

AGREEMENT AND COVENANT
City Project No. F16D014C

This Agreement and Covenant ("Agreement"), between the City of Albuquerque, New Mexico ("City") and Albuquerque Bernalillo County Water Utility Authority ("User"), is made in Albuquerque, New Mexico, and is entered into as of the date of recording this Agreement with the Bernalillo County Clerk, State of New Mexico.

1. **Recital.** The User is the owner of certain real property ("User's Property") located at 6000 ALEXANDER BLVD NE, in Albuquerque, New Mexico, and more particularly described as: (give legal description and filing information)
TR A PLAT OF TRACT A CITY OF ALBUQUERQUE WATERTREATMENT FACILITY
CONT 162.5256 AC and is attached as **Exhibit A**.

The City is the owner of a 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:

Drainage Easement - South Pond

If the City's Property is an easement, then give legal description and filing information:

The User wishes to construct upon, improve or repair and to maintain the following drainage Improvement ("Improvement") on the City's Property (or already has done so):

Storm water Detention Pond

A sketch of the proposed or existing Improvement is attached as **Exhibit B** and made a part of the 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, or 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

F16D014C 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

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COV R:\$25.00 Linda Stover, Bernalillo County



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 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, State of New Mexico. 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 of the Cancellation and Release. After the effective date, the City will record the Cancellation and Release with the Bernalillo County Clerk, State of New Mexico.

Cancellation of this Agreement for any reason shall not release the User from any liability or obligation relating to the installation, operation, maintenance, or removal of the Improvement or any other term of this Agreement.

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:

6000 Alexander Blvd NE, Albuquerque, NM 87107

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 shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The User agrees to indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the acts or omissions of the User, its agents, representatives, contractors or subcontractors or arising from the failure of the User, its agents, representatives, contractors or subcontractors to perform any act or duty required of the User herein. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico.

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:

USER:

By: _____
Sarita Nair
Chief Administrative Officer
Date: _____

By: _____
Name: Mark S. Sanchez
Title: Executive Director
Date: 6/23/2021

APPROVED:

Shahab Biazar, P.E., City Engineer

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this ____ day of _____, 2021, by Sarita Nair, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

My Commission Expires: _____
Notary Public: _____

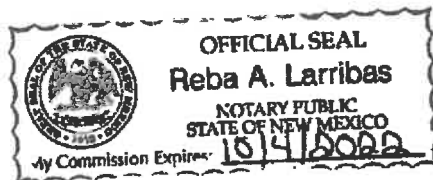
USER'S ACKNOWLEDGMENT

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

This instrument was acknowledged before me on this 23rd day of June, 2021, by Mark S. Sanchez, (name of person signing) Executive Director (title of person signing) on behalf of Albuquerque Bernalillo County Water Utility Authority (User).

My Commission Expires: 10/4/2022
Notary Public

Reba A. Larribas



CITY OF ALBUQUERQUE:

By:

Shahab Biazar, P.E., City Engineer

Dated:

9/10/2021 | 10:04 AM MDT

DocuSigned by:

Shahab Biazar

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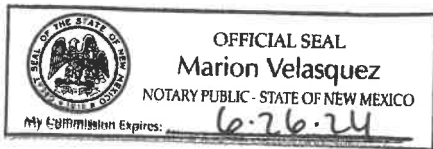
DS

CITY'S NOTARY

STATE OF NEW MEXICO)

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on 10th day of September, 2021, by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on behalf of said corporation.



Notary Public

My Commission Expires: June 26.24

EXHIBIT 'A'
PUBLIC DRAINAGE EASEMENT SURVEY

EASEMENT DESCRIPTIONS

A certain tract of land located within the Corporate Limits of the City of Albuquerque, New Mexico, comprising a portion of Tract A, City of Albuquerque Water Treatment Facility as the same is shown and designated on the Plat filed in the Office of the County Clerk of Bernalillo County, New Mexico on November 16, 2006, Plat Book 2006C, Page 355, Doc. #2006173289, and being more particularly described as follows:

EASEMENT NO. 1 – WEST POND

Beginning at an angle point on the western line of the easement herein described, thence N 16°43'02" E a distance of 125.32 feet along said west right-of-way line to the northernmost corner of the easement herein described; thence S 74°16'58" E a distance of 118.95 feet; thence S 27°22'44" E a distance of 352.64 feet to the northeastern corner of the easement herein described; thence S 36°47'13" W a distance of 220.32 feet; thence S 00°00'22" E a distance of 334.09 feet; thence S 61°25'26" W a distance of 142.76 feet to the southernmost corner of the easement herein described; thence N 60°36'35" W a distance of 160.61 feet; thence N 76°42'05" W a distance of 38.73 feet to the southwestern corner of the easement herein described, whence a western property corner of said Tract A bears S 60°12'08" W a distance of 137.54 feet; thence N 09°50'56" E a distance of 726.52 feet along said eastern right-of-way line to the point of beginning and containing 5.2869 acres more or less.

EASEMENT NO. 2 – SOUTH POND

Beginning at the northwest corner of the easement herein described whence the southwest property corner of said Tract A bears S 58°23'10" W a distance of 406.11 feet; thence N 80°08'11" E a distance of 198.54 feet to the northeast corner of the easement herein described; thence S 00°00'23" E a distance of 202.59 feet to the southeast corner of the easement herein described; thence S 89°39'13" W a distance of 48.16 feet; thence N 85°00'56" W a distance of 148.66 feet to the southwest corner of the easement herein described; thence N 00°14'00" E a distance of 155.96 feet to the point of beginning and containing 0.8139 acres more or less.



EXHIBIT 'A'
PUBLIC DRAINAGE EASEMENT SURVEY

Notes:

1. An easement survey was performed in April, 2021 verifying platted property information obtained at the Bernalillo County Clerk's Office and title information provided by the owner. Property corners were found as indicated.
2. Site located within projected Sections 27 and 34, Township 11 North, Range 3 East, N.M.P.M. (Elena Gallegos Grant).
3. All distances are ground distances.
4. Bearings shown hereon are New Mexico State Plane Grid Bearings, Central Zone (NAD 83). These bearings are positioned from a HMCg temporary benchmark (TBM #1) established from RTK observations by a Topographic Survey, prepared by this firm, in November of 2018. Record bearings and distances are shown in parenthesis.
5. Purpose of this survey is to describe the new public drainage easements being granted to the City of Albuquerque.

SURVEYORS CERTIFICATION

I, Joseph M. Solomon, Jr., New Mexico Professional Surveyor No. 15075, do hereby certify; that this easement survey and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that this survey meets the Minimum Standards for Surveying in New Mexico, and that it is true and correct to the best of my knowledge and belief.


Joseph M. Solomon, Jr., NMPS 15075



June 16, 2021
Date



EXHIBIT 'A'
PUBLIC DRAINAGE EASEMENT SURVEY

KEYED NOTES

EASEMENTS

- ① 10' PUBLIC UTILITY EASEMENT GRANTED BY PLAT 2006C-355
- ② 10' PNM ELECTRIC SERVICES EASEMENT GRANTED BY DOCUMENT FILED 04-08-1999, BOOK 9905, PAGE 6931
- ③ 50' PNM ELECTRIC EASEMENT GRANTED BY PLAT 2006C-355
- ④ PNM SUBSTATION EASEMENT GRANTED BY PLAT 2006C-355
- ⑤ PNM GAS EASEMENT GRANTED BY PLAT 2006C-355
- ⑥ 20' WIDE WATER UTILITY EASEMENT GRANTED TO THE CITY OF ALBUQUERQUE BY PLAT 2006C-355
- ⑦ 20' EASEMENT FOR WATER UTILITIES GRANTED BY DOCUMENT FILED 04-18-1975, MISC. BOOK 417, PAGE 381
- ⑧ 10' PNM AND US WEST EASEMENT GRANTED BY DOCUMENT FILED 06-20-1995, BOOK BCR 95-14, PAGE 6619, DOC. #1995060558
- ⑨ 106' ROADWAY EASEMENT GRANTED BY AGREEMENT FILED 06-29-1968, MISC. BOOK 107, PAGE 778
- ⑩ 60' ROADWAY EASEMENT GRANTED BY DOCUMENT FILED 05-05-1988, MISC. BOOK 617A, PAGES 836-852
- ⑪ 10' PNM EASEMENT GRANTED BY DOCUMENT FILED 08-07-1970, MISC. BOOK 183, PAGE 542
- ⑫ 10' GAS EASEMENT GRANTED BY DOCUMENT FILED 07-02-1971, MISC. BOOK 219, PAGE 799
- ⑬ 10' PNM AND US WEST EASEMENT GRANTED BY DOCUMENT FILED 04-12-1995, BOOK BCR 95-9, PAGE 1184, DOC. #1995036220
- ⑭ 5' GAS EASEMENT GRANTED BY DOCUMENT FILED 06-22-1970, MISC. BOOK 177, PAGE 999
- ⑮ 7' PNM AND MOUNTAIN BELL EASEMENT GRANTED BY DOCUMENT FILED 04-01-1970, MISC. BOOK 169, PAGE 438
- ⑯ PORTION OF RESERVED EXCAVATION EASEMENT TO AMAFCA GRANTED BY DOCUMENT FILED 04-21-1972, BOOK D916, PAGE 971
- ⑰ PNM ELECTRIC UNDERGROUND AND TRANSFORMER EASEMENT GRANTED BY DOCUMENT FILED 10-04-2005, BOOK A104, PAGE 6267, DOC. #2005146669
- ⑱ CROSS LOT BLANKET DRAINAGE EASEMENT FOR TRACT A, MISSION ELEMENTARY SCHOOL FILED 07-11-1996, BOOK BCR 96-19, PAGE 2173, DOC. #1996077358
- ⑲ DRAINAGE COVENANT WITH RENAISSANCE CENTER AND THE CITY OF ALBUQUERQUE TO ACCEPT CERTAIN DRAINAGE WATERS FILED 03-06-1985, MISC. BOOK 207A, PAGE 380, DOC. #1985017070

MONUMENTS

- Ⓐ FOUND BRASS CAP STAMPED "AGP/AGP PROPERTY CORNER"
- Ⓑ FOUND P.K. NAIL W/WASHER STAMPED "LS 4971"
- Ⓒ FOUND BRASS CAP STAMPED "UCI PROP COR 1965"
- Ⓓ FOUND #4 REBAR W/CAP, ILLEGIBLE, W/WASHER STAMPED "LS 7476"
- Ⓔ CALCULATED POSITION FOR PROPERTY CORNER, POINT NOT SET



EXHIBIT 'A'

PUBLIC DRAINAGE EASEMENT SURVEY

BOUNDARY TABLES

LINE	DIRECTION	DISTANCE	LINE	DIRECTION	DISTANCE
L1	N 11°52'57" E	525.50'	L10	S 00°00'01" W	199.62'
(L1)	N 11°54'46" E	525.71'	(L10)	S 00°00'23" W	199.62'
L2	S 79°35'55" E	25.20'	L11	S 03°48'50" E	210.46'
(L2)	S 79°01'34" E	25.18'	(L11)	S 03°48'28" E	210.47'
L3	N 08°49'00" E	56.70'	L12	S 00°00'01" W	942.49'
(L3)	N 08°49'04" E	836.57'	(L12)	S 00°00'23" W	942.49'
L4	N 21°10'39" E	988.18'	L13	S 01°41'53" E	168.70'
(L4)	N 21°10'40" E	988.21'	(L13)	S 01°41'31" E	168.70'
L5	S 81°24'15" E	864.21'	L14	S 00°00'01" W	185.83'
(L5)	S 81°22'27" E	864.17'	(L14)	S 00°00'23" W	185.82'
L6	S 00°02'00" W	1180.26'	L15	N 87°54'38" W	2961.16'
(L6)	S 00°02'22" W	1180.28'	(L15)	N 87°54'22" W	2960.76'
L7	S 89°51'09" E	1965.95'	L16	N 21°50'20" E	6.88'
(L7)	S 89°50'47" E	1965.95'	(L16)	N 18°26'50" E	6.87'
L8	S 00°08'50" W	47.56'	L17	N 10°42'03" E	658.90'
(L8)	S 00°09'13" W	47.56'	(L17)	N 10°42'25" E	658.90'
L9	S 89°51'10" E	5.21'	L18	N 79°12'44" W	637.60'
(L9)	S 89°50'47" E	5.21'	(L18)	N 79°12'22" W	637.60'

CURVE	RADIUS	LENGTH	CHORD BEARING	CHORD	DELTA
C1	35.00'	54.89'	S 44°55'34" E	49.43'	89°51'10"
(C1)	35.00'	54.89'	S 44°55'12" E	49.43'	89°51'10"
C2	35.00'	56.25'	N 46°02'38" E	50.39'	92°05'15"
(C2)	35.00'	56.25'	S 46°03'00" W	50.39'	92°05'15"

EASEMENT TABLES

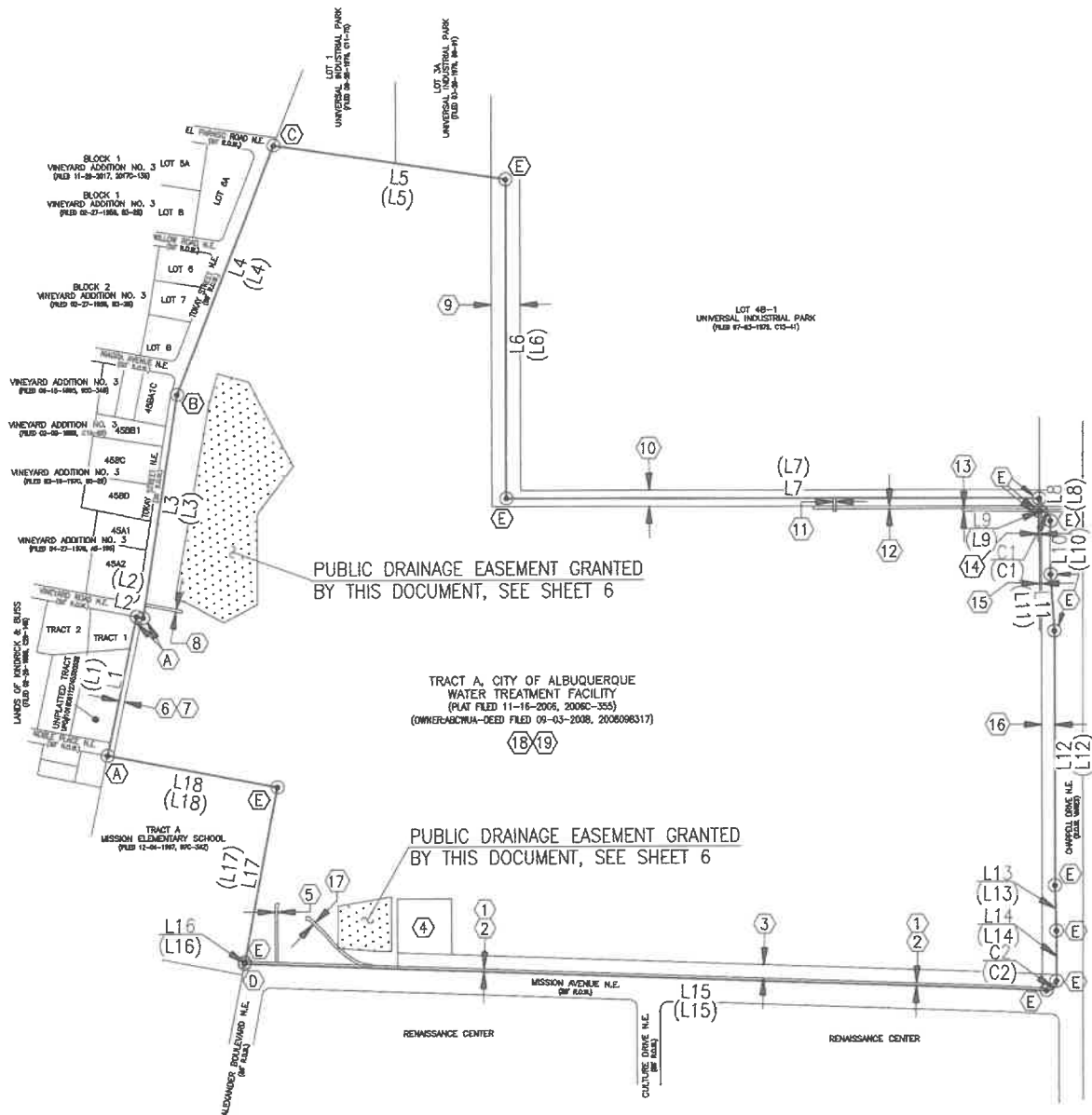
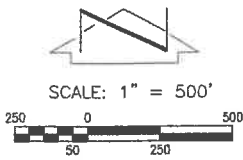
EASEMENT NO. 1 – WEST POND		
LINE	DIRECTION	DISTANCE
E1	N 16°43'02" E	125.32'
E2	S 74°16'58" E	118.95'
E3	S 27°22'44" E	352.64'
E4	S 36°47'13" W	220.32'
E5	S 00°00'22" E	334.09'
E6	S 61°25'26" W	142.76'
E7	N 60°36'35" W	160.61'
E8	N 76°42'05" W	38.73'
E9	N 09°50'56" E	726.52'
T1	S 60°12'08" W	137.54'

EASEMENT NO. 2 – SOUTH POND		
LINE	DIRECTION	DISTANCE
E10	N 80°08'11" E	198.54'
E11	S 00°00'23" E	202.59'
E12	S 89°39'13" W	48.16'
E13	N 85°00'56" W	148.66'
E14	N 00°14'00" E	155.96'
T2	S 58°23'10" W	406.11'



EXHIBIT 'A'

PUBLIC DRAINAGE EASEMENT SURVEY



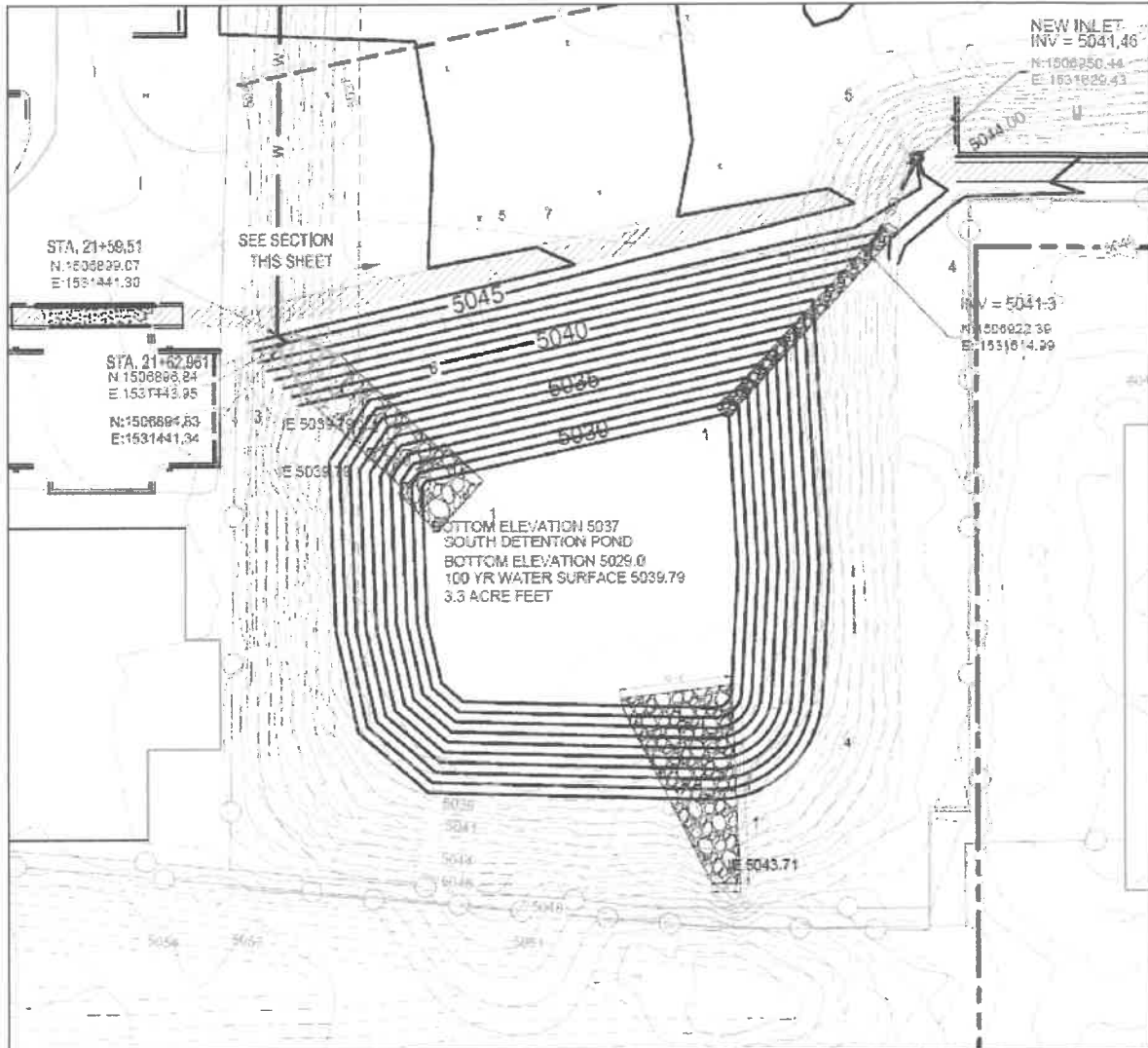
HIGH MESA Consulting Group
Engineers, Surveyors & Subsurface Utility Consultants

6010-B Midway Park Blvd. NE • Albuquerque, New Mexico 87109
Phone: 505.345.4250 • Fax: 505.345.4254 • www.highmesacg.com
JOB NO. 2021.018.1 EASEMENT_R1



EXHIBIT B

SOUTH STORM WATER DETENTION POND, PER CABQ DRAINAGE FILE: F16D014C



Bernalillo County, NM
415 Silver Ave. SW, 2nd Floor
P.O. Box 542
Albuquerque, NM 87102

Receipt: 1266253

Product	Name	Extended
COV	Covenant	\$25.00
	# Pages	6
	Document #	2021107608
	# Of Entries	0
EASE	Easement	\$25.00
	# Pages	15
	Document #	2021107609
	# Of Entries	0
COV	Covenant	\$25.00
	# Pages	12
	Document #	2021107610
	# Of Entries	0
COV	Covenant	\$25.00
	# Pages	12
	Document #	2021107611
	# Of Entries	0
Total		\$100.00

Tender (Check)
Check# 51144
Paid By SMPC ARCHITECTS

Thank You!

9/10/21 1:30 PM vgarza