

**ENCROACHMENT LICENSE AGREEMENT  
FOR STORM DRAIN PIPE OUTFALL TO LADERA DAM THREE TO SERVE  
ALBUQUERQUE PUBLIC SCHOOL'S WESTSIDE STADIUM**

**THIS LICENSE AGREEMENT** is entered into this 17<sup>th</sup> day of May, 2013, by and between the Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), a political subdivision of the State of New Mexico, and the Albuquerque Municipal School District No. 12, Counties of Bernalillo and Sandoval, State of New Mexico, a political subdivision of the State of New Mexico, a.k.a. Albuquerque Public Schools ("APS"), hereinafter collectively referred to as the "Parties".

**WHEREAS**, AMAFCA has a Drainage Easement over the Ladera Dam system, as obtained by court judgment, filed for record in the office of the County Clerk, Bernalillo County, New Mexico, in Misc. Book 498, Pages 648-683; and

**WHEREAS**, APS, as part of the Westside Stadium and Sports Complex improvements, will construct parking and drainage improvements, including one forty-two inch (42") storm drain pipe outfall to Ladera Dam 3 with a water quality manhole and riprap energy dissipator within the Ladera Dam Drainage Easement, along with related grading and appurtenances, hereinafter collectively referred to as the "PROJECT"; and

**WHEREAS**, APS will construct the PROJECT in accordance with the construction plans approved by AMAFCA, and, upon completion of construction and acceptance by APS and AMAFCA, APS 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 APS, its successors and assigns, a License to construct, operate, maintain, and repair, at its sole cost and expense, the PROJECT within the Ladera Dam Drainage Easement, as graphically shown on Exhibit "A", and being more specifically described in the approved construction drawings for the PROJECT, together with full and free ingress and egress thereto subject to the following terms and conditions:

1. All plans for the construction of the PROJECT shall require a City of Albuquerque Work Order and shall be subject to review and written approval by AMAFCA prior to commencement of construction.
2. APS or its contractor shall notify the AMAFCA Field Engineer by telephone call to (505) 884-2215 or any other number designated by AMAFCA, at least forty-eight (48) hours prior to beginning work on or in AMAFCA's right-of-way and/or before final inspection.
3. All construction activities by APS, and all operation, maintenance, repair, relocation or removal of the PROJECT by APS, shall be accomplished at the sole expense of APS and

shall be completed in such a manner as will not damage, impair, or otherwise interfere with the operation, use, and/or maintenance of AMAFCA's flood control facilities.

4. Construction of the PROJECT shall be subject to periodic inspection by AMAFCA staff, whose inspections shall take place during normal business hours unless arrangements have otherwise been made in advance. AMAFCA's comments shall be directed to APS's Project Manager. APS shall respond to AMAFCA's comments in a timely manner.
5. Workmanship and materials shall conform to New Mexico State Highway Department Standard Specifications for Road and Bridge Construction, 2007 edition, and/or City of Albuquerque Standard Specifications for Public Works Construction, whichever applies. All materials to be used in the construction within AMAFCA's Drainage Easement shall be subject to inspection by AMAFCA, in coordination with the Project Manager
6. Any and all excavations and storm drain trenches within AMAFCA's Drainage Easement shall be backfilled with clean fill and compacted to ninety percent (90%) of modified proctor, or as otherwise noted on the plan set. Any other land alterations in AMAFCA's Drainage Easement shall be returned to their original grade and condition if not shown in the plan set. Ground areas within AMAFCA's Drainage Easement that are disturbed during construction or maintenance activities 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 during construction or maintenance activities shall be replaced in kind at the sole expense of APS.
7. Any existing survey control or right-of-way monuments that are moved or destroyed as a result of the construction activities permitted by this License Agreement shall be replaced by a surveyor licensed in the State of New Mexico at the sole expense of APS.
8. APS shall provide AMAFCA with one set of "as built" prints within thirty (30) days of acceptance of the work by AMAFCA.
9. Until such time that the PROJECT is accepted by AMAFCA, APS shall be responsible for all damages caused by construction activities to AMAFCA's facilities or easement area, whether caused by APS, its successors or assigns, or its contractors. To ensure repair of such damages, APS shall require its contractors to purchase and maintain liability insurance, naming AMAFCA as an additional insured, in the amount of \$2,000,000.00. APS or its contractors shall submit to AMAFCA such proof of liability insurance prior to beginning construction within AMAFCA's Drainage Easement. The liability insurance procured pursuant to this section shall not be cancelled, modified, or terminated without the prior written approval of AMAFCA.
10. Subject to a Work Order approval from the City of Albuquerque, APS shall be permitted to modify the PROJECT as constructed in AMAFCA's Drainage Easement, provided that such modification shall be jointly agreed to by AMAFCA, in writing, in advance of such work.
11. All construction, operation, maintenance, repair, relocation and removal of the PROJECT shall be accomplished at the sole expense of APS. All work shall be performed in such a

manner as will not damage, impair, or otherwise interfere with the operation, use, and maintenance of AMAFCA's facilities or easement area.

12. With the exception of emergency conditions, construction within AMAFCA's Drainage Easement, and/or any impairment to the flood-carrying ability of any drainage facility, shall be restricted to the period between October 15 and May 15, unless written permission is obtained from the AMAFCA Executive Engineer.
13. 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 AMAFCA and APS 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.
14. Should APS fail to comply with the provisions of this License Agreement, or should APS fail to properly maintain the PROJECT, or should APS fail to construct the PROJECT within two (2) years, 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 APS at least thirty (30) days to effect a cure. If the notice concerns repair or lack of maintenance, and APS fails to effect a cure within thirty (30) days, AMAFCA may perform the required repair or maintenance and invoice APS for incurred costs without affecting its right to terminate. APS shall pay such costs within sixty (60) days of the date of said invoice.
15. If any AMAFCA action pursuant to this License Agreement is deemed unreasonable, APS shall have the right to appeal to the AMAFCA Board of Directors
16. This License Agreement shall be construed according to the laws of the State of New Mexico.
17. In the event of a dispute between APS and AMAFCA regarding this License Agreement, each Party shall be responsible for its own costs and attorney's fees.
18. If any part of this License Agreement is held to be invalid or unenforceable, the remainder of this License Agreement will remain valid and enforceable if the remainder is reasonably capable of completion.
19. The recitals are a material part of this License Agreement and incorporated herein for all purposes.
20. This Agreement may be executed in counterparts.

*[Rest of Page Intentionally Left Blank, Signature Pages to Follow]*

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

5/17/2013

STATE OF NEW MEXICO )

)SS

COUNTY OF BERNALILLO )

This instrument was acknowledged before me this 17<sup>th</sup> day of May, 2013, *plw*  
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:

10-2-2016

  
Notary Public



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:**

LICENSEE: **Albuquerque Public Schools**

By:

Winston Brooks, Superintendent

Date

July 18, 2012

STATE OF NEW MEXICO )

)SS

COUNTY OF BERNALILLO )

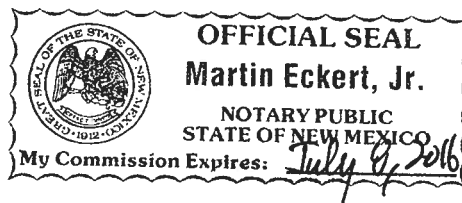
This instrument was acknowledged before me this 18<sup>th</sup> day of July, 2012, by Winston Brooks, as Superintendent of Albuquerque Public Schools, a political subdivision of the State of New Mexico, on behalf of said political subdivision.

My commission expires:

July 8, 2016

Notary Public

Martin Eckert, Jr.



ENCROACHMENT LICENSE AGREEMENT FOR  
STORM DRAIN CONSTRUCTION WITHIN AMAFCA DRAINAGE EASEMENT  
ON THE APS COMMUNITY STADIUM

EXHIBIT A

