

**PRIVATE LICENSE AGREEMENT FOR STORM DRAIN
CONNECTION TO SOUTH DIVERSION CHANNEL**

This License Agreement is made and entered into this 29 day of September, 2015, by and between the Albuquerque Metropolitan Arroyo Flood Control Authority ("AMAFCA"), a political subdivision of the State of New Mexico, and ABQ Health Partners, LLC, a New Mexico limited liability company ("LICENSEE"), collectively referred to as the "PARTIES".

RECITALS:

WHEREAS, AMAFCA owns the fee right-of-way for Parcel 8 of the South Diversion Channel ("SDC") as shown on the plat for South Diversion Channel Drainage Right-of-Way Phase 1, filed for record in the Office of the County Clerk of Bernalillo County, New Mexico, on July 17, 2000, in Book 2000C, Page 183; and

WHEREAS, LICENSEE proposes to develop Tract 2 of Capstone Subdivision, the location of which is shown on Exhibit "A", and to install a thirty-six inch reinforced concrete storm drain pipe (36" RCP) connection to the SDC, along with eight inch (8") thick concrete slope paving, riprap erosion protection and grading ("IMPROVEMENTS") within AMAFCA's property. The specific area containing the IMPROVEMENTS will henceforth be referred to as the "Licensed Area"; and

WHEREAS, the IMPROVEMENTS will provide a benefit to AMAFCA by improving the existing pipe connection and providing a controlled drainage outfall with water quality treatment to the SDC.

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

AMAFCA hereby grants to LICENSEE, and its successors and assigns, a non-exclusive License to construct, operate and maintain the IMPROVEMENTS within the Licensed Area, as graphically shown on the attached Exhibit "B", together with full ingress thereto, subject to the following terms and conditions:

1. LICENSEE shall obtain AMAFCA's prior written approval for the following:
 - a. All changes to the construction drawings for installation of the IMPROVEMENTS. The drawings, with an Engineer's stamp and as approved and signed by AMAFCA, shall be used.
 - b. All future repairs, modifications, removal, or other activities affecting the IMPROVEMENTS.
2. LICENSEE or its contractor shall notify the AMAFCA Project Manager by telephone call to

884-2215 at least forty-eight (48) hours prior to beginning work on or in the AMAFCA's property.

3. LICENSEE shall be responsible for all damages caused by the construction activities to AMAFCA's facilities or property, whether caused by or in any way resulting from the actions of LICENSEE, its successors or assigns, or its contractor. To ensure repair of such damages, LICENSEE shall require its contractor, if work will be performed by a second party, to obtain a Temporary Construction and Access License from AMAFCA prior to construction.
4. All construction by LICENSEE or its contractor and all materials within AMAFCA's property shall be subject to inspection and approval by AMAFCA's Project Manager or his representative to ensure compliance with the approved plans. Any AMAFCA comments shall be directed to LICENSEE.
5. AMAFCA shall have the authority to cause the installation of any of the IMPROVEMENTS to be stopped, or to require that the IMPROVEMENTS be removed by LICENSEE from the Licensed Area, if the construction does not comply with the approved plans.
6. LICENSEE shall revegetate any disturbed ground area within AMAFCA's property that is disturbed by construction or any of LICENSEE's activities, with the exception of maintenance roads and the SDC bottom, which revegetation shall be completed in accordance with City of Albuquerque Standard Specifications for Public Works Construction, Section 1012 Native Grass Seeding, as currently updated.
7. All construction, operation, maintenance, repair, relocation and removal of the IMPROVEMENTS shall be accomplished at the sole expense of LICENSEE. Any existing survey control or right-of-way monuments that are moved or destroyed as a result of the actions permitted by this License Agreement shall be replaced by a registered surveyor at the sole expense of LICENSEE.
8. LICENSEE agrees that all rights granted herein are subordinate to the flood control function of and right of access to AMAFCA's facilities. All work shall be performed in such a manner as will not damage or interfere with the operation and maintenance of and access to AMAFCA's property, flood control facilities and equipment.
9. LICENSEE shall indemnify and hold AMAFCA harmless from all claims or judgments for damages or injury to property or persons to the extent caused by LICENSEE arising from the construction, operation, maintenance, relocation or removal of the IMPROVEMENTS and related equipment, and shall defend AMAFCA against any such claim. LICENSEE shall reimburse AMAFCA for all costs and expenses incurred by AMAFCA resulting from the installation, operation, maintenance or removal of the IMPROVEMENTS should such activities be required to prevent damage to AMAFCA or others. Determination of whether such damage is likely shall be by AMAFCA, which determination shall be reasonable. This agreement to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of the preparation or approval of maps, drawings,

opinions, reports, surveys, change orders, designs or specifications by AMAFCA, its agents or employees.

10. Should LICENSEE fail to comply with the provisions of this License Agreement, or should LICENSEE fail to properly maintain the IMPROVEMENTS, this License Agreement and all rights and privileges herein granted may be terminated by AMAFCA. Any damage or maintenance issue caused by AMAFCA shall be excluded. However, such termination shall be preceded by written notice, giving LICENSEE at least thirty (30) days to effect a cure. If the notice concerns repair or lack of maintenance, and LICENSEE fails to effect a cure within thirty (30) days, AMAFCA may perform the required repair or maintenance and invoice LICENSEE for incurred costs, without impairing its right to terminate this License Agreement. LICENSEE shall pay such costs within sixty (60) days of the date of said invoice.
11. All notices with respect to this License 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 below or other such addresses as hereafter specified in writing by one PARTY to the others:

AMAFCA 2600 Prospect Ave. NE Albuquerque, NM 87107 Attn: Jerry Lovato, Executive Engineer Email: JLovato@amafca.org	ABQ Health Partners, LLC 5400 Gibson Blvd. SE Albuquerque, NM 87108 Attn: Jill C. Klar, COO Email: <u>jill.klar@abqhp.com</u>
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12. This License Agreement shall be construed according to the laws of the State of New Mexico.
13. Each individual signing for each of the PARTIES hereafter warrants and represents that he or she is an authorized agent of such PARTY, on whose benefit he is executing this License, and is authorized to execute the same.
14. This License Agreement shall be in full force and effect for a period of twenty (20) years from the date of signature by AMAFCA and may be renewed for an additional twenty (20) year period upon request of LICENSEE and acceptance by AMAFCA. The burden of timely renewal is on LICENSEE.
15. In the event of a dispute between any of the PARTIES, each PARTY shall be responsible for its own costs and attorney's fees.
16. All terms, conditions and obligations contained herein shall inure to the benefit of and shall be binding upon the parties, their successors, assigns, administrators, executors, receivers and heirs.

IN WITNESS WHEREOF, the undersigned have caused this License Agreement to be executed as of the day and year set forth on Page 1.

LICENSOR:

ALBUQUERQUE METROPOLITAN ARROYO
FLOOD CONTROL AUTHORITY

By: _____

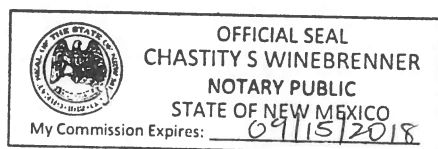
Jerry M. Lovato, P.E., Executive Engineer

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS
COUNTY OF BERNALILLO)

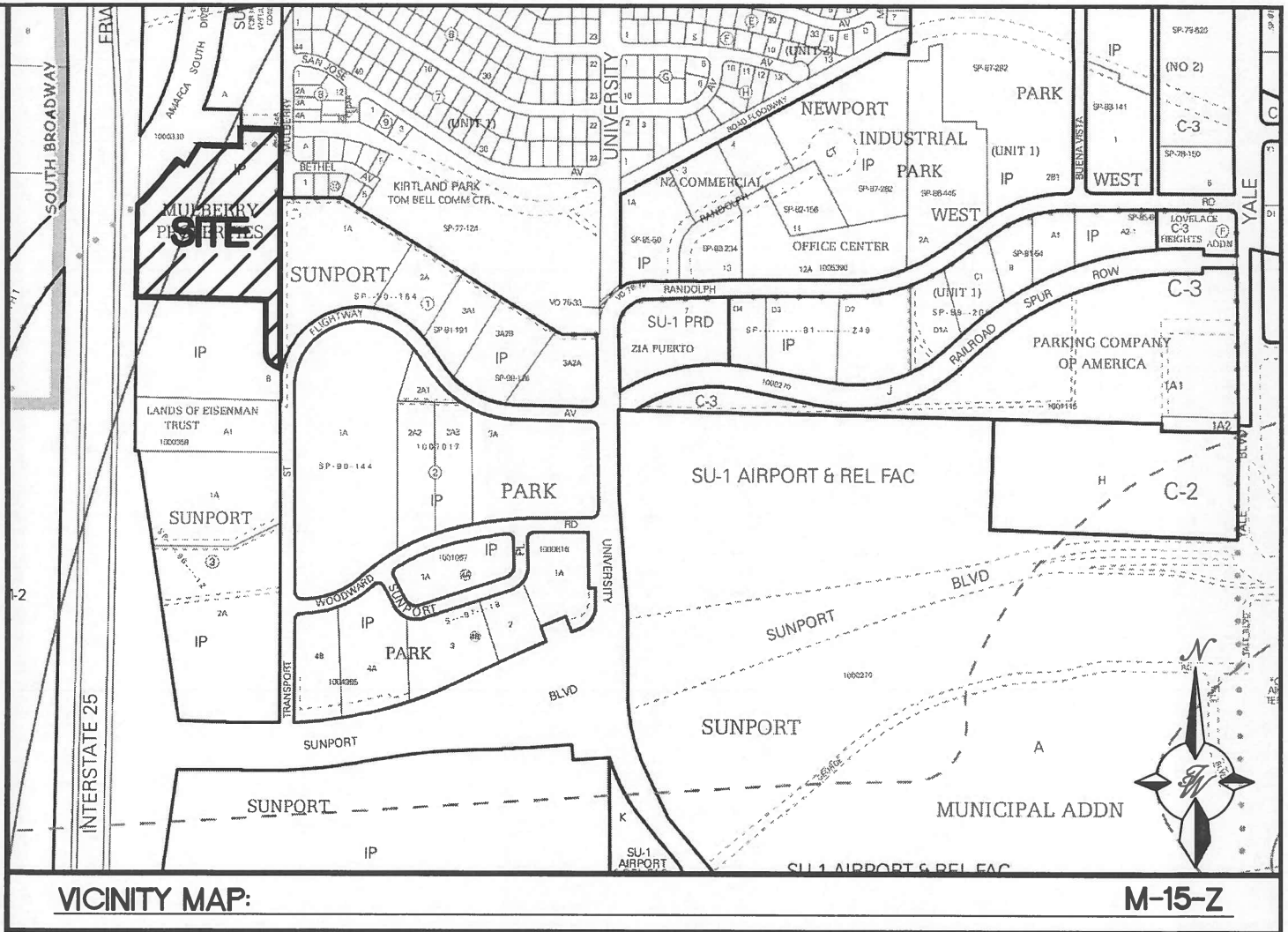
This instrument was acknowledged before me on October 7, 2015
by Jerry M. Lovato, as Executive Engineer of the Albuquerque Metropolitan Arroyo Flood Control
Authority, a political subdivision of the State of New Mexico, on behalf of said political subdivision.

My Commission Expires: 09/15/2018



(SEAL)

Ch S Winebrenner
Notary Public



VICINITY MAP:

M-15-Z

AMAFCA SOUTH DIVERSION CHANNEL PHASE 1 (07/17/2000, 2001) (ROW VARIES)

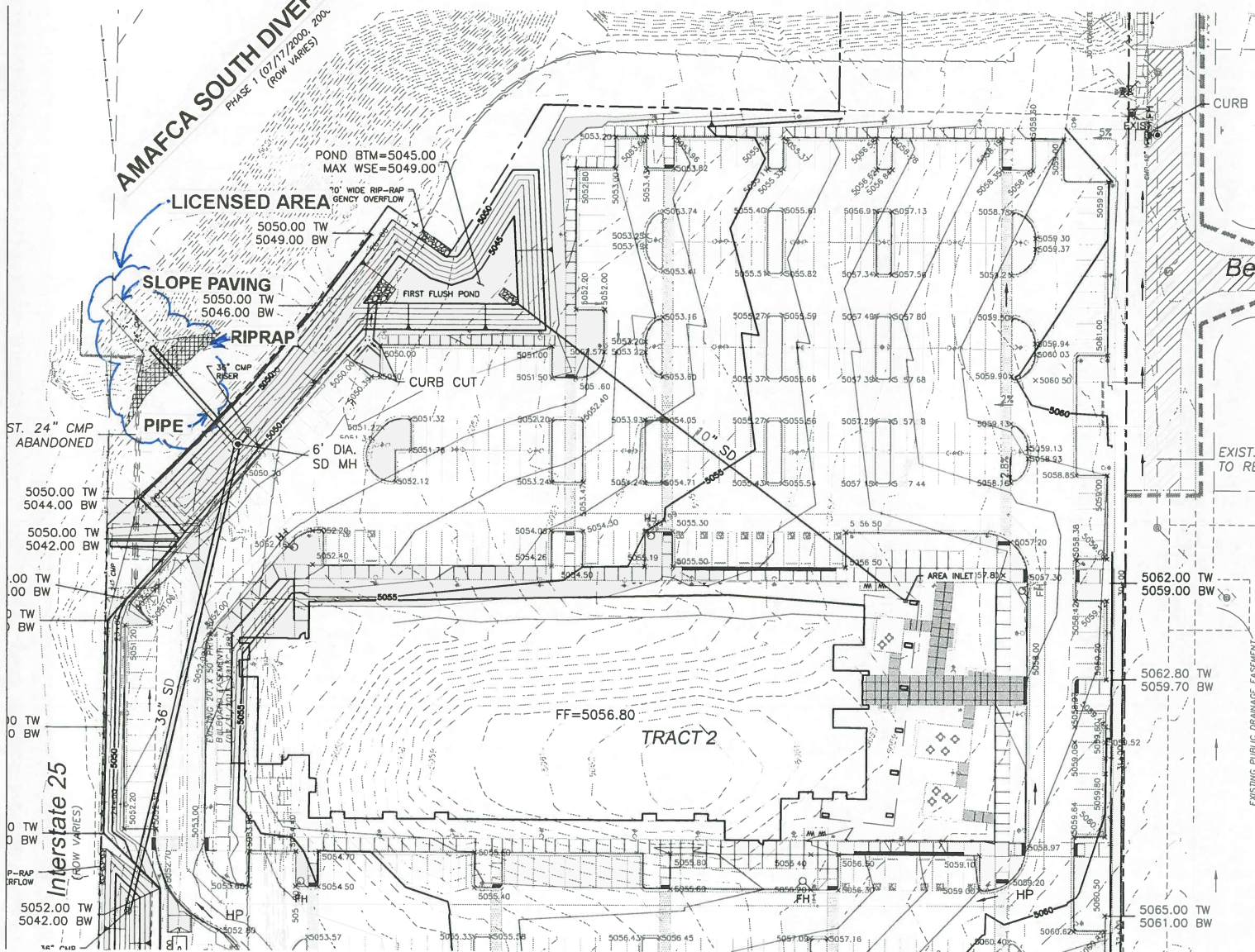


EXHIBIT B