52 feet to a point;
THENCE S 89° 48' 49" E, 1444.54 feet to the northeast corner;
THENCE S 00° 00' 31" E, 1950.96 feet to the point of beginning and continuing (5,255,879 s.f.) 120,6584 acres more or less.

Volcano 6

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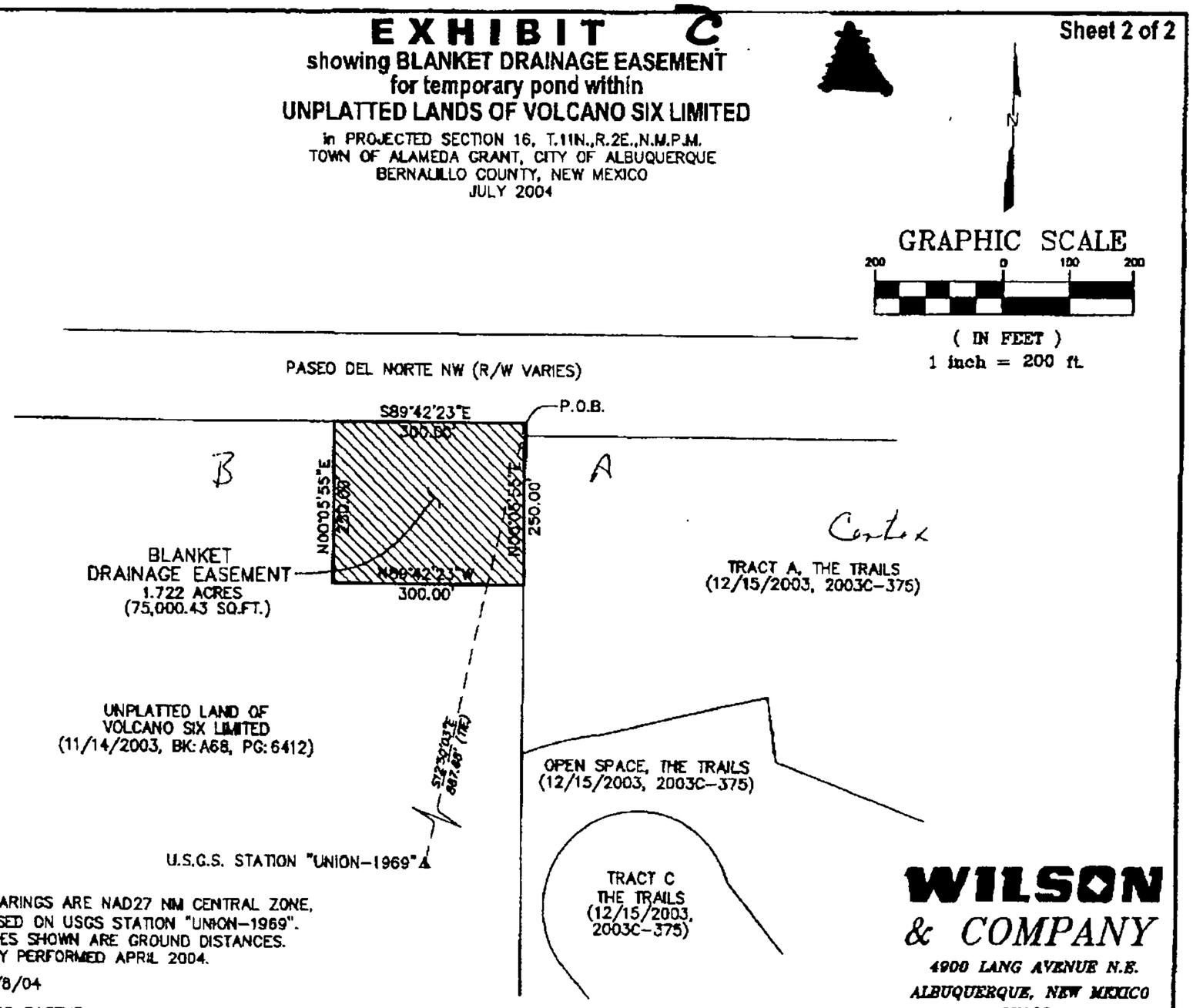
EXHIBIT C

showing BLANKET DRAINAGE EASEMENT
for temporary pond within
UNPLATTED LANDS OF VOLCANO SIX LIMITED

in PROJECTED SECTION 16, T.11N.,R.2E.,N.M.P.M.
TOWN OF ALAMEDA GRANT, CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO
JULY 2004

Sheet 2 of 2



NOTES:
1. BASIS OF BEARINGS ARE NAD27 NM CENTRAL ZONE, GRID NORTH, BASED ON USGS STATION "UNION-1969".
2. ALL DISTANCES SHOWN ARE GROUND DISTANCES.
3. FIELD SURVEY PERFORMED APRIL 2004.

Date Prepared: 7/8/04
Layout: EXHIBIT 1
Drawing: SX4218008_EASEMENT_BASE.dwg
Network Address: X:\Public\PROJECTS\X4218008\S\THE TRAILS

WILSON
& COMPANY
4900 LANG AVENUE N.E.
ALBUQUERQUE, NEW MEXICO
87109
(505) 348-4000

Mary Herrera Bern. Co. AGRE R 25.00
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CONTRACT CONTROL FORM

2005002224

PRELIMINARY REVIEW

Project # 738481
CCN# ~~2005002~~
New or Ext. #

Contact Person Kathy Jaramillo
Phone No. 924-3996

Type of Agreement: 1 agreement & covenants & 1 easements

Description/Project Name: Heritage the Trails, #1
Planning Dept./Div .: Design Review
Developer: The Trails LLC
Contract Amount $ -0-
Contract Amount $ -0-
Contract Amount $

SIA Contract Period: 9/15/04 - 12/31/2024
SIA Contract Period: - 12/31/2024
S/W Contract Period: 9/15/04 -

DRAFT CONTRACT:
Rec'd by Legal: Rejected/Returned to Dept.: /
Returned to Legal: / Approved: Initials:

FINANCIAL GUARANTY:
Letter of Credit No.: Date: Attached: Yes No. Initial
Other: Type Date: Attached: Yes No. Initial

FINAL CONTRACT REVIEW

APPROVALS REQUIRED:

	Date Delivered	Returned to Dept.	Approved By	Approval Date
Utility Div	8/20/04	8/20/04	[illegible]	8/20/04
Hydrology Div	8/16/04	8/19/04	BLB	8/19/04
Transportation Div	8/19/04	8/20/04	NJF	8/20/04
DRC Chairman	8/25/04	8/31/04	[illegible]	8/31/04
Legal Dept	9/1/04	9/14/04	KK	9/14/04
City Engineer	9/15/04	9-15-04	[illegible]	9-15-04
PWD Director				
Finance				
City Clerk				
CAO				

DISTRIBUTION:

	Date:	By:
User Department.	9-21-04	[illegible]
Vendor		
City Clerk	10/12/04	RB
Treasury		
Other:		

ADDENDUM TO COVER PAGE

9-1-04
(Date)

TO: Kevin Curran, Assistant City Attorney, Legal Department

FROM: Project Administrator, Project Review Sec., PWD

SUBJECT: PROJECT NAME: Heritage @ the Trails #1 PROJECT # 738481

The attached documents have been review, approved, initialed and/or signed by the DRC Chairman and are submitted for your action as noted. 9/5/01

ITEM	ACTION: Review & Approval	ACTION: Reference	Comments
Procedure "A"	☐	☐	
Procedure "B"	☐	☐	
Procedure "B" Modified Non Work Order	☐	☐	
Procedure "C"	☐	☐	
Procedure "C" Modified	☐	☐	
Special Agreement	☐	☐	
Sidewalk Deferral Agreement	☐	☐	
Amendment	☐	☐	
Assignment	☐	☐	
Financial Guarantee	☐	☐	
Construction Paperwork:			
Contractors Proposal	☐	☐	
Performance/Warranty Bonds	☐	☐	
Labor/Material Bonds	☐	☐	
Certificate of insurance	☐	☐	
Engineers Cost Estimate	☐	☐	
Extension	☐	☐	
Release/Agreement	☐	☐	
Release/Financial Guarantee	☐	☐	
Calling Notice	☐	☐	
Letter of Commitment	☐	☐	
Reduction Letter	☐	☐	
License Agreement	☐	☐	
Monitoring Well Permit	☐	☐	
Agreement & Covenant	☑	☐	
Drainage Covenant	☐	☐	
Revocable Permit	☐	☐	
Encroachment	☐	☐	
Permanent Easement	☐	☐	
Temporary Easement	☑	☐	
Power of Attorney	☐	☐	
Certificate of Work Order Completion	☐	☐	
Certificate of Completion and Acceptance	☐	☐	
Grading & Drainage Certification	☐	☐	
Notice of Acceptance - Centerline Monu.	☐	☐	
Corporate Resolution	☐	☐	

Other:

Please Call Kathy at 43896 if you have any questions regarding the above or when the documents are ready to be picked up.

No. of Attachments (_____)

COA#: 730084
A&C: POND K

AGREEMENT AND COVENANT
(Drainage)

This Agreement and Covenant ("Agreement") between the City of Albuquerque, a New Mexico municipal corporation ("City"), and The Trails, LLC, a Nevada limited liability company ("User"), is made in Albuquerque, New Mexico and is entered into as of the date of the recording of this Agreement with the Bernalillo County Clerk.

1. Recitals. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"A tract of land situate within the Town of Alameda Grant, being within the NW1/4 NW1/4 SW1/4, projected Section 15, Black Ranch, Township 11 North, Range 2 East, NMPM, City of Albuquerque, Bernalillo County, New Mexico, and being more particularly described as follows:

BEGINNING at the Southeast corner of the herein described tract, from whence Albuquerque Control Survey Monument bears N 57° 00' 46" E, 1403.09 feet;
Thence, N 89° 41' 49" W, 330.0 feet to the Southwest corner;
Thence, N 00°15' 57" E, 641.89 feet to the Northwest corner;
Thence, S 89° 49' 59" E, 330.00 feet to the Northeast corner;
Thence, S 0° 15' 57" W, 642.67 feet to the point of beginning."

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described in Exhibit A attached hereto and incorporated herein.

The User wishes to construct upon, improve or repair and to maintain temporary drainage facilities and areas, including without limitation drainage ponds, (collectively, "Improvement") on the City's Property (or already has done so), as such Improvement is more particularly depicted on the diagram attached hereto as Exhibit B and incorporated herein.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan identified as "Grading and Drainage Report C9-D1" on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of

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Mary Herrera Bern. Co. AGRE R 23.00 Bk-A102 Pg-7018

of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

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9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. Written notice required or permitted under this Agreement shall be sent to the User at the address set forth below:

To User: The Trails, LLC
c/o Longford Group, Inc.
3077 E. Warm Springs Road
Las Vegas, Nevada 89120

Notice may be given to User either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within 3 days after the notice is mailed if there is no actual evidence of receipt. The address set forth above may be changed by the User giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

and Association DM 8/8/05 DM 8-10-05

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or

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Mary Herrera Bern. Co. AGRE R 23.00 Bk-A102 Pg-7018

proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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16. 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.

17. 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.

CITY OF ALBUQUERQUE:

By: _____
Chief Administrative Officer

Dated: 8-26-05

USER:

THE TRAILS LLC, a Nevada limited liability company

By: Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
David A. Murtagh, Division President

Dated: May 16, 2005

APPROVED:

_____
City Engineer

Dated: 8-26-05

Trails\Parcel 5-37\Temp Drainage

Mary Herrera Bern. Co. AGRE R 23.00
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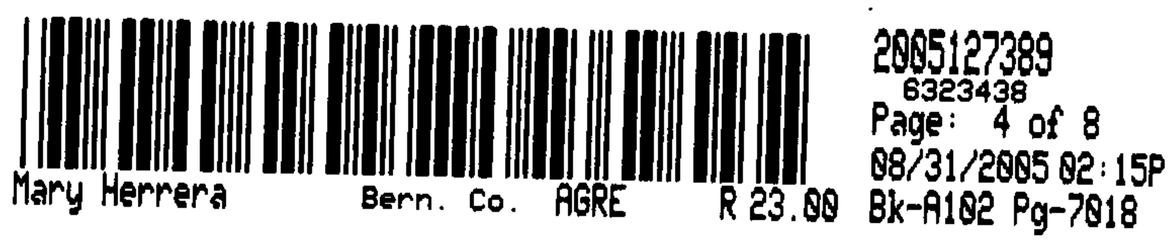
CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on August 26, 2005, by Richard Dourte for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria D. Saavedra
Notary Public
My Commission Expires:
11-25-2007



USER'S ACKNOWLEDGMENT

STATE OF New Mexico)
) **ss.**
COUNTY OF Bernalillo

This instrument was acknowledged before me on May 16th, 2005, by David A. Murtagh, Division President of Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Donna Lawson
Notary Public

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

My Commission Expires:
12-1-08

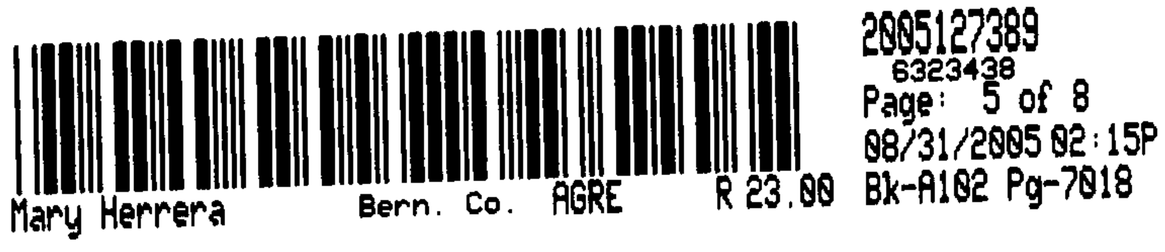


Exhibit A, pg 1 of 2

LEGAL DESCRIPTION - Drainage Easement within unplatted Parcel 5-37

An Easement within that certain parcel of land situate within the Town of Alameda Grant in projected Section 15, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprising a Westerly portion of unplatted lands of The Trails, LLC as the same is described in that certain Warranty Deed, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 24, 2003 in Book A65, Page 5664 more particularly described by survey performed by Russ P.Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 27) grid bearings and ground distances as follows:

BEGINNING at the Southwest corner of the easement herein described, whence the closing corner for Sections 16 and 15 on the South Boundary of the Town of Alameda Grant(a brass cap found in place)bears S 00° 13' 50" W, 303.48 feet distant; Thence running as an easement:

N 00° 16' 10" E ,	259.62 feet to the Northwest corner of the easement herein described; Thence,
N 87° 24' 02" E ,	196.72 feet to a point; Thence,
S 42° 18' 42" E ,	83.10 feet to a point; Thence,
S 00° 16' 10" W ,	208.28 feet to the Southeast corner of the easement herein described; Thence,
N 89° 43' 50" W ,	252.70 feet to the Southwest corner and point of beginning of the easement herein described.

PROFESSIONAL SURVEYOR
STATE OF
NEW MEXICO
No. 9750
RUSS P. HUGG

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Bk-A102 Pg-7018
Mary Herrera Bern. Co. AGRE R 23.00

EXHIBIT "A"
PG 2 of 2

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Page: 7 of 8
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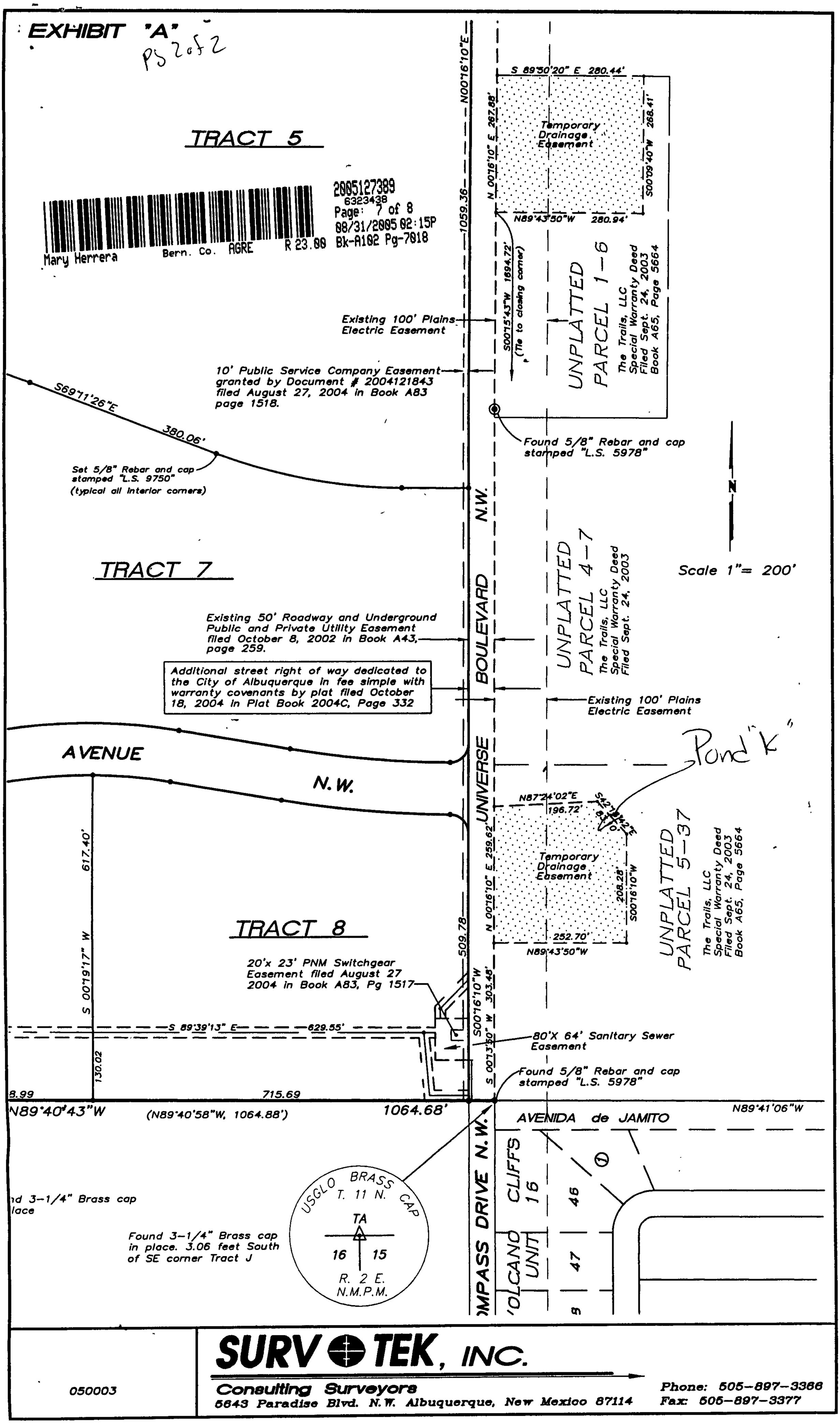
Mary Herrera Bern. Co. AGRE R 23.00



050003

SURV TEK, INC.
Consulting Surveyors
5643 Paradise Blvd. N.W. Albuquerque, New Mexico 87114
Phone: 505-897-3366
Fax: 505-897-3377

EXHIBIT "B"

DRAINAGE EASEMENT
within
BULK LAND
PLAT, THE TRAILS
UNIT II
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO

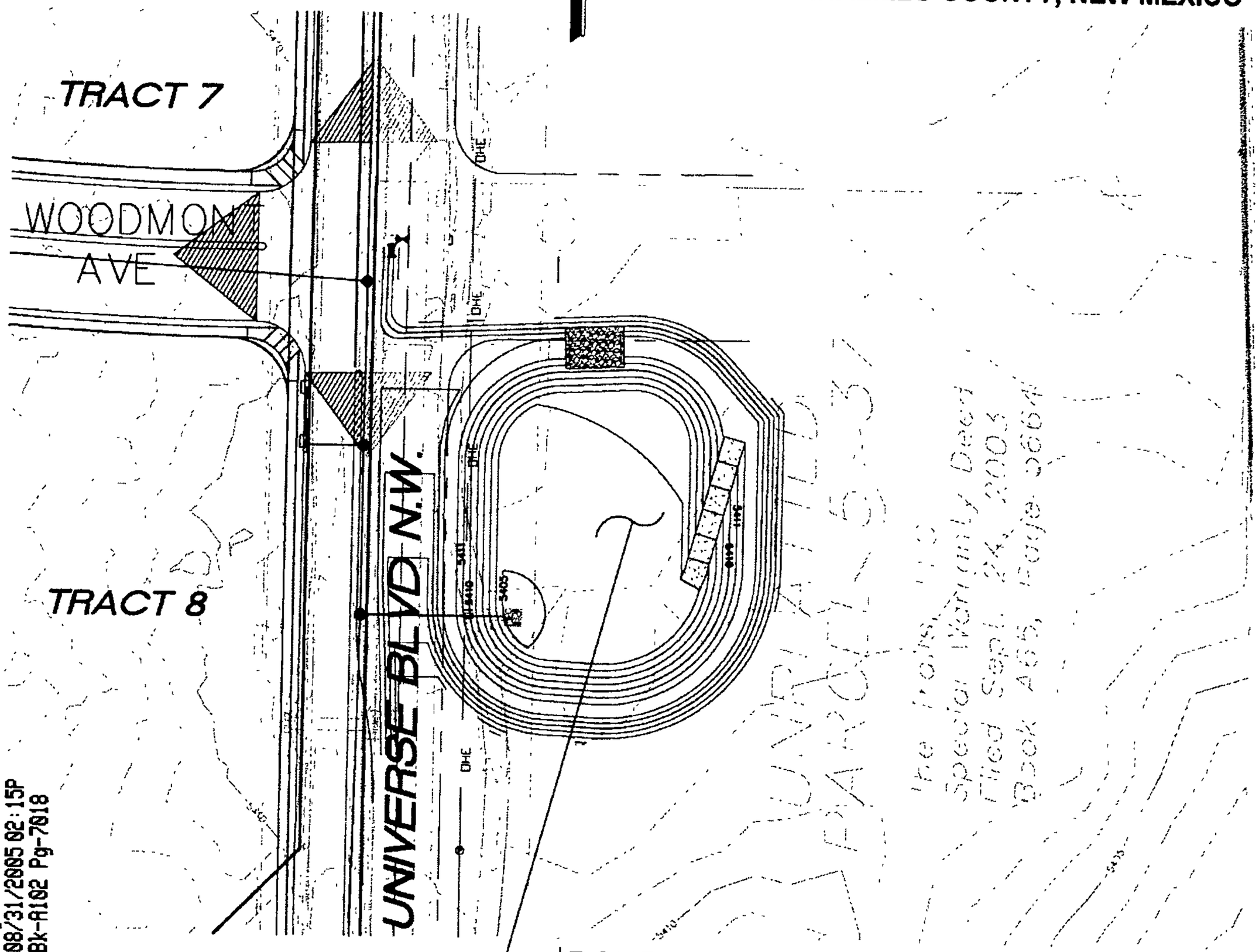
DM 8/8/05
8-10-05

GRAPHIC SCALE

0 50 100 200

(IN FEET)
1 inch = 100 ft.

N



POND K
MAX STORAGE = 2.17 AC-FT
MAX WSEL = 5410.20
TOP OF POND = 5411
BOTTOM OF POND ELEV = 5405
Q(in) = 151.5 cfs
Q(out) = 80.2 cfs

DM 7/8/05

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 896-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

EXHIBIT "B"
POND K 8-10-05

DESIGN S.J.S	WCEA NO. X4218008	DATE MARCH 2005	
DRAWN D.D	PROJECT NO. 730084	SHEET NO 1 OF 1	
CHECK S.J.S			

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Page: 8 of 8
08/31/2005 02:15P
Bk-A102 Pg-7018
R 23.00
Bern. Co. AGRE
Mary Herrera

A&C POND D

AGREEMENT AND COVENANT
(Drainage)

This Agreement and Covenant ("Agreement") by and among the City of Albuquerque, a New Mexico municipal corporation ("City"), The Trails, LLC, a Nevada limited liability company ("User"), and The Trails Community Association, Inc., a New Mexico non-profit corporation ("Association"), is made in Albuquerque, New Mexico and is entered into as of the date of the recording of this Agreement with the Bernalillo County Clerk.

1. Recitals. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"TRACT 1" of The Trails Unit 2 as the same is shown and designated on the plat entitled "Bulk Land Plat of The Trails Unit 2 (being a replat of Tracts G and J of The Trails and unplatted deed parcels) within the Town of Alameda Grant in Projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico," which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Book 2004c, Page 332.

The Association is the owner of certain real property ("Association's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"TRACT OS-3" of The Trails Unit 2 as the same is shown and designated on the plat entitled "Bulk Land Plat of The Trails Unit 2 (being a replat of Tracts G and J of The Trails and unplatted deed parcels) within the Town of Alameda Grant in Projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico," which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Book 2004c, Page 332.

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property and Association's Property, and more particularly described in Exhibit A attached hereto and incorporated herein.

The User wishes to construct upon, improve or repair and to maintain drainage facilities and areas, including without limitation drainage ponds, (collectively, "Improvement") on the City's Property (or already has done so), as such Improvement is more particularly depicted on the diagram attached hereto as Exhibit B and incorporated herein.

The City agrees to permit the Improvement to exist on the City's Property provided the User and the Association comply with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User or the Association. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance

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Mary Herrera Bern. Co. AGRE R 27.00 Bk-A102 Pg-7016

with standards required by the City as per the approved Grading and Drainage Plan identified as "Grading and Drainage Report C9-D1" on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and the covenants of User and Association released by the City at will by the City's mailing to the User and the Association notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User and the Association unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property or the Association's Property is ever condemned by the City, the User and the Association will forego all claims to compensation for any portion of User's structure or Association's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property and Association's structure on Association's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, the Association or their respective heirs, assigns and successors from an assessment against User's Property or Association's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. Written notice required or permitted under this Agreement shall be sent to the parties at the address for such party set forth below:

To User: The Trails, LLC
c/o Longford Group, Inc.
3077 E. Warm Springs Road

Mary Herrera Bern. Co. AGRE R 27.00
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Las Vegas, Nevada 89120

To Association: The Trails Community Association, Inc.
7007 Jefferson Blvd., NE, Suite A
Albuquerque, New Mexico 87109

Notice may be given to User or Association either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within 3 days after the notice is mailed if there is no actual evidence of receipt. The address set forth above may be changed by the relevant party giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

11. Indemnification. The User and association agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding. The respective covenants and obligations of the User and of the Association set forth herein shall be binding on their respective heirs, assigns and successors and on User's Property and Association's Property and constitute covenants running with User's Property and Association's Property until released by the City.

14. 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.

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

16. 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.

17. 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.

18. Agreement by Association. Association agrees to assume responsibility for each and every one of User's obligations under this Agreement at such time as User assigns or otherwise transfers its responsibilities hereunder to Association.

[SIGNTAURES ON FOLLOWING PAGE]

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Mary Herrera Bern. Co. AGRE R 27.00 Bk-A102 Pg-7016

[SIGNATURE PAGE TO AGREEMENT AND COVENANT]

CITY OF ALBUQUERQUE:

By: _____
for Chief Administrative Officer

Dated: 8-26-05

USER:

THE TRAILS LLC, a Nevada limited liability company

By: Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
David A. Murtagh, Division President

Dated: May 16, 2005

ASSOCIATION:

The Trails Community Association, Inc., a New Mexico non-profit corporation

By: _____
Tracy Murphy, President

Dated: May 16, 2005

APPROVED:

_____
City Engineer

Dated: 8-26-05

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on August 26, 2005, by Richard Dourte for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

_____
Notary Public
My Commission Expires:
11-25-2007

Trails\Unit 2\Tracts 1 & OS-3\Drainage

USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on May 16th 2005, by David A. Murtagh, Division President of Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Donna Lawson
Notary Public

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

My Commission Expires:
12-1-08

ASSOCIATION'S ACKNOWLEDGMENT

STATE OF NEVADA)
) **ss.**
COUNTY OF CLARK)

This instrument was acknowledged before me on May 17, 2005, by Tracy Murphy, President of The Trails Community Association, Inc., a New Mexico non-profit corporation.

Crystal House
Notary Public

My Commission Expires:
5/5/07

CRYSTAL HOUSE
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 05-5-2007
CERTIFICATE NO: 03-81924-1

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Page: 5 of 10
08/31/2005 02:15P
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Mary Herrera Bern. Co. AGRE R 27.00

Trails\Unit 2\Tracts 1 & OS-3\Drainage

LEGAL DESCRIPTION - Drainage Easement within Tracts 1 and OS-3 ,Trails Unit 2

An Easement within that certain parcel of land situate within the Town of Alameda Grant in projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprising a Northwesterly portion of Tract OS-3 and a Southerly Portion of Tract 1 of the Trails Unit 2 as the same is shown and designated on the plat entitled "BULK LAND PLAT OF THE TRAILS UNIT 2 (BEING A REPLAT OF TRACTS G AND J, THE TRAILS AND UNPLATTED DEED PARCELS) WITHIN THE TOWN OF ALAMEDA GRANT IN PROJECTED SECTION 16, TOWNSHIP 11 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE,BERNALILLO COUNTY, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Plat Book 2004C, Page 332 more particularly described by survey performed by Russ P.Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 27) grid bearings and ground distances as follows:

BEGINNING at the Southwest corner of the easement herein described, A POINT ON THE Westerly line of said Tract OS-3 whence the Southwest corner of said Tract OS-3 and the Northwest corner of Tract 4 of the Trails Unit 2 (a 5/8" Rebar and cap stamped "L.S. 5978" found in place)bears S 00° 06' 04" W, 68.22 feet distant; Thence running as an easement:

N 00° 06' 04" E ,	55.85 feet to the Northwest corner of said Tract OS-3; Thence,
N 00° 06' 04" E ,	105.00 feet to the Northwest corner of the easement herein described; Thence,
S 89° 55' 02" E ,	449.87 feet to a point on the Easterly line of said Tract 1 and the Northeast corner of the easement herein described; Thence,
S 00° 08' 08" W ,	105.00 feet the Northeast corner of said Tract OS-3; Thence,
S 00° 08' 08" W ,	88.01 feet to a point; Thence
S 33° 23' 38" W ,	44.70 feet to a point; Thence,
S 13° 17' 28" E ,	15.54 feet to a point; Thence,
S 76° 42' 32" W ,	56.97 feet to a point; Thence,

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Mary Herrera Bern. Co. AGRE R 27.00 Bk-A102 Pg-7016

N 13° 17' 28" W ,	24.94 feet to a point; Thence,
N 84° 29' 50" W ,	211.06 feet to a point; Thence,
S 00° 06' 04" W ,	17.04 feet to a point on the Southerly line of said Tract OS-3; Thence,
N 81° 59' 57" W ,	17.35 feet along said Southerly line of Tract OS-3 to a point; Thence,
N 89° 54' 08" W ,	7.81 feet along said Southerly line of Tract OS-3 to a point; Thence,
N 00° 06' 04" E ,	3.84 feet to a point; Thence,
N 73° 25' 31" W ,	93.66 feet to a point; Thence,
N 52° 44' 34" W ,	40.00 feet to a point; Thence,
N 38° 15' 47" W ,	17.41 feet to the Southwest corner and point of beginning of the easement herein described.

PROFESSIONAL SURVEYOR
STATE OF
No. 12750
NEW MEXICO
RUSS P. HUCK

Mary Herrera Bern. Co. AGRE R 27.00
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Page: 7 of 10
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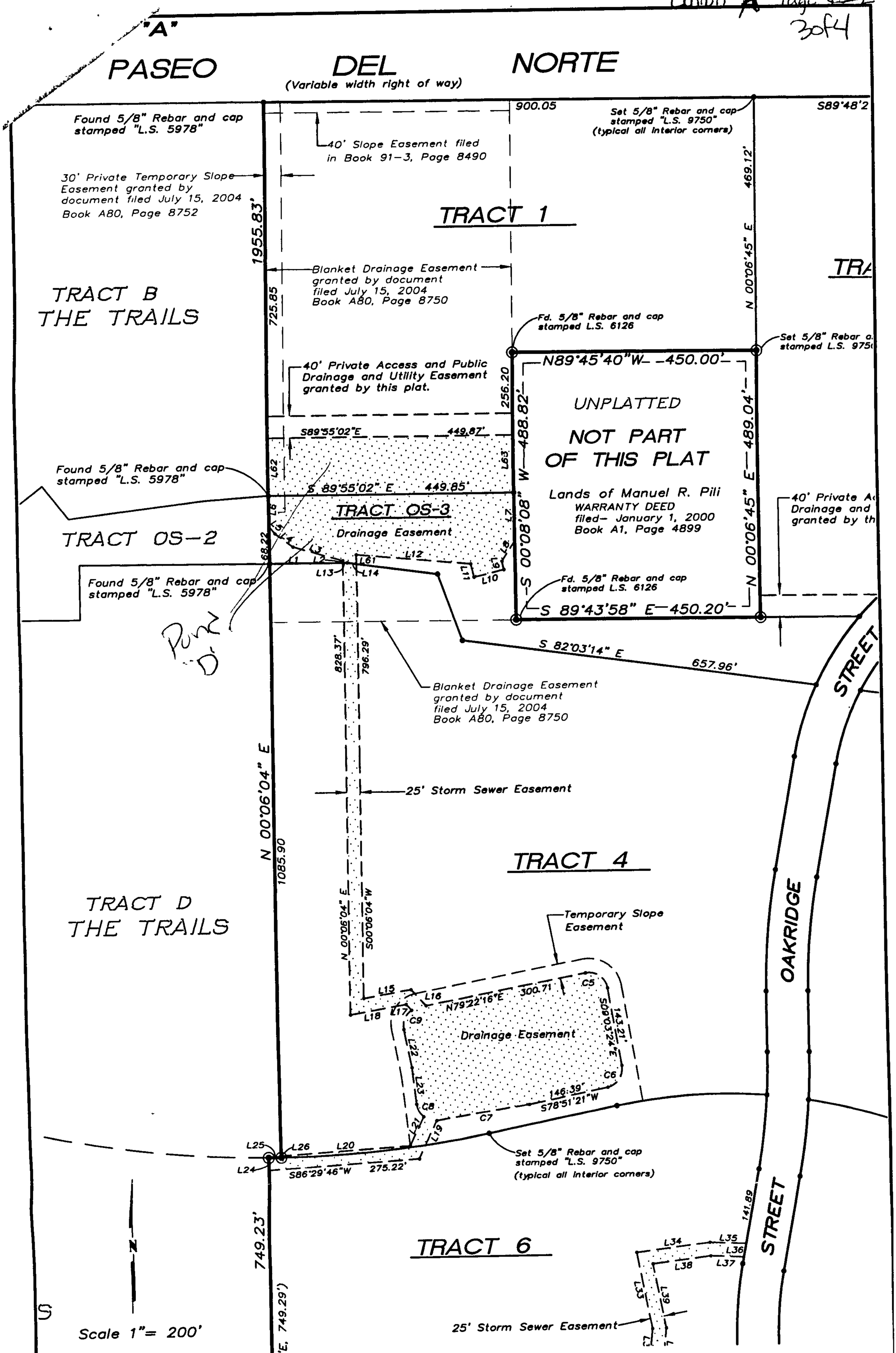
Bk-A102 Pg-7016

Exhibit A Page ~~[illegible]~~ 3 of 4



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Mary Herrera Bern. Co. AGRE R 27.00

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Page: 8 of 10
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Phone: 505-897-3366
Fax: 505-897-3377

EXHIBIT "A"

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08/31/2005 02:15P
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R 27.00
AGRE
Bern. Co.
Mary Herrera

LINE TABLE

LINE	LENGTH	BEARING
L1	132.50'	S89°54'08"E
L2	3.84'	N00°06'04"E
L3	93.66'	N73°25'31"W
L4	40.00'	N52°44'34"W
L5	17.41'	N38°15'47"W
L6	55.85'	N00°06'04"E
L7	88.01'	S00°08'08"W
L8	44.70'	S33°23'38"W
L9	15.54'	S13°17'28"E
L10	56.97'	S76°42'32"W
L11	24.94'	N13°17'28"W
L12	211.06'	N84°29'50"W
L13	7.81'	S89°54'08"E
L14	17.35'	S81°59'57"E
L15	87.79'	N80°17'52"E
L16	40.51'	S41°47'10"E
L17	14.50'	N41°47'10"W
L18	103.64'	S80°17'52"W
L19	77.49'	S26°17'59"W
L20	236.12'	N86°29'46"E
L21	59.03'	N26°17'59"E
L22	70.26'	N10°37'44"W
L23	66.94'	N05°40'36"W
L24	23.53'	N00°30'17"E
L25	22.84'	S89°48'12"E
L26	2.98'	N00°44'07"W
L27	17.63'	N22°30'36"E
L28	75.90'	N00°35'13"E
L29	65.73'	N32°23'17"E
L30	54.97'	N67°48'25"E
L31	70.76'	N39°31'30"E
L32	72.08'	N06°05'21"E
L33	142.48'	N10°37'44"W
L34	136.30'	N83°00'21"E
L35	67.18'	S87°16'51"E
L36	25.26'	S10°52'50"W
L37	61.47'	S87°16'51"E
L38	107.54'	S83°00'21"W
L39	119.52'	S10°37'44"E
L40	83.26'	S06°05'21"W
L42	84.57'	S39°31'30"W
L43	53.28'	S67°48'25"W
L44	63.28'	S32°23'17"W
L45	128.28'	S19°42'27"E
L59	67.61'	N00°16'10"E
L60	100.05'	N89°43'50"W
L61	17.04'	S00°06'04"W
L62	105.00'	N00°06'04"E
L63	105.00'	S00°08'08"W

CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	CHORD	CHORD BEARING	DELTA
C5	54.34'	34.00'	34.95'	48.74'	S54°50'34"E	91°34'20"
C6	53.70'	35.00'	33.75'	48.59'	S34°53'59"W	87°54'45"
C7	174.08'	7435.34'	87.05'	174.08'	S81°13'24"W	1°20'29"
C8	26.97'	34.00'	14.24'	26.27'	N28°24'07"W	45°27'03"
C9	40.26'	34.00'	22.87'	37.95'	N23°17'52"E	67°51'11"
C10	102.72'	55.00'	74.33'	88.43'	N54°05'20"E	107°00'14"

EXHIBIT "B"

DRAINAGE EASEMENT
within
BULK LAND
PLAT, THE TRAILS
UNIT II
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO

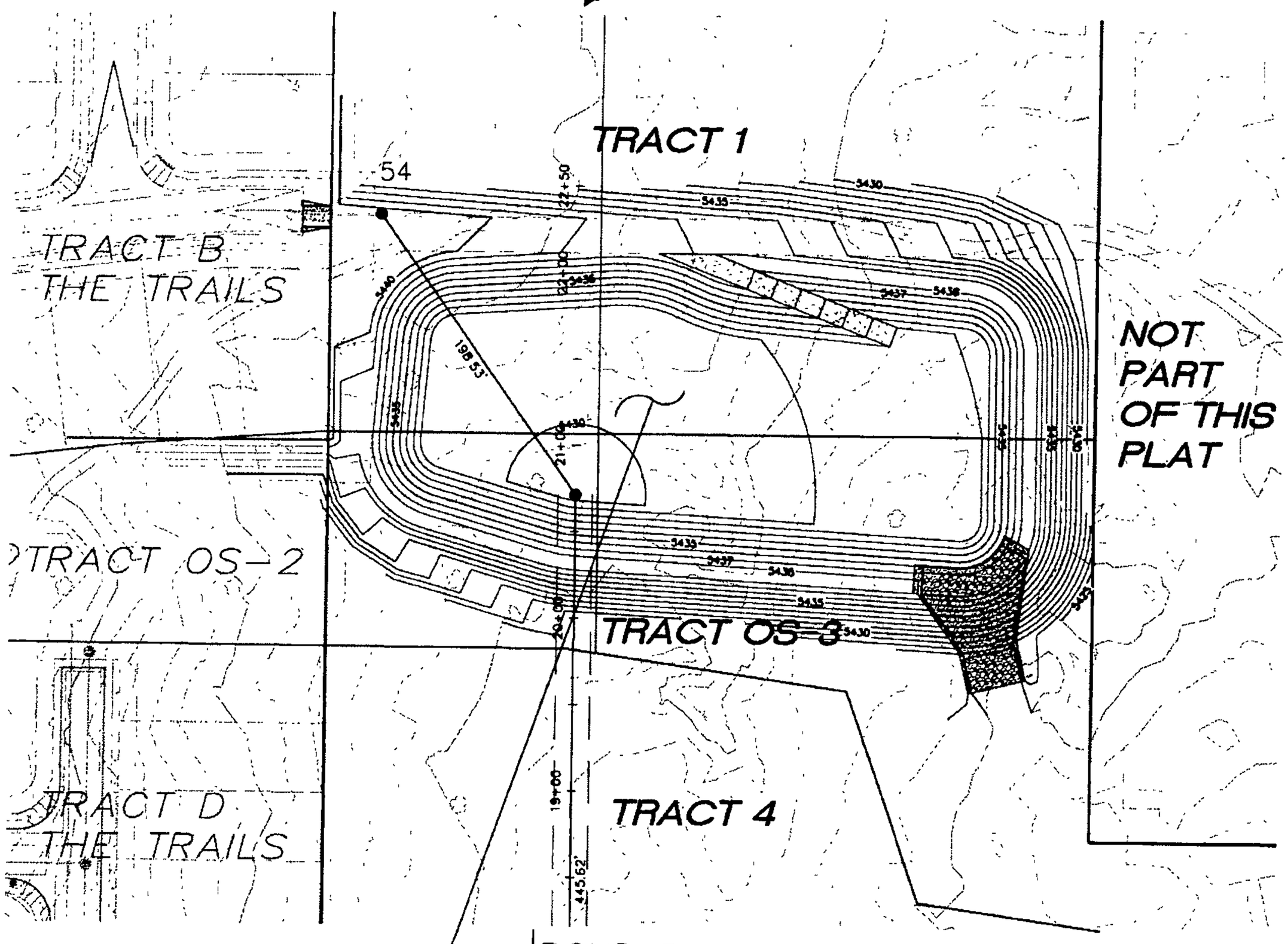
DM 8/8/05
8-10-05

GRAPHIC SCALE

0 50 100 200

(IN FEET)
1 inch = 100 ft.

N



POND D
MAX STORAGE = 6.85 AC-FT
MAX WSEL = 5431.85
TOP OF POND = 5432
BOTTOM OF POND ELEV = 5425
Q(in) = 183.7 cfs
Q(out) = 21.1 cfs

18008\M\exhibits\A & C EXHIBITS.DWG\01-31-05

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 898-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

EXHIBIT "B"
POND D

DM 8/19/05 DM 8/8/05

DESIGN	S.J.S	WCEA NO. X4218008	DATE MARCH 2005
DRAWN	D.D	PROJECT NO 730084	SHEET NO 1 OF 1
CHECK	S.J.S		

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Bk-A102 Pg-7016
Mary Herrera Bern. Co. AGRE R 27.00

30084
Pond J

AGREEMENT AND COVENANT
(Drainage)

This Agreement and Covenant ("Agreement") between the City of Albuquerque, a New Mexico municipal corporation ("City"), and The Trails, LLC, a Nevada limited liability company ("User"), is made in Albuquerque, New Mexico and is entered into as of the date of the recording of this Agreement with the Bernalillo County Clerk.

1. Recitals. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"A certain tract of land located within the Alameda Grant, being more particularly described as follows:

BEGINNING for a tie at the U.S.L.O. marker on the South boundary of the Town of Alameda Grant, which is a point common to Sections 15 and 16, T11N, R2E, NMPM, Bernalillo County, New Mexico;
Thence N 0° 02' E, a distance of 1,302.60 feet to the SW corner and point of beginning of the parcel herein described;
Thence N 0° 02' E, a distance of 660.0 feet to the NW corner;
Thence N 89° 55' 30" E, a distance of 330.0 feet to the NE comer;
Thence S 0° 02' W, a distance of 660.0 feet to the SE comer;
Thence S 89° 55' 30" W, a distance of 330.0 feet to the point of beginning."

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described in Exhibit A attached hereto and incorporated herein.

The User wishes to construct upon, improve or repair and to maintain temporary drainage facilities and areas, including without limitation drainage ponds, (collectively, "Improvement") on the City's Property (or already has done so), as such Improvement is more particularly depicted on the diagram attached hereto as Exhibit B and incorporated herein.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan identified as "Grading and Drainage Report C9-D1" on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be

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4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require User to return City's Property to its original condition by the Deadline. User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. Written notice required or permitted under this Agreement shall be sent to the User at the address set forth below:

To User: The Trails, LLC
c/o Longford Group, Inc.
3077 E. Warm Springs Road
Las Vegas, Nevada 89120

Notice may be given to User either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within 3 days after the notice is mailed if there is no actual evidence of receipt. The address set forth above may be changed by the User giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

and Association DM 9/7/05 JMB 8-10-05

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City,

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its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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

16. 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.

17. 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.

CITY OF ALBUQUERQUE:

By: _____
Chief Administrative Officer

Dated: 8-26-05

USER:

THE TRAILS LLC, a Nevada limited liability company

By: Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
David A. Murtagh, Division President

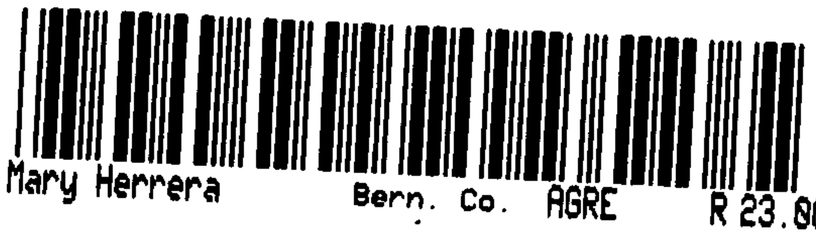
Dated: May 16, 2005

APPROVED:

_____
City Engineer

8-7-05

Dated: 8-26-05



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Trails\Parcel 1-6\Temp Drainage

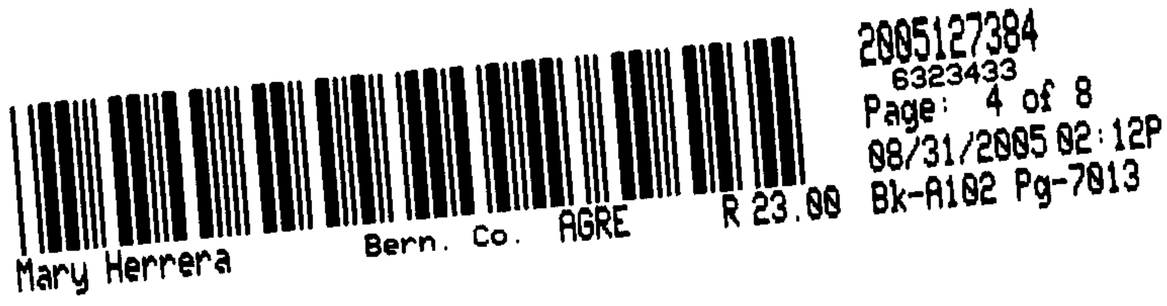
Kje 8/25/05

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on August 26, 2005, by Richard Dourte for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria D. Saavedra
Notary Public
My Commission Expires:
11-25-2007



USER'S ACKNOWLEDGMENT

STATE OF ~~NEVADA~~ New Mexico)
) ss.
COUNTY OF ~~CLARK~~ Bernalillo)

This instrument was acknowledged before me on May 16th, 2005, by David A. Murtagh, Division President of Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Donna Lawson
Notary Public

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

My Commission Expires: 12-1-08

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Exhibit A
sheet 1 of 2

LEGAL DESCRIPTION - Drainage Easement within unplatted Parcel 1-6

An Easement within that certain parcel of land situate within the Town of Alameda Grant in projected Section 15, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprising a Westerly portion of unplatted lands of The Trails, LLC as the same is described in that certain Warranty Deed, filed in the office of the County Clerk of Bernalillo County, New Mexico, on September 24, 2003 in Book A65, Page 5664 more particularly described by survey performed by Russ P.Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 27) grid bearings and ground distances as follows:

BEGINNING at the Southwest corner of the easement herein described, whence the closing corner for Sections 16 and 15 on the South Boundary of the Town of Alameda Grant(a brass cap found in place)bears S 00° 15' 38" W, 1694.72 feet distant; Thence running as an easement:

N 00° 16' 10" E ,	267.88 feet to the Northwest corner of the easement herein described; Thence,
S 89° 50' 20" E ,	280.44 feet to the Northeast corner of the easement herein described; Thence,
S 00° 09' 40" W ,	268.41 feet to the Southeast corner of the easement herein described; Thence,
N 89° 43' 50" W ,	280.94 feet to the Southwest corner and point of beginning of the easement herein described.

PROFESSIONAL SURVEYOR
STATE OF
No. 9750
NEW MEXICO
RUSS P. HUGG

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Exhibit A

EXHIBIT "A"
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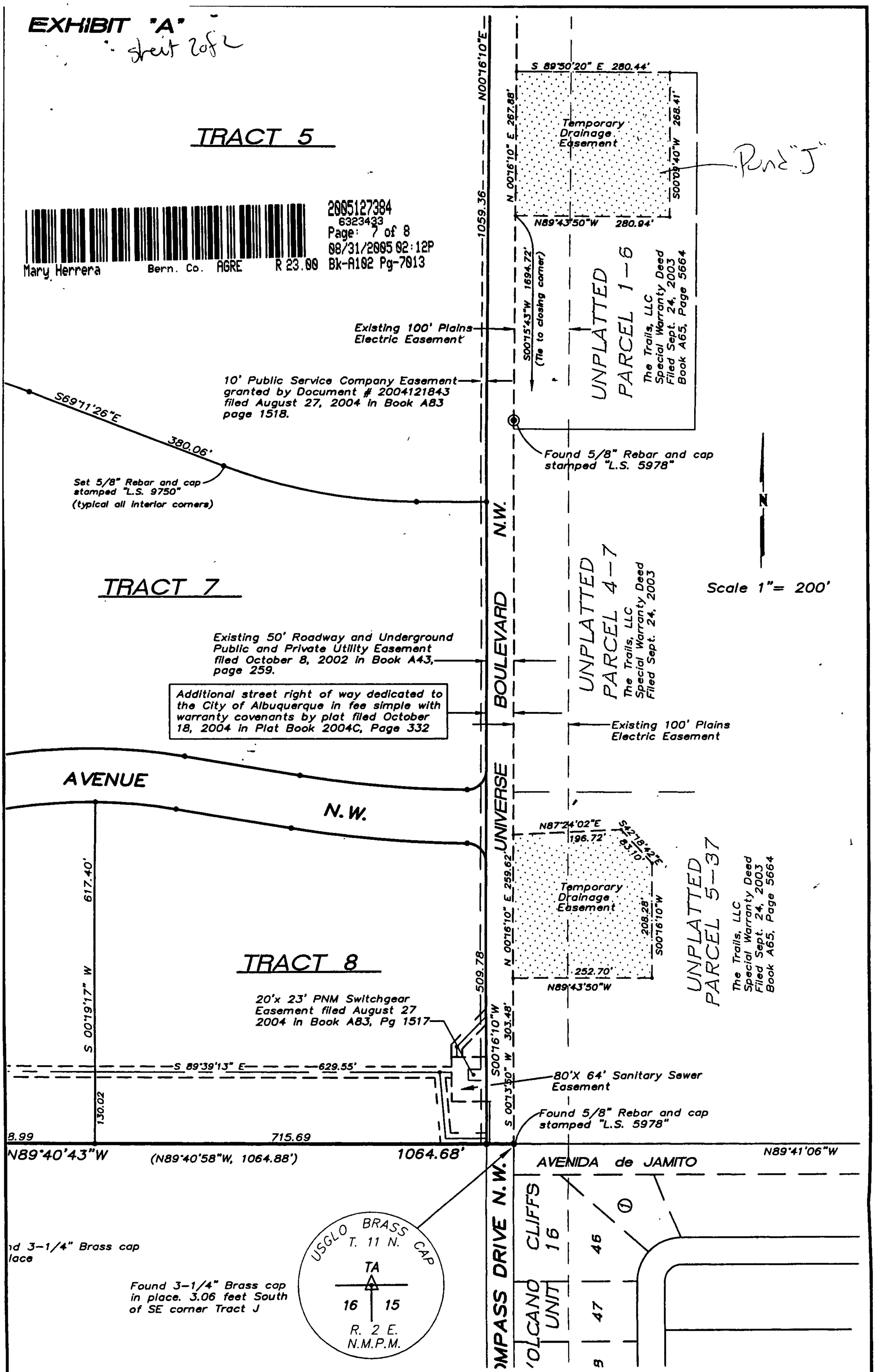


050003

SURV TEK, INC.
Consulting Surveyors
5643 Paradise Blvd. N.W. Albuquerque, New Mexico 87114
Phone: 505-897-3366
Fax: 505-897-3377

EXHIBIT [redacted] "B"

DRAINAGE EASEMENT
within
BULK LAND
PLAT, THE TRAILS
UNIT II
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO

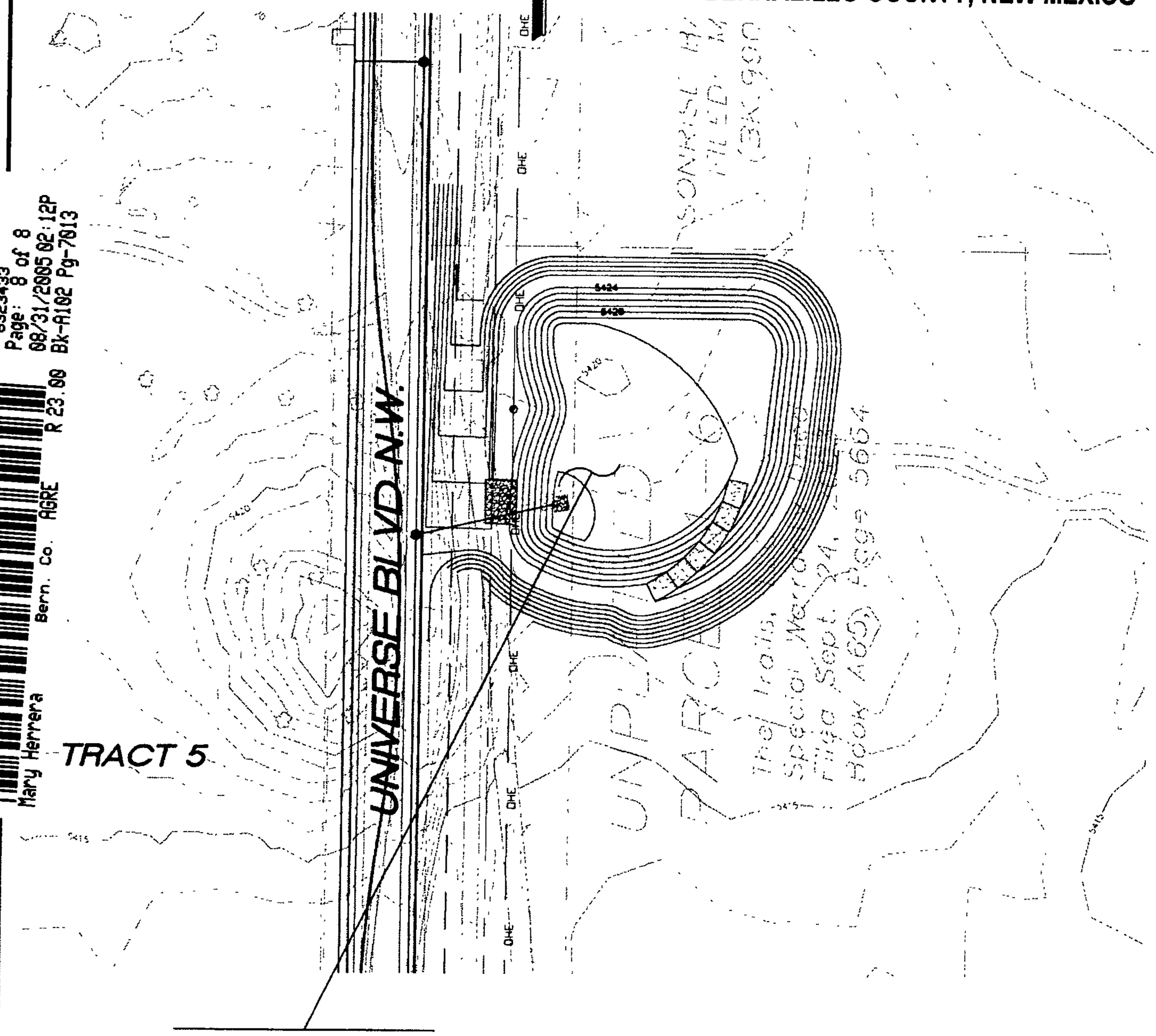
DM 7/8/05

GRAPHIC SCALE

0 50 100 200

(IN FEET)
1 inch = 100 ft.

N



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Bern. Co. AGRE
Mary Herrera

POND J
MAX STORAGE = 2.09 AC-FT
MAX WSEL = 5421.73
TOP OF POND = 5423
BOTTOM OF POND ELEV = 5417
Q(in) = 79.5 cfs
Q(out) = 20.8 cfs

DM 7/8/05

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 896-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

EXHIBIT [redacted] "B"
POND J

8-10-05

DESIGN S.J.S	WCEA NO. X4218008	DATE MAY 2005	
DRAWN D.D	PROJECT NO. 730084	SHEET NO. 1 OF 1	
CHECK S.J.S			

T:\PROJECTS\X4218008\M\exhibits\A & C EXHIBITS.DWG\01-31-05

T30084
Pond F

AGREEMENT AND COVENANT
(Drainage)

This Agreement and Covenant ("Agreement") by and among the City of Albuquerque, a New Mexico municipal corporation ("City"), The Trails, LLC, a Nevada limited liability company ("User"), and The Trails Community Association, Inc., a New Mexico non-profit corporation ("Association"), is made in Albuquerque, New Mexico and is entered into as of the date of the recording of this Agreement with the Bernalillo County Clerk.

1. Recitals. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"TRACT 4" and "TRACT 6" of The Trails Unit 2 as the same is shown and designated on the plat entitled "Bulk Land Plat of The Trails Unit 2 (being a replat of Tracts G and J of The Trails and unplatted deed parcels) within the Town of Alameda Grant in Projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico," which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Book 2004c, Page 332.

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described in Exhibit A attached hereto and incorporated herein.

The User wishes to construct upon, improve or repair and to maintain drainage facilities and areas, including without limitation drainage ponds, (collectively, "Improvement") on the City's Property (or already has done so), as such Improvement is more particularly depicted on the diagram attached hereto as Exhibit B and incorporated herein.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan identified as "Grading and Drainage Report C9-D1" on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

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5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. Written notice required or permitted under this Agreement shall be sent to the parties at the address for such party set forth below:

To User: The Trails, LLC
c/o Longford Group, Inc.
3077 E. Warm Springs Road
Las Vegas, Nevada 89120

To Association: The Trails Community Association, Inc.
7007 Jefferson Blvd., NE, Suite A
Albuquerque, New Mexico 87109

Notice may be given to User or Association either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within 3 days after the notice is mailed if there is no actual evidence of receipt. The address set forth above may be changed by the relevant party giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

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Mary Herrera Bern. Co. AGRE R 29.00 Bk-A102 Pg-7012

and association DM 8/8/05 8-10-05

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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

16. 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.

17. 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.

18. Agreement by Association. Association agrees to assume responsibility for each and every one of User's obligations under this Agreement at such time as User assigns or otherwise transfers its responsibilities hereunder to Association.

CITY OF ALBUQUERQUE:

By: _____
Chief Administrative Officer

Dated: 8-26-05

vfe 8/5/05

USER:

THE TRAILS LLC, a Nevada limited liability company

By: Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
David A. Murtagh, Division President

Dated: May 9, 2005

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

Trails\Unit 2\Tracts 4 & 6\Drainage

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[CONTINUED SIGNATURE PAGE TO AGREEMENT AND COVENANT]

ASSOCIATION:

The Trails Community Association, Inc., a New Mexico non-profit corporation

By: _____
Tracy Murphy, President

Dated: May 9, 2005

APPROVED:

_____ 7-7-05
City Engineer

Dated: 8-26-05

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on August 26, 2005, by Richard Dourte for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Gloria D. Saavedra
Notary Public
My Commission Expires:
11-25-2007

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USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on May 9th, 2005, by David A. Murtagh, Division President of Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Donna Lawson
Notary Public

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

My Commission Expires: 12-1-08

ASSOCIATION'S ACKNOWLEDGMENT

STATE OF ~~NEVADA~~ NEVADA)
) **ss.**
COUNTY OF ~~CLARK~~ CLARK)

This instrument was acknowledged before me on May 17, 2005, by Tracy Murphy, President of The Trails Community Association, Inc., a New Mexico non-profit corporation.

Crystal House
Notary Public

My Commission Expires:
5/5/07

CRYSTAL HOUSE
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 05-5-2007
CERTIFICATE NO: 03-81924-1

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Trails\Unit 2\Tracts 4 & 6\Drainage

LEGAL DESCRIPTION - Drainage Easement within Tracts 4 and 6,Trails Unit 2

An Easement within that certain parcel of land situate within the Town of Alameda Grant in projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprising a Southerly and Westerly portion of Tract 4 and a Northerly portion of Tract 6 of the Trails Unit 2 as the same is shown and designated on the plat entitled "BULK LAND PLAT OF THE TRAILS UNIT 2 (BEING A REPLAT OF TRACTS G AND J, THE TRAILS AND UNPLATTED DEED PARCELS) WITHIN THE TOWN OF ALAMEDA GRANT IN PROJECTED SECTION 16, TOWNSHIP 11 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE,BERNALILLO COUNTY, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Plat Book 2004C, Page 332 more particularly described by survey performed by Russ P.Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 27) grid bearings and ground distances as follows:

BEGINNING at the Northwest corner of the easement herein described, a point on the Northerly line of said Tract 4 and a point on the Southerly line of Tract OS-3 of the Trails Unit 2 whence Northwest corner of said Tract 4 (a 5/8" Rebar and cap stamped "L.S. 5978" found in place)bears N 89° 54' 08" W ,132.39 feet distant; Thence running as an easement:

S 89° 54' 08" E ,	7.81 feet to a point; Thence,
S 81° 59' 57" E ,	17.35 feet to the Northeast corner of the easement herein described; Thence,
S 00° 06' 04" W ,	796.29 feet to a point; Thence,
N 80° 17' 52" E ,	87.79 feet to a point; Thence,
S 41° 47' 10' E ,	40.51 feet to a point; Thence,
N 79° 22' 16" E ,	300.71 feet to a point of curvature; Thence,
Southeasterly ,	54.34 feet on the arc of a curve to the right (said curve having a radius of 34.00 feet, a central angle of 91° 34' 20" and a chord which bears S 54° 50' 34" E, 48.74 feet) to a point of tangency; Thence,

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S 09° 03' 24" E ,	143.21 feet to a point of curvature; Thence,
Southwesterly ,	53.70 feet on the arc of a curve to the right (said curve having a radius of 35.00 feet, a central angle of 87° 54' 45" and a chord which bears S 34° 53' 59" W, 48.59 feet) to a point of tangency; Thence,
S 78° 51' 21" W ,	146.39 feet to a point of curvature; Thence,
Southwesterly ,	174.08 feet on the arc of a curve to the right (said curve having a radius of 7435.34 feet, a central angle of 01° 20' 29" and a chord which bears S 81° 13' 24" W, 174.08 feet) to a non tangent point on curve; Thence,
S 26° 17' 59" W ,	77.49 feet to a point; Thence,
S 86° 29' 46" W ,	275.22 feet to a point on the Westerly line of said Tract 6; Thence,
N 00° 30' 17" E ,	23.53 feet along said Westerly line of Tract 6 to the Northwest corner of said Tract 6 (a 5/8" Rebar and cap stamped "L.S. 5978" found in place); Thence,
S 89° 48' 12" E ,	22.84 feet to the Southwest corner of said Tract 4 (a 5/8" Rebar and cap stamped "L.S. 5978" found in place); Thence,
N 86° 29' 46" E ,	236.12 feet to a point; Thence,
N 26° 17' 59" E ,	59.03 feet to a point on curve; Thence,
Northwesterly ,	26.97 feet on the arc of a curve to the right (said curve having a radius of 34.00 feet, a central angle of 45° 27' 03" and a chord which bears N 28° 24' 07" W, 26.27 feet) to a point on curve; Thence,
N 05° 40' 36" W ,	66.94 feet to a point; Thence,
N 10 37' 44" W ,	70.26 feet to a point of curvature; Thence,

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Exhibit
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Northeasterly ,	40.26 feet on the arc of a curve to the right (said curve having a radius of 34.00 feet, a central angle of 67° 51' 11" and a chord which bears N 23° 17' 52" E, 37.95 feet) to a point on curve; Thence,
N 41° 47' 10" W ,	14.50 feet to a point; Thence,
S 80° 17' 52" W ,	103.64 feet to a point; Thence,
N 00° 06' 04" E ,	828.37 feet to the Northwest corner and point of beginning of the easement herein described.

PROFESSIONAL SURVEYOR
STATE OF
No.
19750
NEW MEXICO
RUSS P. HUGG

Mary Herrera Bern. Co. AGRE R 29.00
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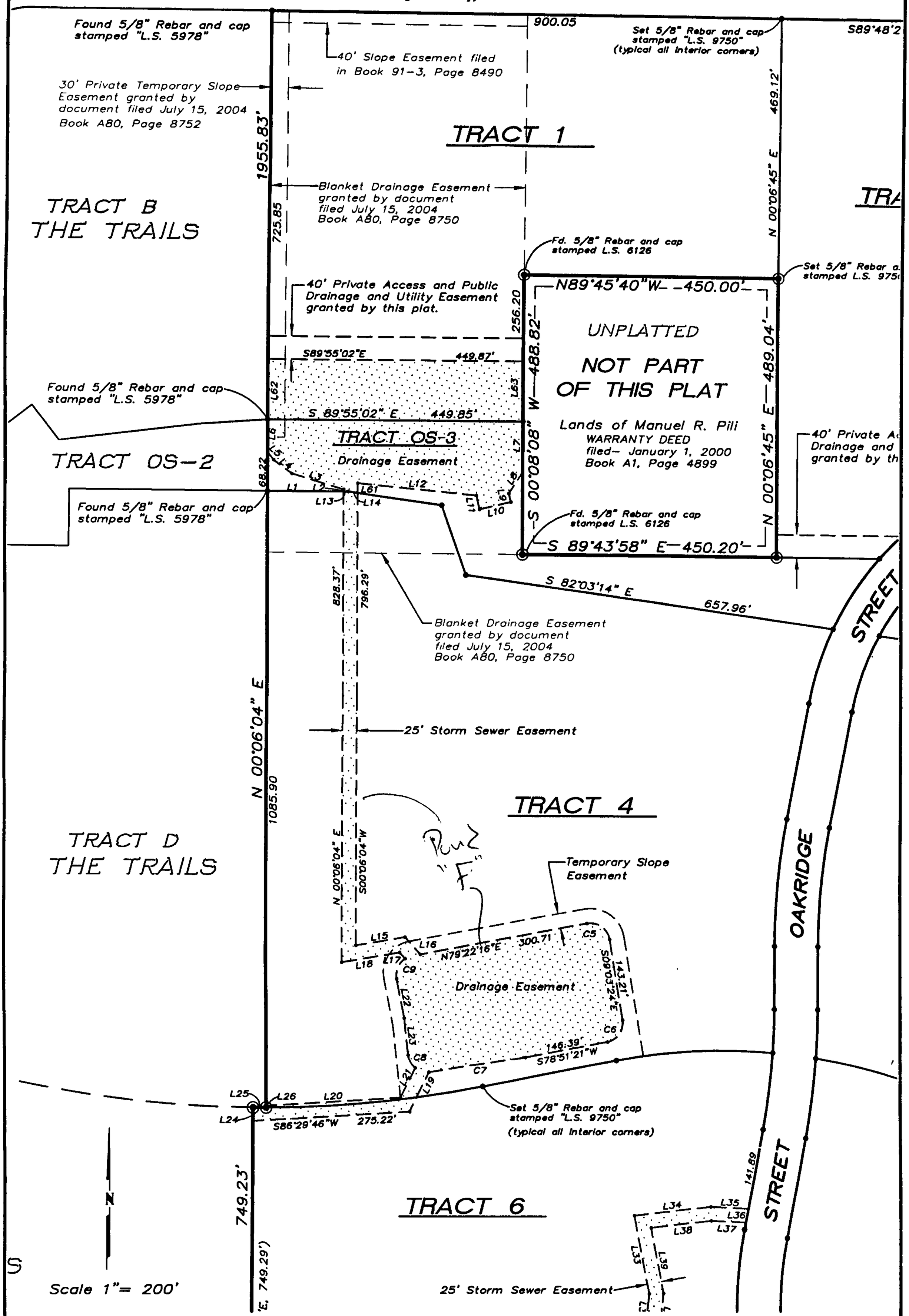

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Mary Herrera Bern. Co. AGRE R 29.00

Phone: 505-897-3366
Fax: 505-897-3377

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R 29.00
AGRE
Bern. Co.
Mary Herrera

LINE TABLE

LINE	LENGTH	BEARING
L1	132.50'	S89°54'08"E
L2	3.84'	N00°06'04"E
L3	93.66'	N73°25'31"W
L4	40.00'	N52°44'34"W
L5	17.41'	N38°15'47"W
L6	55.85'	N00°06'04"E
L7	88.01'	S00°08'08"W
L8	44.70'	S33°23'38"W
L9	15.54'	S13°17'28"E
L10	56.97'	S76°42'32"W
L11	24.94'	N13°17'28"W
L12	211.06'	N84°29'50"W
L13	7.81'	S89°54'08"E
L14	17.35'	S81°59'57"E
L15	87.79'	N80°17'52"E
L16	40.51'	S41°47'10"E
L17	14.50'	N41°47'10"W
L18	103.64'	S80°17'52"W
L19	77.49'	S26°17'59"W
L20	236.12'	N86°29'46"E
L21	59.03'	N26°17'59"E
L22	70.26'	N10°37'44"W
L23	66.94'	N05°40'36"W
L24	23.53'	N00°30'17"E
L25	22.84'	S89°48'12"E
L26	2.98'	N00°44'07"W
L27	17.63'	N22°30'36"E
L28	75.90'	N00°35'13"E
L29	65.73'	N32°23'17"E
L30	54.97'	N67°48'25"E
L31	70.76'	N39°31'30"E
L32	72.08'	N06°05'21"E
L33	142.48'	N10°37'44"W
L34	136.30'	N83°00'21"E
L35	67.18'	S87°16'51"E
L36	25.26'	S10°52'50"W
L37	61.47'	S87°16'51"E
L38	107.54'	S83°00'21"W
L39	119.52'	S10°37'44"E
L40	83.26'	S06°05'21"W
L42	84.57'	S39°31'30"W
L43	53.28'	S67°48'25"W
L44	63.28'	S32°23'17"W
L45	128.28'	S19°42'27"E
L59	67.61'	N00°16'10"E
L60	100.05'	N89°43'50"W
L61	17.04'	S00°06'04"W
L62	105.00'	N00°06'04"E
L63	105.00'	S00°08'08"W

CURVE TABLE

CURVE	LENGTH	RADIUS	TANGENT	CHORD	CHORD BEARING	DELTA
C5	54.34'	34.00'	34.95'	48.74'	S54°50'34"E	91°34'20"
C6	53.70'	35.00'	33.75'	48.59'	S34°53'59"W	87°54'45"
C7	174.08'	7435.34'	87.05'	174.08'	S81°13'24"W	1°20'29"
C8	26.97'	34.00'	14.24'	26.27'	N28°24'07"W	45°27'03"
C9	40.26'	34.00'	22.87'	37.95'	N23°17'52"E	67°51'11"
C10	102.72'	55.00'	74.33'	88.43'	N54°05'20"E	107°00'14"
C11	79.75'	58.00'	47.63'	73.62'	N39°58'45"E	78°47'03"
C12	52.98'	68.00'	27.92'	51.65'	S78°18'36"E	44°38'17"
C13	27.71'	68.00'	14.05'	27.52'	S22°36'49"E	23°20'54"
C14	82.33'	538.00'	41.25'	82.25'	S15°19'24"E	8°46'05"
C15	419.24'	651.00'	217.18'	412.04'	S88°44'30"W	36°53'54"
C16	46.71'	30.00'	29.59'	42.13'	N44°52'19"E	89°12'19"

SURV TEK, INC.
Consulting Surveyors
5643 Paradise Blvd. N.W. Albuquerque, New Mexico 87114
Phone: 505-897-3366
Fax: 505-897-3377

GRAPHIC SCALE

0 50 100 200

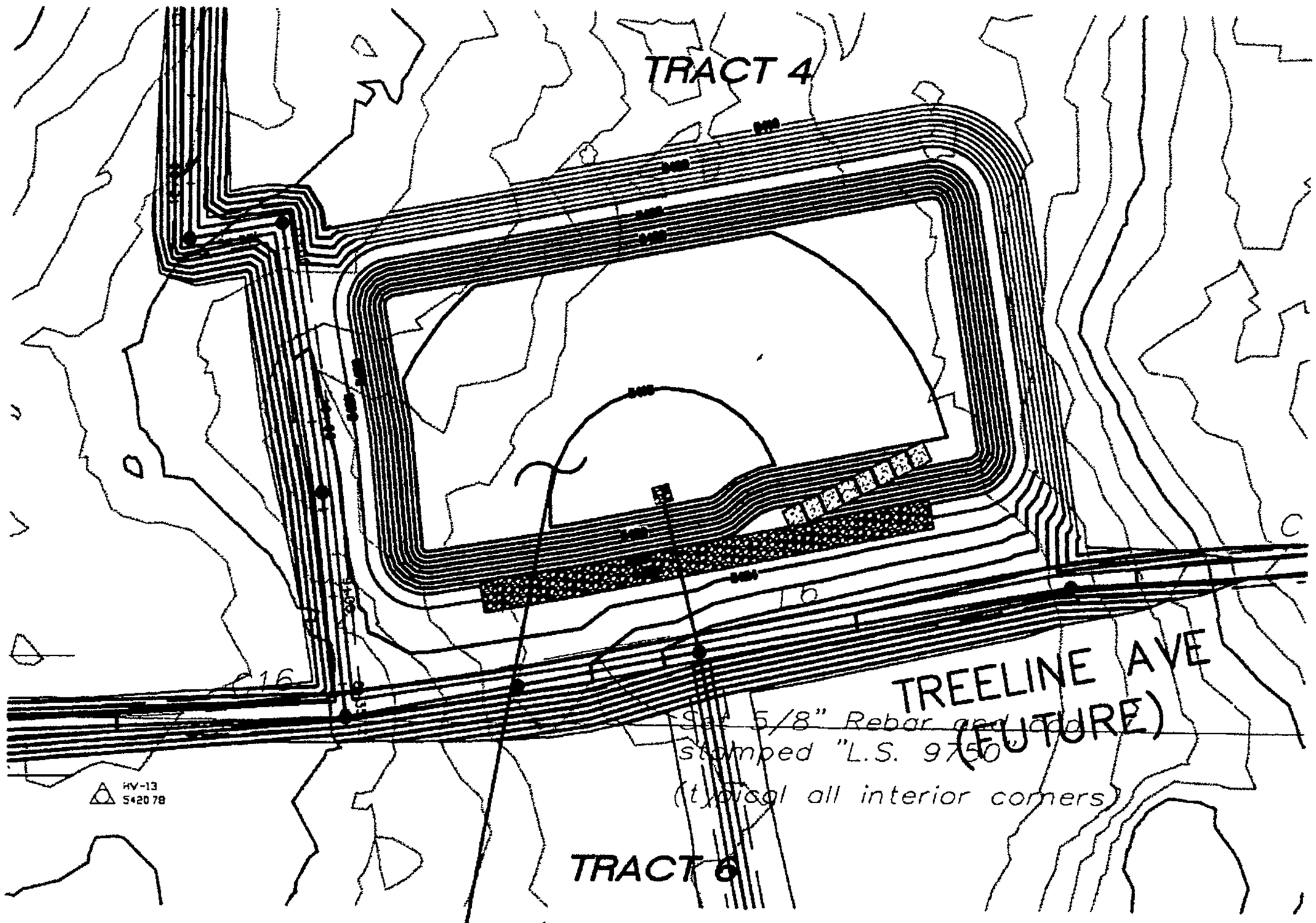
(IN FEET)
1 inch = 100 ft.

N

EXHIBIT "B"

DRAINAGE EASEMENT
within
BULK LAND
PLAT, THE TRAILS
UNIT II
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO

DM 8/8/05



POND F
MAX STORAGE = 9.12 AC-FT
MAX WSEL = 5423.86
TOP OF POND = 5424.33
BOTTOM OF POND ELEV = 5416
Q(in) = 346.5 cfs
Q(out) = 46.8 cfs

DM 8/8/05

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 898-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

EXHIBIT "B"
POND F

DESIGN S.J.S	WCEA NO. X4218008	DATE MARCH 2005	
DRAWN D.D	PROJECT NO. 730084	SHEET NO. 1 OF 1	
CHECK S.J.S			

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COA#: 730084
A&C: POND G

#8

AGREEMENT AND COVENANT
(Drainage)

This Agreement and Covenant ("Agreement") by and among the City of Albuquerque, a New Mexico municipal corporation ("City"), The Trails, LLC, a Nevada limited liability company ("User"), and The Trails Community Association, Inc., a New Mexico non-profit corporation ("Association"), is made in Albuquerque, New Mexico and is entered into as of the date of the recording of this Agreement with the Bernalillo County Clerk.

1. Recitals. The User is the owner of certain real property ("User's Property") located in Bernalillo County, New Mexico, and more particularly described as:

"TRACT 6" of The Trails Unit 2 as the same is shown and designated on the plat entitled "Bulk Land Plat of The Trails Unit 2 (being a replat of Tracts G and J of The Trails and unplatted deed parcels) within the Town of Alameda Grant in Projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico," which was filed in the Office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Book 2004c, Page 332.

The City is the owner of certain real property, easement or public right-of-way ("City's Property") in the vicinity of, contiguous to, abutting or within User's Property, and more particularly described in Exhibit A attached hereto and incorporated herein.

The User wishes to construct upon, improve or repair and to maintain drainage facilities and areas, including without limitation drainage ponds, (collectively, "Improvement") on the City's Property (or already has done so), as such Improvement is more particularly depicted on the diagram attached hereto as Exhibit B and incorporated herein.

The City agrees to permit the Improvement to exist on the City's Property provided the User complies with the terms of this Agreement.

2. City Use of City's Property and City Liability. The City has the right to enter upon the City's Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate without liability to the User. If the Work affects the Improvement the City will not be financially or otherwise responsible for rebuilding or repairing the Improvement. The User promptly will repair the Improvement to the City's satisfaction. The cost of repairing the Improvement will be paid by User.

3. User's Responsibility for Improvement. The User will be solely responsible for constructing, maintaining, repairing and, if required, removing the Improvement, all in accordance with standards required by the City as per the approved Grading and Drainage Plan identified as "Grading and Drainage Report C9-D1" on file at the City Engineer's office. The User will be solely responsible for paying all related costs. The User will not permit the Improvement to constitute a hazard to the health or safety of the general public or to interfere with the City's use of the City's Property. The User will conform with all applicable laws, ordinances and regulations.

4. Use of the Improvement. If the City's Property is a public right-of-way, it shall be open to the use of the general public at all times, subject to reasonable curtailment during periods of construction, maintenance or repair.

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5. Demand for Repair, Modification or Removal. The City may send written notice ("Notice") to the User requiring the User to repair, modify or remove the Improvement within thirty (30) days ("Deadline") and the User will comply promptly with the requirements of the Notice. If removal is demanded, the City also may require the User to return the City's Property to its original condition by the Deadline. The User will perform all required work by the Deadline, at User's sole expense.

6. Failure to Perform by User and Emergency Work by City. If the User fails to comply with the terms of the Notice by the Deadline stated, or, if the City determines that an emergency condition exists, the City may perform the work itself. The City then may assess the User for the cost of the work and for any other expenses or damages which result from User's failure to perform. The User agrees promptly to pay the City the amount assessed. If the User fails to pay the City within thirty (30) days after the City gives the User written notice of the amount due, the City may impose a lien against User's Property for the total resulting amount.

7. Cancellation of Agreement and Release of Covenant. This Agreement may be canceled and User's covenants released by the City at will by the City's mailing to the User notice of the City's intention to record a Cancellation and Release with the Bernalillo County Clerk. The Cancellation and Release will be effective thirty (30) days after the date of mailing the notice to the User unless a later date is stated in the notice or the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk.

8. Condemnation. If any part of the User's Property is ever condemned by the City, the User will forego all claims to compensation for any portion of User's structure which encroaches on City Property and for severance damage to the remaining portion of User's structure on User's Property.

9. Assessment. Nothing in this Agreement shall be construed to relieve the User, his heirs, assigns and successors from an assessment against User's Property for improvements to the City Property under a duly authorized and approved Special Assessment District. The parties specifically agree that the value of the Improvement will not reduce the amount assessed by the City.

10. Notice. Written notice required or permitted under this Agreement shall be sent to the parties at the address for such party set forth below:

To User: The Trails, LLC
c/o Longford Group, Inc.
3077 E. Warm Springs Road
Las Vegas, Nevada 89120

To Association: The Trails Community Association, Inc.
7007 Jefferson Blvd., NE, Suite A
Albuquerque, New Mexico 87109

Notice may be given to User or Association either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received within 3 days after the notice is mailed if there is no actual evidence of receipt. The address set forth above may be changed by the relevant party giving written notice of the change by certified mail, return receipt requested, to the City Engineer at P.O. Box 1293, Albuquerque, New Mexico 87103.

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and association DM 8/8/05 8-10-05

11. Indemnification. The User agrees to defend, indemnify and hold harmless the City, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties as a result of User's use of the City's Property. To the extent, if at all, Section 56-7-1 NMSA 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give direction or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

12. Term. This Agreement shall continue until revoked by the City pursuant to Section 7 above.

13. Binding on User's Property. The covenants and obligations of the User set forth herein shall be binding on User, his heirs assigns and successors and on User's Property and constitute covenants running with User's Property until released by the City.

14. 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.

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

16. 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.

17. 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.

18. Agreement by Association. Association agrees to assume responsibility for each and every one of User's obligations under this Agreement at such time as User assigns or otherwise transfers its responsibilities hereunder to Association.

CITY OF ALBUQUERQUE:

By: _____
for Chief Administrative Officer

Dated: 8-26-05

USER:

THE TRAILS LLC, a Nevada limited liability company

By: Longford Group, Inc., a Nevada corporation, Its Manager

By: _____
David A. Murtagh, Division President

Dated: May 16, 2005

8/5/05

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

Trails\Unit 2\Tract 6\Drainage

Mary Herrera Bern. Co. AGRE R 29.00
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[CONTINUED SIGNATURE PAGE TO AGREEMENT AND COVENANT]

ASSOCIATION:

The Trails Community Association, Inc., a New Mexico non-profit corporation

By: _____
Tracy Murphy, President

Dated: May 16, 2005

APPROVED:

_____
City Engineer

Dated: 8-26-05

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on August 26, 2005, by Richard Dourte for, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

_____
Notary Public
My Commission Expires:
11-25-2007

Mary Herrera Bern. Co. AGRE R 29.00 2005127381 6323430 Page: 4 of 11 08/31/2005 02:12P Bk-A102 Pg-7010

USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on May 16th, 2005, by David A. Murtagh, Division President of Longford Group, Inc., a Nevada corporation, as manager of The Trails, LLC, a Nevada limited liability company.

Donna Lawson
Notary Public

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

My Commission Expires:
12-1-08

ASSOCIATION'S ACKNOWLEDGMENT

STATE OF NEVADA)
) **ss.**
COUNTY OF CLARK)

This instrument was acknowledged before me on May 17, 2005, by Tracy Murphy, President of The Trails Community Association, Inc., a New Mexico non-profit corporation.

Crystal House
Notary Public

My Commission Expires:
5/5/07

CRYSTAL HOUSE
NOTARY PUBLIC
STATE OF NEVADA
DATE APPOINTMENT EXP: 05-5-2007
CERTIFICATE NO: 03-81924-1

Mary Herrera Bern. Co. AGRE R 29.00

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Trails\Unit 2\Tract 6\Drainage

LEGAL DESCRIPTION - Drainage Easement within Tract 6,Trails Unit 2

An Easement within that certain parcel of land situate within the Town of Alameda Grant in projected Section 16, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico comprising a Southerly and Easterly portion of Tract 6 of the Trails Unit 2 as the same is shown and designated on the plat entitled "BULK LAND PLAT OF THE TRAILS UNIT 2 (BEING A REPLAT OF TRACTS G AND J, THE TRAILS AND UNPLATTED DEED PARCELS) WITHIN THE TOWN OF ALAMEDA GRANT IN PROJECTED SECTION 16, TOWNSHIP 11 NORTH, RANGE 2 EAST, NEW MEXICO PRINCIPAL MERIDIAN, CITY OF ALBUQUERQUE,BERNALILLO COUNTY, NEW MEXICO", filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 18, 2004 in Plat Book 2004C, Page 332 more particularly described by survey performed by Russ P.Hugg, New Mexico Professional Surveyor Number 9750 using New Mexico State Plane Coordinate System, Central Zone (NAD 27) grid bearings and ground distances as follows:

BEGINNING at the Southwest corner of the easement herein described, a point on the Southerly line of said Tract 6 and a point on the Northerly right of way line of Woodmont Avenue N.W whence Southwest corner of said Tract 6 (a 5/8" Rebar and cap stamped "L.S. 5978" found in place)bears N 72° 48' 33" W ,94.38 feet distant; Thence running as an easement:

N 22° 30' 36" E ,	17.63 feet to a non tangent point on curve; Thence,
Northeasterly ,	102.72 feet on the arc of a curve to the left (said curve having a radius of 55.00 feet, a central angle of 107° 00' 14" and a chord which bears N 54° 05' 20" E, 88.43 feet) to a point of tangency; Thence,
N 00° 35' 13" E ,	75.90 feet to a point of curvature; Thence,
Northeasterly ,	79.75 feet on the arc of a curve to the right (said curve having a radius of 58.00 feet, a central angle of 78° 47' 03" and a chord which bears N 39° 58' 45" E, 73.62 feet) to a point of tangency; Thence,
N 79° 22' 16" E ,	303.75 feet to a point of curvature; Thence,

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Southeasterly ,	52.98 feet on the arc of a curve to the right (said curve having a radius of 68.00 feet, a central angle of 44° 38' 17" and a chord which bears S 78° 18' 36" E, 51.65 feet) to a point on curve; Thence,
N 32° 23' 17" E ,	65.73 feet to a point; Thence,
N 67° 48' 25" E ,	54.97 feet to a point; Thence,
N 39° 31' 30" E ,	70.76 feet to a point; Thence,
N 06° 05' 21" E ,	72.08 feet to a point; Thence,
N 10° 37' 44" W ,	142.48 feet to a point; Thence,
N 83° 00' 21" E ,	136.30 feet to a point; Thence,
S 87° 16' 51" E ,	67.18 feet to a point on the Easterly line of said Tract 6 and a point on the Westerly right of way line of Oakridge Street; Thence,
S 10° 52' 50" W ,	25.26 feet along said Westerly right of way line of Oakridge Street to a point; Thence,
S 87° 16' 51" E ,	61.47 feet to a point; Thence,
S 83° 00' 21" W ,	107.54 feet to a point; Thence,
S 10° 37' 44" E ,	119.52 feet to a point; Thence,
S 06° 05' 21" W ,	83.26 feet to a point; Thence,
S 39° 31' 30" W ,	84.57 feet to a point; Thence,
S 67° 48' 25" W ,	53.28 feet to a point; Thence,
S 32° 23' 17" W ,	63.28 feet to a point on curve; Thence,
Southeasterly ,	27.71 feet on the arc of a curve to the right (said curve having a radius of 68.00 feet, a central angle of 23° 20' 54" and a chord which bears S 22° 36' 49" E, 27.52 feet) to a point of reverse curvature; Thence,

Exhibit B
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Southeasterly ,	82.33 feet on the arc of a curve to the left (said curve having a radius of 538.00 feet, a central angle of 08° 46' 05" and a chord which bears S 15° 19' 24" E, 82.25 feet) to a point of tangency; Thence,
S 19° 42' 27" E ,	128.28 feet to a point on said Southerly line of Tract 6 and said Northerly right of way line of Woodmont Avenue N.W; Thence Southwesterly and Northwesterly along said Northerly right of way line of Woodmont Avenue N.W. for the following three (3) courses:
S 70° 17' 33" W ,	66.96 feet to a point of curvature; Thence,
Southwesterly ,	419.24 feet on the arc of a curve to the right (said curve having a radius of 651.00 feet, a central angle of 36° 53' 54" and a chord which bears S 88° 44' 30" W, 412.04 feet) to a point of tangency; Thence,
N 72° 48' 33" W ,	98.71 feet to the Southwest corner and point of beginning of the easement herein described.

PROFESSIONAL SURVEYOR
STATE OF
No. 9750
NEW MEXICO
RUSS P. HUGG

Mary Herrera Bern. Co. AGRE R 29.00
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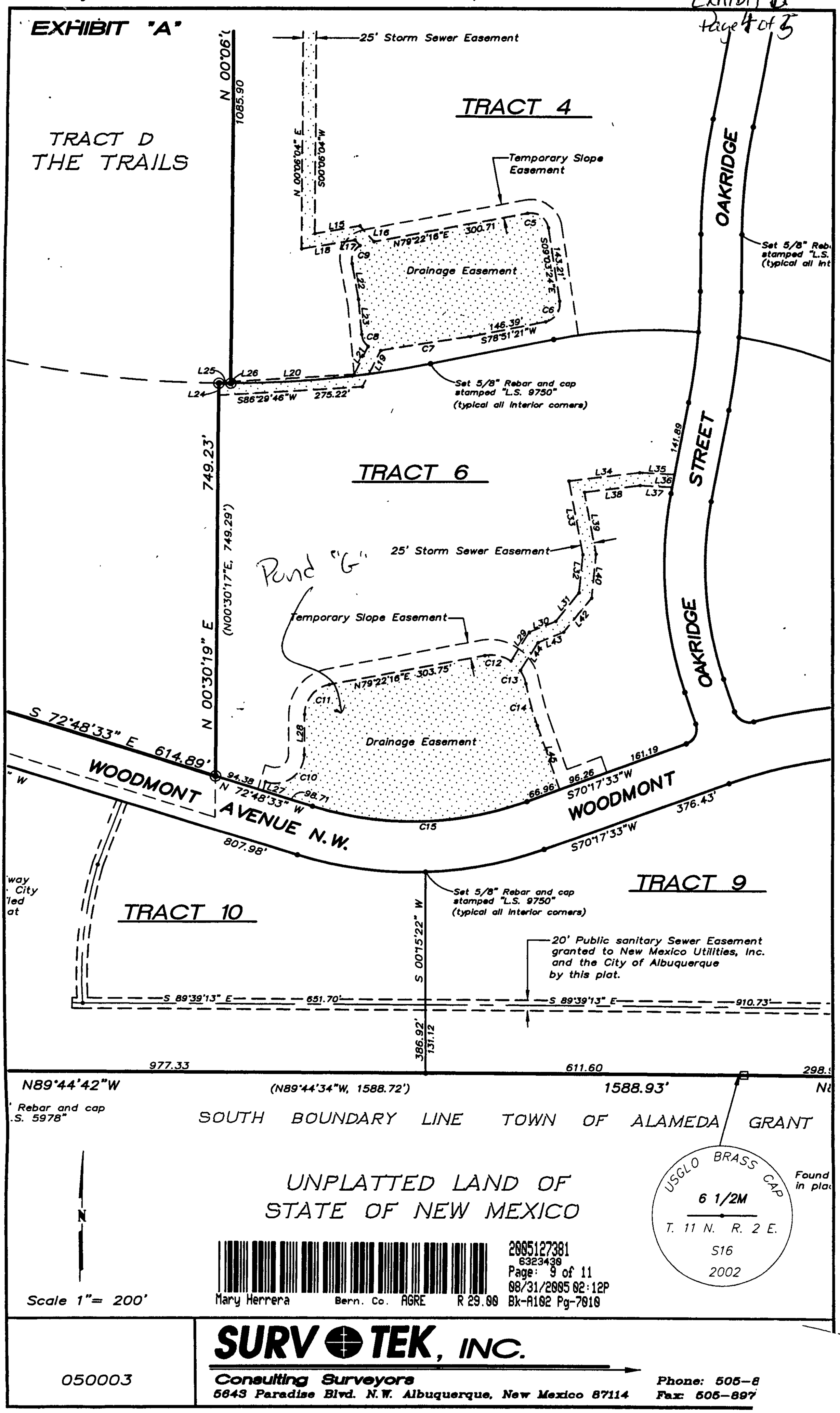
EXHIBIT "A"



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050003

SURV TEK, INC.

Consulting Surveyors
5643 Paradise Blvd. N.W. Albuquerque, New Mexico 87114

Phone: 505-8
Fax: 505-897

EXHIBIT "A"

Exhibit A
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LINE TABLE		
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L5	17.41'	N38°15'47"W
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L14	17.35'	S81°59'57"E
L15	87.79'	N80°17'52"E
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L60	100.05'	N89°43'50"W
L61	17.04'	S00°06'04"W
L62	105.00'	N00°06'04"E
L63	105.00'	S00°08'08"W

2005127381
6323439
Page: 10 of 11
08/31/2005 02:12P
Bk-A192 Pg-7010
R 29.00
Bern. Co. AGRE
Mary Herrera

CURVE TABLE						
CURVE	LENGTH	RADIUS	TANGENT	CHORD	CHORD BEARING	DELTA
C5	54.34'	34.00'	34.95'	48.74'	S54°50'34"E	91°34'20"
C6	53.70'	35.00'	33.75'	48.59'	S34°53'59"W	87°54'45"
C7	174.08'	7435.34'	87.05'	174.08'	S81°13'24"W	1°20'29"
C8	26.97'	34.00'	14.24'	26.27'	N28°24'07"W	45°27'03"
C9	40.26'	34.00'	22.87'	37.95'	N23°17'52"E	67°51'11"
C10	102.72'	55.00'	74.33'	88.43'	N54°05'20"E	107°00'14"
C11	79.75'	58.00'	47.63'	73.62'	N39°58'45"E	78°47'03"
C12	52.98'	68.00'	27.92'	51.65'	S78°18'36"E	44°38'17"
C13	27.71'	68.00'	14.05'	27.52'	S22°36'49"E	23°20'54"
C14	82.33'	538.00'	41.25'	82.25'	S15°19'24"E	8°46'05"
C15	419.24'	651.00'	217.18'	412.04'	S88°44'30"W	36°53'54"
C16	46.71'	30.00'	29.59'	42.13'	N44°52'19"E	89°12'19"

050003

SURV TEK, INC.
Consulting Surveyors
5643 Paradise Blvd. N.W. Albuquerque, New Mexico 87114
Phone: 505-897-3366
Fax: 505-897-3377

EXHIBIT "B"

DRAINAGE EASEMENT
within
BULK LAND
PLAT, THE TRAILS
UNIT II
CITY OF ALBUQUERQUE
BERNALILLO COUNTY, NEW MEXICO

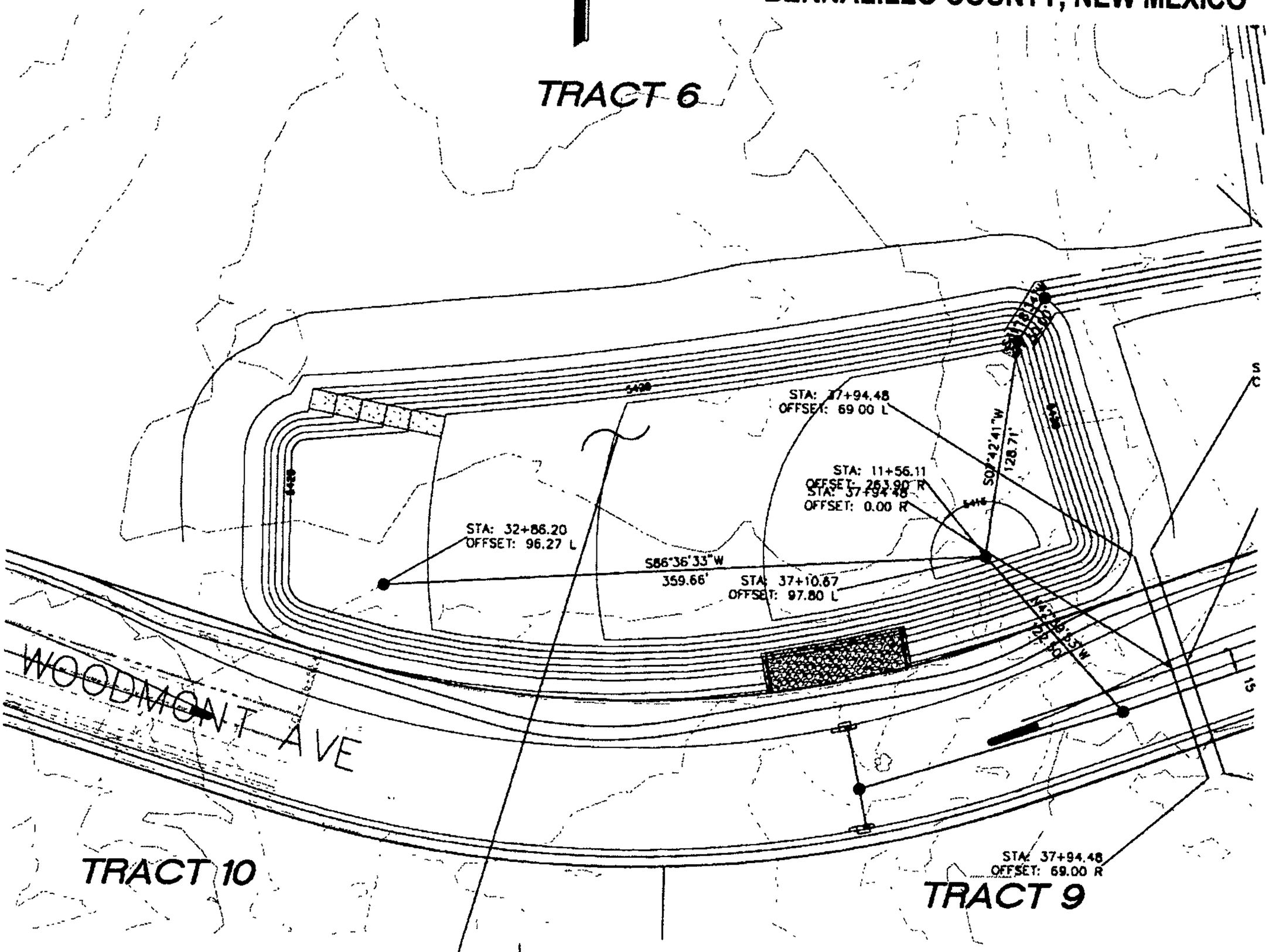
DM 8/8/05

GRAPHIC SCALE

0 50 100 200

(IN FEET)
1 inch = 100 ft.

N



POND G
MAX STORAGE = 9.69 AC-FT
MAX WSEL = 5419.66
TOP OF POND = 5421
BOTTOM OF POND ELEV = 5412
Q(in) = 106.0 cfs
Q(out) = 22.7 cfs

DM 8/8/05

X:\Wilson\exhibits\A & C EXHIBITS.DWG\01-31-05

Mary Herrera Bern. Co. AGRE R 29.00
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Page: 11 of 11
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Bk-A102 Pg-7010

WILSON & COMPANY
2600 THE AMERICAN ROAD S.E.
SUITE 100
RIO RANCHO, NEW MEXICO
87124
(505) 896-8021

CITY OF ALBUQUERQUE
PUBLIC WORKS DEPARTMENT
ENGINEERING GROUP

EXHIBIT "B"
POND G

DESIGN	S.J.S	WCEA NO. X4218008	DATE MARCH 2005
DRAWN	D.D	PROJECT NO. 730084	SHEET NO. 1 OF 1
CHECK	S.J.S		

the proposed Sub-Basin Map in Plate 4. See the HydraFlow Storm Drain Calculations and Inlet Capacity Calculations in Appendix D.

See Plate 1, Overall Pond Grading & Drainage Plan - Interim Conditions for summary tables. See Appendix A for AHYMO input and output. In the future developed conditions, all ponds will be detention surge ponds. According to the "Amendment to the Trails Subdivision Master Drainage Study", a maximum of flowrate of 200 cfs is allowed from the Trails Subdivision. According to the revised Drainage Master Plan, a maximum flowrate of 198 cfs will enter the Universe Blvd. storm drain system to the Boca Negra Dam. See Plate 2 for the Overall Pond Grading & Drainage Plan for Developed Conditions.

Once the storm drain from The Trails to the Boca Negra Detention Dam is completed, all of the plugs in the ponds within The Trails Unit II can be removed, creating detention facilities and eliminating the need to retain runoff from the Trails.

The hydrologic analysis for the interim and developed condition was completed using the Arid Lands Hydrologic Model (AHYMO) Version 1997.02. The 100-year 24-hour return frequency storm was used as the basis of analysis. (See Appendices A & B for input and output data). Methodology outlined in Section 22.2 of the City of Albuquerque Development Process Manual was also incorporated into this analysis. Street flows have been evaluated using Flow Master by Haested Methods. Street flows were analyzed for the use of roll type curb where capacities permitted. Inlets are located to prevent exceeding the street flow capacities per the DPM. See Appendix C for street capacity analysis. Storm Drain design and analysis was performed using *Hydraflow*. See Appendix D for *Hydraflow* output.

Grading Plan

Taos of Trails Unit II Grading Plan is attached as Plate 3. It illustrates the overall grading concept for the Taos of Trails Unit 2 as well as the proposed storm drain.

Conclusion

The analysis performed for this report demonstrates that the proposed system of streets and storm drainage improvements will safely convey and adequately detain the 100-year storm runoff from the offsite and the onsite basins contributing to the site development. Wilson & Company recommends that the proposed storm drain system undergo regular maintenance activities. This should include removing debris from grate inlets, as well as removing sediment buildup within the pipe system.

Per The Trails Unit II Construction Plans (COA 730084), storm drain plugs at Pond E, Pond G and Pond K are scheduled to be installed. As a result of the interim conditions analysis, Wilson & Company recommends also installing temporary plugs at Pond D and Pond F to retain runoff from the 100-year, 10-day event, until the Universe storm drain to the Boca Negra Detention Dam is constructed.

4-5-12

Red capital solutions has bought the undeveloped Longford properties

NO new building permits in the trails, OK to give CO's for buildings that are already constructed

mercer

→ look at addresses to ensure proper location

MEMO

Item 15b

To: Board of Directors

From: Kurt Wagener, P.E., Field Engineer

Date: March 16, 2012

Re: Boca Negra Detention Dam – Authorization to Advertise for Construction Bids

With final plans and specifications being processed, and final submittal to the Office of the State Engineer Dam Safety Bureau, the Boca Negra Detention Dam is ready for bid.

The project provides for the construction of a detention dam on the Boca Negra Arroyo on the Southwest corner of Rainbow Boulevard and Unser Boulevard in Northwest Albuquerque.

The current Engineer's Estimate of the cost of construction of the dam is $4,200,000 plus NMGR Tax.

Following is the proposed Project schedule.

Item	Date
Begin Advertise for Bids	April 1, 2012
Mandatory Pre-Bid Tour	April 27, 2012
Bid Opening	May 3, 2012
Recommendation of Award	May 3, 2012
Invoices to partners	May 4, 2012
Award of Contract	May 24, 2012
Construction Notice to Proceed	June 11, 2012
Construction Complete	April 2013

what happens?

Recommend: The Board authorize the Executive Engineer to advertise for construction bids for the Boca Negra Detention Dam.

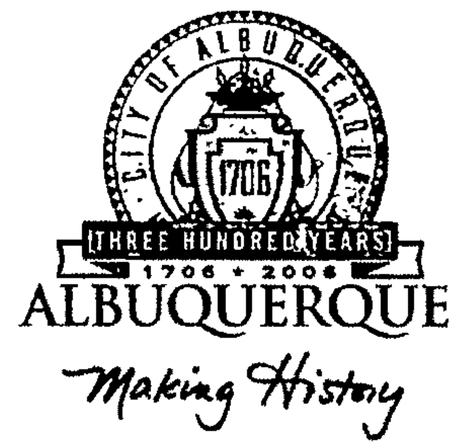
OSE | comment on Report Related to EAP and O&M

Cantata	Permit #	Items
Building 15	201191715	C.O. Immeiately = 6
Building 16	201191845	C.O. Immeiately = 4
Building 17	201191842	C.O. March
Building 18	201191828	C.O. March
Building 19	201191827	C.O. March
Building 20	201191846	C.O. March
Building 21	201191829	C.O. March
Building 22	201191826	C.O. April
Building 29	201191843	C.O. April
Building 52		C.O. May
Building 54		C.O. May
Building 49		C.O. May
Building 53		C.O. May
Building 55		C.O. May
Building 50		C.O. June
Building 56	??	C.O. June
Building 51		C.O. June
Building 48		C.O. July
Building 31		C.O. July
Building 30		C.O. July
Building 47		C.O. July
Building 32		C.O. Aug
TOTAL		
Building 38	201192664	Permit: Held up by Hydrology
Building 37	201192667	Permit: Held up by Hydrology
Building 36	201192666	Permit: Held up by Hydrology
Building 28	201192663	Permit: Held up by Hydrology
Building 45	201192291	Permit: Held up by Hydrology
Building 40	201192661	Permit: Held up by Hydrology
Building 35	201192402	Permit: Held up by Hydrology
Building 47	201192257	Permit: Held up by Hydrology
Building 33	201192292	Permit: Held up by Hydrology
Building 46	201192294	Permit: Held up by Hydrology
Building 42	201192401	Permit: Held up by Hydrology
Building 48	201192256	Permit: Held up by Hydrology
Building 44	201192400	Permit: Held up by Hydrology
Building 23		Permit: Pending
Building 24		Permit: Pending
Building 25		Permit: Pending
Building 26		Permit: Pending
Building 27		Permit: Pending
TOTAL		

Richard,

no objection to extending the SDA for PDN street banners

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

April 9, 2012

Via Email: bmulqueen@realcapitalsolutions.com

Brian Mulqueen, Esq.
RCS—Cantata Residences I, LLC
371 Centennial Parkway, Suite 200
Louisville, CO 80027

Re: Certificates of Occupancy for the Trails Subdivisions

Dear Mr. Mulqueen:

This is to confirm receipt of your letter dated April 6, 2012.

Pursuant to your request, this letter will also confirm that the City Engineer will allow certificates of occupancy to be issued for otherwise conforming lots for the permit applications listed in Exhibit A of the above referenced letter.

Please be advised that the City Engineer will not be in a position to approve any additional building permits until the Trails Development complies with the Trails Master Drainage Plan.

Also on April 6, 2012, the City was noticed with a Demand for Arbitration from the Trails LLC pursuant to the Boca Negra Agreement. Under the terms of the Boca Negra Agreement, the arbitration will implicate property owned by RCS. Notwithstanding, we hope for expeditious resolution of this matter so that your development may move forward as quickly as possible.

Sincerely,

Blake Whitcomb
Assistant City Attorney

CC: Kevin Curran *via email kcurran@cabq.gov*
Richard Dourte *via email rdourte@cabq.gov*
Curtis Cherne *via email ccherne@cabq.gov*

P.O. Box 1293
Albuquerque
New Mexico 87103
www.cabq.gov

CITY OF ALBUQUERQUE

ALBUQUERQUE
Making History

Exhibit A

Cantata	Permit #	Items	Unit Count
Building 15	201191715	C.O. Immeiately	6
Building 16	201191845	C.O. Immeiately	4
Building 17	201191842	C.O. Immeiately	4
Building 18	201191828	C O. Immeiately	5
Building 19	201191827	C.O. Immeiately	5
Building 20	201191846	C.O. Immeiately	4
Building 21	201191829	C.O. Immeiately	6
Building 22	201191826	C.O. April	6
Building 29	201191843	C.O. April	6
Building 52	201192293	C.O. May	3
Building 54	201192111	C.O. May	3
Building 49	201192258	C.O. May	4
Building 53	201192115	C.O. May	4
Building 55	201192112	C.O. May	4
Building 50	201192259	C.O. June	4
Building 56	201192117	C.O. June	4
Building 51	201192110	C.O. June	3
Building 31	201192114	C.O. July	6
Building 30	201192113	C.O. July	6
Building 32	201192116	C.O. Aug	6
TOTAL			93

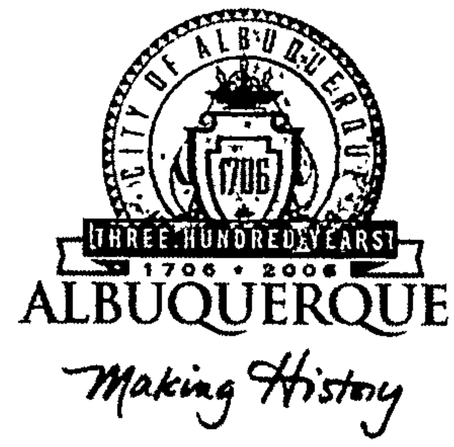
P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

April 9, 2012

Via Email: DPNewell1@drhorton.com

David Newell
DR Horton Inc.
4400 Alameda NE, Suite B
Albuquerque, NM 87113

Re: Certificates of Occupancy for the Trails Subdivisions

Dear Mr. Newell:

This is to confirm receipt of your letter dated April 6, 2012.

Pursuant to your request, this letter will also confirm that the City Engineer will allow certificates of occupancy to be issued for otherwise conforming lots for the following permit applications:

> 6828 Treeline Ave NW, 6836 Treeline Ave NW, 6812 Treeline Ave NW, 6828 Treeline Ave NW, 6824 Treeline Ave NW, 6736 Treeline Ave NW, 6704 Treeline Ave NW, 6832 Treeline Ave NW, 6824 Treeline Ave NW, 6808 Treeline Ave NW, 6804 Treeline Ave NW, 6800 Treeline Ave NW, 6732 Treeline Ave NW, and 6840 Treeline Ave NW (14 total).

Please be advised that the City Engineer will not be in a position to approve any additional building permits until the Trails Development complies with the Trails Drainage Plan.

Also on April 6, 2012, the City was noticed with a Demand for Arbitration from the Trails LLC pursuant to the Boca Negra Agreement. Under the terms of the Boca Negra Agreement, the arbitration will implicate property owned by RCS. Notwithstanding, we hope for expeditious resolution of this matter so that your development may move forward as quickly as possible.

Sincerely,

Blake Whitcomb
Assistant City Attorney

P.O. Box 1293
Albuquerque
New Mexico 87103
www.cabq.gov

CC: Kevin Curran *via email kcurran@cabq.gov*
Richard Dourte *via email rdourte@cabq.gov*
Curtis Cherne *via email ccherne@cabq.gov*

Cherne, Curtis

From: Curran, Kevin J.
Sent: Wednesday, March 14, 2012 12:15 PM
To: Dourte, Richard H.; Cherne, Curtis
Cc: Smith, Gregory P.; Martinez-Siemel, Maria; Whitcomb, Blake
Subject: FW: BNDam Agreement; varioius Trails subdivisions; list of moratorium items
Attachments: Cantata permits.xlsx

All,

I will send to everyone a proposed response to Ric's e-mail below.

Kevin J. Curran
Managing Assistant City Attorney
Real Estate and Land Use Division
Office of the City Attorney
1 Civic Plaza NW
P.O. Box 2248
Albuquerque, NM 87103
505-768-4657/768-4525 Fax
kcurran@cabq.gov

From: Ric Leverick [mailto:rleverick@levemuss.com]
Sent: Wednesday, March 14, 2012 11:21 AM
To: Curran, Kevin J.
Cc: John Murtagh (JMurtagh@longfordgroup.com); Kelly Calhoun (kcalhoun@gcinm.com); Rick Beltramo (rbeltramo@gcinm.com); dbk@keleher-law.com
Subject: BNDam Agreement; varioius Trails subdivisions; list of moratorium items

Dear Kevin, this follows our last call.

Longford Group/The Trails has provided me with an excel spreadsheet, attached, which lists the several pending building permits and COs that we need processed. Please note that for all of the items listed the spreadsheet we are dealing with multi-family units. For COs, we have two buildings that are complete with COs pending. They total 10 units as I read the spreadsheet. You have another 20 buildings in construction. COs, when done, will total 101 COs/units for the 22 buildings. These are all in the Cantata subdivision and all owned by RCS. Pending building permits number 79 as shown.

Next, at the bottom of this email is information provided to me by Rick Beltramo following our last call covering the various pending subdivision platting issues which are or were in process until they were stopped by the moratorium (including City staff being directed to not return calls or respond to emails or other communications from meeting from Rick Beltramo on any project matter despite how normal or trivial). If you need more information, let me know. Also, as a footnote here, Rick advised me that he is coordinating the extension of the Diamond Mesa SIA and needs, I believe, to speak to you about such, and that you have advised that you need my approval to speak to Rick and/or to have a meeting with Rick to discuss this project. Please consider this my blessing/approval on your being able to speak to and meet with Rick to move forward that project.

Relative to SIA Project No. 730081, we are submitting a request to extend this SIA now so it will be on the upcoming DRB agenda. This is the SIA tied to the performance bond for $1.25 million. This is done

so that you and I don't hit a wall relative to our discussion of extending this SIA and thus the call on the bond connected thereto as we try to work out an interim solution to the moratorium.

Mr. Murtagh has indicated that he is willing to work to get the approvals necessary for the idea you and I have discussed where, in consideration of the City and related agencies (i.e., AMAFCA) 'lifting the moratorium on these projects so that the building permits and COs are issued and the plats and SIA requests for extension are processed, (a) a $1,250,000 cash deposit would be made to an account at a federally insured bank agreed to by the City, AMAFCA and The Trails LLC with joint written approval or a decision from the arbitrator engaged to consider the claims related to the BN Dam Agreement needed for the withdrawal of funds in said account, and (b) the bond currently in place for SIA Project No. 730081 (which has been renewed) would continue in place as a financial guaranty for that SIA. I think that you and I would want to tie that SIA and the BN Dam Agreement and the two proposed financial guaranties together in an agreement between The Trails, the City and AMAFCA, defining the claims and issues and agreeing to proceed with the arbitration with an agreed arbitrator to set a scheduling conference among the parties' counsel as soon as possible to start and calendar the process. I like the idea of someone like a Charles Price acting as the arbitrator. Will continue to work with you on that selection, and we do need to get AMAFCA engaged in this discussion and, possibly, KB. Keep in mind that if we can't get this all resolved some, in some written agreement acceptable to the parties, court may be the only viable option.

On some side notes, have you been able to find out if KB has a bond, has it been called and/or has a demand for payment of KB's latest estimate of cash due under the BN Dam Agreement been made and if so what is its response including has it paid and how and to whom? On another side issue, Rick Beltramo has asked me to ask you if you can locate, for our copying, all DAR Reports done to date on the BN Dam. This would include earlier reports not yet provided to us.

Finally, please note that I am copying this email to Mr. Deron Knoner, of the Keleher and McLeod law firm, whom I am advised has been engaged as counsel for RCS.

Please get back to me on where the City is relative to our discussions and ideas about finding an interim solution so we can move forward.

Regards, Ric Leverick
Leverick and Musselman LLC
Attorneys at Law
5120 San Francisco NE
Albuquerque, New Mexico 87109
505-858-3303
Fax 505-858-3201

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Curran, Kevin J.

From: Ric Leverick <rleverick@levemuss.com>
Sent: Wednesday, March 07, 2012 5:19 PM
To: Curran, Kevin J.
Cc: John Murtagh (JMurtagh@longfordgroup.com); Rick Beltramo (rbeltramo@gcinm.com); Kelly Calhoun (kcalhoun@gcinm.com); Susan Berger (sberger@gcinm.com)
Subject: LIST Trails Urgent Items to Release by COA

Kevin, this follows my voice mail to you covering some of our thinking on your points today and also a comment about what to do about AMAFCA's letter dated March 2, 2012, where the costs have again increased.

I believe we are ready to proceed with arbitration on our issues relative to the BND Agreement. I will working to put together the demand for arbitration specifying in summary fashion our claims and issues relative to increased costs. To do so, I need the documents requested in my email to you. Having, among other documents, the approved plans set for the dam will give us a better understanding of changes to the plans that really inure to the benefit of AMAFCA and/or other parties and were not within the contemplation of the parties when the BND Agreement and the first plans were on the table.

Concerning your thoughts, here are ours:

1. Would offer proof to you via Moody's or other information that the bonding company is solvent;
2. Would work with you to 'withdraw my letter' with the understanding that the call on the bond is withdrawn, the bonding company reaffirms that the bond is in place securing our financial obligations;
3. We will proceed with arbitration under the BND Agreement;
4. We would require, in connection with the arbitration, that the parties to the BND Agreement agree that the related issues, including the bond and our SIAs, can be addressed in the same arbitration process, saving us all time and expense and, with the City's agreement to lift the 'moratorium' and to proceed timey with processing of entitlement requests (plat approvals, building permits, and COs), removing from the table our going to federal court for injunctive relief;
5. We would have until August 17, 2012, to convert the bond to cash to be deposited into the arbitrator's trust account to secure our obligations under the BND Agreement and the related SIAs that tie to this drainage outfall, but would agree now that this be done either us or the bonding company by August 17, 2012; and
6. We would agree to the following persons, in the following priority, as arbitrators: Judge William Lang, Judge James A. Hall (formerly, First Judicial District Court) and Briggs Cheney as arbitrators;

This is all conditioned on the City lifting the moratorium on building permits, COS, and on replats and final plats where preliminary conditions on plats were satisfied (i.e., we have a replat in to adjust down from 45' foot frontages lots to 40' frontages, with no material impact whatsoever on offsites including drainage). Below is a more specific list of pending "urgent matters".

Agreeing to lift the moratorium and moving forward with the COs, the building permits, and the replats and final plats were preliminary plat conditions have been met saves us and probably RCS and Horton heading to federal court. Relative to such, The Trails notified RCS and Horton in writing this morning of the moratorium placed on their projects areas.

We want to proceed quickly in a way that insures the City, AMAFCA, and us, of a fair resolution of the issues on the BND Agreement, plus insures AMAFCA and the City that it will have financial security for the award that determines our obligations. To do this, we need City cooperation on lifting the moratorium NOW. I will be proceeding on concurrent paths to get this resolved, including providing an arbitration demand and working with my client, RCS, and Horton on a suit in federal court for injunctive and other relief. Let's work to save us being in front of a federal district court judge and magistrate if we can; but, that said, not wanting to lose time given The Trails forward commitments, we will be working to get this in federal court early this coming week if we can come to an agreement along the lines of what you first called and discussed and my email above and below. Finally, this email has not been reviewed by Mr. Murtagh. I will copy him on this email. He and his company reserve the right to adjust the outline above should I have missed some point he was outlining when we had a quick discussion this afternoon, after lunch, following my morning call with you and Blake.

Regards, Ric Leverick
Leverick & Musselman, LLC
Attorneys at Law
5120 San Francisco Rd. NE
Albuquerque, NM 87109
(505) 858-3303 Office
(505) 858-3201 Fax
Office Hours: Monday thru Friday 8:30 a.m. to 5:30 p.m.

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Projects and related issues:

Project: Cantata – this project is owned by Real Capital Solutions (RCS) and Galway Construction is the hired GC to complete the construction so both parties are affected by this moratorium.

Building Permits – 77 pending, 23 we will submit, all tied to Curtis talking to Rick B about the connection from Universe to the ponds across the street. Ponds are approved; only issue was the connection. Curtis nad Rick were close to resolving the issue when Richard D put a hold on this.
Certificate of Occupancies – 6 units pending, 22 will be done and ready for CO by end of March, and then another another 20 released each month after thru December 2012. Again, required deliveries for RCS, the owner of the fee and units.
Offsite Work – Need Hydrology approval in Trails Unit 4 for Cantata drainage
Release of Financial Guaranty for Offsite work by 5/31/12

Project: Taos - 21 lots on Treeline – Owned by DR Horton

Building Permits – Need DR Horton's permits released for the lots that have not finished permit process. 10 or 11 are at building permit, another 10 or eleven will be coming up for permit very soon. Certificate of

Occupancies – Of the 10 or 11 under construction, a few are close to done and likely at CO soon. Taos was remapped for the 21 lots, with City approval, for sale to DR Horton. Taos Unit 1 and 2 below were part of the original platting.

Project: Taos Unit 1 and 2 – 114 lots – Owned by RCS, Contract to sell lots to DR Horton, Galway is GC hired to coordinate onsite infrastructure completion – All three parties are affected by this moratorium. Simple replat to slightly smaller lot frontages, no real impact on drainage and offsites, and preliminary plat was approved. Have City approved work order for Unit 1. SIA and bonds done/being recorded. On site and sidewalk; no ofsite drainage SIA obligation. Need both Unit 1 and Unit 2 final plats approved and recorded by end of March 2012 for DR Horton to purchase lots from RCS. Have to be done together as the plats relate for street alignment and related infrastructure. All a replat of a City approved recorded plat.

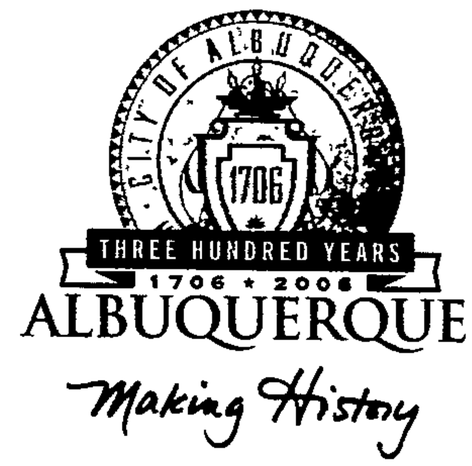
Building Permits in Unit 1 (57 lots) to be released to DR Horton by 5/31/12. Release of Onsite Infrastructure Financial Guaranty of RCS for Unit 1 by 5/31/12

Project: Tierra Vista Unit 1 (Tract 9a) – 50 lots - Owned by RCS, Contract to sell lots to DR Horton, Galway is hired GC to coordinate onsite infrastructure completion – All three parties are affected by this moratorium.

Final Plat – Need Unit 1 final plat approved and recorded by end of March 2012 for DR Horton to purchase lots from RCS. Final plat was to be heard today; deferred to avoid on the record conversation about the BND Agreement and the moratorium. Preliminary plat approved. No offsite drainage. Building Permits in Unit 1 to be released to DR Horton by 5/31/12. Release of Onsite Infrastructure Financial Guaranty of RCS for Unit 1 by 5/31/12

There are items in the works for later this year that are affected by this moratorium which includes projects in Trails Unit 4 and Trails Unit 3.

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

January 24, 2012

SENT: VIA CERTIFIED MAIL

Mitch Petras, Senior Claims Examiner
Developer Surety and Indemnity Company
17780 Fintch, Suite 200
Irvine, CA 92614

Re: Demand on Subdivision Bond No. 823502S for The Trails, City of Albuquerque Project No. 730081 in the amount of $1,250,000.00

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

Dear Mr. Petras,

On March 11, 2011, the City of Albuquerque ("City") made demand on the above referenced Subdivision Bond. It has been more than ten (10) months and we still have not heard from you regarding honoring the terms of the Subdivision Bond. If the Subdivision Bond is not funded by February 27, 2012, the City will pursue its legal remedies against Developer Surety and Indemnity Company for the collection of this sum.

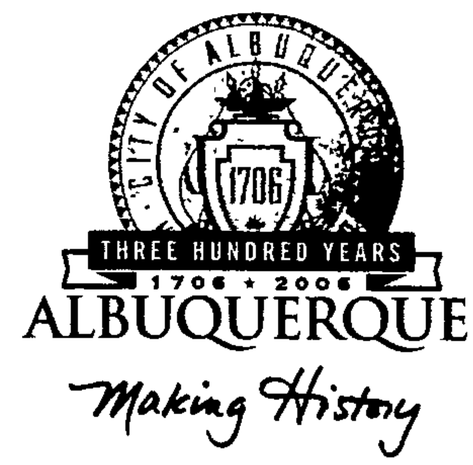
Sincerely,

Kevin J. Curran
Managing Assistant City Attorney

KJC/jer

cc: Richard Dourte, City Engineer
Deborah Stover, Planning Director
Jane Rael, DRC Manager
Marcus Rael, AMAFCA
CPN 730085 file

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

January 24, 2012

SENT: VIA CERTIFIED MAIL

Mitch Petras, Senior Claims Examiner
Developer Surety and Indemnity Company
17780 Fintch, Suite 200
Irvine, CA 92614

Re: Demand on Subdivision Bond No. 823505S & 823501S for Longford @ the Trails, City of Albuquerque Project No. 730085 in the amounts of $328,771.65 & $250,000.00 respectfully

P.O. Box 1293

Albuquerque

New Mexico 87103

www.cabq.gov

Dear Mr. Petras,

On March 14, 2010, the City of Albuquerque ("City") made demand on the above referenced Subdivision Bond. On April 13, 2010, you sent a letter that the principal was arranging for an extension of time for the completion of the bonded improvements. The principle did not arrange for an extension of time. Please proceed with the City's claim.

Sincerely,

Kevin J. Curran
Managing Assistant City Attorney

KJC/jer

cc: Richard Dourte, City Engineer
Deborah Stover, Planning Director
Jane Rael, DRC Manager
CPN 730085 file

MEMO

Item 8b

Supplemental

To: Board of Directors

From: Jerry M. Lovato, P.E., Executive Engineer

Date: February 20, 2012

Re: Pending Litigation

As stated in the mail out memo, Longford Homes has concerns with the legitimacy of the four party agreement. Friday night I received an email attachment from Mr. Rick Beltramo that formalized Longford Homes (The Trails) concerns (see attached letter).

AMAFCA has submitted the design for final approval to the Office of the State Engineer and it is my intent to request the Board's approval at the March 22nd to allow staff to advertise the project for bids. I am providing this information to the Board in anticipation that Longford Homes will request that the project be put on hold until their concerns are fully expressed and dealt with.

At the January Board Meeting, the Board was briefed on how important the Boca Negra Dam is to the region to address development to date and to allow future development in the area to proceed. AMAFCA and the City of Albuquerque (COA) proceeded with or allowed construction of projects assuming that the Boca Negra Dam would be built sooner than later.

Also at the January Board Meeting, the Board was briefed on the possibility of the COA using financial guarantees held by the COA for regional drainage mitigation identified in assorted infrastructure lists.

The COA does not want AMAFCA to engage in a friendly lawsuit to obtain the funding. The COA would rather enter into an agreement which would identify that the funding received from the bonds (financial guarantees) would be used to complete the construction of the Boca Negra Dam. The COA has sent a demand letter for two bonds that add up to $1.5 million. These bonds belong to Longford.

After reviewing the agreement and the above referenced letter, I offer the following comments:

1. Attorney Leverick states that the scope of work was substantially changed but is not specific as to what and how scope changed.

2. The agreement clearly states that AMAFCA would advertise and award the construction "upon receipt of certified and stamped ready-to-bid plans". VISTA and TRAILS were responsible for the design and delivery of the planset. They were also responsible for the dedication of ROW for the Dam site. AMAFCA could not advertise the project because TRAILS failed to provide said plans and property by the February 2006 timeframe stated in the agreement and re-stated in the letter. Furthermore, the TRAILS dedicated the land for the Dam site in June 2011. Said delay was at the discretion of TRAILS.

3. Project delays were <u>not</u> totally outside of TRAILS control since there was considerable "non-occurrence" on their part. That should not make the agreement void. Construction cost escalation also should not render the contract void.

4. Nowhere in the agreement does it state that the worthless value of impact fee credits would nullify the agreement.

5. The Bateman Act does not apply because the City and AMAFCA have already spent monies exceeding the original amount stated in the estimate shown on Exhibit B.

6. AMAFCA has no control over the value or disbursement schedule of impact fee credits. The moratorium was a decision made by the City Council and the value of impact fee credits are market driven; again, outside of AMAFCA's control.

7. It is agreed that the area has seen development since the execution of the agreement. If there were a way to exact participation in the costs of the "regional drainage facility", it should be looked into. It is also agreed that the relative drainage contribution is less than the cost contribution.

8. The construction of the Boca Negra Dam is <u>very</u> important to AMAFCA and the downstream residents. It has been a 5-year-and-counting project that offers needed flood protection. While the agreement may not be fair to Longford and KB, renegotiating the contract may create time-delays that the residents downstream cannot afford.

For Information Only

MEMO Item 8b

To: Board of Directors

From: Jerry M. Lovato, P.E., Executive Engineer

Date: January 20, 2012

Re: Pending Litigation

The Boca Negra Dam Project is the subject of an agreement between AMAFCA, the City of Albuquerque and two private developers. The agreement identifies property transfers, funding for the design, construction, construction management, submittal of a FEMA LOMR and the maintenance and operation of the dam, Unser Boulevard, the bike trail and Rainbow Drive.

Since the last Board Meeting, the City of Albuquerque has guaranteed payment to Wilson and Company for work done to date that was not paid for by Longford. Wilson & Company provided signed and stamped plan sets to AMAFCA on February 10, 2012. The design plans and specification were hand delivered on February 14th to the Dam Safety Bureau.

The issue concerning AMAFCA at this point is obtaining full funding from all the parties to construct the dam before the award of the contract. AMAFCA and the City of Albuquerque have stated their funding is available, now. Longford and KB homes have not responded directly to the question. As such, the City of Albuquerque put both parties on notice that subdivision bonds may be called early last year. KB Homes in Phoenix is now talking to the City of Albuquerque concerning the funding.

The City of Albuquerque has called on two bonds belonging to Longford. The financial guarantees are for the Trails Subdivision.

Longford has had a meeting with Richard Dourte concerning the legitimacy of the four party agreement and has given both the City and AMAFCA a copy of a legal opinion from an attorney.

If more information becomes available, it will be the subject of a late mail out.

For Information Only

310 060611

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX: (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

February 9, 2012

VIA ELECTRONIC MAIL

Mr. John Murtagh
Longford Group, Inc.
3077 E. Warm Springs Road,
Las Vegas, Nevada 89120

Mr. Rick Beltramo
Director of Engineering
Galway Construction, Inc.
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 23, 2005

Dear John and Rick:

I have reviewed the above-referenced Agreement and a project schedule chart prepared by Rick tracking certain key events occurring with respect to the project following the execution of the Agreement. I have also given some consideration to the discussions we have had relative to the Agreement and the project, and to some of the supplemental information provided to me by Rick concerning the project.

You have asked for some bullet points relative to my initial legal conclusions concerning the Agreement. This short letter is provided with the understanding that we were just recently engaged to represent The Trails LLC with respect to its legal rights and obligations under the Agreement and have not spent as much time as necessary to complete our review of documents including correspondence we deem necessary to give final opinions relative to the above.

Based on the foregoing and our initial review of the Agreement and the matters identified above, we are of the opinion that:

- The scope of work was substantially changed on or after fall 2006. This appears to have occurred without approval in writing by The Trails LLC. Section 6.11 of the Agreement provides that it may be modified only in writing

signed by all parties. This change in the scope of work is not unenforceable. Further, per Restatement of the Law, Second, Contracts, § 265, Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary."

- The cost of work has substantially increased based in part on the change in the scope of work ("additions to the scope of the project" including "a master planned sanitary sewer interceptor" and "paving the full four lane section of Unser Blvd. for the entire project reach," cost increases "region wide" and "incomplete estimate that was used during the development of the Agreement." Letter of John P. Kelly dated November 2006). These increased costs are not chargeable to The Trails for (a) changes in the scope of work not agreed to, or (b) increased costs in the project (now pending advertisement for bids) for over 5 years based on the initial assumption, Section 2.2 of the Agreement, that the time to plan, permit, bid and award the construction contract for this project would take only 5 months ending February 2006.

- Delay of the project, as noted in November 2006 letter from John P. Kelly, had by then already resulted in substantial cost increases. There has now been an additional five year delay in the project, resulting in, as we understand it, further substantial projected cost increases. Restatement of the Law, Second, Contracts, § 261, "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary."

- Value of the excess impact fee credits to The Trails LLC (acting essentially as a bank for part of the project costs in consideration of the excess credits) substantially undermined by the City's enactment and continuing resolutions implementing and continuing its impact fee ordinance moratorium, raising the issue of failure of consideration. See, City Ordinance amending SECTION 14-19-1-12 R.O.A. 1994, effective July 1, 2009, and thereafter. "When there is a failure of consideration, a contract, valid when formed, becomes unenforceable because the performance bargained for has not been rendered."

- Project delays outside the control of The Trails LLC have resulted in project delays well in excess of the estimated project time of one year. At this point in time, the advertisement for bids has still not occurred and the construction contract has not been let. This was to have occurred by February 2006. See, Section 2.2 of the Agreement. The project time scope was one year. At a minimum, this raises the issue of whether the Agreement is valid given the underlying expectations of the parties that this would be a one year project. It

raises a host of failed underlying implied conditions (best example, the economy when the Agreement was executed). It also raises other issues such as the New Mexico Bateman Act which generally renders void any public contract committing a city, county or local body from committing public funds to a project beyond one year. Per §6-6-11 New Mexico Statutes Annotated, "It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void." We believe that this would render void the Agreement beyond the City's fiscal year ending June 30, 2006 and may render void the Agreement if (a) the Bateman Act applies to AMAFCA (no case law on this point, but we believe it does) and AMAFCA had not sold bonds sufficient to fund its share of the cost of work by the end of its fiscal year following the execution of the Agreement.

The Agreement calls for arbitration of any dispute. Calling The Trails LLC's bond will result in a demand for arbitration, with the bonding company being directed to not honor the demand on the bond pending completion of the arbitration. Worse case, the bonding company would interplead the bond into an arbitrator's trust account or the Second Judicial District Court pending a final award or decision in the arbitration.

The suggestion by the City of calling the bond would only frustrate The Trails LLC's stated intention of wanting to sit down with the parties involved, including the City and AMAFCA and all new parties benefitted by the proposed project, to revisit the Agreement especially in light of the undeniably long project delays, large cost increases, and substantial changes to the scope of work.

Respectfully yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

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Respectfully yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX: (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

February 9, 2012

VIA ELECTRONIC MAIL

Mr. John Murtagh
Longford Group, Inc.
3077 E. Warm Springs Road,
Las Vegas, Nevada 89120

Mr. Rick Beltramo
Director of Engineering
Galway Construction, Inc.
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 23, 2005

Dear John and Rick:

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You have asked for some bullet points relative to my initial legal conclusions concerning the Agreement. This short letter is provided with the understanding that we were just recently engaged to represent The Trails LLC with respect to its legal rights and obligations under the Agreement and have not spent as much time as necessary to complete our review of documents including correspondence we deem necessary to give final opinions relative to the above.

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- The scope of work was substantially changed on or after fall 2006. This appears to have occurred without approval in writing by The Trails LLC. Section 6.11 of the Agreement provides that it may be modified only in writing

The Trails

Should you have any questions or need any additional information I can be contacted at 761-9911.

Sincerely,

Rick Beltramo
The Trails, LLC

Attachments

Cc: John Murtagh, The Trails
Kurt Wagner, AMAFCA
Richard Dourte, City Of Albuquerque
Curtis Cherne, City of Albuquerque
Richard M. Leverick, Leverick and Musselman, LLC

The Trails

Since we executed the Agreement in 2005, over six years have passed, with a new dam construction estimate that requires The Trails to pay an additional $600,000, not in a small part due to several redesigns initiated by AMAFCA and the City. Also, The City delayed giving us any impact fee credits until November 2011, over six years after we acquired the property for AMAFCA's use. Additionally, since the Agreement was executed, the impact fee credits that were granted to the Trails have been devalued by 50% because of the reduction by 50% by the City for any new impact fees by other builders.

Also, because of the six year delay in the dam completion, The Trails redesigned its drainage outflow to the Unser Blvd. watershed, and we have spent hundreds of thousands of dollars in other drainage facilities to detain and retain developed flows on site and to redirect the flow to the new watershed.

When the Agreement was executed in 2005, there were no other parties to share the benefit and cost with. Since then, the City has created several Sector Plans and Special Assessment Districts in the Boca Negra Dam area, Unser Blvd., Rainbow Blvd. and Paseo Del Norte Blvd. were extended, and the Volcano Vista school complex has been completed. The characteristics of the area have changed substantially since 2005. Many new and eventual users of storm drainage facilities now have the ability to pay for any regional public improvements, including the dam through Sector Plan PIDs and new SADs that are being created in the area.

The Trails contributes less than 3% of the total storm water drainage into the dam, but is expected to pay for over 30% of the total cost. The vast majority of the land owners have no requirement to pay any amount to the project. I suggest that we meet with the City, locate all the beneficiaries of the dam, quantify the flows generated by the properties, and use the Sector Plans and SADs to more uniformly measure equitable amounts to be charged to each beneficiary.

We recently met with the City Department of Municipal Development to discuss our concerns. The City has requested that we suggest what we consider an appropriate amendment to the agreement. We are currently working on that effort. Mr. Lovato has offered to support a meeting of the partners to consider our concerns and proposal. In the near future we will coordinate such a meeting.

We have contracted the services of our attorney to review our opinion. Attached is a copy of Mr. Leverick's letter on the subject.

The Trails

February 17, 2012

Jerry Lovato
Executive Engineer
Albuquerque Metropolitan
Arroyo Flood Control Authority
2600 Prospect Ave., N.E.
Albuquerque, New Mexico, 87107

Jannelle Speake
KB Home Phoenix
4127 E. Van Buren Street, Suite 150
Phoenix, AZ 85008

Michael Riordan
Director, Department of Municipal Development
City Of Albuquerque
P.O. box 1293
Albuquerque, New Mexico, 87102

Re: Boca Negra Dam - Request to Amend Agreement

Dear Project Partners:

The purpose of this letter is to inform the partners of our concerns and challenges due to the Boca Negra Dam Project (BND). We believe that the project is not progressing in the spirit and intent of the original agreement and for several reasons needs to be amended. At some time, possibly March, we would like to present our concerns to the AMAFCA Board and formally pursue amending the agreement.

When the contract was executed in 2005, it was anticipated that the project would be completed by the end of 2006. With direction from Wilson Engineering, The Trails purchased 8.8 acres of land for dedication to AMAFCA at the proposed dam location in 2004 (appraised at $880,000) and paid Wilson Engineering approximately $140,000 in engineering design fees with the understanding that the City would reimburse The Trails on a timely basis with impact fees credits according to the Impact Fee Ordinance in place at the time of the execution of the Agreement. At that time, the average roadway and drainage impact fees for a single family home was approximately $3,700 per house.

* Does not reflect City credit for construction of Trail Underpass/High Flow Outlet

AMAFCA plans to bid this project as soon as possible, with the bid opening most likely in May, 2012. Per the Agreement, the contributions from The Trails LLC and KB Home New Mexico will be due seven days before the expected award date of May 24, 2012. The City's contribution will be due 45 days after award of the construction contract. Per section 6.5 of the agreement;

I request that KB Homes Phoenix and The Trails LLC / Longford Group review the costs and the schedule above and confirm, in writing, your ability to contribute the required funding.

With this letter I am confirming that AMAFCA and the City of Albuquerque are ready to make their contribution per the Agreement.

If you have any questions as to the scope of the project or the break out between the requisite bid lots, please call Kurt Wagener, AMAFCA's Project Manager at 884-2215. Kurt and I will be happy to meet to discuss this matter at your convenience.

I plan to update all parties after we get final approval from the OSE and when the Engineer's Estimate is updated to reflect current costs.

Sincerely,
AMAFCA

Jerry M. Lovato, P.E.
Executive Engineer

Cc Richard Dourte, P.E., City Engineer, City of Albuquerque
Kurt Wagener, P.E., Field Engineer, AMAFCA

AMAFCA received the final design documents from Wilson & Company and a check for $2,306, the design review fee, on June 1, 2011. AMAFCA hand delivered the documents to the OSE on June 1, 2011. The OSE reviewed the submittal and requested additional information, which has been addressed by Wilson & Company. Two key components of the submittal were missing; the required plat showing sufficient right of way interests held by AMAFCA for the construction, operation, and maintenance of the dam, and the signature and stamp of the Engineer of Record.

I noted that the parcels to be dedicated per the Agreement by The Trails, LLC, still needed to be dedicated to AMAFCA in the June 7, 2011 correspondence. Most of the land has been dedicated, except for lot 19. Because lot 19 was not dedicated to AMAFCA, as it was originally proposed, it required Wilson & Company to redesign the dam. As a result of the re-design, the documents needed to be re-submitted to the OSE. Since June 2011, Wilson and Company has been working on the plat. The plat was approved by the Development Review Board and filed for public record last week.

The only outstanding item that needed to be addressed before a complete package could be submitted to the OSE was the signature and stamp of the Engineer of Record. The City of Albuquerque, working with Wilson & Company, secured the signature and stamp last week.

I am happy to report that today, February 14, 2012; AMAFCA hand delivered the final design, construction documents and the construction drawings to the OSE for approval.

That said, AMAFCA staff will be pursuing permission to advertise the project for construction as soon as possible, but most likely by the first week of April. As part of the bidding process, AMAFCA will need to develop a revised engineer's estimate for the project. As you might expect, specific element costs have gone up since June 7, 2011, the date of the last engineer's estimate for the project.

Below you will find the same costs and contributions identified in the June 7, 2011 correspondence. I have used 8% to estimate the construction management services, per section 2.5, 3.6, 4.5, and 5.3 of the agreement.

The matrix shows that the approximate "Cash to Project Account" contributions for each party are as follows:

AMAFCA	$1,384,295
City of Albuquerque	636,136*
The Trails LLC	1,223,395
KB Home New Mexico	1,068,749
Grand Total	$4,312,574

Tim Eichenberg, Chairman
Danny Hernandez, Vice Chairman
Bruce M. Thomson, Secretary-Treasurer
Ronald D. Brown, Assistant Secretary-Treasurer
Daniel F. Lyon, Director

Jerry M. Lovato, P.E.
Executive Engineer

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 Prospect N.E., Albuquerque, NM 87107
Phone: (505) 884-2215 Fax. (505) 884-0214
Website: www.amafca.org

3 10 06 06 11

February 14, 2012

Mr. Michael Riordan, P.E.
Director, Department of Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87102

Ms. Jannelle Speake
KB Homes Phoenix, Inc.
4127 E. Van Buren Street, Suite 150
Phoenix, Arizona 85008

Mr. John Murtagh, P.E.
The Trails, LLC
Longford Group, Inc.
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120

Mr. Dan Aguirre, P.E.
Wilson & Company, Inc
4900 Lang Ave.
Albuquerque, NM 87109

Mr. Rick Beltramo, P.E.
Director of Engineering
Galway Construction, Inc
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: The Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements, dated September 22, 2005 (the "Agreement") – Delivery of Dam Plan Set to Office of the State Engineer for Final Approval

Dear Mr. Riordan, Ms. Speake, Mr. Murtagh, Mr. Aguirre, and Mr. Beltamo:

On June 7, 2011, I requested, in writing, that all parties notify AMAFCA, in writing, if there were any issues that would prevent the plat, design report or the construction documents from being completed, signed, and submitted to the Office of the State Engineer (OSE). In addition, I requested that each party review the estimate and confirm, in writing, their ability to contribute the required funding in the timeframe mentioned in the letter. I received two correspondences related to my requests, one from the City of Albuquerque indicating that they could fully fund their portion of the project and one from Wilson & Company indicating that the Engineer stamp and signature would be withheld until Wilson & Company was fully compensated for work done to date. I took the lack of response from the other parties as tacit approval of the information contained in the letter, dated June 7, 2011.

2005-31

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

THIS AGREEMENT is made and entered into this 22nd day of September, 2005, by and among the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico ("AMAFCA"), the City of Albuquerque, a New Mexico municipal corporation, ("CITY"), Vista Vieja Investments LLC, a New Mexico Limited Liability Corporation ("VISTA"), and The Trails LLC, a Nevada Limited Liability Company ("TRAILS"), all collectively referred to as the "PARTIES".

1. **WHEREAS,** the Boca Negra Watershed Drainage Management Plan, by Resource Technology, Inc., May 2005, adopted by the AMAFCA Board of Directors via Resolution 2005-7, "Boca Negra Drainage Management Plan", on May 26, 2005, ("DMP") calls for a flood control dam to be constructed near the top of Boca Negra Canyon just upstream of the future Unser Blvd.; and

2. **WHEREAS,** the Record of Decision for the Final Environmental Impact Statement dated December, 1993, for the Unser Middle Transportation Corridor, by the City of Albuquerque in cooperation with the U.S. Department of the Interior, National Park Service, dated December 20, 1993, identified that the existing Unser Blvd crossing through Boca Negra Canyon would be limited in use to "utility, drainage and trail purposes", and the City currently plans to build a grade separated multi-use trail connection near this location and a parking area for trail users, to serve the Boca Negra Unit of the Petroglyph National Monument, as well as areas to the west, and to use the existing Unser crossing through Boca Negra Canyon for the Boca Negra Detention Dam Outfall Pipe; and

3. **WHEREAS,** the CITY desires to construct this as a multi-use trail underpass and also desires to construct the two lane section of Unser Blvd., as well as related utility work coincident with the Boca Negra Dam and Outfall Pipe Project; and

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4. **WHEREAS**, the CITY Open Space Division, in its capacity as land owner and management agency for the Boca Negra Unit of Petroglyph National Monument, has requested that the Boca Negra Canyon continue to experience flood flow events while being protected from the more frequent runoff events resulting from development in the Boca Negra watershed, and while allowing a portion of the frequent runoff events to be used by the riparian vegetation in Boca Negra Canyon; and

5. **WHEREAS**, the Boca Negra Detention Dam can be designed to allow this flow regime by use of a dual stage outlet system, where low flows will be directed to a outlet pipe running from the Dam to the Boca Negra Arroyo right of way at Atrisco Blvd, with trickle flows diverted from this outlet pipe to locations within the Boca Negra Canyon, and higher outlet flows will pass through the multi-use trail underpass and be directed to the Boca Negra Canyon in the historic arroyo flow path; and

6. **WHEREAS**, VISTA is currently developing the "Vista Vieja" subdivision, which is southwest of the site of the proposed Boca Negra Detention Dam, and for which the dam will serve as the subdivision's primary storm water outfall; and

7. **WHEREAS**, TRAILS is currently developing the "Trails" subdivision, which is north of the site of the proposed Boca Negra Detention Dam, and for which the dam will serve as the subdivision's only storm water outfall; and

8. **WHEREAS**, AMAFCA, the CITY, VISTA and TRAILS desire to establish an Agreement for construction of the Boca Negra Dam and Outfall Pipe as described in the DMP, for the construction of the multi-use trail underpass/high flow outlet and the two lane section of Unser Blvd, collectively the "PROJECT"; as generally shown on Exhibit A; and

9. **WHEREAS**, AMAFCA, the CITY, VISTA and TRAILS are willing to share in the costs of the design, construction, construction engineering services, right of way, and

FEMA flood map revisions on a percentage basis, as described herein and summarized at Exhibit B; and

10. **WHEREAS,** AMAFCA is agreeable to assumption of maintenance of the completed Boca Negra Detention Dam and Outfall Pipe after acceptance of same by AMAFCA; and

11. **WHEREAS,** the CITY is agreeable to assumption of maintenance of the completed Unser Blvd., multi-use trail underpass/high flow outlet and multi use trails included in the PROJECT after acceptance of same by CITY; and

12. **WHEREAS,** the CITY has enacted a Drainage Facilities Impact Fees Ordinance (0-04-72) under which VISTA and TRAILS may receive credits for their share of construction of the PROJECT, if eligible for impact fee credits, against impact fees otherwise due; and

13. **WHEREAS,** AMAFCA's "District Wide Drainage Facility and Planning Review," prepared by ASCG, Inc., June 2004, identified this PROJECT as a Class "D" project, indicating a project needed in conjunction with other development in the area; and

14. **WHEREAS,** AMAFCA's FY 2005 Project Schedule, adopted by the AMAFCA Board of Directors on August 26, 2004, recognized the need and regional impact of the PROJECT and identified $1,000,000 (One Million Dollars) in funding in FY-06 for the PROJECT; and

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

SECTION 1. The purpose of the Agreement is to:

1.1. Provide for the design of the PROJECT, dedication of right of way, and submittal of a FEMA Conditional Letter of Map Revision ("CLOMR") and Letter of Map Revision ("LOMR") and payment of FEMA review fees, to be funded by VISTA and TRAILS.

1.2 Provide for cash contributions by the CITY, VISTA and TRAILS to AMAFCA to pay for each party's share of construction of and construction engineering services for the PROJECT.

1.3 Provide for AMAFCA's cash contribution for AMAFCA's share of construction and construction engineering services for the project.

1.4. Provide for AMAFCA to act as contracting agency for the PROJECT and related construction engineering services.

1.5 Provide for AMAFCA to accept the Boca Negra Detention Dam and Outfall for maintenance and for the CITY to accept maintenance of the Multi-use trail underpass and high flow outlet, the low flow trickle pipes, as well as Unser Blvd and all multi-use trails built as part of the PROJECT.

1.6 Outline the CITY process by which VISTA and TRAILS may receive credits for the value of the construction of the PROJECT, if eligible for impact fee credits, and, if eligible, the value of the dedication of the land for the PROJECT by VISTA and TRAILS.

SECTION 2. AMAFCA agrees to:

2.1 Review and, if appropriate, approve plans and specifications for PROJECT, as prepared by VISTA's and TRAILS' engineer. It is understood by the PARTIES that the plans and specifications for the PROJECT will include four bid lots with separate bid proposals and separate quantity take-offs as follows:

1. The Boca Negra Detention Dam and Outfall Pipe Bid Lot (the "Dam Bid Lot"), to include site clearing and grubbing, relocation of the existing 24-inch water line that runs from the well site to 81st Street, foundation treatment, key trench, rock excavation, dam embankment, dual stage principal spillway outlet structure with concrete cylinder pipe principal spillway outfall pipes with anti-seep collars through the dam embankment to include the 42-inch diameter RCP outfall pipe down to the Boca Negra Arroyo each of Atrisco Blvd, appurtenant manholes, transition structure, energy dissipater and plunge pool at the end of the outfall pipe, and three trickle flow diversions from the outfall pipe to the Boca Negra Canyon at locations to be determined during design, necessary junction box(es) and other appurtenances, the emergency spillway, the 72-inch Unser Blvd storm drain penetration of sufficient length to prevent further disturbance to the dam embankment when the storm drain is installed, native revegetative seeding with gravel mulch on the dam embankment, and native revegetative seeding with straw mulch in all other disturbed areas, access control fencing and gates, and grading of future parking areas and recreation fields within the reservoir area.

2. The Multi-Use Trail Underpass/High Flow Outlet Bid Lot (the "Trail/ Outlet Bid Lot", to include the twenty five foot wide multi-use trail underpass and dual crossing structure, including concrete wing walls, appurtenant guardrail, necessary backfill over the structure, the multi-use trail within the Unser Blvd. right of way, the high flow outlet channel to its transition to the existing arroyo at the head of Boca Negra Canyon, way, and related traffic control for the Bid Lot.

3. The Unser Blvd. Roadway Bid Lot (the "Unser Bid Lot", to include clearing and grubbing, the 21-inch master planned sanitary sewer line, the 24-inch master planned water line and the 42-inch storm drain within the Unser Blvd. right of way which will connect to the Boca Negra Detention Dam Outfall Pipe, roadway embankment, curb and gutter, subgrade preparation, base course, two lanes of arterial paving, native revegetative seeding with gravel mulch on the roadway embankment, and native revegetative seeding with straw mulch in all other disturbed areas, repaving one lane of the existing roadway in Atrisco Blvd over the alignment of the principal spillway outlet pipe, and any multi-use trail included within the project beyond that in the Trail/Outlet Bid Lot.

4. The General Project Bid Lot (the "General Bid Lot"), to include items of the contract that are applicable to the entire PROJECT, rather than any of the three above Bid Lots, including, but not limited to, bid items for mobilization, surveying and construction staking, storm water pollution prevention plan, care and diversion of water and project signage. For purposes of allocating project cost, items in the General Bid Lot will be allocated among the first three Bid Lots based on their respective construction costs.

2.2 Within the October 2005 to February 2006 timeframe, and upon receipt of certified and stamped ready-to-bid construction plans from VISTA and TRAILS, advertise, accept bids and award the construction contract for the PROJECT, with the actual costs of the PROJECT (design, construction engineering and construction, right of way, and FEMA CLOMR/LOMR analysis, submittal and review fees) to be split by AMAFCA, VISTA, TRAILS and the CITY as summarized in Exhibit B. Advertisement and bidding shall be according to the normal AMAFCA procedures for public bidding of public infrastructure projects.

2.3 Establish and administer a separate interest bearing checking account for the PROJECT ("Project Account"). All contributions for the PROJECT from AMAFCA, CITY, VISTA and TRAILS will be deposited in the Project Account. PROJECT expenses for construction, construction engineering, and any other related construction expenses, will be disbursed from the Project Account. The account will be invested by AMAFCA in the New Mexico State Short Term Fund, with any interest accrued to be first used on any overruns in the construction engineering or construction costs and as further described in Section 6.3.

2.4 Invoice VISTA, TRAILS and the CITY for their respective initial contributions for construction engineering services and construction of the PROJECT, as described in Sections 3.6, 4.2, and 5.2.

2.5 Provide $993,167.00 to the Project Account as AMAFCA's primary portion of its funding for the PROJECT. This amount is an estimated amount based on 25% of the total cost of the Dam Bid Lot and 50% of the Trail/Outlet Bid Lot (including design, construction engineering, right of way and construction). The amount described above for the AMAFCA share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

2.6 Provide full time inspection of the PROJECT including administration, testing, and inspection or other supervision of construction and certification thereof, by a registered engineer and testing firm procured via request for proposals for engineering services by AMAFCA to assure construction is in conformance with the plans and specifications. AMAFCA will invite the CITY to assign up to two members to the Selection Advisory Committee for the evaluation of the proposals received.

2.7 Accept the Boca Negra Detention Dam and Outfall Pipe and related storm water quality structures, if applicable, for continuous maintenance upon satisfactory completion of

construction and confirm acceptance of same in writing by AMAFCA's Executive Engineer.

2.8 Require its contractor to provide liability insurance during the period of construction naming CITY, VISTA and TRAILS as an additional insured's. The amount of the liability insurance shall be at least $1,000,000.00.

2.9 Upon approval of the final pay estimates for the PROJECT and for AMAFCA's engineering consultant providing the construction engineering services, AMAFCA will invoice VISTA, TRAILS and the CITY for any overruns (after applying interest earned in the Project Account as described in Section 6.3) in the construction and construction engineering costs of the PROJECT, or will reimburse VISTA, TRAILS and the CITY for any under runs in the construction and construction engineering costs of the PROJECT, with the provision that the design amount of $186,880.00, the right of way amount of $1,026,436.00, and the FEMA CLOMR/LOMR analysis, submittal and review fees amount of $27,400.00 are fixed. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

2.10 Provide to VISTA's and TRAILS' engineer the PROJECT record drawings, certifications, geotechnical testing results, and written acceptance of the Boca Negra Detention Dam and Outfall Pipe for use in the FEMA LOMR submittal.

2.11 Accept dedication of all required rights-of-way for the Boca Negra Detention Dam in fee simple with warranty covenants, free and clear of liens, claims and encumbrances, and subject to title exceptions acceptable to AMAFCA. Dedication of all rights of way shall be due at the same time or earlier as the initial funding contributions from VISTA and TRAILS.

2.12 License use of the AMAFCA right of way at the Boca Negra Detention Dam to the City of Albuquerque for recreational uses, with the form of the license to be substantially the

same as was approved by AMAFCA on April 21, 2005 for the CITY's recreational use of Kinney Dam. Multi-use trails installed within the AMAFCA right-of-way will be licensed via and subject to the terms and conditions of the existing "First Amendment to License Agreement City Trails Systems on AMAFCA R/W", between AMAFCA and the CITY, dated May 13th, 2003.

SECTION 3. VISTA, at its sole expense and liability, agrees to:

3.1 In conjunction with TRAILS and using the same engineering consultant, provide to AMAFCA the following:

a. The design of the PROJECT, including separate design analysis report, geotechnical investigation report and ready-to-bid, construction plans, contract documents and specifications, approved by AMAFCA, the New Mexico Office of the State Engineer Dam Safety Bureau and the CITY Development Review Committee.

b. All necessary submittals and Agency approvals for the PROJECT, including but not limited to CITY Development Review Board and Design Review Committee, New Mexico Office of the State Engineer Dam Safety Bureau, U.S. Army Corps of Engineers Section 404 permit and New Mexico State Historic Preservation Officer Cultural and Archaeological Clearances. Applicable New Mexico Office of the State Engineer review and permitting fees shall be paid by VISTA.

c. The plans and specifications for the PROJECT shall include four bid lots with separate bid proposals and separate quantity take-offs as described in Section 2.1.

3.2 In conjunction with TRAILS and using the same engineering consultant, submit to (and pay all required review fees) the FEMA CLOMR showing the revised floodplain to be contained within the PROJECT and transition section.

3.3 In conjunction with TRAILS and using the same engineering consultant, provide final plans and specifications for construction of the PROJECT to the CITY and AMAFCA for review and, if appropriate, approval prior to construction.

3.4 In conjunction with TRAILS, dedicate to AMAFCA, the Boca Negra Detention Dam site in fee simple with warranty covenants, free and clear of liens, claims and encumbrances, and subject to title exceptions acceptable to AMAFCA. Dedication of all rights of way shall be due at the same time or earlier as the initial funding contributions from VISTA.

3.5. In conjunction with TRAILS and using the same engineering consultant, upon final approval of the PROJECT design, provide stamped, certified plans and specifications to AMAFCA in hard copy (mylar for the plans) and digital format, for AMAFCA's use in procuring construction of the PROJECT.

3.6 Pay to AMAFCA the amount of $321,500.00 seven (7) days prior to award of a construction contract, which amount shall be VISTA's primary portion of its funding for the PROJECT. This amount is an estimated amount based on 33.5% of the total cost of the Dam Bid Lot, (including design, construction engineering, construction, right of way) and 50% of the FEMA CLOMR/LOMR analysis, submittal and review fees, less a credit in the amount of $93,440.00 representing VISTA'S design costs, less a credit in the amount of $644,471.00 representing VISTA's right of way costs, and less a credit in the amount of $13,700.00 representing VISTA'S costs for the FEMA CLOMR/LOMR analysis, submittal and review fees. The amount described above for the VISTA share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

3.7 Subject to AMAFCA approval of a grading and drainage plan, VISTA shall excavate approximately 40,000 cubic yards from the Boca Negra Detention Dam reservoir area for

use on the adjacent Vista Vieja subdivision. This material shall be removed by a date no later than 30 days prior to AMAFCA's intended award of bids for construction of the PROJECT, in order to allow sufficient time for survey of cross sections to establish final quantities for the Dam Bid Lot. Should VISTA not remove at least 75% of this material by this time, VISTA's contribution shall be increased by the lump sum of $80,000.00, and the material shall become the property of AMAFCA

3.8 Pay to AMAFCA, within 30 days of receipt of invoice from AMAFCA, VISTA's share of any overruns in the Dam Bid Lot, based on VISTA providing 33.5% of the Dam Bid Lot costs, as described in Section 3.6, with the provision that AMAFCA's actual construction engineering costs will be allocated between the Bid Lots by the relative costs of these Bid Lots and that interest accrued in the Project Account will be applied as described in Section 6.3. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

3.9 In conjunction with TRAILS and using the same engineering consultant, upon completion of construction and receipt of project certifications, geotechnical testing results and record drawings from AMAFCA, submit to FEMA a LOMR to revise the 100-year floodplain to show that it is contained within the constructed PROJECT.

3.10 VISTA acknowledges and agrees that the PROJECT and the dedication of land for the PROJECT shall not be eligible for drainage impact fee credit until and unless the PROJECT is listed on the CITY's CCIP.

3.11 Install the Vista Vieja storm drain from the Vista Vieja subdivision to the Boca Negra Detention Dam, designed to accept upstream flows per the DMP, with construction to include the outlet to the Dam reservoir area, appropriate storm water quality facilities and energy dissipater.

3.12 VISTA agrees to install storm water quality debris removal structures on any and all current and future storm drain connections to the PROJECT as related to the Vista Vieja Subdivision. Design of structure(s) shall be coordinated with AMAFCA, and may be located within the Boca Negra Detention Dam right of way. If the debris removal structure is a manhole type facility within the PROJECT right of way, AMAFCA will maintain such structure.

SECTION 4. TRAILS at its sole expense and liability, agrees to:

4.1 In conjunction with VISTA and using the same engineering consultant, provide to AMAFCA the following:

a. The design of the PROJECT, including separate design analysis report, geotechnical investigation report and ready-to-bid, construction plans, contract documents and specifications, approved by AMAFCA, the New Mexico Office of the State Engineer Dam Safety Bureau and the CITY Development Review Committee.

b. All necessary submittals and Agency approvals for the PROJECT, including but not limited to CITY Development Review Board and Design Review Committee, New Mexico Office of the State Engineer Dam Safety Bureau, U.S. Army Corps of Engineers Section 404 permit and New Mexico State Historic Preservation Officer Cultural and Archaeological Clearances. Applicable New Mexico Office of the State Engineer review and permitting fees shall be paid by VISTA.

c. The plans and specifications for the PROJECT shall include four bid lots with separate bid proposals and separate quantity take-offs as described in Section 2.1.

4.2 In conjunction with VISTA and using the same engineering consultant, submit to (and pay all required review fees) the FEMA CLOMR showing the revised floodplain to be contained within the PROJECT and transition section.

4.3 In conjunction with VISTA and using the same engineering consultant, provide final plans and specifications for construction of the PROJECT to the CITY and AMAFCA for review and, if appropriate, approval prior to construction.

4.4 In conjunction with VISTA, dedicate to AMAFCA, the Boca Negra Detention Dam site in fee simple with warranty covenants, free and clear of liens, claims and encumbrances, and subject to title exceptions acceptable to AMAFCA. . Dedication of all rights of way shall be due at the same time or earlier as the initial funding contribution from TRAILS.

4.5 Pay to AMAFCA the amount of $520,757.00 seven (7) days prior to award of a construction contract, which amount shall be TRAILS' primary portion of its funding for the PROJECT. This amount is an estimated amount based on 31.5% of the total cost of the Dam Bid Lot (including design, construction engineering, construction, right of way) and 50% of the FEMA CLOMR/LOMR analysis, submittal and review fees, less a credit in the amount of $93,440.00 representing TRAILS' share of design costs, less a credit in the amount of $381,965.00 representing TRAILS' right of way costs, and less a credit in the amount of $13,700.00 representing TRAILS' share of the costs for the FEMA CLOMR/LOMR analysis, submittal and review fees. The amount described above for the TRAILS share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

4.6 After completion of the PROJECT, pay to AMAFCA, within 30 days of receipt of invoice from AMAFCA, TRAILS' share of any overruns in the Dam Bid Lot, based on TRAILS providing 31.5% of the Dam Bid Lot Costs as described in Section 4.2, with the provision that AMAFCA's actual construction engineering costs will be allocated

between the Bid Lots by the relative costs of these Bid Lots and that interest accrued in the Project Account will be applied as described in Section 6.3. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

4.7 In conjunction with VISTA and using the same engineering consultant, upon completion of construction and receipt of project certifications, geotechnical testing results and record drawings from AMAFCA, submit to FEMA a LOMR to revise the 100-year floodplain to show that it is contained within the constructed PROJECT.

4.8 Install the Universe Storm Drain, from the Trails Subdivision to the Boca Negra Detention Dam, designed to accept upstream flows per the DMP, with construction to include the inlet to the Dam reservoir area and appropriate storm water quality facilities and energy dissipater.

4.9 TRAILS agrees to install storm water quality debris-removal facilities on any and all current and/or future storm drain connections to the PROJECT, as related to the Trails Subdivision. Design of structure(s) shall be coordinated with AMAFCA, and may be located within the Boca Negra Detention Dam right of way. If the debris removal structure is a manhole type facility within the PROJECT right of way, AMAFCA will maintain such structure.

4.10 TRAILS acknowledges and agrees that the PROJECT and dedication of land for the PROJECT shall not be eligible for drainage impact fee credits until and unless the Project is listed on the CITY's CCIP.

SECTION 5. CITY agrees to:

5.1. Review and, if appropriate, approve plans and specifications for PROJECT, as prepared by VISTA's and TRAILS' engineer.

5.2 Dedicate a drainage easement suitable to AMAFCA and generally in the form attached at Exhibit C for the Boca Negra Detention Dam Outfall Pipe and energy dissipater.

5.3. Pay to AMAFCA the amount of $979,197.00 within 45 days of receipt of invoice from AMAFCA, which invoice may be submitted anytime after award of bids for construction of the PROJECT. This amount shall be the CITY's primary portion of its funding for the PROJECT. This amount is an estimated amount based on 10% of the total cost of the Dam Bid Lot, 50% of the Trail/Outlet Bid Lot and 100% of the Unser Bid Lot (including design, construction engineering, right of way and construction). The amount described above for the CITY share of construction is adjustable at the discretion of AMAFCA based on the final approved engineer's estimate for the PROJECT. Any adjustment shall be done prior to advertisement for construction bids and in accordance with Exhibit B.

5.4 Pay to AMAFCA, within 45 days of receipt of invoice from AMAFCA, CITY's share of any overruns in the PROJECT, based on CITY providing 10% of the total cost of the Dam Bid Lot, 50% of the Trail/Outlet Bid Lot and 100% of the Unser Bid Lot, including design, construction engineering, right of way and construction costs, as described in Section 5.2, with the provision that AMAFCA's actual construction engineering costs will be allocated between the Bid Lots by the relative costs of these Bid Lots and that interest accrued in the Project Account will be applied as described in Section 6.3. Final actual costs of the projects will be split among the parties in accordance with Exhibit B.

5.5. Grant impact fee credits to VISTA and to TRAILS for the value of the construction of the PROJECT, only if the PROJECT, or portions thereof, and the value of the dedication of the land for the PROJECT by VISTA and TRAILS are eligible for impact fee credits, against drainage facilities impact fees pursuant to the CITY's Drainage Facilities Impact Fees Ordinance. If the PROJECT or portions thereof become eligible for impact fee credits, the impact fee credits shall be granted pursuant to the following terms and conditions:

1. Credits shall only be granted to VISTA and TRAILS for the value of the construction of the PROJECT and the value of the dedication of the land for the PROJECT by VISTA and TRAILS;

2. The value of the dedication of the land for the PROJECT shall be based on the fair market value of the property prior to any increase in value resulting from subdivision or development approval and shall be demonstrated by an appraisal prepared by an appraiser acceptable to the CITY;

3. The value of the construction of the PROJECT shall at the option of the VISTA and TRAILS be based on:

A. The fair market value of the completed PROJECT at the time of acceptance by AMAFCA and the CITY demonstrated by an appraisal prepared by an appraiser acceptable to the CITY, less AMAFCA's and the CITY's share of the cost PROJECT; or

B. The actual design and construction cost of the completed PROJECT, including testing, surveying, construction management and inspection demonstrated by documentation acceptable to the CITY, less AMAFCA's and the CITY's share of the cost of the PROJECT; and

C. The PARTIES agree that the estimated value of the credits will be based on the actual design and construction cost of the PROJECT, less AMAFCA's and the CITY's share of the cost of the PROJECT, and the fair market value of the dedication of the land for the PROJECT by VISTA and TRAILS.

4. Credits shall first be applied against drainage impact fees imposed on the Vista Vieja Subdivision being developed by VISTA and the Trails Subdivision being developed by TRAILS.

5. If the value of the credits exceeds the amount of drainage impact fees otherwise due, the excess credits shall become the property of VISTA and TRAILS subject to the following conditions for disposition:

A. Excess credits shall only be applied to offset impact fees for the same category of improvement and for projects within the same service area for which the credits were granted;

B. Excess credits shall not be used to offset impact fees for other categories of improvements other than drainage improvements;

C. Excess credits shall be freely assignable by VISTA and TRAILS subject to prior written notice to the CITY;

D. VISTA and TRAILS may request cash reimbursement for excess credits from the CITY; however, the CITY shall not be obligated to reimburse VISTA or TRAILS for any such excess credits;

E. Excess credits shall not accrue interest and shall not be considered public money or constitute a liability of the CITY for any purpose whatsoever, except to offset impact fees as set forth in this Agreement, and

F. Excess credits shall expire if not used or redeemed within seven (7) years after issuance.

6. The credits shall be granted and become effective on the date of acceptance of the PROJECT by AMAFCA and the CITY, in accordance with the Drainage Impact Fee Ordinance.

7. In the event the City does not assess impact fees against the Vista Vieja Subdivision being developed by VISTA and the Trails Subdivision being developed by TRAILS, VISTA and TRAILS shall not be eligible to receive impact fee credits pursuant to this Agreement.

8. Grant impact fee credits to CITY and to AMAFCA for the value of their actual funding for the construction of the PROJECT, only if the PROJECT, or portions thereof, are eligible for impact fee credits, against drainage facilities impact fees pursuant to the CITY's Drainage Facilities Impact Fees Ordinance. If the PROJECT or portions thereof become eligible for impact fee credits, the impact fee credits shall be granted pursuant to the Ordinance.

5.6 Accept the multi-use trail underpass and high flow outlet, the low flow trickle pipes, as well as Unser Blvd and all multi-use trails built as part of the PROJECT, for continuous maintenance upon satisfactory completion of construction and confirm acceptance of same in writing by CITY.

SECTION 6. All PARTIES agree:

6.1 That they are splitting the project costs as provided herein to include design, construction engineering, construction, right of way, FEMA CLOMR/LOMR and FEMA review fees, in accordance with Exhibit C. For purposes of allocating the costs, the design fee of $186,880.00, the right of way value of $1,026,436.00, and the FEMA CLOMR/LOMR analysis, submittal and review fees of $27,400.00 are considered fixed.

6.2 This Agreement does not relieve the VISTA or TRAILS of the requirement to construct (or financially guarantee construction of) such facilities that AMAFCA and the CITY may deem necessary for the Vista Vieja Subdivision and the Trails Subdivision.

6.3 Any interest accrued on monies collected by AMAFCA for the PROJECT shall be first used on any overruns in the construction engineering or construction costs of the PROJECT. If the interest earned on the Project Account is greater than the total over runs, the interest will be applied without prorating it to each Bid Lot. Any remaining interest earned on the Project Account will then be disbursed to AMAFCA, CITY, VISTA and TRAILS in a prorated manner based on the initial contributions made to the Project Account. If the interest earned on the Project Account is less that the total over runs, the interest will be applied in a prorated manner based on the relative costs of each PROJECT Bid Lot, prior to determining additional payments due by the PARTIES.

6.4 All PARTIES will strive for prompt action and timely response.

6.5 If any situation arises which adversely affects any PARTY's participation in this Agreement, or meeting the construction bid schedule identified in Section 2.2, said PARTY will immediately notify the other PARTIES in writing.

6.6 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.

6.7 Unresolvable differences shall be referred to binding arbitration under the provisions of the New Mexico Uniform Arbitration Act.

6.8. All storm drainage facilities will be designed and constructed to current CITY, AMAFCA and New Mexico Office of the State Engineer Dam Safety Bureau standards and, as constructed, shall meet all applicable codes.

6.9 All trail and roadway facilities will be designed and constructed to current City standard specifications and, as constructed, shall meet all applicable codes.

6.10. This Agreement shall inure to the benefit of and be binding upon the undersigned PARTIES and their respective successors and assigns. Whenever in this Agreement a reference to VISTA or TRAILS is made, such references shall be deemed to include a reference to successor owners of the MESA or TRAILS property that is subject to he terms of this Agreement.

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

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

6.13 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.

6.14. 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 one PARTY to the other:

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

Vista Vieja Investments LLC
8300 Carmel Dr., N.E.
Albuquerque, NM 87122
Fax (505) 828-9901
Attn: Scott Schiabor

City of Albuquerque
Director, Dept. Municipal Development
P.O. Box 1293
Albuquerque, NM 87102
Fax: (505) 768-2310

The Trails LLC
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120
Fax (702) 454-8715
Attn: John Murtagh

With copy to:
City of Albuquerque
City Engineer
600 2nd Street NW, Suite 201
Albuquerque, NM 87102
Fax: (505) 924-3864

6.15 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.

6.16 It is specifically agreed among 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.

6.17. As between the CITY and AMAFCA, each party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or tangible property to the extent they result from negligence of its employees. The liability of the CITY and AMAFCA shall in all cases be subject to the limitations and immunities of the New Mexico Tort Claims Act, Section 44-4-1, et. seq., NMSA 1978, as amended.

6.18. In the event of a dispute between VISTA and/or TRAILS and AMAFCA, or VISTA and/or TRAILS and the CITY, regarding this Agreement, the prevailing PARTY shall be entitled to reimbursement of its costs and reasonable attorney's fees. In the event of a dispute between the CITY and AMAFCA, each PARTY shall be responsible for its own costs and attorney's fees.

6.19 Funds for this project are contingent upon AMAFCA's successful sale of General Obligation Bonds.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the day and year set forth above.

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, a political subdivision of the State of New Mexico

Ronald D. Brown, Chair
Board of Directors

ATTEST:

Tim Eichenberg, Secretary/Treasurer
Board of Directors

5/26/05
(date)

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

This instrument was acknowledged before me on May 26, 2005 by Ronald D. Brown, Chair of the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico.

Pamela S. Woodruff
Notary Public

My commission expires:

9-22-08

OFFICIAL SEAL
PAMELA S. WOODRUFF
Notary Public
State of New Mexico
My Commission Expires 9-22-08

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

City of Albuquerque

James Lewis, Chief Administrative Officer — Date 9/21/05

John R. Castillo, P.E., Director
Department of Municipal Development — Date 9/9/5

Reviewed as to Form:

City Attorney — Date 9-20-5

Attest:

City Clerk — Date 9-22-05

ACKNOWLEDGMENT

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

This instrument was acknowledged before me on September 21, 2005, by James Lewis, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation.

Notary Public

My Commission Expires:
1-27-06

Agreement to Provide Design, Construction and Maintenance for
Boca Negra Detention Dam and Outfall Pipe
and Adjacent Unser Blvd. Improvements

Vista Vieja Investments LLC

By: _____ Date: 6/22/05
Scott Schiabor, Managing Member

ACKNOWLEDGEMENT FOR CORPORATION

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

This instrument was acknowledged before me on June 22, 2005 by Scott Schiabor, as Managing Member of Vista Vieja Investments LLC, on behalf of said New Mexico Limited Liability Corporation.

_____
Notary Public

My Commission Expires:
5/19/06

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

The Trails LLC

By:_____ Date: 6/16/05

Name: John K. Murtagh, Managing Member

ACKNOWLEDGEMENT FOR CORPORATION

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

OFFICIAL SEAL
DONNA LAWSON
NOTARY PUBLIC-STATE OF NEW MEXICO
My commission expires: 12-1-08

This instrument was acknowledged before me on June 16th, 2005 by John K. Murtagh, Managing Member of The Trails LLC on behalf of said Limited Liability Company.

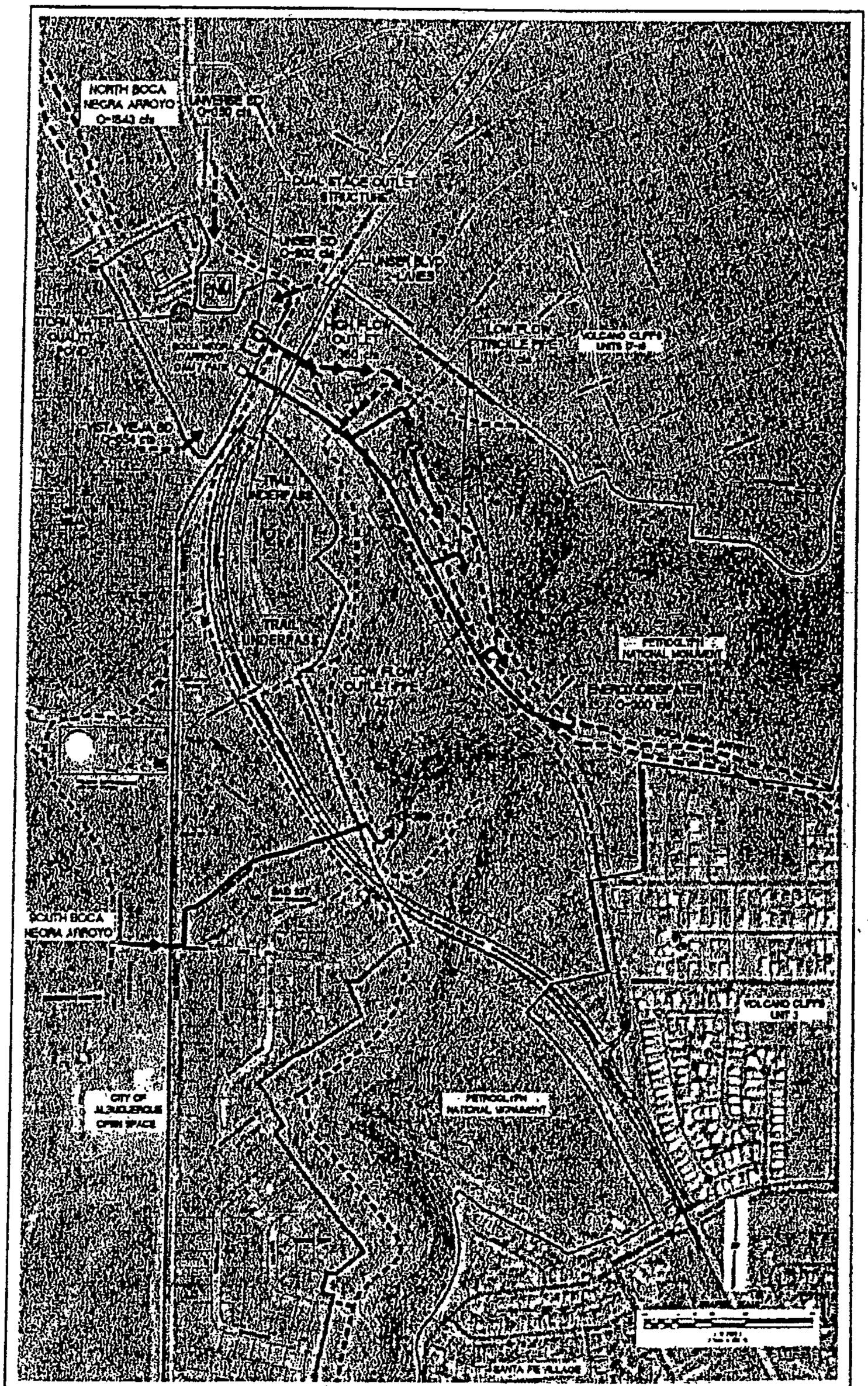
Donna Lawson
Notary Public

My Commission Expires:

12-1-08

Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements

Exhibit A



Proposed Boca Negra Arroyo Dam / Park

Exhibit B

Boca Negra Detention Dam and Outfall Pipe

Cost Sharing Allocation Based on Project Elements
May 18, 2005

Project Elements				Total Cost	AMAFCA	MESA	LONGFORD	City
Boca Negra Detention Dam & Outlet Pipe								
25% 33.5% 31.5% 10% AMAFCA/Mesa/Longford/City								
Dam & Outlet Pipe	1	LS	1,900,000	1,900,000	475,000	636,500	598,500	190,000
Design, 7.22%				137,180	33,250	44,555	41,895	13,300
Construction Management, 8%				152,000	38,000	50,920	47,880	15,200
Right of Way				977,420	244,355	327,436	307,887	97,742
Subtotal				3,166,600	790,605	1,059,411	996,162	316,242
Bike Trail Underpass and Hi Flow Outlet								
50% 0.0% 0.0% 50% AMAFCA/Mesa/Longford/City								
Crossing Structure	1	LS	340,000	340,000	170,000	0	0	170,000
Design, 7%				23,800	11,900	0	0	11,900
Construction Management, 8%				27,200	13,600	0	0	13,600
Right of Way				14,123	7,062	0	0	7,062
Subtotal				405,123	202,562	0	0	202,562
Unser Blvd in Front of Dam - Full cross Section, two lanes paved								
0% 0.0% 0.0% 100% AMAFCA/Mesa/Longford/City								
Roadway and Trail	1	LS	370,000	370,000	0	0	0	370,000
Design, 7%				25,900	0	0	0	25,900
Construction Management, 8%				29,600	0	0	0	29,600
Right of Way				34,893	0	0	0	34,893
Subtotal				460,393	0	0	0	460,393
FEMA LOMR								
0% 50.0% 50.0% 0% AMAFCA/Mesa/Longford/City								
Engineering Design & Submittal for FEMA CLOMR/LOMR				20,000	0	10,000	10,000	0
FEMA Review Fees				7,400	0	3,700	3,700	0
				27,400	0	13,700	13,700	0
Total Project Costs				4,059,516	993,167	1,073,111	1,009,862	979,197
					24.5%	26.4%	24.9%	24.1%

Project Cost Sharing Elements		Project Cost Contributions by Party: AMAFCA	MESA	LONGFORD	City	
Construction	2,610,000	784,367	321,500	520,757	979,197	Cash for Construction
Design	186,880	0	93,440	93,440		Design by Private
Constr. Mgt.	208,800	208,800				Cash for CM services
Right of Way	1,026,436		644,471	381,965		Right of Way Dedication
FEMA Analysis and Submtl	20,000		10,000	10,000		FEMA Analysis and Submtl
FEMA Fees	7,400		3,700	3,700		FEMA Fees
	4,059,516	993,167	1,073,111	1,009,862	979,197	

Exhibit C; Page 1 of 2

GRANT OF PERMANENT EASEMENT
FOR STORM DRAINAGE WORKS

Grant of Permanent Easement, between the City of Albuquerque, a New Mexico municipal corporation ("Grantor"), whose address is P.O. Box 1293, Albuquerque, New Mexico, 87103 and the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico ("AMAFCA"), whose address is 2600 Prospect Ave. NE, Albuquerque, New Mexico, 87107, collectively ("the Parties").

Grantor grants to AMAFCA, and its successors and assigns, an exclusive, permanent easement ("Easement") in, over, upon and across the real property described on Exhibit "A" attached hereto ("Property") for the construction, installation, maintenance, repair, modification, replacement and operation of storm drainage improvements associated with the Boca Negra Detention Dam Outfall Pipe, together with the right to remove trees, bushes, undergrowth and any other obstacles upon the Property if AMAFCA determines they interfere with the appropriate use of this Easement.

Grantor hereby reserves for itself and its successors and assigns the right to construct, operate and maintain roadway improvements and related appurtenances, including bicycle trails, within the Property subject to the review and written approval by AMAFCA, said approval not to be unreasonably withheld. In the event Grantor constructs any improvements ("Improvements") within the Property, AMAFCA has the right to enter upon the Property at any time and perform whatever inspection, installation, maintenance, repair, modification or removal ("Work") it deems appropriate.

The grant and other provisions of this Easement constitute covenants running with the Property for the benefit of the AMAFCA and its successors and assigns until terminated.

To have and to hold the said right and Easement for the uses and purposes aforesaid unto the AMAFCA, its successors and assigns, forever, as specifically provided herein. Any portion of the Easement granted herein shall revert to the Grantor, its successors or assigns, as and to the extent said portion of Easement is declared unnecessary for storm drainage purposes by AMAFCA, its successors and assigns. Any reversion shall be conveyed by Quitclaim Deed.

This Easement shall not be effective until approved by the City Engineer in the signature block below

Revised Exhibit C Acknowledged:

Party Name	Initial	Date
AMAFCA	JPK	9-6-05
CITY	[illegible]	9/9/5
VISTA	[illegible]	9-8-05
TRAILS	DM	9/9/05

Exhibit C, Page 2 of 2

WITNESS my hand and seal this _____ day of _____, 2005.

Approved:

_____
City Engineer

_____
Date

Approved As To Form

_____
City Attorney

_____
Date

Reviewed By:

_____
John R. Castillo, Director, Department of
Municipal Development

_____
Date

GRANTOR: City of Albuquerque

By: _____
James B. Lewis, Chief Administrative Officer

STATE OF NEW MEXICO)
)ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on ____ day of _____, 2005, by James B. Lewis as Chief Administrative Officer of the City Of Albuquerque, a municipal corporation, on behalf of said corporation.

_____
Notary Public

My Commission Expires:

_____

2005-31

November 28, 2005

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL
AUTHORITY
Attention: John Kelly, P.E.
Executive Engineer
2066 Prospect Avenue, N.E.
Albuquerque, New Mexico 87107

Assignment of P. Vista Vieja to KB Homes

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd., Improvements, dated September 22, 2005 ("Agreement@)

Dear Mr. Kelly:

KB HOME New Mexico Inc. has signed an agreement to and is contemplating the purchase of certain real estate in the City of Albuquerque described as the Vista Vieja Subdivision, Tracts One through Four, which is owned by VISTA VIEJA INVESTMENTS, LLC ("VISTA VIEJA"), and which includes the interests of VISTA VIEJA in the above-referenced Agreement. The property will be acquired through two closings, of which the First Closing comprises Tracts One and Two. As of the First Closing, KB HOME will be the successor to VISTA VIEJA as to rights and obligations through a partial assignment as to Tracts One and Two.

As a part of KB HOME's due diligence, we write to obtain your confirmation that the Agreement has not been amended, is current and in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA thereunder, and that AMAFCA is willing to accept KB HOME as VISTA VIEJA's successor under the partial assignment.

KB HOME NEW MEXICO INC. 6330 RIVERSIDE PLAZA LN NW STE 200 ALBUQUERQUE, NM 87120
TEL 505 353 5300 FAX 505 897 4479 KBHOME COM

If these facts are correct, we shall appreciate your signing the acknowledgment to that effect stated below and returning a copy of this letter to us.

Thank you for your cooperation in this matter.

Sincerely,

Robert H. Coleman, Ph.D.
Director of Land Development and Forward Planning

Acknowledgment:

The undersigned hereby acknowledges that the above-referenced Agreement has not been amended, is current and in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA INVESTMENTS, LLC thereunder, and AMAFCA accepts KB HOME New Mexico Inc. as the partial assignee of VISTA VIEJA INVESTMENTS, LLC.

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTRAL
AUTHORITY

By John P Kelly
John Kelly, P.E.
Executive Engineer

Date: 11-29-05

DIXON, SCHOLL & BAILEY, P.A.

A Professional Association of Lawyers and Counselors

Gerald G. Dixon jdixon@dsblaw.com

November 30, 2006

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTROL
AUTHORITY
Attention: John Kelly, P.E.
Executive Engineer
2066 Prospect Avenue, N.E.
Albuquerque, New Mexico 87107

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd., Improvements, dated September 22, 2005 ("Agreement")

Dear Mr. Kelly:

KB HOME New Mexico Inc. has signed an agreement to and is contemplating the purchase of certain real estate in the City of Albuquerque described in the Bulk Land Plat as Vista Vieja Subdivision, Tracts One through Four, which is owned by VISTA VIEJA INVESTMENTS, LLC ("VISTA VIEJA"), and which includes the interests of VISTA VIEJA in the above-referenced Agreement. The first of the two closings occurred on December 1, 2005. The second closing is contemplated to occur on December 1, 2006. The second closing comprises Tracts Three and Four. As of the second closing, KB HOME will be the successor to VISTA VIEJA of its rights and obligations under the referenced Agreement through the Complete Assignment of the above-referenced Agreement as to Tracts Three and Four. It should be noted that at the second closing, as a part of a "land bank" arrangement for the benefit of, and as an accommodation to KB HOME, Salls Brothers Construction, Inc., as assignee of KB HOME, will hold title to Tracts Three and Four, subject to an option agreement in favor of KB HOME. KB HOME will remain the assignee of all rights and obligations under the referenced Agreement.

707 BROADWAY, N.E., SUITE 505 • ALBUQUERQUE, NEW MEXICO 87102
P.O. BOX 26746 • ALBUQUERQUE, NEW MEXICO 87125-6746
(505) 244-3890 • FAX (505) 244-3889
HTTP://DSBLAW.LAWOFFICE.COM

As a part of KB HOME's due diligence, we write to obtain your confirmation that the Agreement has not been amended, is current and is in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA thereunder, and that AMAFCA is willing to accept KB HOME as VISTA VIEJA's successor under the partial assignment.

If these facts are correct, we shall appreciate your signing the acknowledgment to that effect stated below and returning a copy of this letter to us.

Thank you for your cooperation in this matter.

Sincerely,

Gerald G. Dixon
Dixon Scholl & Bailey, P.A.

Acknowledgment:

The undersigned hereby acknowledges that the above-referenced Agreement has not been amended, is current and in good standing insofar as the obligations of all parties thereunder are concerned, that no default has occurred on the part of VISTA VIEJA INVESTMENTS, LLC, thereunder and AMAFCA accepts KB HOME New Mexico Inc. as the assignee of all of the rights, obligations and interests of VISTA VIEJA INVESTEMNTS, LLC, in and to the Agreement.

ALBUQUERQUE METROPOLITAN
ARROYO FLOOD CONTRAL
AUTHORITY

By John P. Kelly
John Kelly, P.E.
Executive Engineer

Date: 11-30-06

COMPLETE ASSIGNMENT OF AGREEMENT TO PROVIDE DESIGN, CONSTRUCTION AND MAINTENANCE FOR BOCA NEGRA DETENTION DAM AND OUTFALL PIPE AND ADJACENT UNSER BLVD. IMPROVEMENTS

This Complete Assignment of Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements ("Complete Assignment") is made and entered into by and between VISTA VIEJA INVESTMENTS, LLC ("VISTA"), and KB HOME NEW MEXICO INC. ("ASSIGNEE"), with reference to the following facts:

Recitals

WHEREAS, VISTA is one of the parties to that certain Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements, dated September 22, 2005, by and among ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY, THE CITY OF ALBUQUERQUE, VISTA VIEJA INVESTMENTS, LLC, and THE TRAILS LLC. ("Agreement");

WHEREAS, VISTA, as Seller, has entered into that certain Purchase Agreement and Escrow Instructions (Vista Vieja), dated June 27, 2005 ("Purchase Agreement"), with KB HOME NEW MEXICO INC., a New Mexico corporation ("KB HOME"), as Buyer, for the purchase and sale of that certain property described in Exhibit A, which is attached hereto and made a part hereof; which purchase and sale will be accomplished in two separate purchase-and-sale transactions described in the Purchase Agreement as the "First Closing" and the "Second Closing," the First Closing describes the conveyance of fee title to Tract 1 and Tract 2, as shown on the Bulk Land Plat of Vista Vieja Subdivision, filed on April 21, 2005, and recorded in Book 2005C, at page 122, of the records of Bernalillo County, New Mexico, a copy of which is attached hereto, made a part hereof, and labeled "Exhibit B" ("Bulk Land Plat"); Tract 1 and Tract 2, as more specifically identified in the Preliminary Plats attached hereto, made a part hereof, and labeled "Exhibit B-1" and "Exhibit B-2," respectively, shall include approximately 142 Lots and 4 Open Space Parcels (described in the Preliminary Plat as Tract 1 and Parcels A, B, and C) to be dedicated to the Homeowners Association; Tract 2 shall comprise approximately 160 Lots and 5 parcels as shown in the Preliminary Plat; the Second Closing describes the conveyance of fee title to Tract 3 and Tract 4, as shown on the Bulk Land Plat; the First Closing comprised the acquisition of Tract 1 and Tract 2 by Assignee, and the Second Closing shall comprise the acquisition of Tract 3 and Tract 4 by Assignee;

WHEREAS, the First Closing was consummated without incident on December 1, 2005, and with each party paying and performing all obligations incumbent upon it through the date of the First Closing;

WHEREAS, VISTA warrants to KB HOME that, to the best of its knowledge, all of the terms of the Agreement are in full force and effect, there have been no amendments to the Agreement, no party thereto, including but not limited to VISTA, is in default thereunder, no event of default thereunder by any party thereto, has occurred, there is no reasonable expectation of the declaration of an event of default by any party thereto, all obligations on the part of VISTA thereunder have been timely performed, and VISTA has provided to KB HOME all financial data, correspondence, and any other documentation in its possession relating to the Agreement;

WHEREAS, VISTA desires to assign to Assignee all of the right, title, and interest of VISTA in the Agreement, and to delegate to Assignee all of its duties under the Agreement;

WHEREAS, Assignee assumes all of the obligations of VISTA under the Agreement, agrees to assume, pay, and perform the Agreement according to its terms, and to protect, defend, hold harmless, and indemnity VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith;

WHEREAS, upon the completion of the Second Closing, presently scheduled for December 1, 2006, VISTA shall remit, convey, or assign in full to Assignee any and all credits theretofore received by VISTA from AMAFCA or Assignee prior to the Second Closing, and Assignee shall be entitled to receive and retain all subsequent credits to which it will be entitled under the Agreement; and

WHEREAS, Assignee intends to assign at the Second Closing all of its right, title, and interest in and to the Purchase Agreement to SALLS BROTHERS CONSTRUCTION, INC., a New Mexico corporation, solely as a part of a "land bank" arrangement for the benefit of, and as an accommodation to, Assignee. Assignee will hold an option to purchase the land comprising Tract 3 and Tract 4. Assignee will remain liable for the payment and performance in full as the Assignee in this Complete Assignment. Following Assignee's assignment to SALLS BROTHERS CONSTRUCTION, INC., Assignee shall be and remain liable for the payment and performance in full of the obligations of VISTA under the Agreement, and Assignee shall protect, defend, hold harmless, and indemnify VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection with the Agreement.

NOW, THEREFORE, in consideration of their mutual agreements herein set forth, it is agreed by and among the parties hereto as follows:

1. VISTA shall, and does hereby, assign to Assignee all of the right, title, and interest of VISTA in the Agreement, and VISTA shall, and does hereby, delegate to Assignee all of the obligations of VISTA under the Agreement.

2. Assignee hereby assumes all of the obligations of VISTA under the Agreement and agrees to assume, pay, and perform the Agreement according to its terms, and to protect, defend, hold harmless, and indemnify VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith.

3. For all claims arising out of events relating to the Agreement occurring after the date of this Complete Assignment, Assignee hereby agrees to protect, defend, hold harmless, and indemnify VISTA from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith. For all claims arising out of events on Tract 3 and Tract 4 of Vista Vieja Subdivision relating to the Agreement and occurring prior to the date of this Complete Assignment, VISTA agrees to protect, defend, hold harmless, and indemnify Assignee from any further liability, including reasonable attorneys' fees and litigation expenses, in connection therewith. Neither party shall be entitled to indemnity for its own acts or omissions.

4. VISTA has assigned, and does hereby assign, all of the credits to which it has been, is, or will be entitled under the Agreement completely assigned hereby, and which credits, if received by VISTA, VISTA agrees to promptly remit, convey, or assign in full to Assignee.

5. Upon the completion of the Second Closing, VISTA shall remit, convey, or assign in full to Assignee any and all credits theretofore received by VISTA from AMAFCA or Assignee prior to the Second Closing; and from and after the Second Closing Assignee shall be entitled to receive and retain all credits to which it will be entitled under the Agreement.

6. The Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Complete Assignment on this 1st day of December, 2006.

VISTA VIEJA INVESTMENTS, LLC

By _____
Robert G. Sahd
Manager

KB HOME NEW MEXICO INC.

By _____
President

ACKNOWLEDGEMENTS

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

This instrument was acknowledged before me on Dec 1, 2006, by ROBERT G. SAHD, Manager of VISTA VIEJA INVESTMENTS, LLC, a New Mexico limited liability company.

(SEAL)

My commission expires:

7/24/10

Notary Public

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

My Commission Expires 12/17/08

This instrument was acknowledged before me on December 1, 2006, by Robert Young, as VP of KB HOME NEW MEXICO INC., a New Mexico corporation.

(SEAL)

My commission expires:

12/17/08

Notary Public

CONSENT AND APPROVAL

The undersigned, SALLS BROTHERS CONSTRUCTION, INC., hereby consents to and approves of the foregoing Complete Assignment.

SALLS BROTHERS CONSTRUCTION, INC.
a New Mexico corporation

By: _____
Name: FRED H. SALLS
Its: PRESIDENT

Exhibit A
To

COMPLETE ASSIGNMENT OF AGREEMENT TO PROVIDE DESIGN, CONSTRUCTION AND MAINTENANCE FOR BOCA NEGRA DETENTION DAM AND OUTFALL PIPE AND ADJACENT UNSER BLVD. IMPROVEMENTS

Legal Description of the Property

158.8919 acres more or less, as shown on the Bulk Land Plat of Vista Vieja Subdivision Recorded in Book 2005C, Page 122, Reception No. 2005055012 of the real estate records of the Clerk of Bernalillo County, New Mexico, on April 21, 2005.

Under the Albuquerque Subdivision Code, § 14-14-3-5 (2), the Development Review Board must approve a final plat if it substantially conforms to the preliminary plat as approved. However, here, the preliminary plat was approved subject to a drainage report, stamp dated March 21, 2007. The March 21, 2007, drainage report states "[a]ccording to the revised Drainage Masterplan, a maximum flowrate of 198 cfs will enter the Universe Blvd. storm drain system to the Boca Negra Dam." Later approved Drainage Masterplans reaffirm this storm water outflow solution. On February 19, 2012, a letter from Leverick and Musselman LLC on behalf of The Trails LLC repudiated The Trails' obligations under the Boca Negra Dam agreement. Further, on April 6, 2012, the City of Albuquerque was noticed with a demand for arbitration by The Trails. This demand reaffirmed The Trails' intention to avoid performance of The Trails' obligations under the Boca Negra Dam agreement. Without this performance, there will be neither a dam nor a Universe Blvd. storm drain system to carry storm water to it. Accordingly, the final plat does not conform to the preliminary plat as approved.

BW 4-10-12

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX: (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

February 9, 2012

VIA ELECTRONIC MAIL

Mr. John Murtagh
Longford Group, Inc.
3077 E. Warm Springs Road,
Las Vegas, Nevada 89120

Mr. Rick Beltramo
Director of Engineering
Galway Construction, Inc.
6330 Riverside Plaza Lane NW
Albuquerque, New Mexico 87120

Re: Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements dated September 23, 2005

Dear John and Rick:

I have reviewed the above-referenced Agreement and a project schedule chart prepared by Rick tracking certain key events occurring with respect to the project following the execution of the Agreement. I have also given some consideration to the discussions we have had relative to the Agreement and the project, and to some of the supplemental information provided to me by Rick concerning the project.

You have asked for some bullet points relative to my initial legal conclusions concerning the Agreement. This short letter is provided with the understanding that we were just recently engaged to represent The Trails LLC with respect to its legal rights and obligations under the Agreement and have not spent as much time as necessary to complete our review of documents including correspondence we deem necessary to give final opinions relative to the above.

Based on the foregoing and our initial review of the Agreement and the matters identified above, we are of the opinion that:

- The scope of work was substantially changed on or after fall 2006. This appears to have occurred without approval in writing by The Trails LLC. Section 6.11 of the Agreement provides that it may be modified only in writing

signed by all parties. This change in the scope of work is not unenforceable. Further, per Restatement of the Law, Second, Contracts, § 265, Where, after a contract is made, a party's principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary."

- The cost of work has substantially increased based in part on the change in the scope of work ("additions to the scope of the project" including "a master planned sanitary sewer interceptor" and "paving the full four lane section of Unser Blvd. for the entire project reach," cost increases "region wide" and "incomplete estimate that was used during the development of the Agreement." Letter of John P. Kelly dated November 2006). These increased costs are not chargeable to The Trails for (a) changes in the scope of work not agreed to, or (b) increased costs in the project (now pending advertisement for bids) for over 5 years based on the initial assumption, Section 2.2 of the Agreement, that the time to plan, permit, bid and award the construction contract for this project would take only 5 months ending February 2006.

- Delay of the project, as noted in November 2006 letter from John P. Kelly, had by then already resulted in substantial cost increases. There has now been an additional five year delay in the project, resulting in, as we understand it, further substantial projected cost increases. Restatement of the Law, Second, Contracts, § 261, "Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary."

- Value of the excess impact fee credits to The Trails LLC (acting essentially as a bank for part of the project costs in consideration of the excess credits) substantially undermined by the City's enactment and continuing resolutions implementing and continuing its impact fee ordinance moratorium, raising the issue of failure of consideration. See, City Ordinance amending SECTION 14-19-1-12 R.O.A. 1994, effective July 1, 2009, and thereafter. "When there is a failure of consideration, a contract, valid when formed, becomes unenforceable because the performance bargained for has not been rendered."

- Project delays outside the control of The Trails LLC have resulted in project delays well in excess of the estimated project time of one year. At this point in time, the advertisement for bids has still not occurred and the construction contract has not been let. This was to have occurred by February 2006. See, Section 2.2 of the Agreement. The project time scope was one year. At a minimum, this raises the issue of whether the Agreement is valid given the underlying expectations of the parties that this would be a one year project. It

raises a host of failed underlying implied conditions (best example, the economy when the Agreement was executed). It also raises other issues such as the New Mexico Bateman Act which generally renders void any public contract committing a city, county or local body from committing public funds to a project beyond one year. Per §6-6-11 New Mexico Statutes Annotated, "It is unlawful for any board of county commissioners, municipal governing body or any local school board, for any purpose whatever to become indebted or contract any debts of any kind or nature whatsoever during any current year which, at the end of such current year, is not and cannot then be paid out of the money actually collected and belonging to that current year, and any indebtedness for any current year which is not paid and cannot be paid, as above provided for, is void." We believe that this would render void the Agreement beyond the City's fiscal year ending June 30, 2006 and may render void the Agreement if (a) the Bateman Act applies to AMAFCA (no case law on this point, but we believe it does) and AMAFCA had not sold bonds sufficient to fund its share of the cost of work by the end of its fiscal year following the execution of the Agreement.

The Agreement calls for arbitration of any dispute. Calling The Trails LLC's bond will result in a demand for arbitration, with the bonding company being directed to not honor the demand on the bond pending completion of the arbitration. Worse case, the bonding company would interplead the bond into an arbitrator's trust account or the Second Judicial District Court pending a final award or decision in the arbitration.

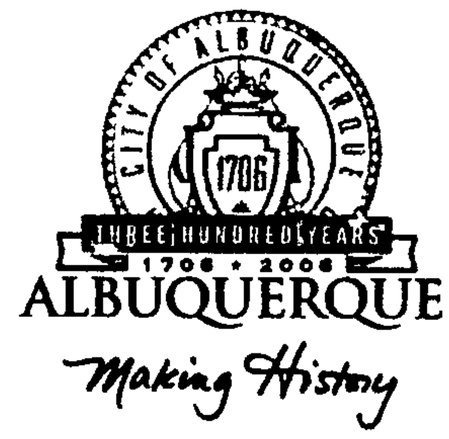
The suggestion by the City of calling the bond would only frustrate The Trails LLC's stated intention of wanting to sit down with the parties involved, including the City and AMAFCA and all new parties benefitted by the proposed project, to revisit the Agreement especially in light of the undeniably long project delays, large cost increases, and substantial changes to the scope of work.

Respectfully yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

CITY OF ALBUQUERQUE



June 11, 2012

Via Email to tim@flynnobrien.com

Timothy Flynn-O'Brien, Esq.
817 Gold Ave. S.E.
Albuquerque, NM 87102

Re: Requested Clarification of the City of Albuquerque's Position Regarding RCS Entities and the Trails Development

Dear Mr. Flynn-O'Brien,

P.O. Box 1293

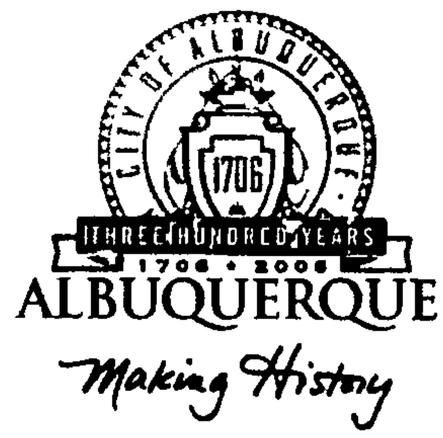
Albuquerque

New Mexico 87103

www.cabq.gov

This correspondence is in response to our telephone conversation on the morning of June 7, 2012. During that conversation, we discussed issues regarding the City of Albuquerque's ("City") withholding of building permits for subdivisions within the Trails Development. The referenced subdivisions are currently owned by various LLC sub-entities of Real Capital Solutions ("RCS"), whom you represent. You requested a clarification of the City's position with regard to the RCS entities, in light of ongoing litigation between The Trails LLC, the City, and various other parties. In this correspondence, I will only address the City's position regarding the issuance of building permits for lots within the Trails Development. Although I expect the Development Review Board ("DRB") will enter rulings regarding final plat applications affecting these subdivisions at the DRB's June 20th hearing, I cannot comment on any anticipated action until such rulings are issued. In clarifying the City's position, I will address the process for acquiring final plats, the City's Ordinances' conditions on issuance of building permits, the Trails LLC's statements regarding the construction of necessary drainage infrastructure, and those statements' relationship to the Trails LLC's apparent authority to represent RCS.

Generally, the Albuquerque City Code § § 14-14-1-1 *et seq.* ("Subdivision Ordinance") and § § 14-5-2-1 *et seq.* ("Drainage Control Ordinance") govern this discussion. Under "Part 2: Fundamental Considerations" of the Subdivision Ordinance, the first paragraph provides that "[l]and may be subdivided only in accordance with procedures established by this article. The Development Review Board shall approve the subdivision of land when it determines that the land is suitable for subdivision for the purposes proposed, the subdivision complies with this article,



and that the subdivision is not contrary to the best interests of the public health, safety, and general welfare." § 14-14-2-1 R.O. Albuquerque 1994. Under the same part, the Subdivision Ordinance later states that "[l]and to be subdivided must have or be provided with adequate infrastructure improvements as specified in Part 4 of this article." § 14-14-2-3(B). Under "Part 4: Minimum Standards for Design of Subdivisions," the drainage section states that "[s]torm sewer systems and other drainage and flood control improvements shall conform to the relevant facility plan, §§ 14-5-2-1 et seq., Drainage Control, other adopted [C]ity policies, and the applicable requirements of the Albuquerque Metropolitan Arroyo Flood Control Authority." § 14-14-4-11 R.O. Albuquerque 1994. Under the Drainage Control Ordinance, the financial responsibility section states that "[a]ll drainage control and flood control facilities which directly result from a proposed land use change are the responsibility of the developer....If the construction of such facilities is a condition of plat approval or building permit issuance, then financial guarantees of such construction satisfactory to the City Engineer shall also be provided as a prerequisite." § 14-5-2-9 R.O. Albuquerque 1994. Accordingly, both plat approval and building permit issuance may be tied to necessary drainage infrastructure.

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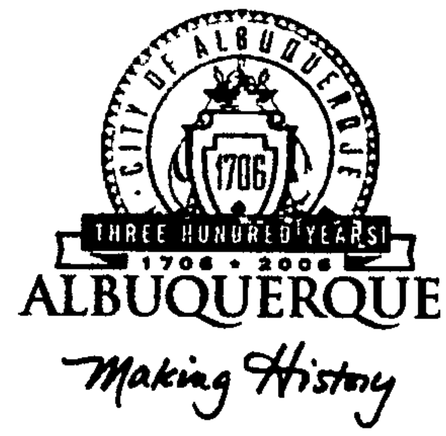
The plat approval process is generally outlined in "Part 3: Procedures and Submission Requirements for Plats" of the Subdivision Ordinance. § § 14-14-3-1 to 3-6. Plats typically move through sketch plat, preliminary plat, and final plat stages respectively. Among the requirements during the preliminary plat stage is an approved Drainage Report, prepared in accordance with the Drainage Control Ordinance and the City's Development Process Manual. § 14-14-3-4(C)(3) R.O. Albuquerque 1994. The "Drainage Report for Amendment to the Trails Unit II & III DMP [Drainage Master Plan]" Dec. 23, 2005, was submitted to the DRB as part of the preliminary plat approval process for the Trails Development. This document calls for storm water flows to leave the Trails Development via the Universe Blvd. storm drain system and run to the Boca Negra Dam. Although they have not yet been transcribed, testimony from the Trails Development's preliminary plat hearings will support the fact that preliminary plat approval was conditioned on the construction of the infrastructure described in this drainage report. Further, the City issued approval letters stating that this document was the publicly approved drainage report for the Trails Development. Similar report submittals, testimony, and approval letters exist concerning each subdivision within the Trails Development. At the April 11, 2012, DRB hearing on final plat approval for RCS owned subdivisions within the Trails Development, Rick



Beltramo, speaking as a representative of RCS, noted that plat submittals and approvals were conditioned on the storm water "outfall being Universe Blvd to Boca Negra Dam" (although, Mr. Beltramo noted "we are wanting the partners [to] consider [an] alternative"). Again, under the Drainage Control Ordinance, these drainage control improvements are the responsibility of the developer.

As part of the process of moving from preliminary plat approval to final plat approval, developers are often required to sign a subdivision improvement agreement (SIA) and provide a supporting financial guarantee to assure construction of necessary infrastructure. § § 14-14-5-3 & 5-4 R.O. Albuquerque 1994. In 2004, as part of the final plat approval stage for the Trails Development, the developer signed SIAs #730081 & #730085, providing a $1.5M guarantee for "off-site drainage mitigation". The related DRB infrastructure list noted that this guarantee related to separate projects, generally recognized through testimony and other documents to be the projects encompassed by the Boca Negra Dam Agreement. These SIAs were extended several times until January 2011, when they fell into default. These SIAs remain in default. While RCS has accepted assignment of the majority of the SIAs relating to the Trails Development, the City is unaware of any attempt by RCS to accept assignment of these drainage related SIAs. The Trails LLC recently indicated that they do not intend to seek extension of these SIAs, placing the SIAs into a state of perpetual default. Currently, there are inadequate financial guarantees to ensure completion of required drainage infrastructure for the Trails Development; the underlying SIAs for those guarantees have not been extended or updated in over a year; and, the SIAs have not been assigned to RCS as the new owner of the underlying property.

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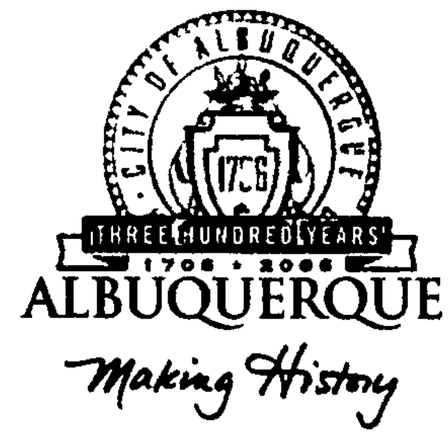
Regarding the City's withholding of building permits, under the Subdivision Ordinance, "[b]uilding permits shall not be issued or allowed by the [C]ity, unless the applicant presents...[a]pproval by the City Engineer that... prior or planned site preparation complies with a previously submitted and approved drainage report and/or plan[.]" § 14-14-9-4 R.O. Albuquerque 1994. Additionally, the Drainage Control Ordinance states that "[a]ll construction activities within the jurisdiction of the [C]ity shall conform to the requirements of the City Engineer with respect to drainage control[.] § 14-5-2-12(B) R.O. Albuquerque 1994. Several additional subsections in § 14-5-2-12 provide similar restrictions on construction in contravention of the Drainage Control Ordinance and its policies.



There are a number of factors that combine to justify the City exercising its authority to withhold building permits. Beyond the above discussed problems relating to SIAs and financial guarantees, the City remains uninformed as to the nature of the Trails LLC and affiliates relationship with RCS. The Trails LLC has repudiated its obligations to construct necessary drainage infrastructure relating to the Trails Development. The Trails LLC's repudiation runs to RCS both as the new owner of the underlying property and as an entity represented by the Trails LLC.

Although RCS manifests no intention to provide the necessary drainage infrastructure, the City is faced with demands for permission to continue construction within a 600+ lot subdivision. Planned site preparations cannot comply with a previously submitted and approved drainage report when the infrastructure contemplated by that report is both disputed and inadequately assured. Further, any construction activities permitted by the requested building permits would not conform to the requirements of the City Engineer with respect to drainage control because there is no apparent intention to construct permanent drainage infrastructure. Accordingly, under the City's ordinances, the City cannot issue building permits within the Trails Development. 13P

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In addition to clarifying the City's position regarding building permits, the City is notifying you that it views RCS as the Trails LLC's successor under the assignment clause of the Boca Negra Dam Agreement. Upon appointment of an arbitrator, the City will petition to have RCS joined in the arbitration as the real party in interest. Further, although the City has a substantial number of recorded contracts and agreements relating to the underlying land, the City was not made a party in RCS's foreclosure actions against the Trails LLC and affiliates. Accordingly, the City may seek to set aside the special master's deed and intervene in order to protect its interests.

Finally, while the City has begun enforcement of its ordinances by withholding building permits, this may not be the City's only remedy. The Drainage Control Ordinance empowers the City Engineer to issue an order demanding compliance from the owner of property that is in violation of the Drainage Control Ordinance. § 14-5-2-14 R.O. Albuquerque 1994. This order may require performance of any duty imposed on the owner by the Drainage Control Ordinance. *Id.* Following non-compliance with this order, the City Engineer may remedy the violation and impose a statutory lien on the property for the reasonable cost of such remedies. *Id.* While the City would prefer

not to utilize these coercive enforcement provisions, if given no alternative, the City will act to protect the public's safety, health, and general welfare.

While the City may currently be forced to withhold issuance of building permits within the Trails Development, the City is hopeful for a quick resolution that does not involve needless litigation. If the City were provided with adequate assurances for the construction the necessary drainage infrastructure—including a financial guarantee in the form of a letter of credit or escrow deposit—the City could issue the requested building permits. However, until such assurances are provided, the City must deny issuance of building permits in compliance with the City's ordinances and in the interest of public safety.

Sincerely,

Blake Whitcomb
Assistant City Attorney

cc: Kevin Curran, Esq. *via email to kcurran@cabq.gov*
Marcus J. Rael, Jr. Esq. *via email to marcus@roblesrael.com*
Greg Smith, Esq. *via email to gsmith@cabq.gov*
Maria Martinez-Siemel, Esq. *via email to mmsiemel@cabq.gov*
Richard Dourte, City Engineer *via email to rdourte@cabq.gov*

P.O. Box 1293
Albuquerque
New Mexico 87103
www.cabq.gov

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

THE TRAILS, LLC,
a Nevada limited liability company,

LONGFORD AT THE TRAILS, LLC,
a Nevada limited liability company,

OVERPECK MANAGEMENT, LLC,
a Nevada limited liability company,

GALWAY CONSTRUCTION INC.,
a Nevada corporation,

MURTAGH NEVADA, LLC,
a Nevada limited liability company,

Plaintiffs,

vs. **No. 12-cv-00357**

CITY OF ALBUQUERQUE,
a New Mexico municipality,

Defendant,

AFFIDAVIT OF CURTIS CHERNE

State of New Mexico)
) ss.
County of Bernalillo)

1. My name is Curtis Cherne, I am over the age of 18, and have personal knowledge of the matters stated in this affidavit.

2. I am a principle engineer and the Albuquerque City Hydrologist for the Planning Department for the City of Albuquerque, and have been employed as an engineer for the City for approximately seven (7) years.

3. I am familiar with the City of Albuquerque requirements regarding development related drainage, drainage reports, and drainage plans and have personal knowledge of the drainage requirements for the Trails development.

4. I am the custodian of the drainage plans and drainage reports for the City of Albuquerque.

5. The *Drainage Report for Amendment to the Trails Unit II & III DMP*, Dec. 23, 2005 by Steve J. Salazar is the approved drainage report for the Trails Development under which platting approvals for the Trails Development were granted.

6. The *Drainage Report for Taos at the Trails Unit II*, Mar. 21, 2007 by Steve Salazar is the approved drainage report for the Taos at the Trails Unit II Subdivision under which platting approvals for the Taos at the Trails Unit II Subdivision were granted.

7. The *Drainage Report for Tract 9A at the Trails Unit II*, Jul. 12, 2006 by Steve Salazar is the approved drainage report for the Tierra Vista at the Trails Subdivision under which platting approvals for the Tierra Vista at the Trails Subdivision were granted.

8. The *Drainage Report for Cantata at the Trails*, Aug. 22, 2007 by Kevin J. Murtagh is the approved drainage report for Cantata at the Trails under which building permit approvals for the Cantata at the Trails Subdivision were granted.

9. The foregoing facts are true to the best of my knowledge.

10. Further affiant sayeth naught.

Curtis Cherne

Curtis Cherne
Principle Engineer and City Hydrologist

Subscribed and sworn to and acknowledged before me this 30th day of May 2012 by Theresa Torrez.

Rachel F. Nickels
Notary Public

My Commission Expires:

May 13, 2014

OFFICIAL SEAL
Rachel F. Nickels
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: May 13, 2014

Janet Saiers, Chair
Danny Hernandez, Vice Chair
Ronald D. Brown, Secretary-Treasurer
Tim Eichenberg, Assistant Secretary-Treasurer
Daniel F Lyon, Director

Jerry M. Lovato, P E.
Executive Engineer

Albuquerque
Metropolitan
Arroyo
Flood
Control
Authority
2600 Prospect N.E., Albuquerque, NM 87107
Phone: (505) 884-2215 Fax: (505) 884-0214
Website: www amafca.org

November 10, 2010

Mr. Michael Riordan, P.E.
Acting Director, Department of Municipal Development
City of Albuquerque
P.O. Box 1293
Albuquerque, New Mexico 87102

Mr. John Murtagh, P.E.
The Trails, LLC
3077 E. Warm Springs Rd.
Las Vegas, Nevada 89120

Mr. Tony Sciarillo
KB Homes New Mexico, Inc.
601 Menaul Blvd NE, #4501
Albuquerque, New Mexico 87107

Re: The Agreement to Provide Design, Construction and Maintenance for Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements, dated September 22, 2005 (the "Agreement")

Gentlemen:

The Boca Negra Dam Hydrology Report has been reviewed by the Office of the State Engineer Dam Safety Bureau, and as of today, minor comments have been received. Wilson and Company, the design engineer working for The Trails and KB Homes, will now need to provide the entire Design Analysis Report and Construction Plans to the New Mexico Office of the State Engineer Dam Safety Bureau ("OSE") for their review and approval at the end of the month. Upon their approval, AMAFCA will approve the plans and advertise the project for construction bids.

It is imperative that Wilson and Company make the submittal to the OSE at the end of the month to allow AMAFCA to advertise the project by the end of the year.

A key component of this submittal is the required plat showing sufficient right of way interests held by AMAFCA for the construction, operation, and maintenance of the dam.

I note that the parcels to be dedicated per the Agreement by The Trails, LLC, still need to be dedicated to AMAFCA. This issue needs to be taken care of immediately so that the plat Wilson and Company is working on can be approved by the Development Review Board, filed for public record, and included with the submittal to the OSE.

That said, I request The Trails LLC, KB Homes, and Wilson and Company notify all parties of the agreement, in writing, if there are any issues that will prevent the plat and dam design analysis report and construction plans from being completed and submitted to the OSE.

For the record, I also want to inform The Trails, LLC and KB Homes, that AMAFCA and the City have entered into a separate agreement (*Agreement for the Acquisition of Additional Right of Way for Boca Negra Detention Dam and Universe Blvd.*, dated May 19, 2010) for acquisition of six lots just north of the dam site. These lots will be used for Universe Blvd. as well as to expand the dam pool. Enlarging the dam pool results in a savings of $90,000.00 in the dam emergency spillway costs. As part of that agreement, AMAFCA is paying Wilson and Company to append these six lots into the above referenced Boca Negra Dam platting action.

With regard to the anticipated construction project, the City of Albuquerque has moved ahead with the construction of Unser and Universe Blvds. adjacent to the dam site. The Unser roadway was to be funded 100% by the City per the Agreement, and will be built via the Unser Blvd. Extension Project (City Project No. 705004). This project also includes the Bike Trail Underpass/Hi Flow Outlet. This component was to be spilt 50/50 by AMAFCA and the City per the Agreement.

AMAFCA and the City have agreed that the City will build the entire Bike Trail Underpass/Hi Flow Outlet structure with the Unser Blvd. Extension Project, and that AMAFCA will credit the City for its 50% share of the actual costs of the structure when AMAFCA invoices the City for its initial contribution to the Boca Negra Detention Dam and Outfall Pipe per the Agreement.

That said, AMAFCA and Wilson and Company have developed a revised engineer's estimate for the project, which is attached. As you might expect, specific element costs have gone up from the date of the Agreement, but the major City funded element is now being done via the Unser Blvd. Extension Project.

Also attached is the project cost allocation matrix from the Agreement, with the updated estimate figures. I have used 8% to estimate the construction management services.

The matrix shows that the approximate "Cash to Project Account" contributions for each party are as follows:

AMAFCA	$1,057,794
City of Albuquerque	641,219*
The Trails LLC	1,183,885
KB Home New Mexico	1,026,731
Grand Total	$3,909,630

* Does not reflect City credit for construction of Trail Underpass/High Flow Outlet

Contingent on Office of State Engineer approval, AMAFCA plans to bid this project in January. Per the Agreement, the contributions from The Trails LLC and KB Home New Mexico will be due seven days before the expected award date of January 27, 2011. The City's contribution will be due 45 days after award of the construction contract. AMAFCA stands ready to make its contribution per the Agreement.

I further request that each party review the estimate and confirm your ability, in writing, to contribute the required funding in the timeframe mentioned above.

If you have any questions as to the scope of the project or the break out between the requisite bid lots, please call Kurt Wagener, AMAFCA's Project Manager at 884-2215. Kurt and I will be happy to meet to discuss this matter at your convenience.

Otherwise, I expect your written responses within two weeks of the date of this letter.

Sincerely,
AMAFCA

Jerry M. Lovato, P.E.
Executive Engineer

Cc Dan Aguirre, P.E., Wilson and Company
Richard Dourte, P.E., City Engineer, City of Albuquerque

Boca Negra Detention Dam and Outfall Pipe

Cost Sharing Allocation Based on Project Elements
From Engineers Estimate 10/05/2010

Project Elements					Total Cost	AMAFCA	KB HOME	TRAILS	City	ABCWUA
Boca Negra Detention Dam & Outlet Pipe										
25% 33.5% 31.5% 10% AMAFCA/KB/TRAILS/City										
Dam & Outlet Pipe	1	LS	3,845,360		3,845,360	961,340	1,288,196	1,211,288	384,536	0
Design, Fixed Fee					137,180	34,295	45,955	43,212	13,718	0
Construction Management, 8%					307,629	76,907	103,056	96,903	30,763	0
Right of Way					977,420	244,355	327,436	307,887	97,742	0
Subtotal					**5,267,588**	**1,316,897**	**1,764,642**	**1,659,290**	**526,759**	**0**
Bike Trail Underpass and Hi Flow Outlet										
50% 0.0% 0.0% 50% AMAFCA/KB/TRAILS/City										
Crossing Structure	1	LS	64,270		64,270	32,135	0	0	32,135	0
Design, Fixed Fee					23,800	11,900	0	0	11,900	0
Construction Management, 8%					5,142	2,571	0	0	2,571	0
Right of Way					14,123	7,062	0	0	7,062	0
Subtotal					**107,335**	**53,667**	**0**	**0**	**53,667**	**0**
Unser Blvd in Front of Dam - Full cross Section, four lanes paved										
0% 0.0% 0.0% 100% AMAFCA/KB/TRAILS/City										
Roadway and Trail	1	LS	0		0	0	0	0	0	0
Design, Fixed Fee					25,900	0	0	0	25,900	0
Construction Management, 8%					0	0	0	0	0	0
Right of Way					34,893	0	0	0	34,893	0
Subtotal					**60,793**	**0**	**0**	**0**	**60,793**	**0**
FEMA LOMR										
0% 50.0% 50.0% 0% AMAFCA/KB/TRAILS/City										
Engineering Design & Submittal for FEMA CLOMR/LOMR					20,000	0	10,000	10,000	0	0
FEMA Review Fees					7,400	0	3,700	3,700	0	0
					27,400	**0**	**13,700**	**13,700**	**0**	**0**
Unser Blvd BID LOT IIIB SEWER INTERCEPTOR										
0%, 0% 0.0% 0.0% 100% ABCWUA										
Sewer Interceptor	1	LS	0		0	0	0	0	0	0
Design, Fixed Fee				Paid Direct by ABCWUA	0	0	0	0	0	0
Construction Management, 8%					0	0	0	0	0	0
Right of Way					0	0	0	0	0	
Subtotal					**0**	**0**	**0**	**0**	**0**	**0**
Total Project Costs					**5,463,116**	**1,370,565**	**1,778,342**	**1,672,990**	**641,219**	**0**
						25.1%	32.6%	30 6%	11.7%	0 0%

Project Cost Sharing Elements		Project Cost Contributions by Party: AMAFCA	KB HOME	TRAILS	City	ABCWUA	
Construction	3,909,630	1,057,794	1,026,731	1,183,885	641,219	0	Cash for Construction
Design	186,880		93,440	93,440			Design by Private
Constr Mgt	312,770	312,770					Cash for CM services
Right of Way	1,026,436		644,471	381,965			Right of Way Dedication
FEMA Analysis and Submtl	20,000		10,000	10,000			FEMA Analysis and Submtl
FEMA Fees	7,400		3,700	3,700			FEMA Fees
	5,463,116	**1,370,565**	**1,778,342**	**1,672,990**	**641,219**	**0**	

4-4-12

fine S02 S01
may 12th Thursday due for dam

bonding company having difficulty
working check due to no project plans
specified

usually bonding company pays afterward
to make sure it is built.

bonding company needs a set of
plans to build too

pick up & set today w/ estimate

Have approved plans from the OSE
before bonding company can consider it

Bridge Sunday the 6th

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX: (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

April 27, 2012

CERTIFIED MAIL, RETURN RECEIPT
REQUESTED, AND CONFIRMED
TELEFAX

Mr. Kevin J. Curran and
Mr. Blake Whitcomb
Assistant City Attorneys
City of Albuquerque
P.O. Box 2248
Albuquerque, New Mexico 87103
Fax Number: 768-4525

Mr. Marcus J. Rael, Jr.
Attorney at Law
Robles/Rael/Anaya
500 Marquette NW, Suite 700
Albuquerque, New Mexico 87102
Fax Number: 242-1106

not in Compliance w/ drainage ordinance due to not enough volume for retention scheme

Project Reference:	Boca Negra Dam
Agreement:	Negra Dam Agreement executed on September 22, 2005, involving, as current parties to the Agreement, The Trails, LLC, the City of Albuquerque, the Albuquerque Metropolitan Arroyo Flood Control Authority and KB Homes.
Arbitration Provision:	Section 6.7 of the Boca Negra Dam Agreement: Unresolvable differences shall be referred to binding arbitration under the provisions of the New Mexico Uniform Arbitration Act.

Dear Messieurs Curran, Whitcomb, and Rael:

I am in receipt of Mr. Rael's letter dated April 11, 2012, and Mr. Whitcomb's letter dated April 17, 2012, responding to the demand made by this law firm as counsel for The Trails, LLC, for arbitration of its demands, claims, and issues under the Agreement referenced above.

Mr. Rael advises in his letter of April 11, 2012, that the demand is premature. He states, as his basis for this position, Section 6.5 of the Agreement, providing that "if a situation arises which adversely affects a party's participation in the Agreement, or its ability to meet the construction bid schedule, that party is to immediately notify the other parties in writing," and Section 6.6 of the Agreement which provides that "any circumstance which materially affects the Agreement will be promptly and equitable resolved by the parties, including amendment to the Agreement." Mr. Rael states that only after the parties have received written notification and attempted unsuccessfully to resolve these differences is arbitration under Section 6.7 [of the Agreement] authorized. Mr. Whitcomb, as Assistant City Attorney, adopts this position in his letter dated April 17, 2012.

Please be advised that The Trails, LLC, considers its email dated December 22, 2011, sent to Richard Dourte, Dan Lewis, Sara Westbrook, Rick Beltramo, Kelly Calhoun, Kevin Curran, Jerry Lovato, Curtis Cherne, and Tony Lloyd notice under Section 6.5 of the Agreement of situations arising under and in connection with the Agreement adversely affecting The Trails, LLC's participation in the Agreement. Please be advised that The Trails, LLC, also considers the letter dated February 17, 2012, sent by the Trails, LLC, to Jerry Lovato, Janelle Speak (KB Homes), and Michael Riordan notice under Section 6.5 of the Agreement of situations arising under and in connection with the Agreement adversely affecting The Trails, LLC's participation in the Agreement. The December 22, 2011, email and the February 17, 2012, letter outline more than a half of dozen specific matters or issues arising under and in connection with the Agreement adversely affecting The Trails, LLC's participation in the Agreement.

Further, relative to Section 6.6's requirement to promptly and equitably resolve the matters or issues, as you may recall we set down at the City back on March 5, 2012, for a 2 hour plus meeting with representatives of the City and AMAFCA. During that meeting, we stated that this was our effort to meet and confer with the parties over all these issues. Nothing was resolved at that meeting. Further, AMAFCA advised that it was proceeding with the construction of the Boca Negra Dam notwithstanding the issues presented during the meeting and in the letter dated February 17, 2012, inclusive of the opinion letter of the undersigned, contained as an enclosure, dated February 9, 2012. Finally, we recall that during the meeting Mr. Rael commented that the meeting would be the one and only meeting where the parties would sit down and attempt to resolve their differences relative to the Agreement prior to an arbitration.

Since that meeting, we have had two long meetings with the City relative to the Agreement and to the City's decision to put the whole of the Trails project into a moratorium (no amended plats, no building permits, no certificates of occupancy, and no other approvals). We understand that AMAFCA was invited to the first of these meetings but chose to not attend.

In addition, since our March 5 meeting, the City has met with RCS and DR Horton, Inc., and counsel. The Trails, LLC, and its counsel were told that they could not attend the meeting between the City and RCS and Horton, and that a subsequent meeting involving the City, RCS, Horton and The Trails would be arranged by the City, but to date the City

The city gave them something, they offered nothing in return

has not made any effort to arrange such meeting. We understand that very little occurred as a result of the meeting between the City, RCS, Horton, and their respective counsel other than issuance of Certificate of Occupancies for buildings currently under construction.

Further, since the March 5 meeting we have asked the City's assistant attorneys, on not less than six occasions, for names of proposed persons to handle the arbitration of these matters. We have, on no less than three occasions, asked the City's assistant attorneys to caucus with AMAFCA relative to these names. We have received no response.

In sum, it is The Trails, LLC's position that it has met the requirements of both Sections 6.5 and 6.6 of the Agreement, and that the City and AMAFCA, in bad faith, are refusing to proceed with arbitration. It is The Trails, LLC's intent to file, mid-week this coming week, a motion and request for hearing in the Second Judicial District Court pursuant to the Section 44-7A-8 of the New Mexico Arbitration Act unless, by May 7, 2012, counsel for the City, AMAFCA and the undersigned agree on an arbitrator and on proceeding with arbitration in this matter. If we are forced into filing a motion to compel arbitration due to refusal of the City and AMAFCA to arbitrate this matter, we will ask the presiding court to enter an award for fees and costs incurred.

Next, Mr. Whitcomb, in his response dated April 17, 2012, states that the parties to the Agreement have been waiting for over two months for specific written proposals from The Trails, LLC. We were first asked for written proposals at the March 5 meeting. We advised, then, that it would take us approximately a week to get such out and we asked then for a number of items including but not limited to the OSE approved set of plans for the project and the design analysis report for the project. In our meetings with the City which followed the March 5 meeting, we reiterated our requests for information. At or immediately following at least two of the meetings, AMAFCA was contacted by the City and again requested the information. We were only recently provided what we understand is the OSE/City/AMAFCA set of approved plans for the project and have not been provided a design analysis report for the project. Finally, we have been told that historical engineering work including the design analysis reports for the Agreement and for the revised estimate of costs related to the Agreement dated 2008 were not archived at the City or by Wilson and Company (and we assume not by AMAFCA). We understand that as the engineering of this project morphed from the 2005 project envisioned by the parties into a much larger project the prior engineering work was discarded.

AMAFCA

It is understandable given the above for a lack of written proposals from The Trails, LLC, as of Mr. Whitcomb's letter (written 40 days (not over two months) following the March 5 meeting) related to its demands, claims, and issues under the Agreement. Nonetheless, the following at The Trails, LLC's proposals:

1. The City will agree to enlarge the pending special assessment district for the area (we believe it is SAD 228) or to proceed with a new special assessment district to fund the construction of the project with those benefitted by the project being assessed and paying for project in accordance with applicable statutes and ordinances concerning a

special assessment district. The Trails will be expected to pay its pro-rata share based upon the percentage of the Trails outfall to the Dam.

2. The City will pay The Trails, LLC, the sum of $541,853.31 to cover damages incurred by it in connection with impact fees that it received, after years of delay, which now are devalued at least 50% since the execution of the Agreement and will become worthless in the next three years when the credits expire.

3. In exchange for payment under Paragraph 2 above, The Trails, LLC, will assign back to the City the impact fee credits which the City recently acknowledged were owing to The Trails, LLC, relative to drainage and right of way dedications as described in the Agreement.

OK w/ approval DMP showing outfall and FG's for the trails unit 2 on Tierra West for outfall

4. The City will recognize the Unser outfall to the project as the approved outfall for the Trails projects (per the "Volcano Heights DMP" prepared by Wilson and Company for the Trails and submitted to the City, providing for 80 cfs to be discharged from The Trails, Units 1, 2, 3A and 4 to the Unser storm drain system in lieu of the Universe Blvd., as an ultimate, fully developed outfall for The Trails, Units 1, 2, 3A and 4).

5. The City will lift the moratoriums on the Trails projects and immediately process for approval building permit applications, requests for certificates of occupancy, plat and other approvals.

Finally, request is made of the City of Albuquerque and AMAFCA, respectively, pursuant to the New Mexico Inspection of Public Records Act, for inspection of the following records:

1. All plans, engineering estimates, cost estimates, letters, emails, telefaxes, correspondence, and other written records related to the work done prior to September 22, 2005, related to and in preparation of the September 22, 2005, Agreement to Provide Design, Construction and Maintenance for the Boca Negra Detention Dam and Outfall Pipe and Adjacent Unser Blvd. Improvements (otherwise referred to above as the Agreement).

DMD

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3. All plans, engineering estimates, design analysis reports, cost estimates, letters, emails, telefaxes, correspondence, and other written records delivered to or received from the Office of the State Engineer between 2005 to date related to the projects covered in the Agreement.

check print these

4. All emails, telefaxes, correspondence, by and between or among the City, including internal City communications, and/or AMAFCA, including internal AMAFCA communications, related to the City and/or AMAFCA acting as the lead in communicating with Office of State Engineer for approval of the plans and specifications for the projects covered in the Agreement.

have nothing

5. All documentation covering the City's funding and AMAFCA's funding of their respective share of the projects covered in the Agreement including all documents related to bond issue, use of general funds, and/or other funding sources including but not limited to all resolutions approving funding of the City's and AMAFCA's share of the projects covered in the Agreement.

DND

Sincerely yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

c; The Trails, LLC

LEVERICK & MUSSELMAN, L.L.C.

ATTORNEYS AND COUNSELORS AT LAW

5120 SAN FRANCISCO, NE
ALBUQUERQUE, NM 87109
(505)858-3303
FAX. (505) 858-3201

A LAW FIRM
COMPOSED OF
PROFESSIONAL
CORPORATIONS

April 27, 2012

CERTIFIED MAIL, RETURN RECEIPT
REQUESTED, AND CONFIRMED
TELEFAX

Mr. Kevin J. Curran and
Mr. Blake Whitcomb
Assistant City Attorneys
City of Albuquerque
P.O. Box 2248
Albuquerque, New Mexico 87103
Fax Number: 768-4525

Mr. Marcus J. Rael, Jr.
Attorney at Law
Robles/Rael/Anaya
500 Marquette NW, Suite 700
Albuquerque, New Mexico 87102
Fax Number: 242-1106

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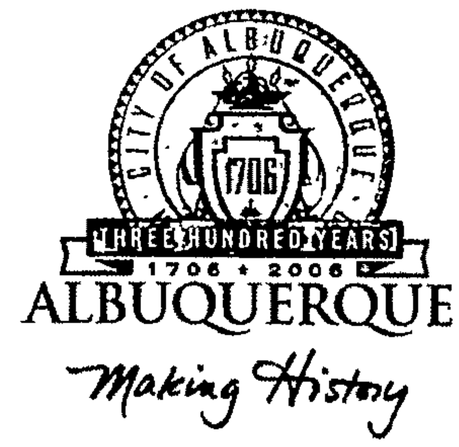
Sincerely yours,

Leverick and Musselman, LLC

By_____
Richard Leverick

c; The Trails, LLC

CITY OF ALBUQUERQUE



Office of the City Attorney
David Tourek, City Attorney
PO Box 2248
Albuquerque, New Mexico 87103
(505) 768-4500 ~ Fax (505) 768-4525

April 11, 2012

Via Email: DPNewell1@drhorton.com

David Newell
DR Horton Inc.
4400 Alameda NE, Suite B
Albuquerque, NM 87113

Re: April 10 Letter and Building Permits

Dear Mr. Newell:

I'm writing in response to your letter dated April 10, 2012, that requested clarification of the City's position regarding building permits.

There appears to be some disagreement regarding exactly what was offered at the April 5, 2012, meeting. Currently, Curtis Cherne is not willing to release any additional building permits; however, this issue may be readdressed when Richard Dourte returns, April 24, 2012.

Sincerely,

Blake Whitcomb
Assistant City Attorney

CC: Kevin Curran *via email kcurran@cabq.gov*
Richard Dourte *via email rdourte@cabq.gov*
Curtis Cherne *via email ccherne@cabq.gov*

P.O. Box 1293
Albuquerque
New Mexico 87103
www.cabq.gov

No buildings permits in the trails, the city is currently evaluating our position

estimate for 500 from the Trails to the Boca Negra Dam.

the request is premature until the permanent drainage facility is determined

refer them to Richard on Building permits and CO's.

get extensions from DRB for Angela at SAA's that include dam