

250

**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 8th day of April, 2011, by and between the Albuquerque Metropolitan Arroyo Flood Control Authority, a political subdivision of the State of New Mexico ("AMAFCA"), and the City of Albuquerque, a New Mexico municipal corporation ("CITY"), individually referred to as "Party" and collectively referred to as the "Parties".

RECITALS:

WHEREAS, the CITY's "North Albuquerque Acres Master Drainage Plan", adopted in 1998, showed an improved channel on the La Cueva Arroyo ("Arroyo") from Barstow Street to Alameda Boulevard; and

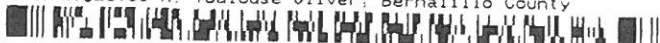
WHEREAS, Llave Construction, Inc., a private developer ("Llave") proposed to construct the improved channel to reclaim floodplain in order to construct the residential housing development know as Rich Court ("Development") which is adjacent to the Arroyo; and

WHEREAS, Llave entered into an agreement with AMAFCA and the CITY, entitled "Agreement to Provide Maintenance for Channel Improvements on the La Cueva Arroyo from 1,300 feet west of Ventura to Barstow" as recorded in the office of the County Clerk of Bernalillo County, New Mexico, in Book A-95, Page 4275, on April 20, 2005, as Document Number 2005054437 ("Llave Agreement"); and

WHEREAS, the Llave Agreement outlined conditions whereby Llave agreed to construct the Arroyo improvements, to grant certain drainage easements to the CITY and right-of-way to AMAFCA for the Arroyo and to obtain a Letter of Map Revision ("LOMR") from the

Doc# 2011040742

04/29/2011 09:25 AM Page: 1 of 9
MEMO R: \$25.00 M. Toulouse Oliver, Bernalillo County



**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

Federal Emergency Management Agency ("FEMA") to remove the FEMA floodplain from the developable property; and

WHEREAS, The City required a Subdivision Improvements Agreement ("SIA") for the Development (City Project No. 751983) from Llave that included a financial guarantee for public infrastructure and the LOMR for this area; and

WHEREAS, Llave did not fulfill the LOMR requirement of the SIA, thus the City called on the financial guarantee for the Rich Court Development. The amount received by the City to complete this requirement was \$37,223.80; and

WHEREAS, AMAFCA and the City thought it would be in the best public interest to expedite the LOMR process and have AMAFCA hire one of its on-call engineering consultants to complete the LOMR; and

WHEREAS, in a letter dated September 13, 2010, AMAFCA invoiced the CITY in the amount of \$25,327.77 for its consultant's costs incurred to date with the understanding that an MOU would be required for the reimbursement; and

WHEREAS, FEMA considers the berm construction on the Arroyo to be a levee and is requiring additional construction, hereinafter referred to as the "Project", and information to satisfy the levee requirements before issuing a LOMR. Llave will fund the construction work with its contractor, and AMAFCA will fund the additional engineering, surveying and geotechnical work and the FEMA review fee to satisfy the remaining requirements shown as additional costs on Exhibit "A"; and

WHEREAS, the CITY is amenable to the transfer of SIA funds to AMAFCA to aid in efforts to obtain the LOMR.

**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

NOW THEREFORE, in consideration of the promises and covenants contained herein, the Parties hereto agree as follows:

UNDERSTANDING:

SECTION ONE: PURPOSE OF THE MOU

- 1.1 To provide conditions for the transfer of SIA funds from the CITY to AMAFCA.

SECTION TWO: AMAFCA AGREES TO:

2.1. Oversee construction of the Project to ensure that it is constructed to AMAFCA's standards and will meet FEMA's requirements.

2.2. Require its on-call engineer to submit the LOMR package to the CITY Floodplain Administrator to forward to FEMA. The package shall contain the FEMA review fee, certified "As-Built" drawings, appropriate forms and other information as required by FEMA.

2.3. Hire one of its on-call geotechnical consultants to provide compaction sampling on the berm as constructed by the Project.

2.4. Provide an invoice to the CITY with a detailed cost accounting of the additional costs for work by its on-call engineering and geotechnical consultants and the FEMA review fee ("Additional Costs"). The invoice will be sent within two weeks after acceptance of the Project by AMAFCA. The estimated amount for the Additional Costs is shown on Exhibit "A".

SECTION THREE: THE CITY AGREES TO:

- 3.1. Submit the LOMR to FEMA within two (2) weeks of receipt from AMAFCA.

**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

3.2. Transfer the SIA funds to AMAFCA in the amount of \$25,327.77, as invoiced by AMAFCA in the September 13, 2010, letter.

3.3. Transfer any remaining SIA funds up to \$37,223.80 to AMAFCA for the additional work after receipt of invoice from AMAFCA, listed as Additional Costs in Exhibit "A".

SECTION FOUR: BOTH PARTIES AGREE:

4.1. To cooperate in order to expedite the construction of the Project and submittal of the LOMR.

4.2. The CITY will not be responsible for reimbursement of funds above \$37,223.80. However, this MOU will not preclude future reimbursement of funds to AMAFCA should additional funds become available

4.3. If any situation arises which adversely affects either party's participation in this MOU, the affected party will immediately notify the other party in writing.

4.4. If any circumstance arises which materially affects any provision of this MOU, the parties mutually agree to promptly and equitably resolve it, including executing an amendment to this MOU if necessary.

4.5. If any claim or circumstance arises under the terms of this MOU which results in additional financial requirements by either party, it will be promptly and openly discussed by between the parties. Resolution of such claim or circumstance, if any, will be the sole responsibility of the party otherwise responsible for fulfilling the term of this MOU under which the claim or circumstance arises.

**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

4.6. This MOU may be modified only by the mutual written agreement of the parties hereto.

4.7. The parties understand and agree the obligations of each party under this MOU shall be performed in compliance with all 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, the Resolutions of AMAFCA, or the Ordinances of the City of Albuquerque.

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

4.9. It is specifically agreed between the parties executing this MOU that this MOU 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 MOU to maintain a suit(s) for wrongful death(s) and/or any other claim(s) whatsoever pursuant to any provision of this MOU.

4.10. Each party shall be solely responsible for any and all liability arising from personal injury including death(s) or damage to property arising from an act or failure to act of the respective party, its officials, agents, contractors and employees pursuant to this MOU. Liabilities of each party shall be subject to the immunities and limitations of the Tort Claims Act, Section 41-4-1, et seq., N.M.S.A. 1978 and any amendments thereto.

4.11. This MOU is subject to approval and execution by the AMAFCA Executive Engineer and the Chief Administrative Officer of the CITY and shall not be binding upon the

**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

parties until executed by both parties. Upon execution by both parties, the covenants, terms and conditions of this MOU shall be binding upon and inure the benefit of the parties hereto, their successors and assigns.

4.12. The effective date of this MOU shall be the date this MOU is executed by both parties.

Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda

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

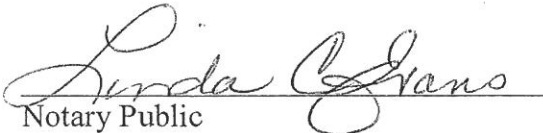
Albuquerque Metropolitan Arroyo
Flood Control Authority


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

ACKNOWLEDGMENT

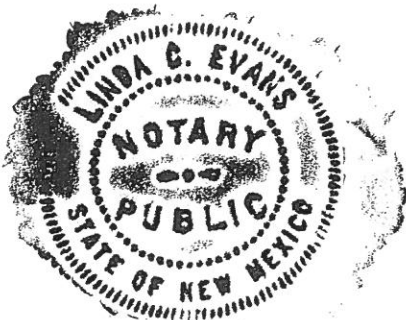
STATE OF NEW MEXICO)
)ss.
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on April 13, 2011, by
Jerry M. Lovato, P.E., Executive Engineer, on behalf of the Albuquerque Metropolitan Arroyo
Flood Control Authority, a political subdivision of the State of New Mexico.


Notary Public

My Commission Expires:

10-07-12



**Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda**

City of Albuquerque


Robert J. Perry, Chief Administrative Officer

Date 4/6/11

Attest:

City Clerk

Date _____

ACKNOWLEDGMENT

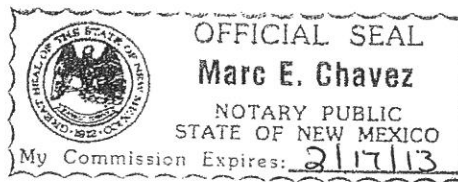
[illegible]

This instrument was acknowledged before me on April 8, 2011, by Robert J. Perry, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation.

Marc E. Chavez
Notary Public

My Commission Expires:

2/17/13



Memorandum of Understanding for the
Transfer of Payment for the Letter of Map Revision for
La Cueva Arroyo Between Barstow and Alameda

EXHIBIT "A"

Additional Costs

Engineering Costs	\$5,000.00
Geotechnical Costs	<u>\$2,500.00</u>
Subtotal	\$ 7,500.00
New Mexico Gross Receipts Tax	\$ 525.00
Subtotal	<u>\$8,025.00</u>
FEMA Review Fee	<u>\$7,150.00</u>
Total	\$15,175.00



FOR PROMPT PAYMENT SEND ALL FUTURE INVOICES TO ADDRESS LISTED BELOW

CITY OF ALBUQUERQUE

PO BOX 1985 ALBUQUERQUE, NEW MEXICO 87103

CHECK DATE: 07/01/2011

VENDOR NUMBER: *****0000123791

CHECK NUMBER: 2534087

Page 95 of 166

VEND

DATE	INVOICE OR CREDIT MEMO NUMBER	TYPE	DESCRIPTION	REFERENCE NO.	GROSS	AMOUNTS DISCOUNTS	NET
6/14/2011	R092083		COMPLETION FEMA/LOMR OBLIG/		*****\$25,327.77		*****\$25,327.77
TOTAL					*****\$25,327.77		*****\$25,327.77

RECEIVED
JUL 05 2011

THE ATTACHED CHECK IS IN PAYMENT FOR THE ITEMS DESCRIBED ABOVE