

COPY

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AGRE R: \$25.00 M. Toulouse Oliver, Bernalillo County

Parcel: Kinney Dam – Tract A
ZAP C-19

**ENCROACHMENT LICENSE AGREEMENT
FOR STORM DRAIN PIPE CONNECTION
FROM NORTH DOMINGO BACA PARK TO KINNEY DAM PIPE**

This License Agreement is entered into this 2nd day of May, 2012, by and between the Albuquerque Metropolitan Arroyo Flood Control Authority (“AMAFCA”), a political subdivision of the State of New Mexico, and the City of Albuquerque, (“CITY”), a municipal corporation of the State of New Mexico, its successors and assigns, hereinafter collectively referred to as the “Parties”.

WHEREAS, AMAFCA owns the fee simple interest in Tract A, as shown of the Plat of AMAFCA Kinney Dam – Tract A, filed for public record in the Office of the County Clerk of Bernalillo County, New Mexico on April 20, 2006, in Book 2006C, Page 126; and

WHEREAS, the CITY, as part of the North Domingo Baca Park – Phase 8 improvements, will construct parking and drainage improvements, including one thirty-six inch (36”) Storm Drain Pipe Connection to the existing AMAFCA-maintained thirty-six inch (36”) outfall pipe at the southeast corner of Kinney Dam, along with related grading and appurtenances, hereinafter collectively referred to as the “PROJECT”; and

WHEREAS, the CITY will construct the PROJECT in accordance with standards set forth by the CITY and approved by AMAFCA, and, upon completion of construction and acceptance by the CITY and AMAFCA, the CITY shall thereafter maintain the PROJECT.

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

AMAFCA hereby grants to the CITY, its successors and assigns, a License to construct, operate, maintain, and repair the PROJECT, with related improvements, in Kinney Dam, as graphically shown on Exhibit “A”, and being more specifically described in the approved construction drawings for the PROJECT, incorporated herein by reference, together with full and free ingress and egress thereto subject to the following terms and conditions:

1. The CITY shall obtain AMAFCA’s written approval for the following:
 - a. All changes to the plans or specifications which affect the PROJECT or Kinney Dam.
 - b. Future repair, modification, removal or other activities affecting the completed PROJECT or Kinney Dam.
 - c. Future projects within or in the vicinity of Kinney Dam.
2. Workmanship and materials shall conform to the City of Albuquerque Standard Specifications for Public Works Construction, as currently modified.

3. All construction activities by the CITY and operation, maintenance, repair, relocation or removal of the PROJECT by the CITY shall be accomplished at the sole expense of the CITY and shall be done in such a manner as will not damage or interfere with the operation and maintenance of AMAFCA's flood control facilities.
4. The CITY shall be responsible for all damages caused by construction activities. To ensure repair of such damages, the CITY shall require its contractor to purchase Standard Form Owner's Protective Liability insurance naming AMAFCA as additional named insured in the amount of \$1,000,000.00. Evidence of said insurance shall be provided to AMAFCA prior to the start of construction.
5. The CITY or its contractor shall notify the AMAFCA Field Engineer by phone call to 884-2215 at least forty-eight (48) hours prior to beginning work on or in AMAFCA's right-of-way and also before final inspection.
6. Any and all excavations and storm drain trenches shall be backfilled with clean fill and compacted to 90% of modified proctor. Any other land alterations in Kinney Dam shall be returned to their original grade and condition if not shown in the plan set. Ground areas within Kinney Dam that are disturbed during construction shall be re-vegetated in accordance with the City of Albuquerque Standard Specifications for Public Works Construction, Section 1012 - Native Grass Seeding, as currently updated. Any existing fencing that is removed or destroyed shall be replaced in kind at the expense of the CITY.
7. Any existing survey control or right-of-way monuments that are moved or destroyed as a result of the construction permitted by this License Agreement shall be replaced by a registered surveyor at the expense of the CITY.
8. Construction within the limits of Kinney Dam shall be subject to inspection by AMAFCA's Executive Engineer or his designated representative. AMAFCA's comments shall be directed to the CITY's Project Manager. The CITY shall respond to AMAFCA's comments in a timely manner.
9. All materials to be used in the construction within Kinney Dam shall be subject to inspection by AMAFCA, in coordination with the Project Manager.
10. 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 in all cases is subject to the limitations and immunities of the New Mexico Tort Claims Act Section 41-4-1 et.seq., NMSA 1978, as amended.
11. The CITY shall provide AMAFCA with one set of "Record Drawings" within thirty (30) days after completion of the PROJECT.
12. Upon completion of construction and acceptance by the CITY and AMAFCA, the CITY shall be responsible for the operation, maintenance and repair of the PROJECT, at the sole

expense of the CITY, in such manner as will not damage or interfere with the operation, maintenance or reconstruction of AMAFCA's flood control facilities.

13. Should the CITY fail to comply with the provisions of this License Agreement, or should the CITY fail to properly maintain its portion of the PROJECT, this License Agreement and all rights and privileges herein granted may be terminated by AMAFCA. However, such termination shall be preceded by written notice, giving the CITY at least thirty (30) days to effect a cure. If the CITY fails to effect a cure within thirty (30) days, AMAFCA may perform the required repair, maintenance or removal and invoice the CITY for incurred costs. The CITY shall pay such costs within sixty (60) days of the date of said invoice.
14. If any AMAFCA action pursuant to this License Agreement is deemed unreasonable, the CITY shall have the right to appeal to the AMAFCA Board of Directors.
15. In the event of a dispute between the CITY and AMAFCA, each Party shall be responsible for its own costs and attorney's fees.
16. This License Agreement shall be construed according to the laws of the State of New Mexico.

The provisions hereof shall inure to the benefit of and bind the heirs, executors, administrators, successors, and assigns of the parties hereto.

Terms and Conditions of License Agreed to and Acknowledged:

LICENSOR: **Albuquerque Metropolitan Arroyo Flood Control Authority**

by:

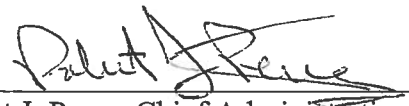

Jerry M. Lovato, Executive Engineer

Date

5/21/2012

LICENSEE: **City of Albuquerque**

By:

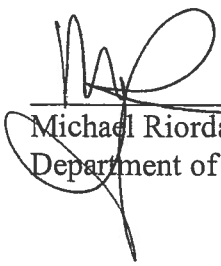

Robert J. Perry, Chief Administrative Officer

Date

4/17/12

RECOMMENDED:

By:


Michael Riordan, P.E., Director
Department of Municipal Development

Date

4/6/12

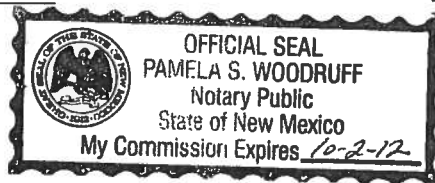
ACKNOWLEDGMENTS

STATE OF NEW MEXICO)
)SS
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this 2nd day of May, 2012,
by Jerry M. Lovato, as Executive Engineer of the Albuquerque Metropolitan Arroyo Flood Control
Authority, a political subdivision of the State of New Mexico, on behalf of said political subdivision.

My commission expires:

10-2-12



Pamela S. Woodruff
Notary Public

STATE OF NEW MEXICO)
)SS
COUNTY OF BERNALILLO)

This instrument was acknowledged before me this 17th day of April, 2012,
by Robert J. Perry, as Chief Administrative Officer of the City of Albuquerque, a New Mexico
Municipal Corporation, on behalf of said Municipal Corporation.

My commission expires:

2/17/13

Marc E. Chavez
Notary Public

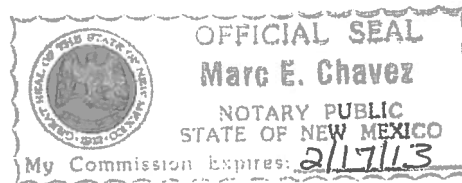


EXHIBIT "A"

