

**ENCROACHMENT and MAINTENANCE AGREEMENT
for
RUTLEDGE WAREHOUSE PROJECT ON NORTH DIVERSION CHANNEL**

This Agreement is made this XX day of June 2023 by and between, the **Albuquerque Metropolitan Flood Control Authority** (hereinafter referred to as "AMAFCA" or "Licensor"), a political subdivision of the State of New Mexico, and **Brunacini Development, Ltd. Co.**, ("Licensee"), a limited liability company.

RECITALS

- A. AMAFCA is the owner of: a drainage right of way for the North Diversion Channel as shown on the Plat of AMAFCA North Diversion Channel and Inlet Channels Drainage Right-of-Way Phase 4 Parcels A thru G; as indicated and described on attached **Exhibit A**; and
- B. Licensee desires to: stage, construct, and maintain an earthen swale, a concrete rundown to the earthen swale, and a traversable concrete rundown to the North Diversion Channel associated with the Rutledge Warehouse development installed on Tract A-2-A-1, Journal Center Phase 2, Unit 2 as further described on attached **Exhibit B**; and
- C. A separate temporary construction license (TCAL) is necessary to construct and install the project. TCAL number **TC2022-05-002** was executed on 26th Day of May 2022; included as **Exhibit C**; and
- D. An Encroachment and Maintenance Agreement is necessary for the continued operation and maintenance of the project by the Licensee; and
- E. Licensor and Licensee wish to establish the terms upon which this Encroachment and Maintenance Agreement shall be authorized.
- F. This agreement shall expire at 11:59 pm, twenty-five (25) years from date of composition on **June 30, 2047**.
- G. Contact information:

AMAFCA
2600 Prospect Ave. NE
Albuquerque, NM 87107
Attn: Executive Engineer
Email: JLovato@amafca.org

Brunacini Development, Ltd. Company
PO Box 6363 7550 Meridian Place NW
Albuquerque, NM 87197
Attn: Angelo Brunacini
Email: abrunacini@brunacini.com

Now therefore, for consideration granted, the receipt and sufficiency of which is acknowledged, and in consideration of the mutual promises and covenants contained herein, the parties agree as follows.

1. **Encroachment and Maintenance Agreement.** AMAFCA hereby grants to Licensee a non-exclusive right to encroach upon the AMAFCA Property as identified in **Exhibit A**. This Encroachment and Maintenance Agreement shall be for the limited purpose of operating and maintaining the project described in **Exhibit B**.

2. **Contingency.** The grant of rights herein is conditioned on approval of the construction drawings and project installation by AMAFCA and shall not become effective until approval is successfully obtained by Licensee. In the event Licensee fails to obtain AMAFCA's approval as required herein within one (1) year of the date of execution, this Agreement shall be deemed null and void.

3. **Permits.** Licensee agrees to obtain and provide copies to AMAFCA of all required permits prior to any new construction commencing.

4. **Approvals by AMAFCA.** Licensee shall obtain AMAFCA's prior written approval for the following:

- a. All construction drawings and specifications for construction of the project, including grading and drainage plans.
- b. All changes to the project plans and/or specifications, which may affect AMAFCA's facilities prior to construction.
- c. All changes to the project plans and/or specifications, which may affect AMAFCA's facilities after construction has started.
- d. A written plan for protecting AMAFCA's facilities during and after construction. The plan must include, at a minimum, the following:
 - i. Posting information on site to inform users of the project.
 - ii. Placing appropriate signage notifying the public of ditch safety and water quality issues due to the project's location within a flood control facility.
 - iii. Any other protections necessary to ensure the integrity of the flood control facilities.

The standards provided herein are not exclusive, and AMAFCA reserves the right to reject any plan which, in AMAFCA's sole opinion, does not provide sufficient protection to AMAFCA's facilities or the public during or after construction. AMAFCA shall promptly review all design and construction documents and provide timely comments or approval, as appropriate.

5. **Compliance with Specifications.** Licensee shall ensure that all workmanship and materials conform to New Mexico Department of Transportation ("NMDOT") Standard Specifications for Road and Bridge Construction (current edition), or City of Albuquerque Standard Specifications for Public Works Construction (as currently updated), whichever applies.

6. **Construction Activities.** All construction, activities, maintenance, inspection, repair, dust control, relocation and removal of any improvements shall be accomplished at Licensee's sole expense, and subject to inspection by AMAFCA. All construction activities shall be completed as shown on the approved plans and specifications previously approved by AMAFCA and in accordance with applicable laws, rules, and regulations then in effect. Licensee shall notify AMAFCA in writing ten (10) days before commencing any work in AMAFCA's right-of-way. Licensee will provide AMAFCA with the Contractor's contact

information, including but not limited to, project managers contact information as well as location and dates of all pre-construction meetings. After receiving written notice that project construction is complete, AMAFCA shall inspect the project and provide to the Licensee either written acceptance of the project or written comments on corrective action items which must be completed before acceptance shall be granted.

7. **Permit Compliance.** Licensee agrees acquire all necessary permits to complete the project and comply with such permit requirements. Permit requirements include but are not limited to those requirements described on attached TCAL Agreement (**Exhibit C**).

8. **Inspection and Protection of AMAFCA Facilities.** All construction work performed, or materials used within the limits of AMAFCA's right-of-way, shall be subject to periodic onsite inspection by AMAFCA staff or designated representative. Any comments by AMAFCA as a result of such inspections shall be directed to the Licensee for review. Licensee may be required to reimburse AMAFCA for certain costs incurred for on-site inspection and related services performed by AMAFCA staff or designated representatives. All construction activities associated with the project shall be completed in such a manner so as not to damage or interfere with the operation and maintenance of AMAFCA's flood control facilities and equipment. If any activities of the project endanger the flood control function of any AMAFCA facilities, AMAFCA shall notify the Licensee and they shall promptly commence to correct such condition and to restore the AMAFCA facilities at Licensee's sole expense. In the event Licensee fails to commence such repairs within seventy-two (72) hours of such notice, AMAFCA shall commence to make such repairs to correct such condition at the expense of the Licensee.

9. **Maintenance of the Project.** Upon successful completion of construction activities, Licensee shall obtain written acknowledgement from AMAFCA that all terms of the TCAL have been satisfied and that the project has been constructed in accordance with the construction drawings and specifications approved by AMAFCA. Upon obtaining written acknowledgement from AMAFCA, Licensee shall accept maintenance of the project. Maintenance of the project shall include all necessary activities to ensure the project is maintained at design parameters. The project shall be properly maintained continuously at the expense of the Licensee, and shall not in any way impede, endanger, or negatively affect the flood control function of any AMAFCA facilities.

10. **Restrictions.** Licensee shall restrict construction within any drainage right-of-way, or any impairment to the flood-carrying ability of any waterway, to the period between October 15 and May 15. At all other times, drainage ways shall be in original or final condition, and excavations and other land alterations shall be returned to their original contours and compacted condition, unless express written exception has been given in advance by AMAFCA.

11. **Restoration of Facilities.** If the construction, operation, maintenance, repair, relocation, or removal of the project in the Agreement Area shown on **Exhibit A** in any way impedes, endangers, or negatively affects the flood control function of any AMAFCA facilities, the Licensee will promptly commence to correct such conditions and to restore AMAFCA facilities at its sole cost. AMAFCA shall notify the Licensee as soon as possible of such conditions. In the event the Licensee fails to commence such repairs within thirty (30) days of such notice, AMAFCA shall be permitted to make such repairs to correct such condition at the expense of Licensee.

12. **Emergency Declaration.** In the event a natural or human caused event occurs that requires the AMAFCA Executive Engineer or the AMAFCA Board of Directors to declare a State of Emergency that impacts the facilities occupied by this agreement, the Licensee, may be required to allow AMAFCA staff and contractors to respond as appropriate to the emergency declared and make necessary repairs to the facilities at the expense of the Licensee.

13. **Relocation of Facilities.** In the event that the project must be relocated to facilitate a flood control function, the Licensee shall be responsible for the relocation and the cost of such relocation shall be paid exclusively by the Licensee.

14. **Primary of Purpose.** It is mutually acknowledged that Licensee's proposed use of the property shall be subservient to flood control operations, maintenance, and inspection of AMAFCA facilities. If access to the area is to be restricted as a result of the project, Licensee shall provide AMAFCA with the necessary access means to allow AMAFCA staff access to their facility. In the event damages occur to the project by AMAFCA's operations, AMAFCA will not be liable for the costs of the repairs to any damages incurred by the Licensee.

15. **Indemnification.** The 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.

a. The work performed by Licensee shall be at its exclusive risk. To the fullest extent permitted by law, Licensee will defend, indemnify and hold harmless AMAFCA from any and all claims for bodily injury and property damage (other than damage to the work itself), including the loss of use of property resulting therefrom, which arise or are in any way connected with the work performed, materials furnished or services provided by Licensee, or anyone employed directly or indirectly by any of them under this agreement.

Indemnified parties include AMAFCA, designees, officers, directors, employees, successors, and their assigns.

Claims include any and all claims for bodily injury, death or damage to property, demands, damages, actions, causes of action, suits, losses, judgments, obligations and any liabilities, costs and expenses (including but not limited to investigative and repair costs, attorneys' fees and consultants' fees).

b. Licensee is not obligated to indemnify and defend Contractor or owner for claims due to the sole negligence or willful misconduct of indemnified parties. Any obligations assumed pursuant to this agreement will not be construed to negate, abridge or reduce other rights or obligations of indemnity, which otherwise exist as to a party or person described in this agreement.

c. Licensee's indemnification and defense obligations under this contract extend to claims occurring after this agreement is terminated as well as while it is in force and continue until it is finally adjudicated that any and all actions against the indemnified parties for such matters which are indemnified hereunder are fully and finally barred by applicable laws.

16. **No Third-Party Rights.** 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, nor does it authorize anyone not a party to this Agreement to maintain a suit for wrongful death or any other claim whatsoever.

17. **Right to Appeal.** In addition to its common law rights and remedies under the law of contract, if any action by AMAFCA under this Agreement is deemed unreasonable by the Licensee, they shall have the right to appeal to the AMAFCA Board of Directors.

18. **Termination for Cause.** Should the Licensee fail to comply with the provisions of this Agreement, or should they fail to make use of the premises for the purposes stated for a continuous period of one (1) year, this Agreement and all rights and privileges herein granted may be terminated by AMAFCA. However, such termination shall be preceded by written notice, giving them at least thirty (30) days to affect a cure. In the event that the Licensee, its licensee and/or its permittees breach the terms and conditions of this

Agreement, AMAFCA shall be entitled to recover costs and attorney's fees incurred as a result of the breach, in addition to any other legal and/or equitable remedies available.

19. **Termination for Convenience.** AMAFCA may terminate this Agreement for any reason or no reason, as to all or any part of the property or grant of rights herein, upon providing the Licensee one-year prior written notice of such termination.

20. **Notices.** All notices with respect to this Agreement shall be in writing and shall be delivered personally, via electronic mail with receipt request, or sent postage prepaid by United States Mail, via certified mail with return receipt requested, to the addresses set forth on Page One (1) of this agreement or other such addresses as hereafter specified in writing by one Party to the others:

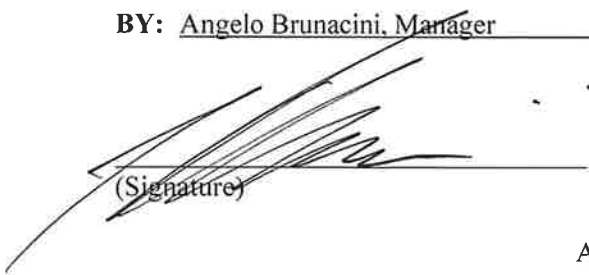
21. **Renewal.** Timely request for renewal of this Agreement is the sole responsibility of Licensee. Written renewal notification by the Licensee shall commence six (6) months prior to the expiration date listed on Page One (1) of this Agreement.

22. **Entire Agreement.** This Agreement and all exhibits and attachments hereto represent the entire agreement between the parties regarding use of the property.

In witness whereof, the undersigned have caused this Agreement to be executed as of the day and year set forth on Page One (1)

LICENSEE: BRUNACINI DEVELOPMENT, LTD. COMPANY

BY: Angelo Brunacini, Manager

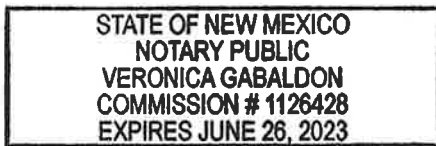

(Signature)

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me on the 20 day of June, 2023, by Angelo Brunacini as Manager of said company, on behalf of said company.

SEAL





Notary Public

June 26, 2023
My commission expires:

**LICENSOR: ALBUQUERQUE METROPOLITAN ARROYO
FLOOD CONTROL AUTHORITY**

BY:

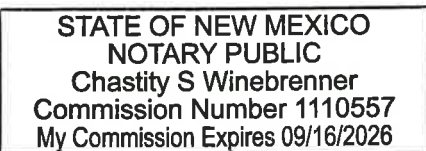

Jerry M. Lovato, P.E.,
AMAFCA Executive Engineer

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) s.s.
CITY OF BERNALILLO)

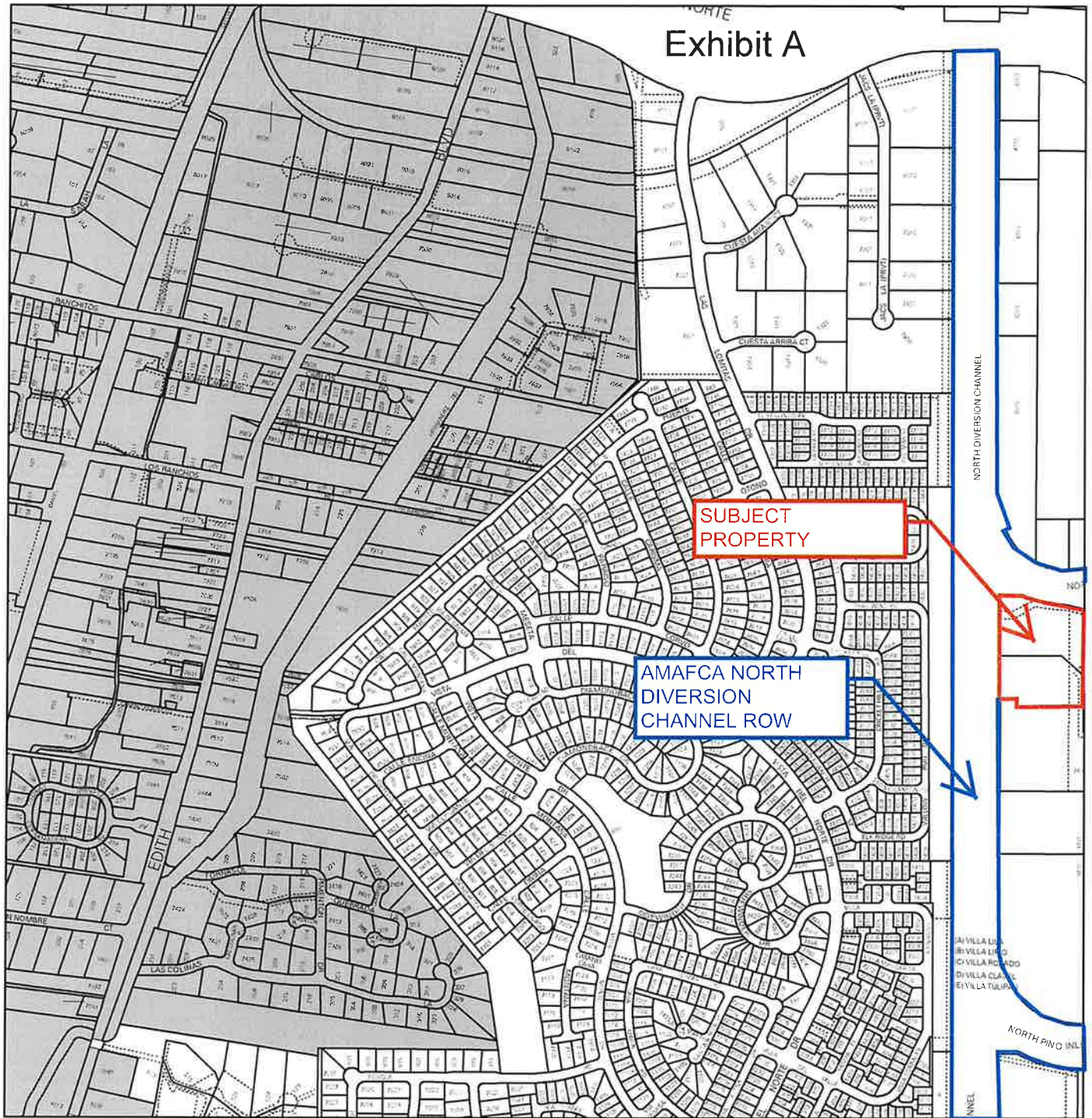
This instrument was acknowledged before me on June 20, 2023, by Jerry M. Lovato, Executive Engineer for AMAFCA, a political subdivision of the State of New Mexico, on behalf of said political subdivision.

SEAL

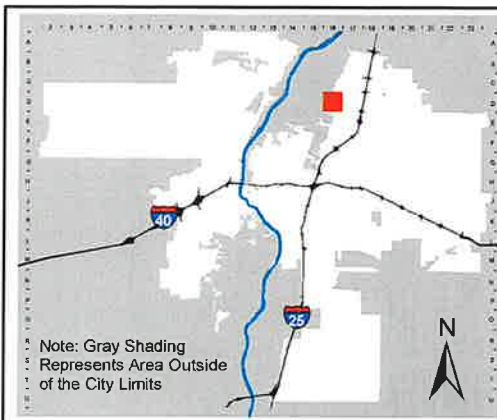



Notary Public

My commission expires: 09/16/2026



For more current information and details visit: www.cabq.gov/gis



Address Map Page:

D-16-Z

Map Amended through:

3/17/2017



These addresses are for informational purposes only and are not intended for address verification.







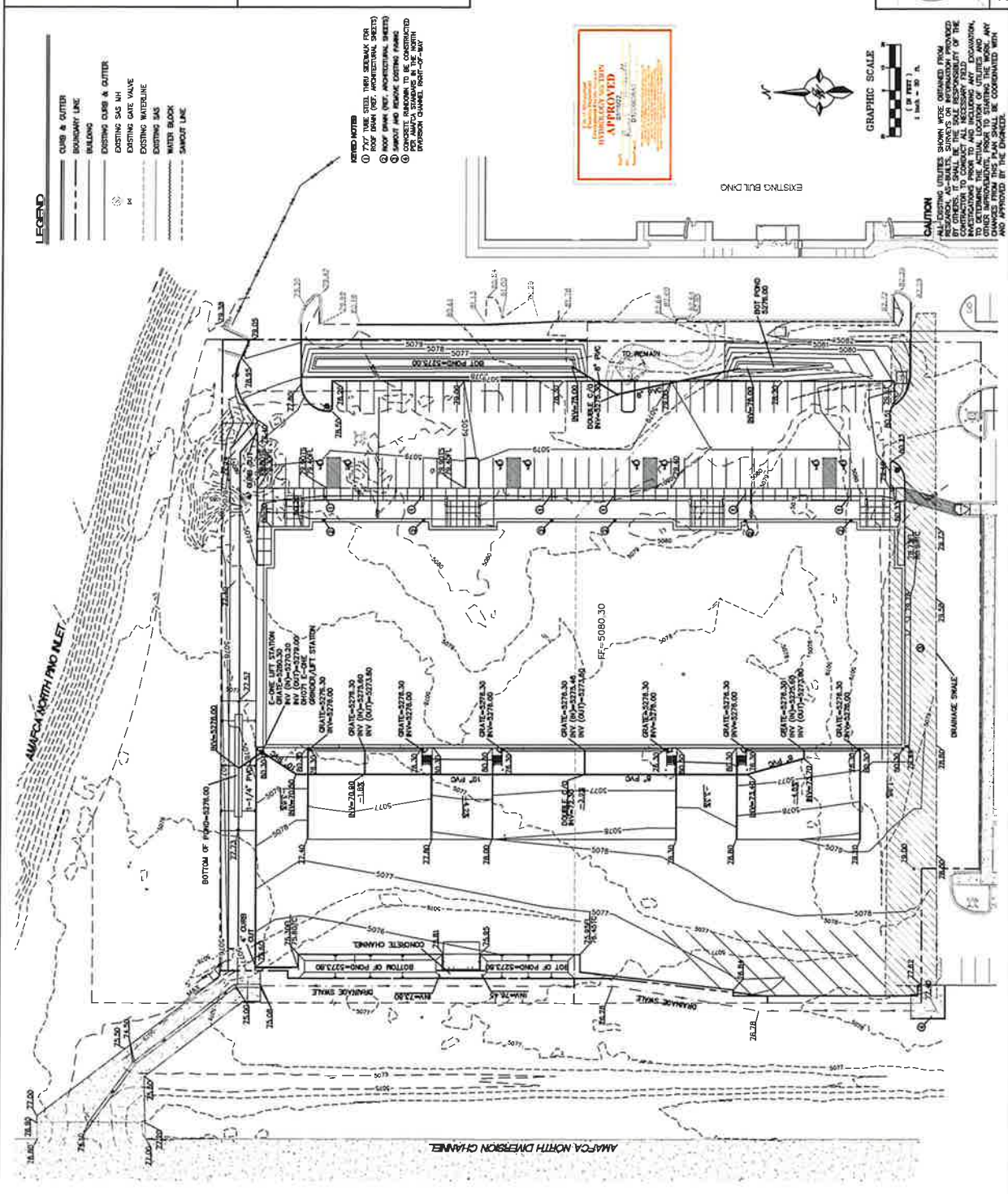
REFERENCE TO CONTRACTORS

1. AN EXAMINATION/CONSTRUCTION PERMIT SHALL BE REQUIRED FOR ANY CONSTRUCTION OF A NEW OR EXISTING DRIVEWAY OF ANY TYPE.
2. ALL WORKS OUTLINED ON THESE PLANS TO BE PERFORMED, INCLUDING BUT NOT LIMITED TO, THE CONSTRUCTION OF DRIVEWAYS SHALL BE CONSTRUCTED IN ACCORDANCE WITH CITY OF LOS ANGELES STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
3. TWO WORKING DAYS PRIOR TO ANY EXAMINATION, CONTRACTOR SHALL CONTACT THE LOCAL FIRE SERVICE, POLICE DEPARTMENT AND THE CITY ENGINEER'S OFFICE TO COORDINATE THE EXAMINATION.
4. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL EXAMINE AND VERIFY THE HORIZONTAL AND VERTICAL LOCATION OF ALL EXISTING UTILITIES AND RECORD THE LOCATION. THE CONTRACTOR SHALL NOTIFY THE ENGINEER SO THAT THE LOCATION OF ALL UTILITIES CAN BE VERIFIED BY AN INDEPENDENT UTILITY LOCATING COMPANY AT THE AMOUNT OF \$1,500.
5. BACKFILL COMPACTOR SHALL BE ACCORDING TO TYPICAL/STREET USE.
6. MAINTENANCE OF THESE FACILITIES SHALL BE THE RESPONSIBILITY OF THE OWNER OF THE PROPERTY.
7. WORK ON INTERNAL STREETS SHALL BE PERFORMED ON A

ADDITIONAL CONTRACT NOTES

1. CONTRACTOR IS RESPONSIBLE FOR OBTAINING A TYPICAL DISTURBANCE PAYOUT PRIOR TO BEGINNING WORK.
2. CONTRACTOR IS RESPONSIBLE FOR MAINTAINING RUN-OFF ON SITE DURING CONSTRUCTION.
3. CONTRACTOR IS RESPONSIBLE FOR CLEANING ALL SEDIMENT THAT GETS INTO DRAINING OF RUN.
4. REPAIR OF DAMAGED FACILITIES AND CLEANUP OF SEDIMENT ACCUMULATIONS ON ADJACENT PROPERTIES AND IN PUBLIC PLACES IS THE RESPONSIBILITY OF THE CONTRACTOR.
5. ALL DISPOSED SOILS AND MATERIALS MUST BE PROTECTED FROM WIND AND WATER EXPOSURE PRIOR TO ANY CITY ACCEPTANCE OF ANY PRODUCT.
6. ALL MATERIALS NOT UTILIZED AT THE END OF THE PROJECT SHALL BE STORED IN ACCORDANCE WITH SOA SEVER 100 F. 000.

	RUTLEDGE OFFICE/WAREHOUSE ALBUQUERQUE, NM	DOWN BY DATE 3-7-22	DRAWING 0000	SHEET # GR-1	3-7-22 RUTLEDGE 2021(5)
	RUTLEDGE SPEC BUILDING GRADING AND DRAINAGE PLAN		3231 MONROE PARK PL. NE ALBUQUERQUE, NM 87109 (505) 855-3100 www.tlmsurveyors.com		



	RUTLEDGE OFFICE/WAREHOUSE ALBUQUERQUE, NM	DATE 3-7-22	DRAWN BY pmm
	CHANNEL SECTIONS	SHEET # GR-2	JOG 100

Exhibit C

ZAP: D-16/17
TC2022-05-002

TEMPORARY CONSTRUCTION AND ACCESS LICENSE

This Temporary Construction and Access License ("TCAL") made and entered into by and between the Albuquerque Metropolitan Flood Control Authority ("AMAFCA"), a political subdivision of the State of New Mexico, and **Brunacini Development, LTD. Co.** (Licensee) a New Mexico Limited Liability company.

RECITALS

- A. AMAFCA is the owner of: a drainage right of way for the North Diversion Channel as shown on the Plat of AMAFCA North Diversion Channel and Inlet Channels Drainage Right-of-Way Phase 4 Parcels A thru G; as indicated and described on attached **Exhibit A**; and
- B. Licensee desires to execute a TCAL at this location in order to: stage and construct an earthen swale, a concrete rundown to the earthen swale, and a traversable concrete rundown to the North Diversion Channel associated with the Rutledge Warehouse development installed on Tract A-2-A-1, Journal Center Phase 2, Unit 2 as further described on attached **Exhibit B**; and
- C. This TCAL is subject to the AMAFCA General Notes for construction as shown in **Exhibit "C"**.
- D. Licensee shall restrict construction within any drainage right-of-way, or any impairment to the flood-carrying ability of any natural waterway, to the period between October 15 and May 15. At all other times, drainage ways shall be in original or final condition, and excavations and other land alterations shall be returned to their original contours and compacted condition, unless express written exception has been given in advance by AMAFCA.
- E. If Site Specific Requirements by AMAFCA are necessary for the construction of the facilities or access to the site, they are included as **Exhibit D**; and
- F. AMAFCA and Licensee wish to establish the terms upon which this TCAL shall be authorized.
- G. An Encroachment and Maintenance Agreement between AMAFCA and the Licensee X will/___ will not be entered into for the continued operation and maintenance of this project by the Licensee.
- H. This TCAL agreement shall expire when the project is completed, the requirements of AMAFCA are met including all clean up and restoration of the site, and AMAFCA has issued written notice of acknowledgement of the work or, at 11:59 pm, one (1) year from date of execution of this TCAL on **May 31, 2023**
- I. Contact information:
 - AMAFCA
2600 Prospect Ave. NE
Albuquerque, NM 87107
Attn: Real Estate Manager
Email: amafca@amafca.org
 - Brunacini Development, Ltd. Company
PO Box 6363 7550 Meridian Place NW
Albuquerque NM 87197
Attn: Angelo Brunacini, Manager
Email: abrunacini@brunacini.com

TEMPORARY CONSTRUCTION AND ACCESS LICENSE

LICENSE CONDITIONS

1. It is mutually acknowledged that Licensee's proposed use of the property shall be subservient to flood control operations, maintenance, and inspection of AMAFCA facilities. If access to the area is to be restricted as a result of the project, Licensee shall provide AMAFCA with the necessary access means to allow AMAFCA staff access to their facility. In the event damages occur to the project by AMAFCA's operations, AMAFCA will not be liable for the costs of the repairs to any damages incurred by the Licensee.
2. The Licensee and their contractor shall save and hold AMAFCA harmless from all claims and judgments for damages and injury to the property and persons arising from the negligent occupancy or negligent use of the property by the Licensee or the Licensee's contractor. The Licensee and/or their contractor shall be solely responsible for all damages caused by construction activities. To ensure repairs of such damages, the Licensee and/or their Contractor shall purchase Standard Form Owner's Protective Liability insurance naming AMAFCA as additional named insured in the amount of Two-Million Dollars (\$2,000,000) and shall provide evidence of said insurance to AMAFCA within Seven (7) days of execution of this Agreement. The Licensee and their contractor shall save and hold AMAFCA harmless from all claims and judgments for damages and injury. In addition, Licensee, Contractor, and any of their licensees, subcontractors, or permittees shall procure general or premises insurance as necessary and shall list AMAFCA as an additional insured on all such policies.
3. Licensee and their contractor shall be solely responsible for damages to persons and property resulting from the actions and omissions of that party, their agents, guests and/or permittees, and/or arising out of the use of the Agreement Area by that party, their agents, guests and/or permittees. The 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. All construction, activities, maintenance, inspection, repair, dust control, relocation and removal of any improvements shall be accomplished at Licensee's or their contractor's sole expense, and subject to inspection by AMAFCA. All construction activities shall be completed as shown on the approved plans and specifications previously approved by AMAFCA and in accordance with applicable laws, rules, and regulations then in effect. Licensee shall notify AMAFCA in writing ten (10) days before commencing any work in AMAFCA's right-of-way. Licensee will provide AMAFCA with the Contractor's contact information, including but not limited to, project manager's contact information as well as location and dates of all pre-construction meetings. A construction project schedule will also be required.
5. Licensee agrees to acquire all necessary permits to complete the project and comply with such permits including AMAFCA's programmatic fugitive dust permit and NPDES MS4 Permit and will require the Licensee's contractor to comply with all such permit requirements.
6. Licensee shall obtain AMAFCA's written approval for the following prior to construction:
 - a. SAFETY: AMAFCA facilities are designed and constructed to convey stormwater and reduce the impact of flooding on public and private property throughout AMAFCA's jurisdiction. As such, the flood control operations of AMAFCA's facilities are primary and paramount. Licensee agrees to provide AMAFCA with a safety plan that includes plans for rapid removal of equipment and personnel from AMAFCA facilities in a storm event. The Licensee also acknowledges that AMAFCA's facilities may contain water, regardless of weather conditions, and are responsible for the care and diversion of water in and around their location within the AMAFCA facility. Licensee also agrees that conditions may arise where AMAFCA will require Licensee to assign personnel to early alert locations, upstream of the location, to monitor weather conditions and facility flows.
 - b. All construction drawings and specifications for construction of the project, including grading

TEMPORARY CONSTRUCTION AND ACCESS LICENSE

- and drainage plans.
- c. All changes to the project plans and/or specifications, which may affect AMAFCA's facilities prior to construction.
 - d. All changes to the project plans and/or specifications, which may affect AMAFCA's facilities after construction has started.
 - e. A written plan for protecting AMAFCA's facilities during and after construction. The plan must include, at a minimum, the following:
 - i. Posting information on site to inform users of the project.
 - ii. Placing appropriate signage notifying the public of ditch safety and water quality issues due to the project's location within a flood control facility.
 - iii. Any other protections necessary to ensure the integrity of the flood control facilities.

The standards provided herein are not exclusive, and AMAFCA reserves the right to reject any plan which, in AMAFCA's sole opinion, does not provide sufficient protection to AMAFCA's facilities or the public during or after construction. AMAFCA shall promptly review all design and construction documents and provide timely comments or approval, as appropriate.

- 7. All construction work performed, or materials used within the limits of AMAFCA's right-of-way and easements, shall be subject to periodic onsite inspection by AMAFCA staff or designated representative. Any comments by AMAFCA as a result of such inspections shall be directed to the Licensee for review. Licensee may be required to reimburse AMAFCA for certain costs incurred for on-site inspection and related services performed by AMAFCA staff or designated representatives. All construction activities associated with the project shall be completed in such a manner so as not to damage or interfere with the operation and maintenance of AMAFCA's flood control facilities and equipment. If any activities of the project endanger the flood control function of any AMAFCA facilities, AMAFCA shall notify the Licensee and they shall promptly commence to correct such condition and to restore the AMAFCA facilities at Licensee's sole expense. In the event Licensee fails to commence such repairs within seventy-two (72) hours of such notice, AMAFCA shall commence to make such repairs to correct such condition at the expense of the Licensee.
- 8. Licensee shall ensure that all workmanship and materials conform to New Mexico Department of Transportation ("NMDOT") Standard Specifications for Road and Bridge Construction (current edition), or City of Albuquerque Standard Specifications for Public Works Construction (as currently updated), whichever applies
- 9. After receiving written notice that project construction is complete, AMAFCA shall inspect the project and provide to the Licensee either written acceptance of the project or written comments on corrective action items which must be completed before acceptance shall be granted. See **Exhibit "E"**
- 10. In the event a natural or human caused event occurs that requires the AMAFCA Executive Engineer or the AMAFCA Board of Directors to declare a State of Emergency that impacts the facilities occupied by this agreement, the Licensee, may be required to allow AMAFCA staff and contractors to respond as appropriate to the emergency declared and make necessary repairs to the facilities at the expense of the Licensee.
- 11. This License and all rights and privileges herein granted may be terminated by AMAFCA should the Licensee fail to comply with provisions of this Licensee.
- 12. This License represents the entire agreement between the parties regarding the use of said property.

TEMPORARY CONSTRUCTION AND ACCESS LICENSE

ALBUQUERQUE METROPOLITAN ARROYO FLOOD CONTROL AUTHORITY

BY: 

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

5/27/2022
Date

LICENSEE AND ON BEHALF OF THEIR CONTRACTOR

BY: 

Angelo Brunacini, Brunacini Development, Ltd. Co.

5/27/2022
Date

ACKNOWLEDGMENTS

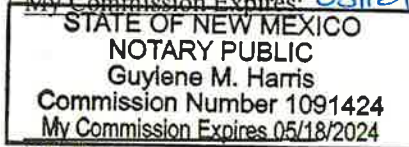
STATE OF NEW MEXICO)

)S.S.

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on May 27, 2022 by Jerry M. Lovato, P.E., 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: 05/18/2024



(SEAL)


Notary Public

STATE OF NEW MEXICO)

)S.S.

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on May 27, 2022 by: Angelo Brunacini, as Manager of Brunacini Development, Ltd. Co., a New Mexico Limited Liability Company on behalf of said company.

My Commission Expires: 6/26/2023

(SEAL)


Notary Public

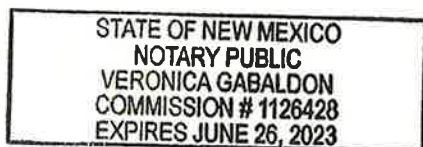
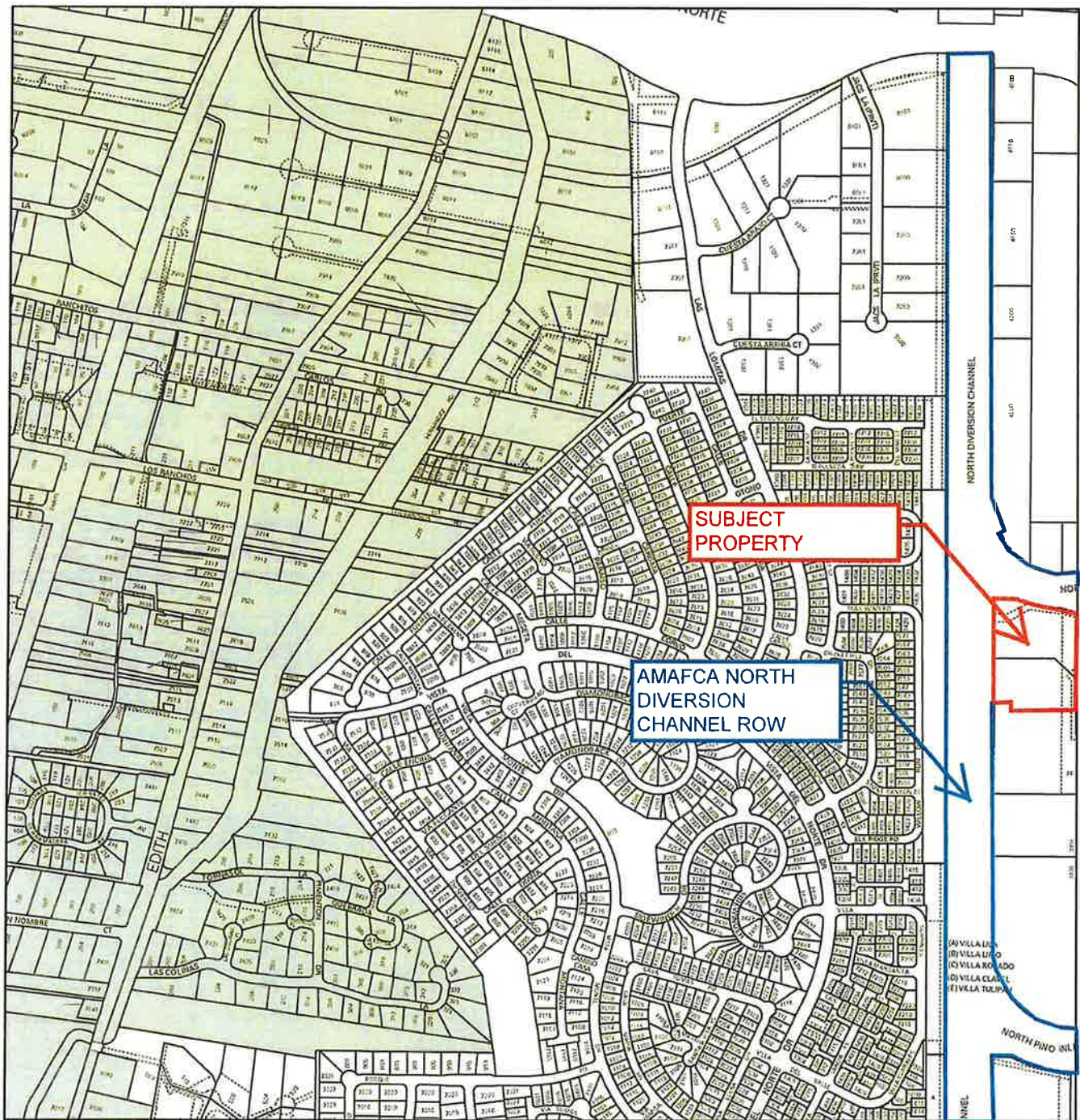


EXHIBIT "A"



For more current information and details visit: www.cabq.gov/gis



Address Map Page:

D-16-Z

Map Amended through:
3/17/2017

These addresses are for informational purposes only and are not intended for address verification.

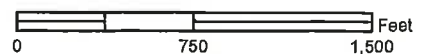


EXHIBIT "B"

PAGE 1 OF 2

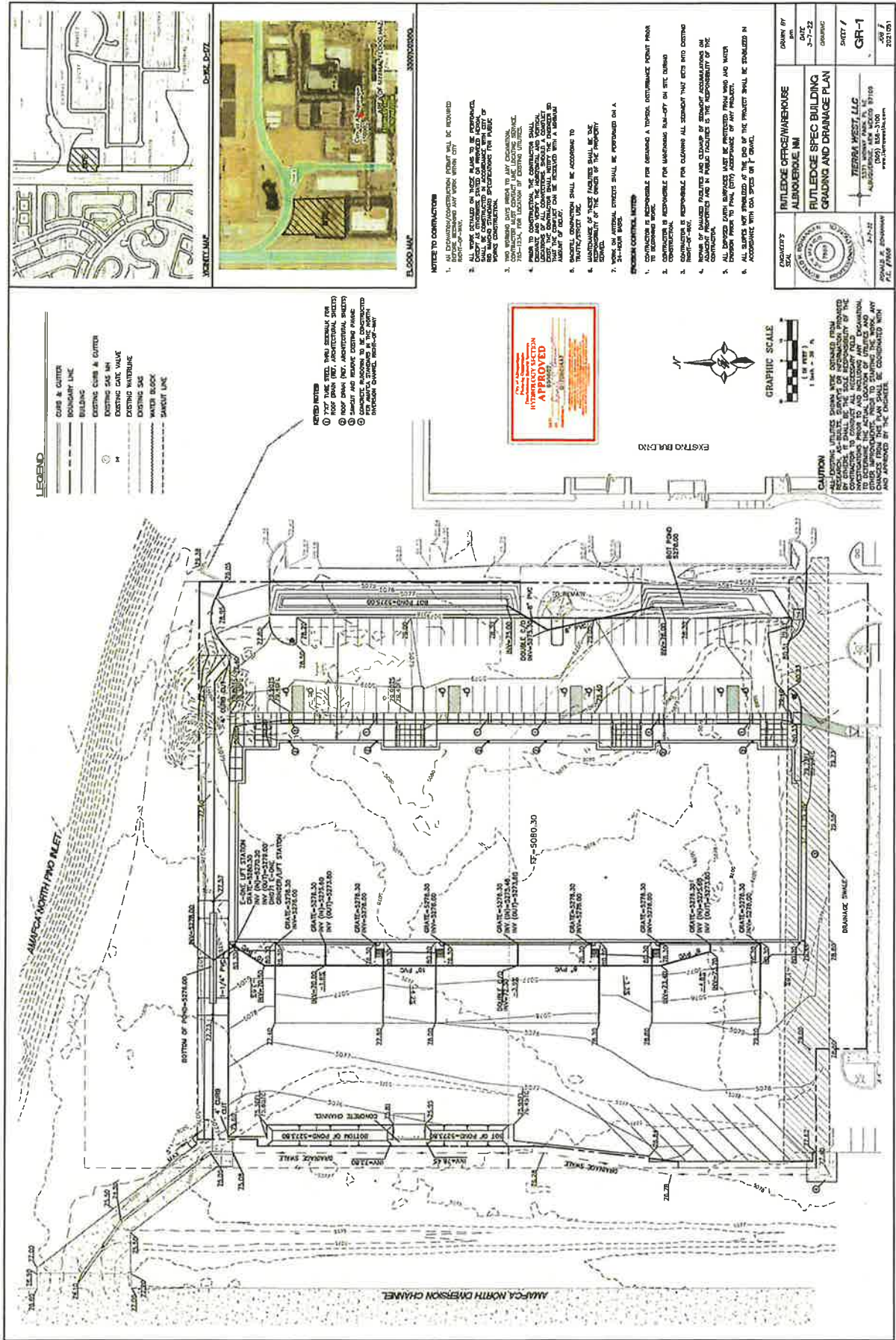
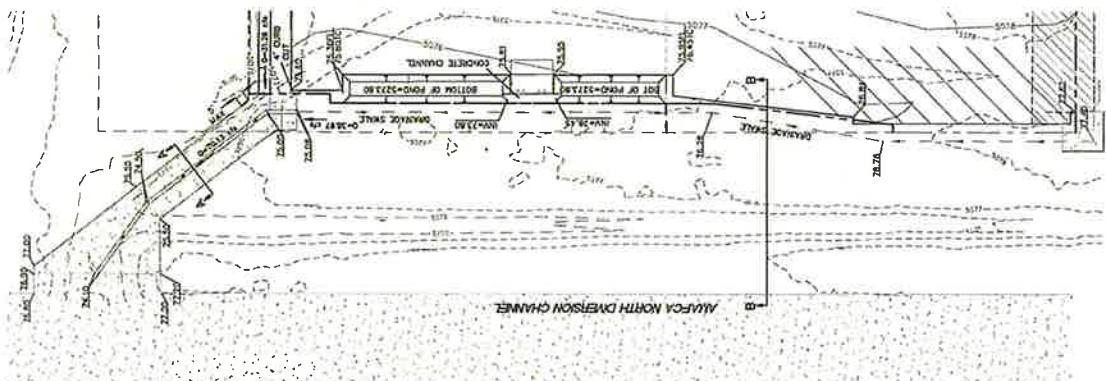
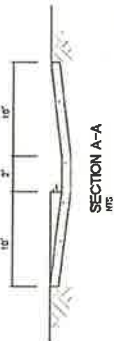


EXHIBIT "B"

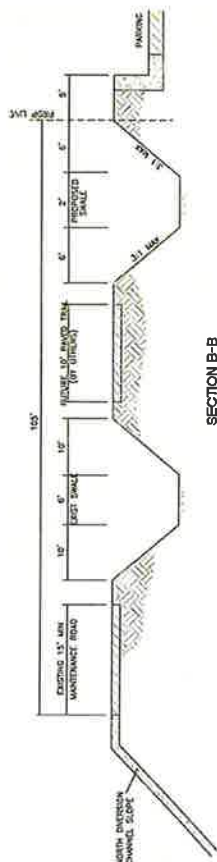
PAGE 2 OF 2



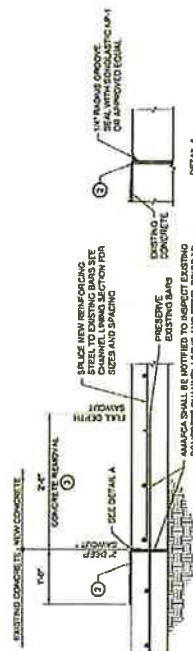
NOTES:
SEE CHANNEL BROADEN DETAILS ON SHEET 04-3



SECTION A-A
M/S



SECTION B-B
M/S



NEW TO EXISTING CHANNEL LINING CONSTRUCTION JOINT DETAILS

AMFCA GENERAL NOTES

- AMFCA'S PROJECT MANAGER SHALL BE NOTIFIED 48 HOURS PRIOR TO START OF ANY WORK AND SHALL BE PRESENT FOR THE ENTIRE DURATION OF THE WORK WITHIN THE AMFCA RIGHT-OF-WAY OR EASEMENT.
- NO WORK SHALL BE PERFORMED IN THE AMFCA RIGHT-OF-WAY OR EASEMENT BETWEEN MAY 15 AND OCTOBER 15 WITHOUT WRITTEN PERMISSION FROM AMFCA.
- ALL EXISTING CHANNELS AND EASEMENTS SHALL BE COMPACTED TO BE ADEQUATE PROTECTED WHEN THE CHANNELS ARE EXPOSED. TESTING REPORTS SHALL BE PROVIDED TO AMFCA.
- AMFCA SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND SHALL BE RESPONSIBLE FOR THE CONSTRUCTION WITHIN THE AMFCA RIGHT-OF-WAY OR EASEMENT.
- CONTRACTOR SHALL PROVIDE A CERTIFICATE OF LIABILITY INSURANCE IN THE AMOUNT OF \$1,000,000 TO AMFCA.
- CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND SHALL BE RESPONSIBLE FOR THE CONSTRUCTION WITHIN THE AMFCA RIGHT-OF-WAY OR EASEMENT.
- NO EXISTING CHANNELS SHALL BE EXPOSED OR EXPOSED TO THE PUBLIC AS A RESULT OF THE CONSTRUCTION. THE CHANNELS SHALL BE PROTECTED BY A FENCED AREA WITH A GUARD RAIL AND A WARNING SIGN.
- THE AMFCA SHALL BE ALLOWED TO ALLOWED IN THE AMFCA CHANNELS, IS ALLOWED.
- NO TRACTED VEHICLES WILL BE ALLOWED IN THE AMFCA CHANNELS WITHOUT WRITTEN PERMISSION FROM AMFCA.

APPROVED FOR CONSTRUCTION WITHIN AMFCA RIGHT-OF-WAY / EASEMENT

FOR AMFCA



CONTRACT'S SEAL	DATE	DATE	DATE
RUTLEDGE OFFICE/WAREHOUSE	3-7-22	3-7-22	3-7-22
ALBUQUERQUE, NM	3-7-22	3-7-22	3-7-22
CHANNEL SECTIONS	3-7-22	3-7-22	3-7-22
SHEET 1	3-7-22	3-7-22	3-7-22
CR-2	3-7-22	3-7-22	3-7-22
DATE	3-7-22	3-7-22	3-7-22
1021051	3-7-22	3-7-22	3-7-22

TERRA WEST, LLC
ALBUQUERQUE, NM 87102
www.terrawest.com

AMAFCA General Notes

Exhibit C

AMAFCA GENERAL COSTRUCTION REQUIREMENTS

1. AMAFCA's Project Manager shall be notified by email at amafca@amafca or by phone at (505) 884-2215 at least ten (10) days prior to start of any work.
2. AMAFCA's Project Manager shall be notified by email at amafca@amafca or by phone at (505) 884-2215 at least ten (10) days prior to request for final inspection of the work within the AMAFCA right-of-way or easement.
3. No work will be performed in the AMAFCA right-of-way or easement between May 15 and October 15 without prior written authorization from AMAFCA.
4. All subgrade, backfill and embankment shall be compacted to 95% ($\pm 2\%$ of optimum moisture per ASTM D-1557) within the AMAFCA right-of-way or easement. Testing reports shall be provided to AMAFCA at the final inspection.
5. Certified as-built plans shall be submitted to AMAFCA for any construction within the AMAFCA right-of-way or easement before final written acceptance or acknowledgement of the project.
6. All disturbed ground areas shall be revegetated in accordance with City of Albuquerque Standard Specifications for Public Works Construction, Section 1012 Native Grass Seeding, as currently updated.
7. Any existing survey control monuments that are disturbed or damaged as a result of the construction or maintenance activities, shall be replaced by a licensed surveyor in New Mexico at the Licensee's expense. AMAFCA shall be notified at least two days (48 hours) prior to any monument placement.
8. The Licensee and/or their contractor shall maintain or repair all AMAFCA infrastructure including but not limited to fencing, gates, signage, and all other facilities. All repairs will be performed to return facilities to original or AMAFCA-approved condition.
9. The maximum wheel load allowed in the AMAFCA channel shall be twelve thousand (12,000) pounds.
10. No tracked vehicles will be allowed in AMAFCA hard-lined or concrete channel without written permission from AMAFCA.
11. Cranes operating with outriggers in the channel shall limit the outrigger footprint load area to less than twelve thousand (12,000) pounds.

12. Dust suppression shall be maintained seven (7) days a week during construction activity. During periods of construction inactivity, the contractor shall be required to maintain dust control measures.
13. The Licensee and/or their contractor shall be responsible to provide track-out reduction measures and clean up any track-out of material. The contractor shall clean up any soil deposits or spills on all paved roads along haul routes.
14. The Licensee and/or their contractor are responsible for all traffic and pedestrian control.
15. At the end of each workday and during times of construction inactivity, the contractor shall ensure all access gates to the facility are closed and locked.
16. The Licensee and/or their contractor shall be responsible for all trash and debris removal in the area of the construction activity. All graffiti will be removed or appropriately covered up within one day (24 hours).
17. Any fines imposed against AMAFCA due to the contractor's activities that violate the conditions of any required fugitive or AMAFCA's programmatic dust permit shall be reimbursed by the Licensee and/or their contractor.
18. Any fines levied against the contractor due to its activities that violate any local statutes or requirements shall be paid by the Licensee and/or their contractor.
19. If AMAFCA is fined as being the landowner of the property, due to the contractor's activities, the contractor or the Licensee shall reimburse AMAFCA for all costs associated with payment of the fine by AMAFCA.
20. At the substantial completion of the project, the Licensee's contractor shall restore to conditions as before construction or improve to AMAFCA's requirement the maintenance access roads impacted by the project including all necessary grading and top dressing of the road base or gravel material at the direction of authorized AMAFCA personnel. Any concrete, asphalt or other debris found within the construction area will be transported off site and appropriately disposed of by the Licensee's contractor at no cost to AMAFCA.

This Temporary Construction and Access License is subject to the EPA NPDES Municipal Separate Storm Sewer System (MS4) Permit NMR04A000 requirements as listed below, if applicable:

1. The contractor shall submit a stormwater pollution prevention plan (SWPPP) for approval by AMAFCA before the Notice of Intent (NOI) is submitted to EPA, if and only if, the contractor is using any AMAFCA Facility as a Best Management Practice (BMP) or if a BMP will inhibit the function of an AMAFCA Facility.
2. The contractor shall implement an erosion and sediment control program to minimize sediment entering AMAFCA's Facilities.
3. The contractor shall provide SWPPP inspection and enforcement of control measures during construction. Copies of all the SWPPP inspection reports will be submitted to AMAFCA as part of the final inspection.
4. Any fines levied against contractor due to any activities that violate conditions of the AMAFCA MS4 Permit NMR04A000 shall be paid by the contractor and/or the Licensee.
5. If AMAFCA is fined as Owner, due to the contractor's activities, the Licensee and/or their contractor shall reimburse AMAFCA for all costs associated with payment of the fine by AMAFCA.

These conditions are included and are made a part of this agreement by mutual understanding of both parties.

Exhibit D

Site Specific Requirements

- A. The Licensee will notify AMAFCA staff by email at amafca@amafca.org a minimum of ten (10) days prior to:
1. Any preconstruction conference for the project,
 2. Any construction activities within AMAFCA's right-of-way, and
 3. Any concrete placement within the AMAFCA right-of-way for inspection of rebar reinforcement and connection to existing drainage infrastructure
- to ensure that there are no conflicts with AMAFCA maintenance requirements or other concerns.

Exhibit E

Temporary Construction and Access License Closeout Inspection

Date: _____ TCAL #: TC2022-05-002 _____

AMAFCA Representative: _____

Licensee Representative: _____

1) Compaction Testing Report Documents Received:	Y _____	N _____	NA _____
2) As-built Documents Received:	Y _____	N _____	NA _____
3) Disturbed Ground Revegetated:	Y _____	N _____	NA _____
4) AMAFCA Facilities Returned to Original Condition:	Y _____	N _____	NA _____
5) Maintenance Access Roads Restored:	Y _____	N _____	NA _____
6) SWPP Control Measures Removed:	Y _____	N _____	NA _____
7) All Construction Debris Removed From Site:	Y _____	N _____	NA _____
8) Any fines levied against the contractor have been paid or satisfied:	Y _____	N _____	NA _____
9) Encroachment Maintenance Agreement has been executed	Y _____	N _____	NA _____

Deficiencies:

1) _____

Date Corrected: _____ AMAFCA Initials/Date: _____

2) _____

Date Corrected: _____ AMAFCA Initials/Date: _____

3) _____

Date Corrected: _____ AMAFCA Initials/Date: _____