# *Environmental Planning Commission*

***Agenda Number: 1***
***Project Number: 2019-002263***
***Case Number: RZ-2019-00107***
***Hearing Date: May 9, 2019***

## *Staff Report*

| | |
|---|---|
| ***Agent*** | Hunt & Davis PC |
| ***Applicant*** | Paul Allen Homes |
| ***Request*** | **Appeal of a denial requesting reimbursement of excess open space impact fee credits (citywide service area).** |
| ***Legal Description*** | n/a |
| ***Location*** | See request above. |
| ***Size*** | n/a |
| ***Existing Zoning*** | n/a |
| ***Proposed Zoning*** | n/a |

### *Staff Recommendation*

***No Recommendation for***
***Project Number 2019-002263***
***Case Number RZ-2019-00107***

***Staff Planner***
***Tony Loyd,***
***Impact Fees Administrator***


***Summary of Analysis***

On November 9, 2018, the Appellant requested cash reimbursement of his excess open space impact fee credits in the citywide service area ("Credits"). On March 19, 2019, the Impact Fees Administrator denied the request. Per Section 14-14-19(J)(7)(c) of the City's Impact Fee Ordinance ("IFO"), the city shall not be obligated to provide reimbursements for excess credits in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area. With that said, during the period from November 9, 2018 to March 19, 2019, there were meetings held and conversations between the Impact Fees Administrator and the Appellant intended to work towards the approval of the Appellant's request for reimbursement as there were sufficient unencumbered funds available. However and during this same time period, there were internal requests made to the Impact Fees Administrator to deny the Appellant's request to allow time for the City's Parks Department to provide material that would demonstrate that all impact fee funds for open space were encumbered.

# *Appeal Report*

## *INTRODUCTION*

### *Request*

Appeal of a denial, by the Impact Fees Administrator, of the Appellant's request for reimbursement from the City in the amount of $268,345.00 for excess open space impact fee credits in the citywide service area ("Credits").

### *EPC Role*

- The EPC's role is to hear this case based on Section 14-19-20 ADMINISTRATIVE APPEALS of the Impact Fee Ordinance ("IFO"). For full text, see Exhibit A, Impact Fee Ordinance, Section 14-19-20 ADMINISTRATIVE APPEALS.

### *History*

- The Appellant's Credits were originally issued on July 15, 2014 (Exhibit K) in exchange for the conveyance of real property, known as Tract N, located within the Saltillo Unit I Subdivision in the amount of $311,000.00. The property was conveyed as open space according to the City's applicable Component Capital Improvement Plan ("CCIP") as listed in the City of Albuquerque 2013-2022 Decade Plan for Capital Improvements and 2013 General Obligation Bond Program (Exhibit C). By definition, the holder of Credits can request reimbursement from the City for all or part of the amount of excess impact fee credits from revenue generated by impact fees paid by new development for system improvements. However, the city is not obligated to provide reimbursements in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.

- The following will be needed to assist the Commission in its decision making:

  1. December 2012, by definition IFO (Exhibit A), Encumbered - Impact fee funds committed for a specified capital improvement on a specified time schedule which does not exceed seven years from the date of payment of the impact fees.

  2. February 1, 2016, a New Mexico District Court entered a Memorandum Opinion and Order regarding the City's encumbrance of impact fee funds (Exhibit E Memorandum Opinion and Order Keeran, et. al. v. City of Albuquerque, D-202-CV-2014-07331). The Court concluded that the city's definition of encumbered means that to qualify as encumbered, the funds must be committed, or in other words, ear marked, to a specified capital improvement, and must be scheduled to be spent on that specific capital improvement within seven years from the date the

fees were paid. In addition, merely listing a project on the CCIP is not sufficient to encumber an unspent balance. This is important when reviewing the City's Capital Implementation Program Financial Status Reports for Open Space (Exhibit D). Finally, the Court remanded back to the City to determine if impact fee funds were encumbered according to the corrected definition described in the opinion (Exhibit E). For reference, the City Council Case # is AC-14-4.

3. May 16, 2016, Remand of AC-14-4 per order of the Second Judicial District Court (Exhibit F).

4. December 6, 2016, Notice of Decision, City Council, City of Albuquerque (Exhibit G) which was based on the recommendations of the Land Use Hearing Officer ("LUHO"). Some key statements from the Notice applicable to this appeal:

    a. Listing a project on the CCIP is not sufficient to encumber an unspent balance;
    b. Under the City's/Department of Municipal Development's ("DMD") incremental process of encumbering impact fees, impact fees are considered unencumbered;
    c. Ms. Christine Ching, DMD Fiscal Manager stated/clarified that impact fees were encumbered only when a specific capital improvement project is contracted out;
    d. If impact fees were not earmarked for a specific contract, they were unencumbered.

5. September 30, 2018 thru April 9, 2019, The Impact Fees Administrator used DMD's Capital Implementation Program Financial Status Reports for Open Space (Exhibit D) to determine what impact fee funds were encumbered and/or unencumbered as of the date of the applicant's reimbursement request (i.e. November 9, 2018).

    a. After reviewing the reports, the impact fee funds for open space were unencumbered at the time of the request.

6. November and December, 2018, Received Real Estate Purchase Agreements (Krueger and Chant) from the City's Parks Department (Exhibit H). Used to determine unencumbered balances.

    a. The date of the request for reimbursement precedes the reserved date in the Capital Implementation Program Financial Status Reports for Open Space (Exhibit D). However, reserved does not meet the

definition of encumbered. As such, bullet point a. is for illustration purposes only and to determine the open space account balance.

b. The date of the request for reimbursement precedes the dates of the Real Estate Purchase Agreements.
c. After reviewing the agreements, the impact fee funds for open space were unencumbered at the time of the request.

7. March 8, 2019, Received Real Estate Purchase Agreement with Option to Purchase, Notice of Exercise of Option, and Map from the City's Parks Department (Exhibit I). This information/material was submitted to the Impact Fees Administrator by the Parks Department for consideration in determining encumbered balances.

    a. The Real Estate Purchase Agreement with Option to Purchase does not meet the definition of encumbered. The definition of encumbered means that to qualify as encumbered, the funds must be committed, or in other words, ear marked, to a specified capital improvement, and must be scheduled to be spent on that specific capital improvement within seven years from the date the fees were paid (see bullet points i thru iii below). As such, the Real Estate Purchase Agreement with Option to Purchase was not considered in determining the open space account balance in fund 345 Impact Fees.

        i. There are no funds committed under Fund 345 Impact Fees in the open space account for properties listed in the Real Estate Purchase Agreement with Option to Purchase.
        ii. There are no specific capital improvements listed under Fund 345 Impact Fees in the open space account for properties listed in the Real Estate Purchase Agreement with Option to Purchase.
        iii. The timeframes to execute purchases listed in the Real Estate Purchase Agreement with Option to Purchase are dependent on exercising an option to purchase and only become effective upon the purchase and closing of the properties. Not necessarily within seven years from the date that open space impact fees are paid.
        iv. Listing a project on the CCIP is not sufficient to encumber an unspent balance.

8. March 19, 2019, Transmitted letter of denial to Appellant (Exhibit J).

***Applicable Ordinances, Plans, Policies and Additional Materials***

- Exhibit A – Impact Fee Ordinance, Chapter 14, Article 19 of the Revised Ordinances of Albuquerque 1994, Sections 14-19-1 through 14-19-99 ROA 1994 and can be referred to interchangeably as "Ordinance or IFO".
- Exhibit B – Development Process Manual, Chapter 18, Impact Fees Regulations and can be referred to interchangeably as "DPM".
- Exhibit C – City's applicable Component Capital Improvement Plan ("CCIP") as listed in the City of Albuquerque 2013-2022 Decade Plan for Capital Improvements and 2013 General Obligation Bond Program.
- Exhibit D – Capital Implementation Program Financial Status Reports for Open Space, June 31, 2018 thru April 9, 2019.
- Exhibit E – New Mexico District Court Memorandum Opinion and Order.
- Exhibit F – Remand of AC-14-4 per order of the Second Judicial District Court.
- Exhibit G – Notice of Decision, City Council, City of Albuquerque.
- Exhibit H – Krueger and Chant Real Estate Purchase Agreements.
- Exhibit I – Real Estate Purchase Agreement with Option to Purchase, Notice of Exercise of Option, and Map.
- Exhibit J – Letter of denial to Appellant.
- Exhibit K – Open Space Impact Fee Credits.
- Appellant information as provided by Hunt & Davis.

***Applicable Definitions***

- Definitions can be found in the Impact Fee Ordinance, Chapter 14, Article 19 of the Revised Ordinances of Albuquerque 1994, Section 14-19-3 ROA 1994, see Exhibit A.

## *BASIS FOR APPEAL/RESPONSE TO APPEAL*

The Appellant's grounds for appeal are summarized below, followed by the City's response in bold and applicable sections within the Ordinance and DPM as provided to the EPC for reference. However, the entire Impact Fee Ordinance and Chapter 18, Impact Fees Regulations, from the Development Process Manual were used to prepare the response to the appeal.

1. On March 29, 2019, the Appellant requested documents related to this appeal and an explanation for the City's decision to deny Appellant's reimbursement request. To date, the City has provided no explanation or documents pursuant to the request and accordingly, failed to provide Appellants with a true opportunity to appeal the City's decision. Thus, the City's decision is both arbitrary and capricious and unsupported by substantial evidence and raises serious due process issues.

**There is no recollection of a specific request for information, dated March 29, 2019, that was received by the Impact Fees Administrator. However, an Inspection of Public Records Request ("IPRR") was made through the City Clerk's Office around the time of the letter of denial. The requested materials were received by Hunt & Davis (Agent). The request includes applicable materials necessary to respond to the denial. In addition, most of the Exhibits included in this Staff Report are readily available online through the City's Website/Planning Department Webpage. Also, a specific reference (spelled out verbatim) to the Impact Fee Ordinance denying the request was provided by letter dated March 19, 2019. As such, the decision to deny was neither arbitrary or capricious. In terms of due process, the Appellant is seeking relief through the Environmental Planning Commission which is the first step in the appeal process as defined by the Impact Fee Ordinance Ordinance (Exhibit A).**

2. Appellant has received hundreds of pages of emails related to the appeal from the IPRR request.

**Hunt & Davis will respond by supplement to the emails received.**

3. The Appellant is challenging the encumbrance of open space impact fees and the use of those fees on projects listed in the CCIP.

**Encumbrance and expenditure of fees are addressed in detail in this Staff Report and through the Capital Implementation Program Financial Status Reports for Open Space, dated June 31, 2018 thru April 9, 2019 (Exhibit D). This material is part of the IPRR.**

4. The City has processed other requests, excluding open space, for reimbursement of excess impact fee credits, except for the request before the Commission.

**Agree**.

5. The City required additional W-9's.

**The requirement was necessary, as the City has an Amended W-9. The Impact Fees Administrator provided the Appellant with the Amended W-9 when made aware of the change.**

## *CONCLUSION*

The facts support an unencumbered balance of open space impact fees sufficient to cover the request for reimbursement.

***FINDINGS - RZ-2019-00107, May 9, 2019, Appeal***

1. The case is an appeal of a denial, by the Impact Fee Administrator, of the Appellant's request for reimbursement from the City in the amount of $268,345.00 for excess open space impact fee credits in the citywide service area.

2. Section 14-19-20 ADMINISTRATIVE APPEALS of the Impact Fee Ordinance, authorizes the Environmental Planning Commission (EPC) to hear appeals of any determinations regarding impact fees. This case is such an appeal and has been duly filed in accordance with the referenced Ordinance.

3. The Impact Fee Ordinance Section 14-19-19 CREDITS, allow for the granting of impact fee credits for system improvements, provided a project is listed on the Component Capital Improvements Plan (CCIP) as listed in the Ordinance. Additionally, should credit be granted for system improvements which exceed the value of the impact fees otherwise due from development, then that portion may become excess credits as issued by the Impact Fees Administrator.

4. The holder of excess impact fee credits can request reimbursement from the City for all or part of the amount of excess impact fee credits from revenue generated by impact fees paid by new development for system improvements. However, the city is not obligated to provide reimbursements in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.

5. Based on Section 14-19-3 DEFINITIONS – "Encumbered" with additional language in Section 14-19-19(J)(7)(c) of the Impact Fee Ordinance, the facts support an unencumbered balance of open space impact fees sufficient to cover the request for reimbursement.

***RECOMMENDATION - RZ-2019-00107, May 9, 2018***

**No recommendation.**

***Tony Loyd***
***Impact Fees Administrator***

*Notice of Decision cc list:*

Hunt & Davis, PC, Attorneys at Law
Blake Whitcomb
2632 Mesilla, NE
Albuquerque, NM 87110
COA, P.O. Box 1293, Albuquerque, NM 87103
COA, Planning Department, 600 2nd St. NW, Albuquerque, NM 87102

EXHIBIT A

EXHIBIT A

# CITY of ALBUQUERQUE
## TWENTIETH COUNCIL

COUNCIL BILL NO. F/S O-12-38 ENACTMENT NO. O-2012-034

SPONSORED BY: Trudy E. Jones and Brad Winter

ORDINANCE

DELETING THE CURRENT CHAPTER 14, ARTICLE 19 ROA 1994, THE FOUR EXISTING ORDINANCES THAT ADOPTED IMPACT FEES; ADOPTING A NEW CHAPTER 14, ARTICLE 19 ROA 1994 TO BE KNOWN AS THE "IMPACT FEE ORDINANCE."

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE.

SECTION 1. Chapter 14, Article 19 of the Revised Ordinances of Albuquerque 1994, Sections 14-19-1-1 through 14-19-4-99 ROA 1994, concerning impact fees is hereby repealed.

SECTION 2. A new Chapter 14, Article 19 of the Revised Ordinances of Albuquerque 1994 is hereby adopted to read as follows:

"§ 14-19-1 SHORT TITLE.

Sections 14-19-1 through 14-19-99 ROA 1994 shall be known and cited as the "Impact Fee Ordinance."

§ 14-19-2 INTENT AND PURPOSES.

(A) Sections 14-19-1 et seq. are intended to implement and comply with the New Mexico Development Fees Act (§§ 5-8-1 et seq. NMSA 1978) and shall be interpreted to so comply.

(B) Sections 14-19-1 et seq. are intended to assess and collect impact fees in an amount based upon appropriate service units for capital facilities in order to finance such facilities, the demand for which is generated by new development in the city. The purpose of §§ 14-19-1 et seq. is to ensure the provision of an adequate level of service for capital facilities throughout the city so that new development may occur in a manner consistent with the city's Planned Growth Strategy and the Albuquerque/Bernalillo County

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Comprehensive Plan. The City Council intends, by enactment of §§ 14-19-1 et seq., to require new development to bear an amount not to exceed its proportionate share of the costs related to the additional capital facilities that are rationally related to such new development in accordance with applicable law. Only capital improvement needs that are rationally related to new development in accordance with applicable law will be paid by impact fees. Impact fees shall not exceed the cost to pay for a proportionate share of the cost of system improvements based upon service units needed to serve new development. Subject to the provisions of §§ 14-19-1 et seq. and the Development Fees Act (Sections 5-8-1 et seq. NMSA 1978), impact fees shall be spent on new or enlarged capital facilities and equipment which benefit those developments which pay the fees.

§ 14-19-3 DEFINITIONS.

For the purpose of §§ 14-19-1 et seq., the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVISORY COMMITTEE. The standing committee required to be appointed under the Development Fees Act (Sections 5-8-1 et seq. NMSA 1978).

APPLICANT. A person, including any governmental entity, seeking subdivision or development approval, a building permit, a refund, a waiver or a credit, whichever is applicable.

ASSESSMENT. The determination of the amount of the impact fee.

BUILDING PERMIT. The building permit required by the Uniform Building Code, as adopted by the city.

CAPITAL IMPROVEMENTS. Any of the following facilities, including existing facilities, facility expansions or new facilities, that have a life expectance of ten or more years and are owned and operated by or on behalf of the city.

(1) ROAD CAPITAL IMPROVEMENTS. Roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways as specified in Section 5-8-2D(2) NMSA 1978.

(2) DRAINAGE CAPITAL IMPROVEMENTS. Storm water, drainage and flood control facilities.

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(3) FIRE CAPITAL IMPROVEMENTS. Buildings for fire and rescue and essential equipment costing $10,000 or more.

(4) POLICE CAPITAL IMPROVEMENTS. Buildings for police and essential equipment costing $10,000 or more.

(5) PARK CAPITAL IMPROVEMENTS. Parks, recreational areas, and related areas and facilities.

(6) OPEN SPACE CAPITAL IMPROVEMENTS. Open space land and related facilities.

(7) TRAIL CAPITAL IMPROVEMENTS. Trail improvements.

CAPITAL IMPROVEMENTS PLAN (CIP). A document that meets the requirements of Section 5-8-6 of the Development Fees Act (NMSA 1978), including a description of existing capital facilities for each service area, an analysis of the capacity and current usage of existing facilities, a description of capital improvements necessitated by and attributable to growth in the service area, a demand or equivalency table, projected service units in the service area based on the land use assumptions, the projected demand for capital improvements required to serve the new service units, and anticipated sources of funding independent of impact fees. This document includes an initial list of capital improvements on which impact fees may be spent, which is subsequently incorporated into the COMPONENT CAPITAL IMPROVEMENTS PLAN (CCIP).

CITY. The City of Albuquerque.

CITY CAPITAL IMPLEMENTATION PROGRAM. The city's capital improvements program as set out and regulated by §§ 2-12-1 ROA 1994 et seq. The Capital Implementation Program is funded by General Obligation Bonds and includes projects that support rehabilitation, deficiency remediation and growth. The Capital Implementation Program contains, as an additional component, the list of growth-supporting projects that are funded by impact fees.

CITY COUNCIL. The duly constituted governing body of the City of Albuquerque.

COLLECTION. The payment of the applicable impact fees. (See also ASSESSMENT.)

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COMMERCIAL. Establishments engaged in the selling or rental of goods, services or entertainment to the general public, or providing executive, management, administrative or professional services. Such uses include, but are not limited to, shopping centers, discount stores, supermarkets, home improvement stores, pharmacies, automobile sales and service, banks, movie theaters, amusement arcades, bowling alleys, barber shops, laundromats, funeral homes, vocational or technical schools, dance studios, health clubs, golf courses, real estate, insurance, property management, investment, employment, travel, advertising, secretarial, data processing, telephone answering, telephone marketing, music, radio and television recording and broadcasting studios; professional or consulting services in the fields of law, architecture, design, engineering, accounting and similar professions; interior decorating consulting services; medical and dental offices and clinics, including veterinarian clinics and kennels; and business offices of private companies, utility companies, trade associations, unions and nonprofit organizations.

COMPONENT CAPITAL IMPROVEMENTS PLAN (CCIP). A component of the city's Capital Implementation Program that identifies the capital improvements on which impact fees may be spent. This component of the city's Capital Implementation Program is funded by impact fees and limited to projects that support growth. The CCIP is adopted and revised at the same time and via the same process as the Capital Implementation Program of which it is a part. The CCIP provides the process by which the list of capital improvements identified in the impact fee Capital Improvements Plan (CIP) is amended between updates of the CIP.

COUNTY. The County of Bernalillo.

COMPREHENSIVE PLAN. The City of Albuquerque/Bernalillo County Comprehensive Plan.

CREDIT. Credit for the value of the construction, contribution or dedication of system improvements or the contribution of money for system improvements accepted by the city.

CREDIT-HOLDER. The person entitled to transfer, apply or seek reimbursement for excess credits.

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DEEMED COMPLETE means that an applicant has been issued a building permit.

DEVELOPER. Any person, corporation, organization or other legal entity constructing or creating new development.

DEVELOPMENT. The division of land, reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use, change of use or extension of the use of land, any of which increases the number of service units.

DEVELOPMENT AGREEMENT. A written agreement entered into between the city and a developer whereby the developer agrees to dedicate or construct capital improvements.

DEVELOPMENT APPROVAL. Written authorization, such as approval of a subdivision application or issuance of a building permit, or other forms of official action required by the city prior to commencement of construction.

DEVELOPMENT SITE. The property under consideration for development at the time of application for a building permit.

DWELLING UNIT. One or more connected rooms and a single kitchen designed for and occupied by no more than one family for living and sleeping purposes.

EFFECTIVE DATE. July 1, 2005.

ENCUMBERED. Impact fee funds committed for a specified capital improvement on a specified time schedule which does not exceed seven years from the date of payment of the impact fees.

EXCESS CREDITS. That portion of the credit granted for system improvements which exceeds the value of the impact fees otherwise due from the development.

FACILITY EXPANSION. The expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to improve service to existing development.

FIRST IN, FIRST OUT means expenditures of impact fee revenues reflecting the chronological order in which the impact fee revenues were collected.

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GROSS FLOOR AREA. The total floor area, including basements, mezzanines, and upper floors, if any, expressed in square feet measured from the outside surface of outside walls, but excluding enclosed vehicle parking areas.

HOTEL/MOTEL. An establishment that provides paid lodging in rooms or suites that do not meet the definition of dwelling units.

IMPACT FEE. A charge or assessment imposed by the city on new development in order to generate revenue for funding or recouping the costs of capital improvements rationally related to new development in accordance with applicable law. The term includes amortized charges, lump-sum charges, capital recovery fees, contributions in aid of construction, development fees and any other fee that functions as described by this definition. The term does not include hook-up fees, dedication of rights-of-way or easements or construction or dedication of on-site water distribution, wastewater collection or drainage facilities, or streets, sidewalks or curbs if the dedication or construction is required by a previously adopted valid ordinance or regulation and is rationally related to new development in accordance with applicable law.

IMPACT FEE STUDY. The report prepared by Duncan Associates for the City of Albuquerque titled "Impact Fee Land Use Assumptions and Capital Improvements Plan, 2012-2022," in September 2012, as may be amended, that constitutes the LUA and CIP for the update of the road, park, open space, trail, fire and police impact fees for the City of Albuquerque.

IMPACT FEES ADMINISTRATOR. The person designated to administer the impact fee program established by §§ 14-19-1 et seq.

INDEPENDENT FEE DETERMINATION. A finding by the impact fees administrator that an independent fee study does or does not meet the requirements for such a study as established by this chapter and, if the requirements are met, the fee calculated by the impact fees administrator therefrom.

INDEPENDENT FEE STUDY. The engineering, financial and/or economic documentation prepared by an applicant in accordance with § 14-19-17 to

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allow an individual determination of an impact fee other than by use of the applicable fee schedule.

INDUSTRIAL/WAREHOUSE. An establishment primarily engaged in the fabrication, assembly or processing of goods, or the display, storage and sale of goods to other firms for resale, as well as activities involving significant movement and storage of products or equipment. Typical uses include manufacturing plants, welding shops, wholesale bakeries, dry cleaning plants, bottling works, wholesale distributors, storage warehouses, moving and storage firms, trucking and shipping operations and major mail processing centers.

INSTITUTIONAL. A governmental, quasi-public or institutional use, or a non-profit recreational use, not located in a shopping center. Typical uses include elementary, secondary or higher educational establishments, day care centers, hospitals, mental institutions, nursing homes, assisted living facilities, fire stations, city halls, court houses, post offices, jails, libraries, museums, places of religious worship, military bases, airports, bus stations, fraternal lodges, parks and playgrounds.

LAND USE. The primary category of use for any principal or accessory building, structure or use located on a development site.

LAND USE ASSUMPTIONS (LUA). A description of the service area and projections of changes in land uses, densities, intensities and population in the service area over at least a five-year period.

LEVEL OF SERVICE (LOS). A standardized measure of the quantity or quality of service provided by a facility or system of facilities. It is often expressed as a ratio between capacity and demand, or cost and demand. The term "existing LOS" refers to the calculation of the measure at the time the CIP is prepared or updated.

MICRO MULTI-FAMILY. A MULTI-FAMILY dwelling unit with a GROSS FLOOR AREA of 600 square feet or less.

MINI-WAREHOUSE. An enclosed storage facility containing independent, fully enclosed bays that are leased to persons for storage of their household goods or personal property.

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MOBILE HOME/RV PARK. An area developed or intended to be developed for occupancy by two or more mobile homes or recreational vehicles that are used for dwelling purposes, and spaces are rented individually to residents.

MULTI-FAMILY. A dwelling unit that is connected to one or more other dwelling units.

NEW DEVELOPMENT. The division of land; reconstruction, redevelopment, conversion, structural alteration, relocation or enlargement of any structure; or any use, change of use or extension of the use of land; any of which increases the number of service units.

OFFSET. The amount by which an impact fee is reduced to fairly reflect the credits applied for system improvements.

OWNER OF RECORD. The persons having legal and equitable title to the property as recorded in the real property records of the county.

PROJECT IMPROVEMENTS. Site specific improvements or facilities that are primarily planned, designed or built to provide service for a specific development project and that are necessary for the use of the occupants or users of that project, and that do not provide significant additional capacity for other developments. The physical location of the improvement or facility, on-site or off-site, shall not be considered determinative of whether it is a PROJECT IMPROVEMENT or a system improvement. No improvement or facility specifically identified in the CIP, as may subsequently be amended in the CCIP, shall be considered a PROJECT IMPROVEMENT.

PROPORTIONATE SHARE. That portion of the cost of system improvements which is reasonably and fairly related to the service demands and needs of new development.

QUALIFIED PROFESSIONAL. A professional engineer, surveyor, financial analyst or planner providing services within the scope of his or her license, education or experience.

REFUND. Reimbursement of impact fees to the owner of record of property for which impact fees have been paid.

SERVICE AREAS. Geographically defined areas within the city that have been designated in the CIP in which development potential may create the need for capital improvements to be funded by impact fees.

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SERVICE UNIT. A standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements. The following service units are used in the impact fee analyses:

(1) Roads. Daily vehicle-miles of travel on the City arterial road system during a typical weekday, as more fully described in the Impact Fee Study.

(2) Drainage. Acres of impervious cover.

(3) Parks. Equivalent dwelling units, which each represent the average number of persons residing in a single-family detached dwelling unit, as more fully described in the Impact Fee Study.

(4) Open space. Equivalent dwelling units.

(5) Trails. Equivalent dwelling units.

(6) Fire. Functional population, which each represent the equivalent of a person present at the site of a land use for 24 hours during a typical weekday, as more fully described in the Impact Fee Study.

(7) Police. Functional population.

SINGLE-FAMILY DETACHED. A building arranged or designed to be occupied by one family, including mobile homes not located in a mobile home park, the structure having only one dwelling unit and not attached to any other dwelling unit.

SYSTEM IMPROVEMENTS. Capital improvements that expand the capacity of the type of facility to accommodate the impacts of additional development.

SYSTEM STUDIES. Any study, analysis or report, or portion thereof, required by the city to determine the system improvements for new development.

WAIVE. To relinquish or abandon a claim or right.

§14-19-4 AUTHORITY.

The city is authorized to impose impact fees under the Development Fees Act (Sections 5-8-1 et seq. NMSA 1978). The provisions of §§ 14-19-1 et seq. shall not be construed to limit the power of the city to use any other methods or powers otherwise available for accomplishing the purposes set forth in §§ 14-19-1 et seq., either in substitution or in conjunction with §§ 14-19-1 et seq.,

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provided that such methods or powers are not inconsistent with or prohibited by §§ 14-19-1 et seq. or the Development Fees Act.

§ 14-19-5 APPLICABILITY.

Sections 14-19-1 et seq. shall be applicable to all development that occurs within the corporate jurisdiction of the city, as may be amended in the future, and shall apply uniformly within each service area. Impact fees are not assessed or collected within the Mesa del Sol development.

§ 14-19-6 FINDINGS AND DECLARATIONS.

The City Council hereby finds and declares that:

(A) The city is committed to the funding and provision of capital facilities necessary to cure any deficiencies that may exist in already developed areas of the city.

(B) Such facilities shall be provided by the city using existing funding sources allocated for such facilities, other than impact fees, including, but not limited to, the general fund, general obligation bonds, special assessment districts and metropolitan redevelopment districts.

(C) New development causes and imposes increased demands on public facilities.

(D) The City Council appointed an advisory committee, pursuant to Section 5-8-37 NMSA 1978, to review land use assumptions (LUA), the capital improvements plan (CIP) and the component capital improvements plan (CCIP). The advisory committee reviewed the LUA, the CIP and the CCIP.

(E) The land use assumptions, incorporated in §§ 14-19-1 et seq. by reference, indicate that new development will continue and will place increasing demands on the city to provide additional capital improvements.

(F) New development should pay an amount not to exceed its proportionate share of the capital costs related to the additional capital improvements needed to accommodate that new development.

(G) The City Council finds that the impact fees do not exceed the proportionate share of the cost attributable to new development to maintain the existing level of service currently provided to existing development for each type of capital improvement in each service area.

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(H) The City Council, after careful consideration of the matter, hereby finds and declares that it is in the best interest of the general welfare of the city and its residents to impose impact fees upon new development in order to finance capital improvements in the designated service areas for which demand is created by the new development.

(I) The City Council further finds and declares that impact fees provide a reasonable method of assessing new development to ensure that such new development pays a portion of the costs of capital facilities that are rationally related to the new development in accordance with applicable law.

(J) The City Council further finds and declares that such impact fees are equitable, and impose a fair assessment on new development by requiring that new development pay a portion of the cost, and deems it advisable to adopt §§ 14-19-1 et seq. as set forth.

(K) The City Council further finds that there exists a rational relationship between the capital costs of providing capital improvements at the existing level of service and the impact fees imposed on development under §§ 14-19-1 et seq.

(L) The City Council further finds that there exists a rational relationship between the impact fees to be collected pursuant to §§ 14-19-1 et seq. and the expenditure of those funds on capital costs related to capital facilities as limited and restricted by §§ 14-19-1 et seq.

(M) The City Council further finds and declares that §§ 14-19-1 et seq. are consistent with both the procedural and substantive requirements of the New Mexico Development Fees Act (Sections 5-8-1 et seq. NMSA 1978).

(N) The City Council has carefully considered the Report prepared by Integrated Utilities Group, Inc. for the City of Albuquerque titled "Drainage Impact Fee Study Final Report" dated September 2004, and as amended November 2004, and further finds that said Report sets forth reasonable and equitable methodology and assumptions consistent with the New Mexico Development Fees Act for the formulation and imposition of a Drainage Facilities Development Impact Fee Program for the City of Albuquerque.

(O) The City Council has carefully considered the land use assumptions and capital improvements plan report (Impact Fee Study) dated September

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2012, prepared by Duncan Associates for the City of Albuquerque titled "Impact Fee Land Use Assumptions and Capital Improvements Plan, 2012-2022," and further finds that said Impact Fee Study sets forth reasonable and equitable methodologies and assumptions consistent with the New Mexico Development Fees Act for the update of the road, park, open space, trail, fire and police impact fees for the City of Albuquerque.

§ 14-19-7 LAND USE ASSUMPTIONS.

The land use assumptions provide a projection of changes in land uses, densities, intensities and population within planning information areas over at least a five-year period.

(A) The City Council hereby incorporates by reference the land use assumptions set forth in § 14-13-5-2 ROA 1994, as amended. These land use assumptions adopted in 2009 continue to be the basis for the drainage impact fees.

(B) The land use assumptions for the 2012 update of the road, park, open space, trail, fire and police impact fees are contained in the Impact Fee Study, which is hereby adopted and incorporated herein by reference.

(C) The land use assumptions shall be reviewed and updated, if necessary, in conjunction with the update of the CCIP. Updates of the land use assumptions shall occur at least every five years from the effective date of §§ 14-19-1 et seq., unless the City Council makes a determination that an update is not necessary.

§ 14-19-8 CAPITAL IMPROVEMENTS PLAN.

(A) The Capital Improvements Plan (CIP) is a document that meets the requirements of Section 5-8-6 of the Development Fees Act (NMSA 1978), including a description of existing capital facilities for each service area, an analysis of the capacity and current usage of existing facilities, a description of capital improvements necessitated by and attributable to growth in the service area, a demand or equivalency table, projected service units in the service area based on the land use assumptions, the projected demand for capital improvements required to serve the new service units, and anticipated sources of funding independent of impact fees. This document includes an initial list of capital improvements on which impact fees may be spent, which

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is subsequently incorporated into the Component Capital Improvements Plan (CCIP) and amended between updates of the CIP.

(B) The City Council hereby adopts by reference the drainage CCIP (the report prepared by Integrated Utilities Group, Inc. for the City of Albuquerque titled "Drainage Impact Fee Study Final Report" dated September 2004, and as amended November 2004), particularly as it relates to the allocation of a fair share of the costs of new facilities for drainage facilities to be borne by new users of such facilities and the levels of service to be provided to the citizens of the city for these facilities. Updates of the drainage CIP shall occur at least every five years from the effective date of §§ 14-19-1 et seq., unless the City Council makes a determination that an update is not necessary.

(C) The City Council hereby adopts by reference the Impact Fee Study, which contains the 2012 update of the roads, parks, open space, trails, fire and police CIPs, particularly as it relates to the allocation of a fair share of the costs of new facilities to be borne by new users of such facilities and the levels of service to be provided to the citizens of the city for these facilities. Updates of the CIPs shall occur at least every five years from the effective date of §§ 14-19-1 et seq., unless the City Council makes a determination that an update is not necessary.

(D) The updated lists of capital improvements included in the Impact Fee Study for roads, drainage, parks, open space, trails, fire and police facilities shall be incorporated into the next update of the CCIP. The CCIP shall be updated every two years in conjunction with the Capital Implementation Program process. Since developers may have expectations of receiving credit for improvements related to projects in the road and drainage portions of the CCIP, road and drainage capital improvements will be removed from the CCIP between updates of the respective CIPs only if the project is underway or completed.

§ 14-19-9 ADVISORY COMMITTEE.

The advisory committee is a standing committee established pursuant to § 14-13-1-4 ROA 1994. The advisory committee shall meet at the direction of the City Council. The functions of the advisory committee shall include:

(A) Advise and assist the city in adopting land use assumptions;

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(B) Review the land use assumptions, capital improvements plan and CCIP and file written comments;

(C) Monitor and evaluate implementation of the CCIP;

(D) File annual written reports with respect to the progress of the CCIP and report to the city any perceived inequities in implementing the plan or imposing the impact fees;

(E) Advise the city of the need to update or revise the land use assumptions, capital improvements plan, CCIP and impact fees; and

(F) Any other tasks the City Council may direct the advisory committee to perform.

§ 14-19-10 ESTABLISHMENT OF SERVICE AREAS.

Service areas for the Impact Fees are established as follows (as depicted on the maps included in the Impact Fee Study and attached hereto).

(A) Roads. One road impact fee service area is established, encompassing all of the land within the City limits, with the exclusion of the area within the Mesa del Sol development.

(B) Drainage. Five drainage impact fee service areas are established, as depicted on the maps included in the Impact Fee Study and attached hereto.

(C) Parks. Four park impact fee service areas are established, as follows:

(1) Northeast Service Area. All of the land within the City limits, as may be amended, located north of Candelaria Road and east of I-25.

(2) Southeast Service Area. All of the land within the City limits, as may be amended, located south of Candelaria Road and east of I-25, with the exclusion of the area within the Mesa del Sol development.

(3) Northwest Service Area. All of the land within the City limits, as may be amended, located north of I-40 and west of I-25.

(4) Southwest Service Area. All of the land within the City limits, as may be amended, located south of I-40 and west of I-25.

(D) Open Space. The open space impact fee service area is the entire area within the City limits, as may be amended, with the exclusion of the area within the Mesa del Sol development.

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(E) Trails. The trail impact fee service area is the entire area within the City limits, as may be amended, with the exclusion of the area within the Mesa del Sol development.

(F) Fire. The fire impact fee service area is the entire area within the City limits, as may be amended, with the exclusion of the area within the Mesa del Sol development.

(G) Police. The police impact fee service area is the entire area within the City limits, as may be amended, with the exclusion of the area within the Mesa del Sol development.

§ 14-19-11 IMPOSITION.

(A) Any developer engaging in new development after the effective date of §§ 14-19-1 et seq. shall pay impact fees in the manner and in the amounts required in §§ 14-19-1 et seq., unless otherwise specified in this section. No building permit shall be issued for development within the city unless the impact fees are assessed and collected pursuant to §§ 14-19-1 et seq.

(B) Payment of impact fees specified in this section shall constitute full and complete payment of the project's proportionate share of system improvements for which such fee was paid and shall constitute compliance with the requirements of §§ 14-19-1 et seq.

(C) Notwithstanding any other provision of §§ 14-19-1 et seq., applications for building permits which have been filed and deemed complete by the city prior to the effective date of this ordinance shall remain subject to the impact fees in place when the fees were assessed.

(D) Nothing in §§ 14-19-1 et seq. shall prevent the City from requiring developers to construct reasonable site specific improvements or facilities but only in connection with a development. Required improvements must be primarily planned, designed or built to provide service for a specific development project and necessary for the use of the occupants or users of that project. The City may not require the developer to construct improvements that provide significant additional capacity for other developments. The City may require developers to prepare necessary studies, analyses, or reports required as part of a development approval process.

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(E) Nothing in §§ 14-19-1 et seq. shall prevent the city from requiring a developer to construct reasonable system improvements necessitated by and attributable to the new development as a condition of development approval or pursuant to a development agreement with the city, provided that services are not available from existing facilities with actual capacity to serve the new development. If the system improvement is on the CCIP, the city shall grant applicable credits to the developer for constructing such system improvements.

(F) Nothing in §§ 14-19-1 et seq. shall abrogate the city's authority to require the applicant to prepare necessary studies, analyses or reports required as a part of the development approval process.

(G) Nothing in §§ 14-19-1 et seq. shall prevent the city from rejecting an application for development if it determines that such development is inconsistent with adopted city plans, regulations or ordinances.

§ 14-19-12 ASSESSMENT AND COLLECTION.

(A) The impact fees administrator or his/her designee shall calculate and assess the impact fees at the earliest possible time.

(1) For land that is platted or replatted on or after the effective date, the impact fees shall be preliminarily assessed for development no later than at the time that the subdivision plat is recorded.

(2) For land that was platted or replatted prior to the effective date or for development that occurs on existing lots of record, the impact fees shall be assessed at the time of development approval, plan check or issuance of a building permit.

(B) The assessment of impact fees shall be in writing and shall be valid for a period of four years.

(C) Notwithstanding the provisions of this section, the assessment of impact fees may be revised based on information provided at the time of issuance of the building permit, or if the number of service units in the specific development increases, provided that such revision shall be limited to the impact fees for the additional service units.

(D) The impact fees administrator, or his/her designee, shall calculate and assess all other impact fees as follows:

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(1) Determine the applicable service area;

(2) Determine the applicable land use category;

(3) Verify the number of dwelling units or the amount of gross floor area (whichever is applicable) in the development; and

(4) Multiply the number of dwelling units or the amount of gross floor area, whichever is applicable, by the applicable impact fees from the table in § 14-19-14.

(E) If the assessment occurs at the time of subdivision plat or site plan approval, the assessment may be based on the applicable fee schedule.

(F) If an application proposes a use that does not directly match an existing land use category upon which fees are based, the impact fees administrator shall assign the proposed use to the existing land use category that most closely resembles the proposed use.

(G)When new development for which an application for a building permit has been made includes two or more buildings, structures or other land uses in any combination, including two or more uses within a building or structure, the total impact fee assessment shall be the sum of the fees for each and every building, structure, or use, including each and every use within a building or structure, or an independent fee determination may be conducted.

(H) When a change of use, redevelopment or modification of an existing use or building requires the issuance of a building permit and results in a net increase in gross floor area the impact fee shall be based on the net increase, if the service units are calculated on gross floor area for the new category of land use type. Should a change of use, redevelopment or modification of an existing use or building result in a net decrease in gross floor area or calculated impact fee, no refund or credit for past impact fees paid shall be made or created.

(I) The impact fees administrator shall retain a record of the impact fees assessment. A copy shall be provided to the applicant on the forms prescribed by the city. A notice of impact fees assessment for the site shall be recorded in the appropriate real property title records of the County Clerk; for subdivisions, this notice shall be included on the final plat.

§ 14-19-13 FEE SCHEDULES.

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§ 14-19-13 FEE SCHEDULES

The following impact fees are hereby imposed upon all new development in the city, excluding in Mesa del Sol, that occurs on or subsequent to the effective date of this ordinance, unless fees were assessed under the previous fee schedule within four years prior to the date of the completed building permit application. Assessment of impact fees prior to building permit shall be based on 50% of the maximum fees contained in the reports referenced in §14-19-6 (N) and (0) as shown in the following impact fee schedules. Assessment and collection at time of building permit shall be based on the following phase-in schedule: Prior to January 1, 2014, fees shall be assessed and collected at 20% of the rates shown in the fee schedules;
From January 1, 2014 through December 31, 2014, fees shall be assessed and collected at 40% of the rates shown in the fee schedules;
From January 1, 2015 through December 31, 2015, fees shall be assessed and collected at 60% of the rates shown in the fee schedules;
From January 1, 2016 through December 31, 2016, fees shall be assessed and collected at 80% of the rates shown in the fee schedules;
From January 1, 2017 onward, fees shall be assessed and collected at 100% of the rates shown in the fee schedules.

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(A) Road impact fees.

| Land Use Type | Unit | Fee/Unit |
|---|---|---|
| Single-Family Detached | Dwelling | $1,399 |
| Multi-Family | Dwelling | $649 |
| Micro Multi-Family | Dwelling | $325 |
| Mobile Home/RV Park | Space | $451 |
| Hotel/Motel | Room | $928 |
| Commercial | 1,000 sq. ft. | $1,409 |
| Public/Institutional | 1,000 sq. ft. | $885 |
| Industrial/Warehouse | 1,000 sq. ft. | $588 |
| Mini-Warehouse | 1,000 sq. ft. | $228 |

(B) Drainage impact fees.

| Service Area | Fee per Impervious Acre |
|---|---|
| Central City | $0 |

| | |
|---|---|
| Far Northeast | $5,104 |
| Tijeras | $5,104 |
| Southwest Mesa | $5,104 |
| Northwest Mesa | $5,104 |

(C) Fire impact fees.

| Land Use Type | Unit | Fee/Unit |
|---|---|---|
| Single-Family Detached | Dwelling | $133 |
| Multi-Family | Dwelling | $73 |
| Micro Multi-Family | Dwelling | $37 |
| Mobile Home/RV Park | Space | $115 |
| Hotel/Motel | Room | $81 |
| Commercial | 1,000 sq. ft. | $122 |
| Public/Institutional | 1,000 sq. ft. | $76 |
| Industrial/Warehouse | 1,000 sq. ft. | $19 |
| Mini-Warehouse | 1,000 sq. ft. | $10 |

(D) Police impact fees.

| Land Use Type | Unit | Fee/Unit |
|---|---|---|
| Single-Family Detached | Dwelling | $58 |
| Multi-Family | Dwelling | $32 |
| Micro Multi-Family | Dwelling | $16 |
| Mobile Home/RV Park | Space | $50 |
| Hotel/Motel | Room | $35 |
| Commercial | 1,000 sq. ft. | $53 |
| Public/Institutional | 1,000 sq. ft. | $33 |
| Industrial/Warehouse | 1,000 sq. ft. | $8 |
| Mini-Warehouse | 1,000 sq. ft. | $5 |

(E) Park impact fees.

| Housing Type | Unit | Fee/Unit |
|---|---|---|
| Single-Family Detached | Dwelling | $902 |
| Multi-Family | Dwelling | $487 |
| Micro Multi-Family | Dwelling | $244 |
| Mobile Home/RV Park | Space | $776 |

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(F) Open space impact fees.

| Housing Type | Unit | Fee/Unit |
|---|---|---|
| Single-Family Detached | Dwelling | $449 |
| Multi-Family | Dwelling | $242 |
| Micro Multi-Family | Dwelling | $121 |
| Mobile Home/RV Park | Space | $386 |

(G) Trail impact fees.

| Housing Type | Unit | Fee/Unit |
|---|---|---|
| Single-Family Detached | Dwelling | $49 |
| Multi-Family | Dwelling | $27 |
| Micro Multi-Family | Dwelling | $14 |
| Mobile Home/RV Park | Space | $42 |

§ 14-19-14 USE OF FEES COLLECTED.

(A) The funds collected pursuant to §§ 14-19-1 et seq. shall be used solely for the purpose of planning, design, land acquisition, construction, expansion and development of system improvements for the service area from which the impact fees were collected.

(1) Eligible costs include, but are not limited to, the costs of system capacity and/or system impact studies, planning, design and construction, land acquisition, land improvement, design and engineering related thereto, including the cost of constructing or reconstructing system improvements including, but not limited to, the construction contract price, surveying and engineering fees, and related land acquisition costs.

(2) Impact fees shall not be used for routine and periodic maintenance expenditures, personnel training and other operating costs.

(3) Road impact fees collected on or after the effective date of this ordinance shall not be expended for right-of-way acquisition or collector road improvements. The costs of these components have not been included in the updated road impact fees, and credit will no longer be provided to developers who make right-of-way dedications or improve collector roads.

(4) Trail impact fees collected on or after the effective date of this ordinance shall not be expended for right-of-way acquisition. The cost of right-of-way has not been included in the updated trail impact fees, and credit

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will no longer be provided to developers who make right-of-way dedications for trails.

(B) Notwithstanding the above, impact fees may also be spent on:

(1) Fees paid to independent qualified professionals who are not employees of the city for preparing and updating the land use assumptions, impact fee capital improvements plan and impact fee study;

(2) Costs and fees charged by qualified professionals who are not employees of the city for services directly related to the construction of capital improvements; and

(3) Administrative costs associated with §§ 14-19-1 et seq. for city employees who are qualified professionals. Such administrative costs shall not exceed 3% of the total impact fees collected, as provided by Section 5-8-4 NMSA 1978. The city shall be entitled to expend up to 3% of the impact fees collected annually to offset the permissible administrative costs associated with the collection and use of such funds.

(C) The city may issue bonds, revenue certificates and other obligations of indebtedness in such manner and subject to such limitations as may be provided by law in furtherance of the provision of capital improvement projects. Funds pledged toward retirement of bonds, revenue certificates or other obligations of indebtedness for such projects may include impact fees and other city revenues as may be allocated by the City Council. The impact fees paid pursuant to §§ 14-19-1 et seq., however, shall be restricted to use solely and exclusively for financing directly, or as a pledge against bonds, revenue certificates and other obligations of indebtedness for the cost of capital improvements as specified in this section.

§ 14-19-15 EXEMPTIONS.

(A) The following types of new development shall be exempt from the impact fees imposed pursuant to §§ 14-19-1 et seq.:

(1) Any addition or expansion to a building which does not increase the number of service units attributable to the addition or expansion.

(2) Any accessory building for a subordinate or incidental use to a dwelling unit on residential property, or any expansion of an existing dwelling unit, which building does not constitute a new dwelling unit.

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(3) Any reconstruction of a destroyed or partially destroyed building provided that the destruction of the building occurred other than by willful razing or demolition. The exemption only applies to the replacement of the previous facility. A change of land use or increase in dwelling units shall be addressed through § 14-19-13.

(4) Governmental entities, including the City, are not exempt from the payment of impact fees. However, no fire impact fee shall be assessed or collected for the construction of a fire capital improvement, and no police impact fee shall be assessed or collected for the construction of a police capital improvement.

(5) Full or partial waivers of impact fees shall be provided for affordable housing projects that meet the criteria set forth in the Development Process Manual.

(6) Full or partial waivers of impact fees shall be provided for projects within metropolitan redevelopment areas that meet the criteria set forth in the Development Process Manual. Notwithstanding the provisions of the Development Process Manual, such waivers shall be provided for both non-residential and residential development within the metropolitan redevelopment area that conforms to the metropolitan redevelopment area and any sector development or area plan applicable within the metropolitan redevelopment area.

(B) Applications for exemptions.

(1) An applicant for an exemption from impact fees shall have the burden of claiming and proving that a development project qualifies for any of the exemptions listed in this section prior to the issuance of a building permit. Such exemptions shall be granted or denied in writing by the impact fees administrator or his/her designee, subject to appeal pursuant to § 14-19-20.

(2) An application for an exemption shall be made on forms provided by the city. An application not filed before the issuance of a building permit shall be deemed waived.

(3) The city may adopt administrative procedures and guidelines to implement exemptions granted pursuant to this section.

§ 14-19-16 INDEPENDENT FEE DETERMINATION.

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An independent determination of impact fees may be made as follows:

(A) An applicant for development approval may elect to have an independent determination of the impact fees due for their development project in accordance with this section. Any applicant who makes this election shall prepare and submit to the impact fees administrator an independent fee study for the development project for which development approval is sought.

(B) All independent fee studies shall be prepared for review and submitted to the impact fees administrator no later than the time of application for a building permit. Any submission not so made shall be deemed waived.

(C) Each independent fee study shall comply in all respects with the requirements of this section and be organized in a manner that will allow the impact fees administrator to readily ascertain such compliance.

(D) Each independent fee study shall comply with all other written specifications as may be required by the impact fees administrator from time to time.

(E) The impact fees administrator shall determine the appropriate impact fees based on the results of the independent fee study and the applicable impact fee schedule established in § 14-19-13.

(F) Any impact fee calculated in accordance with this section and approved and certified in writing by the impact fees administrator shall be valid for four years following the certification. Following such period, a new application for an independent fee study must be made. Any change in the submitted development plan that in any material way affects said fee calculation shall void the certification of the fee.

(G) An independent fee determination study must address the expected impact of the development over the projected life of the structures on the system improvement. Any claim that the use or occupancy of the structures within the development will be different from normal use or occupancy must be supported by the appropriate zone change or other appropriate documentation that will support the claim.

§ 14-19-17 ADMINISTRATION OF FEES.

(A) Collection of impact fees by the impact fees administrator or his/her designee. The impact fees administrator or his/her designee shall be

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responsible for collection of the impact fees. Upon receipt of impact fees, the impact fees administrator or his/her designee shall place such funds into separate accounts as specified in §§ 14-19-1 et seq. All such funds shall be deposited in interest-bearing accounts in a bank authorized to receive deposits of city funds. Interest earned by each account shall be credited to that account and shall be used solely for the purposes specified for funds of such account.

(B) Establishment and maintenance of records. The impact fees administrator or his/her designee shall establish and maintain accurate financial records for the impact fees collected pursuant to §§ 14-19-1 et seq. which shall clearly identify for each impact fee payment the payor of the impact fee, the specific development project for which the fee was paid, the date of receipt of the impact fee, the amount received, the category of capital improvement for which the fee was collected, and the applicable service area. The financial records shall show the disbursement of all impact fees, including the date and purpose of each disbursement.

(C) Annual reports. The impact fees administrator or his/her designee shall prepare and present to the City Council an annual report describing the amount of any impact fees collected, encumbered and used during the preceding year by category of capital improvement and service area.

(D) Public inspection. The records of the accounts shall be available for public inspection and copying at the city during ordinary city business hours.

(E) Expenses of administration. An amount not to exceed 3% of the total of all impact fees collected may be allocated and applied for administration of §§ 14-19-1 et seq. for city employees who are qualified professionals.

§ 14-19-18 REFUNDS.

(A) The current owner of record of property on which an impact fee has been paid shall be entitled to a refund of such fee if:

(1) The current owner of record of the property submits an application for refund within one year of the event giving rise to the right to claim a refund.

(2) All or a portion of the impact fees paid by the development are not spent within seven years after the date of payment. The determination of

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whether the impact fees paid by a development have been spent shall be determined using a first in, first out accounting standard.

(3) Existing city facilities of the type for which the impact fees have been paid are available to provide service to the development, but service from such facilities is not provided by the city.

(4) Existing city facilities of the type for which the impact fees have been paid are not available to the development, and the construction of improvements that would serve the development are not completed and available to provide service to the development within seven years from the date of payment of the impact fees.

(B) An application for refund must be submitted to the impact fees administrator or his/her designee within the time period specified in §14-19-18 (A) (1) on a form provided by the city for such purpose and must contain information and documentation sufficient to permit the impact fees administrator to determine whether the refund claimed is proper and, if so, the amount of such refund.

(C) In no event shall an applicant be entitled to a refund for impact fees assessed and paid to recover the costs of excess capacity in existing system improvements.

(D) Within 30 days from the date of receipt of an application for refund, the impact fees administrator or his/her designee must provide the applicant, in writing, with a decision on the refund request including the reasons for the decision. If a refund is due the applicant, the city shall issue a refund payment to the applicant within 30 days of the impact fees administrator's written decision on the refund request.

(E) The applicant may appeal the determination of the impact fees administrator within 30 days of such determination, as provided in § 14-19-20.

(F) A refund shall bear interest calculated from the date of collection of the impact fee to the date of refund at the statutory rate as set forth in Section 56-8-3 NMSA 1978.

§ 14-19-19 CREDITS.

The city shall grant credit against impact fees imposed pursuant to §§ 14-19-1 et seq. under the following circumstances:

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(A) Credits shall be granted only for the value of any construction of improvements or contribution or dedication of land, easements or money for system improvements or system studies listed on the CCIP, made by a developer or his predecessor in title or interest as a condition of development approval or pursuant to a development agreement with the city, or for payments made or to be made pursuant to the terms of any special assessment district (SAD), Public Improvement District (PID), Subdivision Improvement Agreement (SIA), Business Improvement District (BID), Metropolitan Redevelopment District (MRD) or other program by which off-site system improvements are paid or constructed, provided the projects are listed on the CCIP.

(B) Credits shall only be granted for system improvements listed on the CCIP or system studies listed on the CCIP for the same category of system improvements and within the same service areas for which impact fees are imposed pursuant to §§ 14-19-1 et seq.

(C) Credits shall only be granted for contributions, dedications or improvements accepted by the city. Cash contributions shall be deemed accepted when payment is received and accepted by the city. Land or easements shall be deemed accepted when conveyed or dedicated to and accepted by the city. All conveyances and dedications of land or easements shall be conveyed to the city free and clear of all liens, claims and encumbrances. Improvements shall be deemed accepted when:

(1) The construction of the creditable improvement is complete and accepted by the city;

(2) A suitable maintenance and warranty bond or letter of credit is received and approved by the city; and

(3) All design, construction, testing, bonding and acceptance procedures are verified by the city to be in strict compliance with the current city standards as shown by a certificate of completion and acceptance issued by the City Engineer.

(D) Notwithstanding division (C) of this section, the city may, by agreement, grant credits for system improvements which have not been completed if the applicant for such credits provides the city with acceptable security to ensure

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completion of the system improvements in the form of an irrevocable letter of credit for the benefit of the city in an amount determined by the impact fees administrator to be equal to 125% of the estimated completion cost of the system improvements, including land acquisition costs and planning and design costs. The value of such system improvements for computing credits shall be their estimated completion cost, based on documentation acceptable to the city.

(E) No credits shall be granted for:

(1) System improvements that fail to meet applicable city standards;

(2) Project improvements;

(3) The construction of local on-site facilities required by zoning, subdivision, or other city regulation intended to serve only a particular development;

(4) System improvements made in excess of applicable city standards, unless such system improvements are listed on the CCIP and the higher construction standard is required as a condition of development approval; or

(5) Any study, analysis or report, or portion thereof, required by the city to determine the project improvements for a development project.

(F) Development agreements for system improvements may be negotiated and entered into between the city and a developer, subject to the following requirements:

(1) A developer may offer to construct, contribute, dedicate or pay the cost of a capital improvement included as a project in the CCIP;

(2) The city may accept such offer on terms satisfactory to the city;

(3) The terms of the agreement shall be memorialized in a written agreement between the city and the developer prior to the issuance of a building permit;

(4) The agreement shall establish the estimated value of the system improvements, the schedule for initiation and completion of the system improvements, a requirement that the system improvements be completed to accepted city standards, and such other terms and conditions as deemed necessary by the city; and

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(5) The city must review the system improvements plan, verify costs and time schedules, determine if the system improvements are eligible system improvements, determine if the completed improvement meets applicable city standards, calculate the applicable impact fees otherwise due, determine the amount of the credits for such system improvements to be applied to the otherwise applicable impact fees, and determine if excess credits are created.

(G) Credits for system improvements shall be applied for as follows:

(1) Credits shall be applied for no later than the time of application for a building permit on forms provided by the city. Credits not applied for within such time period shall be deemed waived.

(2) Credits created pursuant to a development agreement with the city entered into between the city and a developer from and after the effective date shall be applied for no later than the time the development agreement is approved by the city.

(H) The value of credits and the calculation of excess credits shall be determined by the impact fees administrator, in writing, subject to appeal pursuant to § 14-19-20.

(I) The value of credits for system improvements shall be computed as follows:

(1) The value of cash contributions shall be based on the face value of the cash payment at the time of payment to the city;

(2) The value of unimproved land or easements shall be:

(a) The fair market value of the land or easement prior to any increase in value resulting from development approval demonstrated by an appraisal prepared by an appraiser acceptable to the city; or

(b) The acquisition cost of the land or easement to the developer or his/her predecessor in title or interest demonstrated by documentation acceptable to the city.

(3) The value of system improvements shall be:

(a) The fair market value of the completed system improvement at the time of acceptance by the city demonstrated by an appraisal prepared by an appraiser acceptable to the city; or

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(b) The actual construction cost of the completed system improvement, including planning and design costs, demonstrated by documentation acceptable to the city.

(4) The value of system studies shall be the cost of the study demonstrated by documentation acceptable to the city.

(5) An applicant for credits shall be responsible for providing at his/her own expense the appraisals, construction and acquisition cost documentation and other documentation necessary for the valuation of credits by the impact fees administrator. The city shall not be obligated to grant credits to any applicant who cannot provide such documentation in such form as the impact fees administrator may require.

(6) In lieu of the appraisals referred to in divisions (I)(2)(a) and (I)(3)(a) of this section, the impact fees administrator may accept an appraisal prepared by an appraiser acceptable to the city that demonstrates the combined fair market value of land, easements or completed improvements at the time of acceptance by the city, less the increase in land value resulting from development approval.

(7) The impact fees administrator may accept an appraisal that was prepared contemporaneously with the original contribution, dedication or construction of a system improvement if he/she determines that such appraisal is reasonably applicable to the computation of the credit due.

(8) The impact fees administrator retains the right to obtain, at the city's expense, additional engineering and construction cost estimates and/or property appraisals that may, at the impact fees administrator's option, be used to determine the value of credits.

(J) Credits granted for system improvements and system studies shall be applied as follows:

(1) No credit shall be provided for road or trail right-of-way dedication after the effective date of this ordinance, since the cost of right-of-way has not been included in the updated calculation of those fees.

(2) Credits shall be applied first to offset the impact fees otherwise due for the development project for which the credit was granted. If the value of the credit exceeds the impact fees otherwise due, the excess credits shall

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become the property of the applicant, subject to the requirements of §§ 14-19-1 et seq.

(3) Credits shall only be applied to offset impact fees for projects within the same service area for which the credit was granted. Credits shall not be used to offset impact fees for other categories of system improvements or for other service areas. However, credits can be applied within new service areas if the improvement generating that credit is within that new service area.

(4) If an applicant is entitled to excess credits, the impact fees administrator shall issue a certificate of excess credit to the applicant which denotes the dollar amount of the excess credit, the category of system improvement and service area to which the excess credit may be applied, the name of the applicant as the original credit-holder, a description of the development project for which the credit was granted and the year in which the credit will become available. The certificate of excess credit shall be signed by both the impact fees administrator and the credit-holder. The impact fees administrator shall retain a copy of the certificate of excess credit and the credit-holder shall be given the original certificate.

(5) Excess credits shall be freely transferable in accordance with the provisions of §§ 14-19-1 et seq.

(6) The credit-holder of excess credits may do any of the following:

(a) Apply all or part of the excess credits to offset impact fees due for new development for the same category of system improvements within the same service area for which the credit was granted;

(b) Transfer all or part of the certificate of excess credits to another person who shall become the credit-holder upon written notice to the impact fees administrator, subject to the same rights and restrictions as the original credit-holder, in addition to additional restrictions that apply to transferred excess credits; and/or

(c) Request reimbursement from the city for all or part of the amount of the excess credits from revenue generated by impact fees paid by new development for system improvements within the same service category and service area for which the credit was granted.

(7) Excess credits shall be subject to the following restrictions:

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(a) Excess credits shall not accrue interest and shall not be considered public money, public funds or public credit within the meaning of any law or ordinance relating to public money, public funds or public credit.

(b) Excess credits shall not be reimbursed from the city's general fund or from any other city funding source other than impact fees paid by new development for system improvements within the same service category and service area for which the credit was granted.

(c) The city shall, upon request from the credit-holder of excess credits, after acceptance by the city of the project creating credits, provide reimbursements for excess credits on a first in, first out basis and shall not be obligated to provide reimbursements in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.

(d) Except as otherwise provided in §§ 14-19-1 et seq., excess credits shall not constitute a liability of the city, and the city shall not be obligated to reimburse excess credits.

(e) Excess credits transferred from the original credit-holder may be applied to offset up to 100% of the impact fees otherwise due from new development for system improvements within the same service category and service area for which the credit was granted.

(f) Excess credits must be applied for, used, sold, or redeemed, if at all, within fifteen years after their issuance. Excess credits issued prior to adoption of this ordinance shall be permitted to be used, sold or redeemed within fifteen years after the adoption of this ordinance.

(g) Excess credits shall only be used, sold, or redeemed within the same service area for which the credit was granted. However, excess credits can be transferred within new service areas if the improvement generating the credit is within that new service area. Excess credits shall not be used to offset impact fees for other categories of system improvements or for other service areas.

§ 14-19-20 ADMINISTRATIVE APPEALS.

(A) Notice of appeal; filing; fee. An applicant who chooses to appeal the assessment or calculation of impact fees; determination of exemptions,

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credits, excess credits; or other decision of the impact fees administrator shall submit a notice of appeal and payment of a nonrefundable processing fee to the impact fees administrator or his/her designee within 30 days following the date of the decision or determination of the impact fees administrator giving rise to the appeal.

(B) Bond. If the notice of appeal is accompanied by a bond or other sufficient surety satisfactory to the City Attorney, in an amount equal to the impact fee assessed, the City Building Official or his/her duly designated agent shall issue the building permit.

(C) Staying of impact fee collection; requirement. The filing of a notice of appeal shall not stay the collection of the impact fee unless a bond or other sufficient surety has been filed.

(D) Action by Environmental Planning Commission. Appeals shall be considered by the Environmental Planning Commission in accordance with the rules and regulations of that administrative body. Upon hearing such appeals, the Environmental Planning Commission may affirm, change or modify the decision of the impact fees administrator or, in lieu thereof, make such other or additional determination as it deems proper. The decision of the Environmental Planning Commission upon the appeal shall be in writing, concurred in by a majority of the members present, which shall forthwith transmit a copy of the decision to the applicant and to the impact fees administrator.

(E) Appeal of Environmental Planning Commission's decision. Either the applicant or the impact fees administrator may appeal the decision of the Environmental Planning Commission to the City Council within 30 days following the decision of the Environmental Planning Commission.

(F) Final decision by City Council. The City Council shall consider the appeal in accordance with the rules and regulations of that governing body. The decision of the City Council shall, in all instances, be the final administrative decision and shall be subject to judicial review in accordance with applicable law.

§ 14-19-21 PROMULGATION OF RULES.

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(A) The Mayor is responsible for the promulgation of rules necessary to fulfill the intent of §§ 14-19-1 et seq. Authorized rules shall be published in the Development Process Manual and shall have the same effect as the provisions within §§ 14-19-1 et seq. The following process shall be observed hereafter in rulemaking pursuant to §§ 14-19-1 et seq.

(B) Prior to the adoption, amendment or repeal of any rule, the Mayor shall, at least 30 days prior to the proposed action:

(1) Publish notice of the proposed action in a daily newspaper of general circulation in the city; and

(2) Notify any person or group filing written request, such request to be renewed yearly to assure notice of proposed action which may affect that person or group, notification being by mail or other method to the last address specified by the person or group. A fee may be charged those requesting notice to cover reasonable city costs.

(3) The notice of proposed action shall:

(a) State the manner in which data, views or arguments may be submitted to the Mayor by any interested person;

(b) Describe the substance of the proposed action or state the subjects and issues involved; and

(c) Include specific reference to the division of this article under which the rule is proposed.

(C) All interested persons shall be given reasonable opportunity to submit data, views, and arguments concerning any proposed rule change. If the Mayor finds that oral presentation is unnecessary or impracticable, the Mayor may require that the presentation be made in writing. The Mayor shall consider fully all submissions related to the proposed rule change. All persons making a presentation, verbally or in writing, shall promptly be given a copy of the decision, by mail or otherwise.

(D) Each rule or set of rules adopted is effective upon recording as an adopted rule with the City Clerk and promulgated as an amendment of the Development Process Manual or as specified in the rule itself.

(E) Regarding filing of rules and copying:

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(1) The Mayor shall promptly record with the City Clerk one copy of each proposed rule, adopted final rule, or amendment or repeal thereof, including all rules existing on the effective date of §§ 14-19-1 et seq.

(2) The Mayor shall promptly publish each final rule or amendment, or repeal thereof, including all rules existing on the effective date of §§ 14-19-1 et seq., as amendments to the Development Process Manual.

(3) The City Clerk shall maintain and update as necessary an index of adopted rules on file in the Clerk's office and shall make copies of the rules available to the public. The City Clerk shall allow the public to make copies of rules recorded in the Clerk's office. A reasonable fee may be charged.

§ 14-19-22 EFFECT OF IMPACT FEE ON ZONING AND SUBDIVISION REGULATIONS.

Sections 14-19-1 et seq. shall not affect, in any manner, the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning and subdivision regulations of the city, which shall be operative and remain in full force and effect without limitation with respect to all such development.

§ 14-19-23 IMPACT FEE AS ADDITIONAL AND SUPPLEMENTAL REQUIREMENT TO CITY REGULATIONS.

The impact fee is additional and supplemental to, and not in substitution of, any non-financial requirements imposed by the city on the development of land or the issuance of building permits. Payment of the impact fee shall not waive or otherwise alter compliance with zoning or other city requirements. It is intended to be consistent with and to further the objectives and policies of the Comprehensive Plan and other city policies, ordinances and resolutions by which the city seeks to ensure the provision of public facilities in conjunction with the development of land.

§ 14-19-24 REVIEW AND AMENDMENT.

The advisory committee shall review, update and propose any amendments to the land use assumptions and the impact fees at least every five years from the effective date. The advisory committee shall be consulted during such review and file its written comments concerning any amendments with the

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City Council. The City Council shall take action on any proposed amendments consistent with the provisions of the Development Fees Act.

§ 14-19-98 ENFORCEMENT.

The enforcement of §§ 14-19-1 et seq. will be the responsibility of the impact fees administrator and such city personnel as he or she may designate from time to time.

§ 14-19-99 PENALTY.

The city shall have the power to sue in law or equity for relief in civil court to enforce §§ 14-19-1 et seq. including, but not limited to, injunctive relief to enjoin and restrain any person from violating the provisions of §§ 14-19-1 et seq. and to recover such damages as may be incurred by the implementation of specific corrective actions. Knowingly furnishing false information to the city on any matter relating to the administration of §§ 14-19-1 et seq. shall constitute an actionable violation. The impact fees administrator may revoke or withhold the issuance of any building permit or other development permits if the provisions of §§ 14-19-1 et seq. have been violated by the owner or his/her assigns. Subject to applicable law, the city shall have the right to inspect the lands affected by §§ 14-19-1 et seq. and shall have the right to issue cease and desist orders, stop work orders and other appropriate citations for violations."

SECTION 3. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 4. COMPILATION. Section 2 of this ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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PASSED AND ADOPTED THIS 19th DAY OF November, 2012
BY A VOTE OF: 6 FOR 3 AGAINST.

For: Cook, Harris, Jones, Lewis, Sanchez, Winter

Against: Benton, Garduño, O'Malley

Trudy E. Jones, President
City Council

APPROVED THIS 30 DAY OF November, 2012

Bill No. F/S O-12-38

Richard J. Berry, Mayor
City of Albuquerque

ATTEST:

Amy B. Bailey
City Clerk

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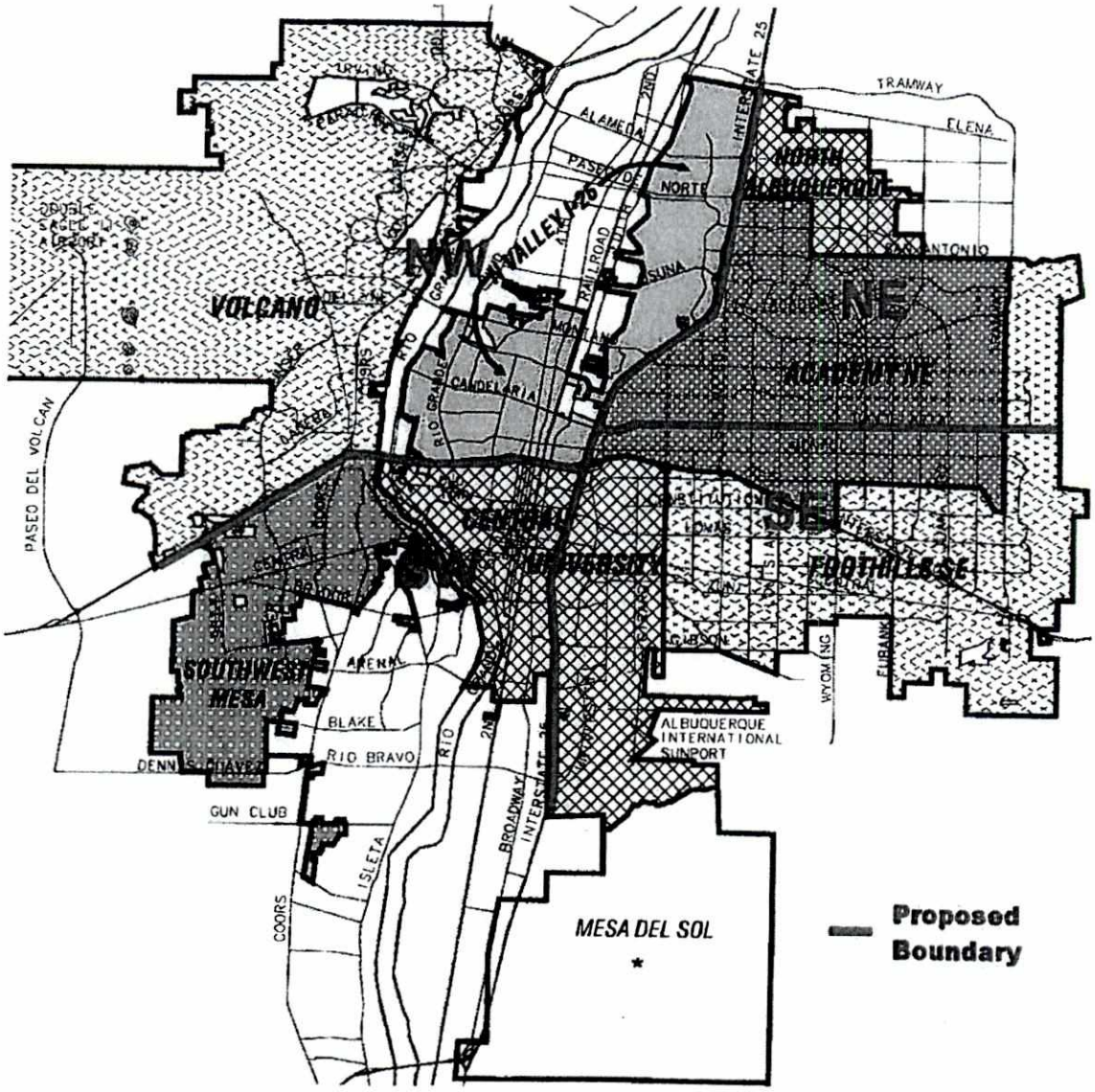
## Parks – Service Areas



## Drainage – Service Areas

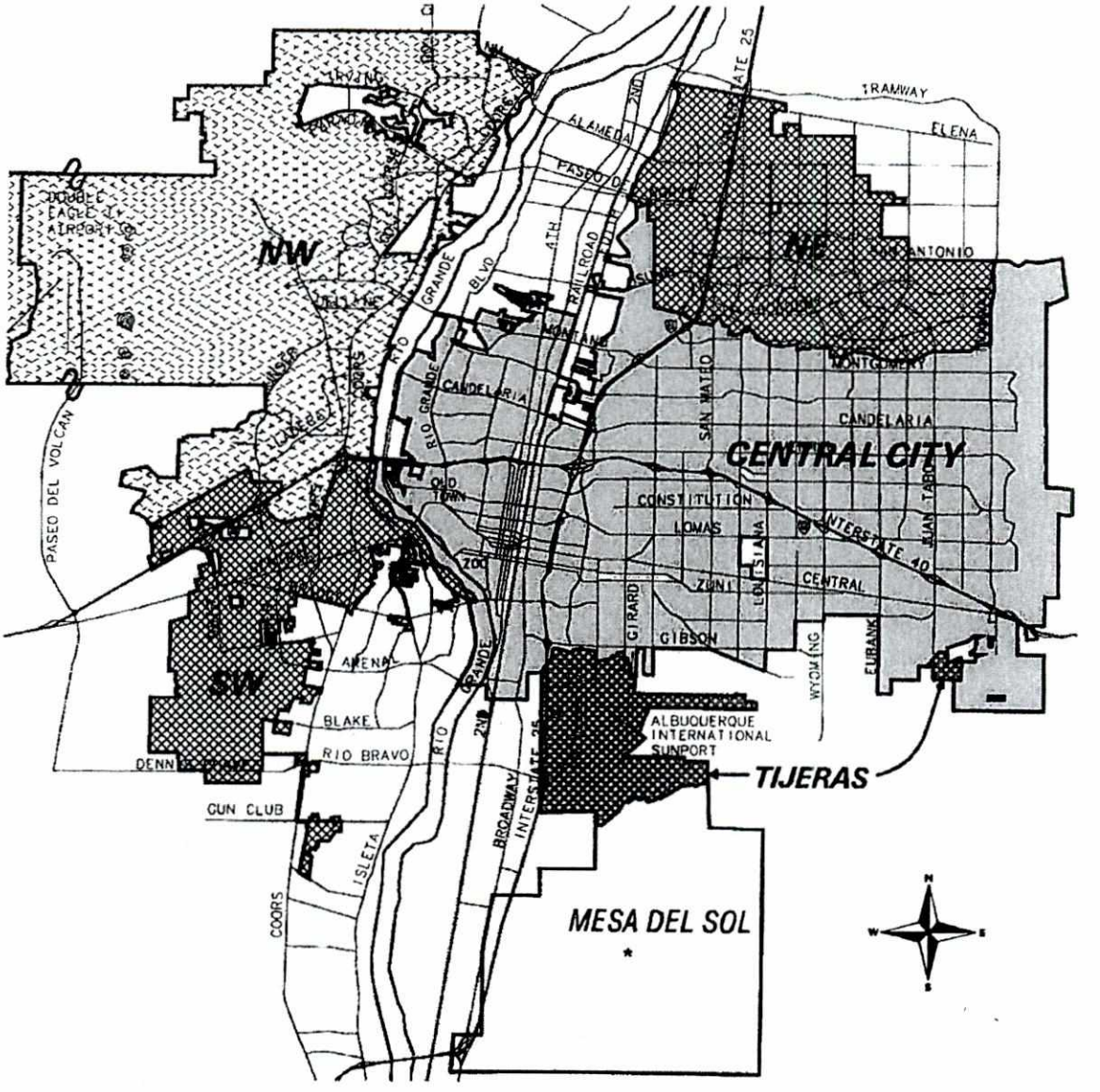


EXHIBIT B

EXHIBIT B

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# 18
# *Impact Fees Regulations*

## *Section 1. INTENT*

The following Administrative Rules and Procedures shall guide the Impact Fees Administrator in the administration of the City of Albuquerque Development Impact Fee Ordinance Enactment Nos. 0-2004-51, 0-2004-52, 0-2004-53, and 0-2004-54 (hereinafter referred to as the Impact Fee Ordinances, and Resolution 04-159) that become effective July 1, 2005. These Administrative Rules elaborate upon the administrative directions contained in the Impact Fee Ordinance and are intended to be used in conjunction with the Impact Fee Ordinance in their implementation and administration.

Tables and forms are provided for use in determining the amount of the impact fee for each land development activity. In construing these Rules, all words, phrases and terms contained here shall have the same meaning as defined in the City of Albuquerque Impact Fee Ordinances in the New Mexico Development Fee Act (§ 5-8-1 *et seq.*, NMSA 1978) and the City of Albuquerque Subdivision Ordinance and Zoning Code.

## *Section 2. ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITY*

### A. Impact Fees Administrator

The Impact Fees Administrator is hereby authorized to interpret and enforce all provisions of these Rules and the appropriate Impact Fee Ordinance of the City of Albuquerque and to carry out the general administration of all impact fees enacted by the City of Albuquerque. The Impact Fees Administrator shall have the responsibility to carry out the following:

1. When no equivalent type of land use is present in either the fee schedule or in the City's Comprehensive Zone Code, or is a previously determined miscellaneous land use, the Impact Fees Administrator shall establish a fee applicable to the most nearly equivalent type of land use on the fee schedule.

2. When requested by the fee payer, the Impact Fees Administrator shall assess and certify the impact fee applicable to a particular development using the procedures described in the applicable Impact Fee Ordinance and in these Administrative Rules. The impact fee assessment certification shall be valid for a period of four (4) years.

    a. The Impact Fees Administrator shall calculate and assess the impact fee as follows:

        i. Determine the applicable service area;

        ii. Determine the applicable land use category;

iii. Verify the number of dwelling units or the amount of gross floor area (whichever is applicable) in the development; and

iv. Multiply the number of dwelling units or the amount of gross floor area, whichever is applicable, by the applicable impact fee from the schedule in Exhibit E.

b. If the assessment occurs at the time of preliminary plat or site plan approval, the assessment may be estimated based on the applicable fee schedule and be finalized no later than building permit.

3. With respect to an independent fee determination (see section 5.), the Impact Fees Administrator shall:

a. Conduct a pre-application meeting with the applicant and representatives of appropriate departments of the City;

b. Review the independent fee determination study for sufficiency, methodology, technical accuracy and findings; and

c. Establish the amount of the impact fee as a result of the independent study based on the procedures described in the applicable Impact Fee Ordinance and in these Administrative Rules.

4. The Impact Fees Administrator has sole authority to determine exemptions from a requirement to pay an impact fee or reduction in the amount of the fee.

5. The Impact Fees Administrator shall determine the availability of and the amount of any refund of an impact fee.

6. The Impact Fees Administrator shall calculate the additional impact fee due in the event of change of use, redevelopment, or modifications of an existing use.

7. The Impact Fees Administrator shall calculate and grant credits for contributions, dedications or improvements that may be used to offset any impact fee otherwise due.

8. The Impact Fees Administrator shall maintain separate interest bearing accounts clearly identifying the payor and category of capital improvements within the service area in which the fee was collected.

9. A notice of impact fee assessment for the site shall be included on the final plat.

**B. Other Departments**

Other departments and offices of the City of Albuquerque shall provide advice, information, or other such services upon the request of the Impact Fees Administrator.

## Section 3. IMPOSITION OF IMPACT FEE

### A. Feepayer

Any person who, after the effective date of the appropriate Impact Fee Ordinance, seeks to engage in a new development by applying to the City of Albuquerque for any of the following permits shall be required to pay an impact fee in the manner and amount set forth in the relevant ordinance and in these Administrative Rules:

1. The issuance or extension of a building permit, or certificate of occupancy in the case of a mobile home.

2. The issuance or extension of a permit that would allow the construction or installation of a structure, including a mobile home.

### B. Determination and Assessment of the Impact Fee

1. **General.** The amount of the impact fee shall be determined by the Impact Fees Administrator, who shall receive assistance from other departments when necessary and appropriate. The Impact Fees Administrator shall determine whether the method of fee determination is based on the fee schedule contained in the appropriate Impact Fee Ordinance or by an independent fee determination study. The calculation of exemptions, refunds, and credits, and the determination of the net impact fee due shall also be the responsibility of the Impact Fees Administrator with the assistance of appropriate City of Albuquerque Departments.

2. **Assessment of Fee.** The impact fee shall be assessed as follows:

   a. For land that is platted or replatted on or after July 1, 2005, the impact fee shall be assessed for new development no later than at the time the subdivision plat is recorded;

   b. For land that received preliminary or final plat approval between December 10, 2004, and July 1, 2005 and is not exempt pursuant to paragraph d. below, or for development that occurs on existing lots of record, also not exempt pursuant to paragraph d., the impact fee shall be assessed at the time of plan check or issuance of a building permit;

   c. Development approvals resulting in vested rights acquired prior to December 10, 2004 shall not be subject to an impact fee. However, development approvals resulting in vested rights acquired prior to December 10, 2004 shall be subject to an impact fee if a building permit has not been procured within two (2) years of the effective date of the Impact Fee Ordinances.

   d. For the purpose of the Impact Fee Ordinances and these Administrative Rules, vested rights shall mean development rights acquired and resulting from building permit approval, final plat approval, preliminary plat approval, or EPC or DRB site plan for subdivision or site plan for building permit approval obtained prior to the enactment date (December 10, 2004) of the Impact Fee Ordinance. Vested rights arising from such approvals shall expire if a building permit has not been issued within two (2) years from the effective date of the Impact Fee Ordinance and the impact fee may be assessed and collected thereafter.

e. No impact fee shall be collected on applications for building permits that are deemed complete prior to July 1, 2005.

f. The fees in effect when an application for building permit is deemed complete are the impact fees to be collected.

g. The assessment of an impact fee shall be in writing and shall be valid for four years.

**C. Payment Due [Collection Of Impact Fee]**

1. **General.** The impact fee shall be collected prior to issuance of a building permit. All payments shall be made in the following manner:

   a. Payment by approved credit card, personal or business check, cashier's check, or money order payable to City of Albuquerque;

   b. All payments are to be made at offices of the City of Albuquerque, Development and Building Services Division of the Planning Department; and

   c. In lieu of monetary payment, up to 100% of an impact fee due may be paid by the use of applicable credits as defined in Section 10.

2. **Invalid Payment.** In the event the payment of an impact fee subsequently proves to be invalid due to insufficient funds, improper execution, or for any other reason, then the following actions shall be taken:

   a. The Impact Fees Administrator shall, within thirty (30) days of detection of such a deficiency, notify the feepayer, the contractor, and the property owner by certified mail that:

      i. An impact fee amount is due by valid payment immediately upon receipt of said notice; and

      ii. Permits, inspections or certificates of occupancy will not be issued until the amount is paid and, if not paid within thirty (30) days, the Impact Fees Administrator shall have authority to instruct the City of Albuquerque Building Department to stop all construction on the site until the payment is received.

   b. No further building permits, construction permits, inspections or certificate of use and occupancy (C.O.) shall be issued by the City of Albuquerque until the required impact fee is paid; and

   c. The amount due shall be the amount of the impact fee plus the amount charged by the bank for the dishonored payment, plus a service charge as established by City of Albuquerque.

3. **Credits Prior to Completion.** In the event the feepayer has received approval from the Impact Fees Administrator for credits for construction of system improvements and the credits are to be applied before completion of the improvements, the following requirements shall be met:

a. The feepayer shall submit to the Impact Fees Administrator in the form attached as Exhibit G an irrevocable letter of credit for an amount equal to 125% of the full amount of the completion cost of the system improvements. The letter of credit shall be payable to the City of Albuquerque and shall be approved by the City Attorney prior to acceptance;

b. The feepayer shall procure a City Work Order for the construction of the creditable improvements; which Work Order shall include:

i. A performance and warranty bond shall be issued by a company registered in and licensed to do business in the State of New Mexico, for the purpose of securing faithful performance of the construction and to indemnify the City for any damages associated with failure to satisfactorily perform construction, and shall be effective for one (1) year after the City issues a certificate of completion and acceptance;

ii. The performance and warranty bond shall be reviewed and approved by the City Attorney prior to acceptance of the bond by the Impact Fees Administrator; and

iii. The performance and warranty bond shall be renewed not later than sixty (60) days prior to the renewal date. In the event of a notice to cancel or of intent not to renew, the Impact Fees Administrator shall be entitled to declare a default and make demand on the full amount of the bond.

**D. Expiration of Building Permits**

1. If a building permit expires, is revoked, or is voluntarily surrendered and is, therefore, voided and no construction or improvement of land has commenced, then the feepayer shall be entitled to a refund, without interest, of 97% of the impact fee which was paid as a condition for its issuance. The City shall retain 3% of the fee for administrative costs. The feepayer must submit an application for such a refund to the Impact Fees Administrator at least thirty (30) days prior to the expiration of the permit. In the case of an expired permit which was obtained in whole or in part by the use of credits, only that portion not paid by credits may be refunded. The feepayer shall apply to the Impact Fees Administrator to reinstate the credits that were not utilized. Any request to reinstate a credit must be made at the time of reapplication or it shall be deemed waived.

2. If a refund has been received by the feepayer, the feepayer must pay the appropriate impact fee if reapplication is made for a permit. If a permit expires and no refund has been issued, a feepayer will not be required to pay the fee again if reapplication is made for the permit on the same lot, parcel or tract unless the use or size of the structure has changed within the previous four (4) years of the original assessment. In the event the use or size of the structure has changed, the amount due would be the change in the amount of the fee based upon the new structure or use.

3. A credit for previous payment of an impact fee must be requested by the feepayer. Any credit not so requested at the time of reapplication shall be deemed waived by the feepayer.

4. A refund of the impact fee shall not be granted if the permit expires and construction has commenced. In this case, the feepayer will not have to pay the impact fee if reapplication is made for a permit for the same type and size of structure.

**E. Private Security**

No credit will be given against a public safety impact fee for the provision of private security services or facilities.

**F. Private Fire Protection or Rescue**

No credit will be given against a public safety impact fee for the provision of private fire protection or rescue services or facilities.

## Section 4. DETERMINATION OF AN IMPACT FEE BASED ON FEE SCHEDULES

**A. Payment from Schedule**

The amount of the impact fee shall be determined from the fee schedule attached as Exhibit E and utilizing Exhibit B, Impact Fee Calculation Form:

If the type of land use is not specified in the fee schedule or in the City's Comprehensive Zone Code, the Impact Fees Administrator shall apply the fee of the most nearly equivalent type of land use on the fee schedule.

The Impact Fees Administrator shall be guided in the selection of a comparable land use type by the City of Albuquerque Comprehensive Plan and the land development regulations of the City of Albuquerque, including but not limited to the Comprehensive Zone Code and Subdivision Ordinance.

If a feepayer shall opt not to have the impact fee determined according to the fee schedule, then the feepayer shall prepare and submit an independent fee determination study in accordance with the appropriate Impact Fee Ordinance.

In the event that the sub-classification of a particular use of land into the classification established by the Ordinance is unclear, the *North American Industry Classification System, United States*, latest edition, shall be used as a guide.

**B. Residential Heated Area**

The amount of the impact fee for residential structures shall be based on the floor area of the structure that is designed to be provided with heat and/or air conditioning and not on gross floor area of the structure.

### C. Gross Floor Area

The amount of the impact fee for non-residential structures shall be based on the total floor area, including basements, mezzanines and upper floors, if any, expressed in square feet and measured from the outside surface of the outside walls.

### D. Mixed Use Development

If a development includes both residential and non-residential uses, the impact fee is to be assessed for each use based on the fee schedule and the results added together. If the owner can substantiate that the impact of the mixed use project justifies a lower impact fee proportionate to the impact reduction, then the Impact Fees Administrator may consider a proportionate reduction of the impact fee. The Impact Fees Administrator is encouraged to utilize the Shared Parking section of the Zoning Code, the ULI Shared Parking Standards, and the ITE Manual for guidance.

### E. Mixed Use Structures

If a structure includes both residential and non-residential uses, the impact fee is to be assessed for each use individually based on the relevant fee schedule and the results added together. If the owner can substantiate that the impact of the mixed use project justifies a lower impact fee proportionate to the impact reduction, then the Impact Fees Administrator may consider a proportionate reduction of the impact fee. The Impact Fees Administrator is encouraged to utilize the Shared Parking section of the Zoning Code, the ULI Shared Parking Standards, and the ITE Manual for guidance.

### F. Shell Permit

Subject to the following qualifications, an impact fee shall not be assessed for tenant development improvements. Builders will often apply for a building permit to construct the "shell" of a building. Remodeling permits would be issued later to finish construction of the interior of the structure. The impact fee shall be paid prior to the issuance of the building permit for construction of the shell. The amount of the fee should be based on the intended land use as described by the builder. If a builder applies for a "shell" permit and the intended land use is not known, the impact fee shall be assessed based on that land use which generates the greatest impact and is allowed under the existing zoning for the lot or parcel. If it is found during review of the application for a Tenant Improvement Permit that the actual land use differs from the intended land use as described in the application, a determination shall be made as to whether or not an additional impact fee is due based on the procedures for change of use. If so, the additional impact fee shall be paid prior to the issuance of the Tenant Improvement Permit. If it is determined that there has been an over-payment of an impact fee, a refund would become available pursuant to the refund provisions of these Administrative Rules.

If a shell permit is deemed complete prior to July 1, 2005, and left unfinished, an impact fee shall not be assessed at the time of reapplication of a shell permit. Subsequent change of use, redevelopment, or modification of the structure may be subject to an impact fee based on the procedures for change of use.

### G. Change of Use

In the case of a change of use, redevelopment, or modification of an existing use which requires the issuance of a building permit, the impact fee shall be based upon the net increase in the impact fee for

the new use as compared to the previous use. The amount of the impact fee that is due as a result of the change in land use shall be determined at the time the feepayer applies for a building permit. The impact fee shall be paid prior to the issuance of a building permit for construction or remodeling.

Previous land use shall be the lawful land use physically existing on the effective date of the ordinance or the current lawful land use. The feepayer shall furnish all documentation required by the Impact Fees Administrator to determine the previous use.

Should the change of use, redevelopment, or modification result in a net decrease in the impact fee, no refunds or credits for the impact fee previously paid shall be made.

If the change of land use does not require the issuance of a building permit, then there shall be no requirement to pay an impact fee.

### H. Accessory or Auxiliary Uses

Generally, no impact fee shall be assessed for accessory or auxiliary land uses, such as a clubhouse or tennis court in an apartment complex, unless it can be established by the Impact Fees Administrator that the land use constitutes an independent function. However, structures that meet the definition of a "dwelling" in the City of Albuquerque Building Code are not exempted as accessory or auxiliary uses.

### I. House Moves and Mobile Home Moves

An impact fee shall be assessed for structures or mobile homes moved from one location to another unless the structure or unit being moved is a replacement of an equivalent use at the new location. If the structure or mobile home moved is replaced by an equivalent use at the old location, no impact fee shall be due for the replacement use.

### J. Recreational Vehicles (RVs)

The development of an RV site is the relevant regulatory issue for this Administrative Rule and the administration of an impact fee.

### K. Model Homes

Model homes on residentially zoned land shall be charged a residential impact fee. Model homes on non-residentially zoned land shall be charged a non-residential impact fee.

### L. Remodeling and Redevelopment

When a change of use, redevelopment or modification of an existing commercial use or building requires a building permit, the impact fee shall be calculated based on the pro rata difference between previous use and the proposed use.

Remodeling or additions to single family dwelling units shall not be subject to an impact fee.

**M. Miscellaneous Land Use Types**

The Impact Fees Administrator shall maintain a list of the rulings made of any administrative determination.

## Section 5. INDEPENDENT FEE DETERMINATION

**A. Option of the Feepayer**

If a feepayer shall opt not to have an impact fee determined according to the fee schedule in Exhibit E, then the feepayer shall prepare and submit an independent fee determination in accordance with these Administrative Rules and the appropriate impact fee. Any submission not so made at the time of building permit application shall be deemed waived.

The utilization of this option by the feepayer shall not exempt the applicant from paying the impact fee prior to the issuance of a building permit.

**B. Notice of Intent by Feepayer**

The feepayer shall inform the Impact Fees Administrator of the feepayer's intent to utilize an independent fee determination. The Impact Fees Administrator shall then schedule a pre-application meeting with the applicant.

**C. Pre-Application Meeting**

Before beginning the independent fee determination study, the feepayer or the feepayer's representative shall be given the opportunity to attend a pre-application meeting with the Impact Fees Administrator. The purpose of the pre-application meeting is to discuss the procedures of the independent fee determination study, the methodology to be employed, the standards to be met, and to reduce the meeting to a letter of understanding.

Results, conclusions, and agreements reached at the pre-application meeting regarding methodology, required forms or documentation, or procedures, which shall not constitute a waiver of ordinance provisions, shall be placed in a letter of understanding by the Impact Fees Administrator within fifteen (15) days from the pre-application meeting. A copy of this letter of understanding shall be sent to the applicant. The agreements set out in the letter of understanding will expire in thirty (30) days from receipt unless the applicant acknowledges acceptance of the agreements in writing to the Impact Fees Administrator.

The applicant may waive the pre-application meeting. Any applicant who waives a pre-application meeting has waived his/her right to administratively raise methodological or procedural issues at a subsequent time.

**D. Guidelines**

1. The purpose of the independent determination study is to measure the impact of the development in question on the roadway facilities, drainage facilities, parks, recreation, trails, open space facilities, or the public safety facilities of the City of Albuquerque.

2. An independent fee determination study must address the expected impact of the development over the projected life of the structures on the system improvement. Any claim that the use or occupancy of the structures within the development will be different from normal use or occupancy must be supported by the appropriate zone change or other appropriate documentation that will support the claim.

3. The independent fee determination study shall follow the methodologies and formats which are agreed upon during the pre-application meeting and be in accord with any documentation or methodology required by these Administrative Rules and the appropriate Impact Fee Ordinance.

4. The independent fee determination study shall be prepared and presented by qualified professionals in good standing in their respective fields. The methodology shall be consistent with best professional practice and support the central claim of the study. The study shall provide all necessary supporting documentation and information. Failure to adhere to best professional standards is a basis for rejection of the study. The applicant's submission must be certified that the study complies with best professional practices.

5. The applicant shall submit the independent study to the Impact Fees Administrator.

6. The applicant shall provide the Impact Fees Administrator with the name, address and telephone number of the property owner, the professional preparing the study, and the applicant.

**E. Sufficiency Determination**

1. The Impact Fees Administrator will review the independent fee determination study for sufficiency, methodology, technical accuracy and findings. The Impact Fees Administrator shall have thirty (30) days to review the study and to inform the applicant, in writing, of any deficiencies or defects in the study, or to find the study complete and acceptable. A notice of acceptance or non-acceptance shall be mailed to the applicant. In the event that the notice is not given within thirty (30) days, the study shall be considered complete and acceptable.

2. Upon receipt of a notice of non-acceptance, the applicant may modify or supplement the study and resubmit a modified study. The Impact Fees Administrator will consider the independent fee determination study to be withdrawn and the letter of understanding expired if the Impact Fees Administrator does not receive a response from the applicant within thirty (30) days of receipt of the above notice.

3. Upon receipt of a response or resubmittal of the study, the Impact Fees Administrator shall have thirty (30) days to review the resubmittal or response and notify the applicant of any defects or deficiencies in the submission. If the Impact Fees Administrator finds deficiencies or defects in a resubmitted study, notice of such deficiencies or defects shall be provided as in paragraph 2. above. If the feepayer disagrees with the findings or decisions of the Impact Fees Administrator, the feepayer may appeal the decision as outlined in the applicable ordinance.

**F. Determination of Impact Fee**

The determination of the amount of the applicable impact fee shall be made by the Impact Fees Administrator based on review of a complete and acceptable independent fee determination study.

**G. Effective Date**

The effective date for an impact fee assessed by an independent fee determination study shall be the date at which the Impact Fees Administrator issues a notice of acceptance for the independent fee determination. The independent fee determination shall be valid for four (4) years.

**H. Application for Permit**

It shall be the responsibility of the feepayer, at the time of application for a building permit, to present the approved independently determined fee as approved by the Impact Fees Administrator.

## Section 6. COLLECTION AND DEPOSIT OF THE IMPACT FEE

**A. Road (Transportation) Impact Fee**

1. **Service areas.** There are currently eight (8) Road (Transportation) Service Areas within the incorporated area of City of Albuquerque.

2. **Deposit of the impact fee.** All road impact fees collected shall be properly identified by road development impact fee service area and promptly transferred for deposit in the appropriate Road Development Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

**B. Drainage (Stormwater) Impact Fees**

1. **Service areas.** There are currently five (5) Drainage (Stormwater) Service Areas within the incorporated area of City of Albuquerque.

2. **Deposit of the impact fee.** All drainage impact fees collected shall be properly identified by drainage development impact fee service area and promptly transferred for deposit in the appropriate Drainage Development Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

**C. Park and Recreation Impact Fees**

1. **Service areas.** There are currently seven (7) Park and Recreation Development Impact Fee service areas within the City of Albuquerque.

2. **Deposit of the impact fee.** All park and recreation impact fees collected shall be properly identified by park and recreation development impact fee service area and promptly transferred for deposit in the appropriate Park and Recreation Development Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

**D. Public Safety Impact Fees**

1. **Service areas.** There are currently two (2) Public Safety Impact Fee Service Areas.

2. **Deposit of the impact fee.** All public safety impact fees collected shall be properly identified and promptly transferred for deposit in the appropriate Public Safety Impact Fee Fund to be held in a separate account until expended or encumbered in accord with these Rules and the Development Impact Fee Ordinance.

## Section 7. USE OF IMPACT FEE FUNDS

### A. Purpose

Funds collected from Road, Drainage, Public Safety and Parks and Recreation, Trails and Open Space development impact fees shall be used for the purpose of acquiring and/or making systems improvements to Drainage Facilities, Public Safety Facilities, Parks Recreation, Trails and Open Space Facilities and Roads Facilities under the jurisdiction of the City of Albuquerque, the State of New Mexico, or other political subdivisions, and shall not be used for maintenance or operations.

### B. System Improvements

1. At least once each fiscal year the Impact Fees Administrator shall present to the City Council a report describing the amount of development impact fees collected, encumbered and used, and a proposed Component Capital Improvement Program for system improvements, which assigns funds, including any accrued interest, from the several Development Impact Fee Fund accounts to specific system improvement projects and related expenses. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Development Impact Fee Fund account until the next fiscal period except as provided by the refund provisions of this rule and the Development Impact Fee Ordinance.

2. Funds shall be used exclusively for acquisitions, expansions, or capital improvements on the City's Component Capital Improvements Plan and within the Development Impact Fee Service Area from which the funds were collected.

3. In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which development impact fee may be expended, development impact fee may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subparagraphs 1. and 2. above.

4. In the event a developer enters into an agreement with the City to construct, fund or contribute system improvements so that the amount of the credit created by such construction, funding or contribution is in excess of the development impact fee otherwise due, the developer shall be reimbursed for such excess construction funding or contribution from development impact fees paid by other developments located in the service area which is benefitted by such improvements.

5. Only impact fees collected may be used to provide refunds.

6. Funds shall be considered expended on a first in, first out basis by the date received.

## Section 8. REFUNDS

**A. Refund for Failure to Construct or Provide Service**

1. The current owner of record of property on which an impact fee has been paid shall be entitled to a refund of the fee if the construction of the improvements for which the fee was paid are not completed and available to provide service within seven (7) years from the date of payment of the impact fee.

2. The current owner shall submit a written request for refund to the Impact Fees Administrator within one (1) year of the date giving rise to the right to claim a refund. Failure to make a written request within one (1) year shall constitute a waiver of the right to receive a refund.

   a. The current owner shall provide evidence of ownership in the form of a deed or title report;

   b. The Impact Fees Administrator shall make a written decision on the request for refund within thirty (30) days;

   c. If a refund is due to the current owner of record, the City shall issue a refund payment within thirty (30) days of the written decision;

   d. If the Impact Fees Administrator determines that a refund is not due, the current owner of the property may appeal the decision of the Impact Fees Administrator to the City's Environmental Planning Commission within thirty (30) days of the written decision;

   e. The refund shall bear interest calculated from the date of collection of the impact fee to the date of refund as set forth in Section 56-8-3 NMSA, 1978; and

   f. Refunds shall be made on a first in, first out basis by the date received. Prior to making a refund, the Impact Fees Administrator shall notify all eligible fee payers by certified mail of the opportunity to make application for a refund.

3. The Impact Fees Administrator shall review the impact fee revenues collected and expenditures made by service area seven (7) years following the effective date and annually thereafter. If revenues exceed expenditures by more than ten percent (10%), the City shall refund a pro rata share of the difference to the owner of record of each property for which an impact fee has been paid within the previous seven (7) years in the service area due a refund.

**B. Refund of Excess Credits**

1. If excess credits have not been utilized, the credit holder may request a refund of the excess credits, which refund shall not include interest.

2. Application for refund of excess credits must be made at least ninety (90) days prior to expiration of the excess credit. Failure to apply for refund within ninety (90) days prior to expiration shall constitute a waiver of the credit holders right to reimbursement.

3. The Impact Fees Administrator shall refund excess credits on a first in, first out basis by the date received. Prior to making a refund of excess credits the Impact Fees Administrator shall notify all eligible excess creditholders by certified mail of the opportunity to redeem any excess credits.

4. The Impact Fees Administrator shall not be obligated to provide a refund of excess credits in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.

### C. Overpayment

A refund, without interest, will be made if it is determined by the Impact Fees Administrator that an overpayment of an impact fee has occurred. Refunds under this section shall not be made more than one (1) year after overpayment of the impact fee has been determined.

### D. Underpayment

In the event the Impact Fees Administrator determines that an underpayment of an impact fee has occurred through error or misrepresentation by the feepayer, the Impact Fees Administrator may revoke inspections or withhold the issuance of any building permit or certificate of occupancy, or shall have the power to sue in law or equity as may be provided by law for relief in civil court to enforce the correct payment of the fee.

## Section 9. EXEMPTIONS

### A. Must Be Claimed by Feepayers

An exemption must be claimed by the feepayer no later than 30 days prior to the time of application for a building permit. Any exemption not so claimed shall be deemed waived by the feepayer. Applicants whose requests for exemptions from an impact fee are rejected may appeal the decision within thirty (30) days of the decision as outlined in the applicable Impact Fee Ordinance.

### B. Total Exemptions

1. The following shall be exempted from payment of all impact fees:

   a. Alteration of an existing building or use of land where the existing use of the property is not changed and there is no additional enclosed or open area in non-residential structures.

   b. The construction of accessory or auxiliary buildings or structures incidental to a dwelling unit on a residential property.

   c. Replacement of a lawfully permitted building, mobile home, recreational vehicle, trailer or structure with a new unit, building or structure of the same type, use and size. If the existing unit, building, or structure is torn down, destroyed by fire or other natural disaster, or otherwise eliminated or moved off the site, or if the original structure is

converted to a utility building, garage, or other non-residential or non-commercial use the replacement structure will be exempt from the payment of an impact fee. The permit applicant shall document such replacement.

d. An amendment to a development approval provided that the amended development approval does not increase the number of service units.

2. In applying for the above-mentioned exemptions, it shall be the applicant's responsibility to furnish, as required by the Impact Fees Administrator, all materials and information necessary to validate the exemption which may include the following:

a. Current survey of the property by a registered professional licensed surveyor;

b. Old and new construction plans;

c. Official certificate of occupancy;

d. Certified statements from owner stating past and proposed land use;

e. Utility bills or receipts; and

f. Property tax records.

### C. Exemption Based on Error or Misrepresentation

Exemptions from payment of an impact fee based on error or misrepresentation by the feepayer shall be subject to the provisions found in Section 8.D. of these Rules.

### D. Building Permit Applications Deemed Complete

Applications for building permits, which have been filed and deemed complete prior to July 1, 2005, shall not be subject to an impact fee. All other fees shall be applicable to the issuance of building permits.

## Section 10. CREDITS

### A. General Conditions

An applicant may obtain credit for up to 100% of an impact fee otherwise due or to become due by offering to dedicate land, contribute cash, and/or construct improvements for City CCIP projects. Applicants shall file an Impact Fee Credit Application, Exhibit C, with the Impact Fees Administrator. Any application for credit must be made and determined prior to the time of application for a building permit or issuance of a work order. Any claim not so made shall be deemed waived. Excess credits shall only be granted for the same category of system improvements and within the same service area for which the impact fee was imposed. The authority to determine credit lies exclusively with the Impact Fees Administrator. In every case impact fee credits shall be calculated so as to be consistent with Section 5-8-15 NMSA, 1978.

1. Credits may be granted subject to the following conditions:

   a. Impact fee credits will not be authorized until they are memorialized in a Development Agreement between the City and the Developer for Impact Fee Credits;

   b. Payments made or construction of system or off-site improvements between July 1, 2002 and July 1, 2005, provided the system or off-site improvements are on the City CCIP;

   c. Payments made or construction of system improvements after June 10, 2005, provided the system improvements are on the City CCIP;

   d. Credits shall only be granted for the value of system improvements listed on the City CCIP, including the value of any system studies;

   e. For CCIP roadway facility projects, dedicated ROW in excess of 86 feet (more than 43 feet dedicated on either side of the center line) is eligible for CCIP credit;

   f. Credits shall only become effective in the year the project appears on the City's CCIP;

   g. Credits shall be applied first to offset the impact fee otherwise due for the development project for which the credit was granted; and

   h. Upon approval of the impact fee credit application by the Impact Fees Administrator, the Impact Fees Administrator shall issue a certificate of credit to the applicant in the form attached as Exhibit J.

2. No credit shall be given for:

   a. Private improvements;

   b. Project improvements (as defined by the Development Fees Act and the Impact Fee Ordinances). For CCIP roadway facility projects, roadway construction in excess of the project improvements required by the city development process is eligible for impact fee credit. Lanes eligible for impact fee credit will be confirmed by the Impact Fees Administrator prior to the execution of the Development Agreement for Impact Fee Credit.

   c. System improvements (as defined by the Development Fees Act and the Impact Fee Ordinance) that are not accepted by the City; and

   d. Construction of improvements or conveyance of land for which consideration has previously been given by a governmental body.

**B. General Documentation and Procedures**

An offer to make a payment, construct capital improvements or dedicate land in lieu of paying the impact fee shall be made in an application filed with the Impact Fees Administrator identifying the

capital improvement and/or land dedication for which credits are requested. If the City of Albuquerque accepts such an offer, whether the acceptance is before or after the effective date of the appropriate Impact Fee Ordinance, the credit shall be determined and provided in the following manner:

1. **Amount of credit requested.** The applicant shall specify the dollar amount of the credit requested. The costs claimed by the applicant as the basis for the credit requested shall be no more than the actual costs or the fair market value as determined by the Impact Fees Administrator.

2. **Documentation.** It is the obligation of the applicant to submit written determination, to the satisfaction of the Impact Fees Administrator, that supports the amount of the credit requested and indicates the basis on which the amount requested was calculated.

3. **Submittals for construction credits.** Prior to site plan, preliminary plat or Work Order approval, the applicant shall enter into a Development Agreement for Credits, in the form attached as Exhibit F, with the City as a condition for the granting of the credits. The Development Agreement for Credits shall establish:

   a. The value of the credits;

   b. The method by which the credits shall be valued;

   c. A requirement that the improvement be completed to applicable City standards;

   d. A construction completion deadline for the improvements;

   e. Public liability insurance of at least $1,000,000 per occurrence for which the City is an additional insured; and

   f. A labor and material payment bond and a performance and warranty bond in favor of the City.

4. An applicant claiming credit for the construction of eligible system improvements and/or land dedication shall procure a City approved Work Order and provide the following information to the Impact Fees Administrator during development review or prior to application for the issuance of building permits:

   a. **Construction of system improvements.** The credit applicant shall submit a project description in sufficient detail with an engineer's cost estimate prepared by a professional engineer, to allow the Impact Fees Administrator to verify the cost estimates. The engineer's estimate shall include:

      i. Construction costs including NM gross receipts tax;

      ii. Design costs;

      iii. Land acquisition costs;

      iv. Testing, survey and inspection costs; and

      v. In no case shall the cost for design, engineering, testing, surveying, inspections, and overhead constitute more than 17% of the construction credit granted.

   b. **Land dedication.** A credit applicant requesting credit for land dedication for approved improvements, shall present the following, as applicable:

      i. An approved subdivision plat;

      ii. A warranty deed to convey title to the appropriate governmental body;

      iii. A title policy issued by a title insurance company in good standing and authorized to do business in New Mexico;

iv. A certified copy of the most recent assessment of the property for tax purposes;

v. A certified statement from the county treasurer certifying that all property taxes are current and paid;

vi. A property appraisal prepared by qualified professionals approved by the City. In preparing their reports, appraisers shall value the land prior to any increase in value resulting from the development approval; and

vii. Confirmation that the land to be dedicated is included in the City's CCIP.

5. **Change orders.** No increase in the amount of approved credit will be authorized unless it is determined during actual construction of the agreed-to improvements that change orders are to be made incurring additional expense for items that are necessary and are not shown on the approved plans and estimates previously furnished to the Impact Fees Administrator. It shall be the feepayer's responsibility to obtain prior approval from the Impact Fees Administrator before all such change orders are made. All requests for an increase of the approved credit shall include all documentation required by the Impact Fees Administrator.

6. **Acceptance of construction for credit.** Credit against the impact fee otherwise due will not be provided until:

a. The construction is completed and accepted by the City as shown by a certificate of completion and acceptance signed by the City Engineer;

b. As-built record drawings are submitted to the City and certified by a New Mexico registered engineer;

c. A suitable performance, maintenance or warranty bond or irrevocable letter of credit is submitted to and approved by the City Attorney; or

d. In the case of 6.f. below, upon completion of the agreed-to construction improvements and upon acceptance by the appropriate governmental authority pursuant to 6.a. above, the bond may be reduced to an amount and a time period as provided for by the City to cover a maintenance period for the improvements;

e. All design, construction, inspection, testing, bonding and acceptance procedures are in strict compliance with the then-current City ordinances and policies, as they may be applicable; and

f. Credit may be provided before completion of specified improvements if the feepayer posts a financial guaranty for the costs of such construction in the form of an irrevocable letter of credit to be posted with the City in an amount determined by the Impact Fees Administrator equal to 125% of the full cost of construction. In the event of cancellation of the financial guaranty, notice of intent to cancel or not to renew must be given to the Impact Fees Administrator no later than sixty (60) days prior to the renewal date. In such event of a notice to cancel or of intent not to renew, the Impact Fees Administrator shall be entitled to declare a default and collect the full amount of the financial guaranty. The financial guaranty shall be in the form attached as Exhibit G.

If the construction project will not be completed within two (2) years of the execution date of the Development Agreement for Impact Fee Credits, the amount of the financial guaranty shall be increased by 10% compounded for each year of the life of the financial guaranty. The financial guaranty shall be reviewed and approved by the City Attorney prior to acceptance of the financial guaranty by the City.

In the event that: (1) the City receives notification from the guarantor that the financial guaranty is being canceled before all agreed-to improvements have been completed and accepted by the appropriate governmental body; or (2) the City determines that terms of the agreement for construction as set forth in the financial guaranty are not being complied with, then the City shall, in accordance with the terms of the financial guaranty, make demand on the financial guaranty and collect the full amount of the financial guaranty to be used for completion of the agreed-to improvements and other expenses. If the cost incurred by the City to complete the improvements exceeds the amount received from the financial guaranty, the City shall have the right to sue in law or equity to recover the difference.

7. **Acceptance of land dedication for credit.** Credits for land dedication shall be granted when the following procedures have been completed and title to land has been delivered and accepted by the appropriate governmental body and recorded in the Bernalillo County Clerk's Office.

   a. The delivery to the Impact Fees Administrator of a deed, with sufficient funds to pay all costs of transfer of title, including the recording of a subdivision plat if required;

   b. The escrow or payment of taxes prorated to the date of closing; and

   c. The issuance of a title insurance policy subsequent to recording of the deed and escrow of taxes.

8. **Transferability of credits.** Impact fee credits may be transferable from one project or development to another if provided for in the Development Agreement for Impact Fee Credits with the City of Albuquerque.

9. **Withdrawal of offer by applicant.** Any person who offers land and/or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the execution of the Development Agreement and pay the full impact fee required by the appropriate Impact Fee Ordinance.

10. The value of credits granted for approved construction will be established by the Impact Fees Administrator and will be based on actual construction costs as defined and approved in the City's Work Order Close-Out Process. Should the developer request credits in advance of the actual construction of the improvements and post a financial guarantee to secure 125% of the estimated value of the credits, the Impact Fees Administrator will review the actual construction costs to ensure the value of the work meets or exceeds credits granted. The Agreement and Financial Guarantee will be released once the work has been accepted by the City and the value of credits has been confirmed by the Impact Fees Administrator. Should the value of the work established through the City's Work Order Close-Out Process exceed the value of the estimated credits granted, the developer may request an increase in credits granted for a project from the Impact Fees Administrator.

Should the value of the work established through the City's Work Order Close-Out Process be less than the value of the estimated credits granted, the Impact Fees Administrator shall, at his option, be able to directly draw from the financial guarantee for the difference in those amounts.

**C. Excess Credits**

1. If the value of the credits exceeds the amount of impact fee otherwise due, the applicant shall be entitled to excess credits and the Impact Fees Administrator shall issue a Certificate of Excess Credits in the form attached as Exhibit D to the applicant. The Certificate of Excess Credits shall state:

   a. Dollar amount of the excess credits;

   b. The system improvement category;

   c. Service area to which the excess credits may be applied;

   d. Name of the applicant as the original credit holder;

   e. Description of the Component Capital Improvement Plan Project for which the excess credits were granted; and

   f. The year(s) in which the excess credits may be applied.

   The Certificate of Excess Credits shall be dated, executed and notarized by the Impact Fees Administrator and the applicant.

2. Excess credits shall only be applied for the same category of system improvements and within the same service area for which the impact fee was imposed.

3. Excess credit and credits shall be freely assignable provided notice to Impact Fees Administrator is provided prior to the assignment. The Notice of Assignment of Credits to the Impact Fees Administrator shall be in the form attached as Exhibit H.

4. Excess credits shall not accrue interest.

5. The Impact Fees Administrator shall upon request of the excess credit-holder reimburse excess credits on a first in, first out basis. The Request for Reimbursement of Excess Credits shall be in the form attached as Exhibit I. The Impact Fees Administrator shall not be obligated to provide reimbursement in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.

6. Excess credits must be used or redeemed within seven (7) years of the effective date of the excess credits. Excess credits not used or redeemed within seven (7) years of the effective date shall expire.

## Section 11. WAIVERS AND REDUCTIONS

### A. Affordable Housing

### 1. Ownership Housing

a. Definition of affordable: On the first working day of each fiscal year, the Department of Family and Community Services, or its successor department, shall issue a determination of housing affordability based on the purchase price of a home. An affordable purchase price will be defined as what is affordable for a hypothetical household of four persons at 80% of Median Family Income (MFI), adjusted for family size as determined by the U.S. Department of Housing and Urban Development, if that household spends 30% of household income on housing costs and assumes a conventional mortgage at the Freddie Mac 30 year mortgage annual percentage rate published in the week prior to July 1.

b. Impact fees shall be waived completely on building permits for new housing units, that meet the definition of affordability, after the fee waiver, and are located in Metropolitan Redevelopment Areas, Planned Village Development Zones and Infill Development Zones.

c. In mixed income projects, 60% of the impact fees will be waived for affordable units that are located outside of the areas where impact fees are waived completely. In determining whether a development qualifies as a mixed-income project under R-04-159, the percentage of units that meet the definition of affordable, after the fee waiver, is at least 20% and not more than 50% of the total number of units in the development and also where at least 50% of the units have a sales price that is above the determination of housing affordability.

d. Finalization of impact fee waivers for affordable housing will be contingent upon an approved certification by the City of Albuquerque that documents the unit was purchased by an income qualified buyer at a price that does not exceed the determination of housing affordability and before closing can provide documentation that the loan is structured in such a way that the buyer is not making monthly payments greater than of their household income. Documentation of purchaser income will be completed by the mortgage lender on forms provided by the City and approved by the Department of Family and Community Services.

e. A deed restriction, or another mechanism for the amount of the waived impact fee, will be placed on the property when the developer can provide an executed purchase agreement for a house price that falls within what has been defined as affordable. Before closing on the property, the mortgage lender will provide documentation to the Department of Family and Community Services that the buyer is at or below 80% of MFI and is not paying more than 30% of their household income on the first mortgage. Once the City has reviewed and approved this documentation, the deed restriction or other mechanism will be released five years (5) after the closing date. If the buyer cannot be shown to meet the income guidelines defining affordability, the developer will be responsible for paying the impact fees to the City in order to release the deed restriction or other mechanism.

2. **Rental Housing**

a. Definition of affordable: On the first working day of each fiscal year, the Department of Family and Community Services or its successor department shall issue a determination of affordability for rental housing calculated on the monthly rental costs for a housing unit occupied by a household at 60% and 80% of MFI adjusted for family size, as determined by the U.S. Department of Housing and Urban Development, paying 30% of monthly income on housing costs. In making this calculation, household size shall be converted to number of bedrooms per rental unit as follows:

| *Household Size* | *Bedrooms* |
|---|---|
| 1 & 2 Persons | 1 |
| 3 Persons | 2 |
| 4 Persons | 3 |
| 5 Persons | 4 |

b. Impact fees will be waived for rental housing only for those projects developed under an agreement with an agent of local, state, or federal government which requires that a specified number of units be available at affordable rents only to households at or below 60% of MFI for a period of no less than fifteen (15) years. The agreement must specify the income test used to identify renters that qualify for affordable units.

c. Impact fees for mixed income projects in adopted centers and corridors shall be waived completely proportionate to the percentage of units affordable to households at or below 60% of MFI adjusted for household size. For mixed income projects not located in adopted centers and corridors, 60% of impact fees will be waived proportionate to the percentage of units affordable to households at or below 60% of MFI adjusted for household size. To qualify for a waiver of impact fees for a mixed income project, the affordable units (at 60% MFI) must be at least 20% and not more than 40% of all units in the project. In addition, the agreement must specify that at least 30% of the units will be at rents at or above the determination of affordability for households at 80% MFI adjusted for family size.

d. For rental projects that are not part of a mixed-income project, as defined in R-040-159, impact fees will be waived in proportion to the percentage of affordable units that will be reserved for households at or below 30% of MFI adjusted for family size.

## B. FAA Jurisdiction

Any development under the jurisdiction of the Federal Aviation Administration Grant Assurances shall not be subject to an impact fee.

**C. Jobs - Housing Balance**

For every new building developed for the following uses, the Roadway Facilities Impact Fee will be reduced in the SW Mesa, W Mesa and the NW Mesa service areas as follows:

| | |
|---|---|
| Industrial or Manufacturing | 70% reduction |
| Institutional | 60% reduction |
| Office | 50% reduction |
| Lodging, Retail, or Quality Restaurant* | 30% reduction |

*A quality restaurant is a high quality, full-service eating establishment with turnover rates usually of at least one hour or longer. Quality restaurants generally do not serve breakfast; some do not serve lunch; all serve dinner. This type of restaurant usually requires reservations and is generally not part of a chain.

**D. Development in Metropolitan Redevelopment Areas**

Nonresidential development within Metropolitan Redevelopment Areas (MRA) that conforms to the MRA and any sector development or area plan applicable within the MRA shall no be subject to impact fees.

**E. Economic Development**

Development that has received City Council approval for or subject to Industrial Revenue bonds, Metropolitan Redevelopment Bonds, or the local Economic Development Act (Section 5-10-1 *et seq.* NMSA, 1978), where an economic impact analysis has been conducted that indicates a positive economic impact on the City shall not be subject to an impact fee.

## Section 12. AMENDMENTS

All additions or changes to these Administrative Rules shall be subject to review and approval pursuant to the Development Process Manual process as agenda items during the regular meetings of the Development Process Manual Executive Committee. Copies of these Administrative Rules as revised and approved by the Mayor shall be made available to all City Staff who administer impact fees and shall be made available to members of the general public, upon request, at designated locations in the City of Albuquerque.

## EXHIBIT A

CITY OF ALBUQUERQUE

[RESERVED]

# *EXHIBIT B*
# *IMPACT FEE CALCULATION FORM*

CITY OF ALBUQUERQUE

***SECTION 1:***

_____/_____
Property Owner/Applicant Contractor

_____/_____/_____
Building Permit Number Permit Type lot size (Acres)

_____/_____
Legal Description Job Address

The impact fee calculated herein has been determined based on the fee schedule adopted in Roadway Facilities Impact Fees Ordinance, Drainage Facilities Impact Fees Ordinance, Park, Recreation, Trails and Open Space Facilities Ordinance and the Public Safety Facilities Impact Fee Ordinance. This form is authorized only for those building projects expressly identified above. Changes or modifications to the building referred to above or amendments to the impact fee schedule contained in City of Albuquerque Development Impact Fee Ordinance shall render this calculation form null and void.

**ANY CLAIM FOR CREDIT OR EXEMPTION MUST BE MADE NO LATER THAN THE TIME OF APPLICATION FOR A BUILDING PERMIT OR PERMIT FOR MOBILE HOME INSTALLATION. ANY CLAIM NOT SO MADE SHALL BE DEEMED WAIVED.**

**PARKS, RECREATION, TRAILS AND OPEN SPACE FACILITIES IMPACT FEE**

Residential Only
Service Area (See Exhibit E): _____
Impact Fee / Service Unit (See Exhibit E): _____
Service Unit (SU) = 1000 SF of heated area
Square feet of residential heated area=_____
Number of Service Units (SUs) = Heated area SF / 1000 SF = _____
Park and Recreation Impact Fee = Number of SUs * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

**PUBLIC SAFETY FACILITIES IMPACT FEE**

Residential
Service Area (See Exhibit E): _____
Impact Fee / Service Unit (See Exhibit E): _____
Service Unit = 1000 SF heated area
Square feet of heated area:_____
Number Service Units (SUs) = Square feet of heated area / 1000 SF =_____
Public Safety Impact Fee = Number of SUs * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

Non-Residential (Retail/Office/Industrial/Institutional)
Land Use: _____
Service Area (See Exhibit E): _____
Impact Fee / Service Unit (See Exhibit E): _____
Service Unit (SU) = 1000 SF gross floor area
Square feet of Gross Area: _____
Number Service Units (SUs) = Square feet gross floor area / 1000 SF =_____
Public Safety Impact Fee = Number of SU's * Impact Fee / SU = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total of Impact Credits = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

**ROADWAY FACILITIES IMPACT FEE**

Recreation (Racquet Club/Health Club/Spa/Dance Studio), Institutional (Hospital/Church), Office, Retail, Industry
Land Use: _____
Service Area (See Attachment E): _____
Impact Fee / Service Unit (See Attachment E) = _____
Service Unit (SU) (See Attachment E) = 1000 SF gross floor area
Square feet of gross floor area=_____
Number Service Units (SUs) = Gross floor area SF / 1000 SF = _____
Roadway Facilities Impact Fee = Number of SU * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

Residential
Land Use: _____
Service Area (See Attachment E): _____
Impact Fee / Service Unit (See Attachment E) = _____
Service Unit (SU) (See Attachment E) = Dwelling Unit
Number of Dwelling Units (DUs) = _____
Roadway Facilities Impact Fee = Number of DUs * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

Lodging (Hotel/Motel/RV Park)
Land Use: _____
Service Area (See Attachment E): _____
Impact Fee / Service Unit (See Attachment E) = _____
Service Unit (SU) (See Attachment E) = Room/RV
Number of Rooms/RV Spaces = _____
Roadway Facilities Impact Fee = Number of Rooms/RV Spaces * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

Recreation (Golf Course/General Recreation/Movie Theaters w/Matinee)
Land Use: _____
Service Area (See Attachment E): _____
Impact Fee / Service Unit (See Attachment E) = _____
Service Unit (SU) (See Attachment E) = Hole/Acre/Screen
Number of Holes/Acres/Screens = _____
Roadway Facilities Impact Fee = Number of Holes/Acres/Screens * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

Institutional (Nursing Home/Elementary School/High School/Junior/Community College/University/Cemetery)
Land Use: _____
Service Area (See Attachment E): _____
Impact Fee / Service Unit (See Attachment E) = _____
Service Unit (SU) (See Attachment E) = Bed/Student/Acre
Number of Beds/Students/Acres = _____
Roadway Facilities Impact Fee = Number of Beds/Students/Acres * Impact Fee / SU = $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

**DRAINAGE FACILITIES IMPACT FEE**

All Land Uses
Service Area (See Exhibit E): _____
Impact Fee / Service Unit (See Exhibit E) = _____
Service Unit (SU) (See Exhibit E) = One Impervious Acre
Impervious Acre = The product of the weighted "C" value (Table A-11, Chapter 22.2 of the DPM) and the total area in acres

**SERVICE UNITS (SUs) = THE SUM OF (CA*AA + CB*AB + CC*AC + CD*AD)**

| **TABLE A-11. RATIONAL METHOD,C** | | | | | ACRES/LAND TREATMENT | NUMBER SERVICE UNITS |
|---|---|---|---|---|---|---|
| TREATMENT | PRECIPITATION ZONE | | | | | |
| | 1 | 2 | 3 | 4 | | |
| CA | 0.27 | 0.31 | 0.35 | 0.39 | Times (*) (____AA) = | ____SU'S |
| CB | 0.43 | 0.45 | 0.48 | 0.52 | Times (*) (____AB) = | ____SU'S |
| CC | 0.61 | 0.62 | 0.64 | 0.66 | Times (*) (____AC) = | ____SU'S |
| CD | 0.93 | 0.93 | 0.93 | 0.94 | Times (*) (____AD) = | ____SU'S |
| Number of Service Units | | | | | | ____SU'S |

Drainage Facilities Impact Fee = Number of SUs * Impact Fee= $_____

Impact fee on the effective date (6/10/05) = 34% * Impact Fee = $_____
Impact fee six months after the effective date (12/10/05) = 67% * Impact Fee = $_____
Impact fee eighteen months after the effective date (12/10/06) = 100% = $_____

Credits (Attach copy of approved Impact Fee Credit Application) = $_____
Total Impact Credits = $_____

| TOTAL IMPACT FEE DUE | $_____ |
|---|---|

Applicant/Property Owner:

_____/_____/_____

Name (Print) Signature Date

Approved

_____/_____/_____

Impact Fees Administrator Signature Date

# *EXHIBIT C*
# *IMPACT FEE CREDIT APPLICATION*

CITY OF ALBUQUERQUE

**CREDIT REQUEST**

The City of Albuquerque Development Impact Fee Ordinance provides for a cash payment, the conveyance of property or the construction of facilities in lieu of impact fee payments for development projects within the City. Accordingly, request is made hereby to review the following information to determine the applicable credit, if any.

Type of Credit Requested:

| | |
|---|---|
| Park, Recreation, Trails and Open Space Facilities | ____ |
| Public Safety Facilities | ____ |
| Roadway Facilities | ____ |
| Drainage Facilities | ____ |

_____
Name of Applicant

_____
Address

_____/_____/_____/_____
City State Zip Telephone

_____
Development Project and Legal Description

_____ _____
Development Number (Preliminary Plat) or (Site Plan) Approval Date

Park, Recreation, Trails and Open Space Facilities
Service Area: _____ CCIP Project: _____
Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Public Safety Facilities
Service Area: _____ CCIP Project: _____
Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Roadway Facilities
Service Area: _____ CCIP Project: _____
Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Drainage Facilities
Service Area: _____ CCIP Project: _____
Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

This application must be accompanied with the following information:
1. Engineer's Estimate
2. Conveyance of all necessary property interests free and clear of all liens, claims and encumbrances
3. Title opinion
4. Tax assessment
5. Tax Certification
6. Property appraisal

Applicant:

_____/_____/_____
Name Signature Date

**AMOUNT OF CREDITS APPROVED BY THE IMPACT FEES ADMINISTRATOR**

Park, Recreation, Trails and Open Space Facilities
Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Public Safety Facilities
Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Roadway Facilities

Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Drainage Facilities

Cash: _____ Amount: _____
Real Property: _____ Amount: _____
Construction: _____ Amount: _____
Total: _____ Amount: _____

Amount of credits approved Amount: _____

Impact Fees Administrator:

_____/_____/_____

Name Signature Date

# EXHIBIT D
# CERTIFICATE OF EXCESS CREDITS

CITY OF ALBUQUERQUE

_____
Name (Credit Holder)

_____
Address

_____/_____/_____/_____
City State Zip Telephone

**Park, Recreation, Trails and Open Space Facilities**

_____/_____/_____/_____/_____
Account Number Service Area CCIP Project Category of Improvements Amount

_____
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)_____

**Public Safety Facilities**

_____/_____/_____/_____/_____
Account Number Service Area CCIP Project Category of Improvements Amount

_____
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)_____

**Roadway Facilities**

_____/_____/_____/_____/_____
Account Number Service Area CCIP Project Category of Improvements Amount

_____
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)_____

**Drainage Facilities**

_____/_____/_____/_____/_____

Account Number Service Area CCIP Project Category of Improvements Amount

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)_____

| |
|---|
| Approved<br><br>_____/_____/_____<br>Credit Holder Signature Date |

| |
|---|
| Approved<br><br>_____/_____/_____<br>Impact Fees Administrator Signature Date |

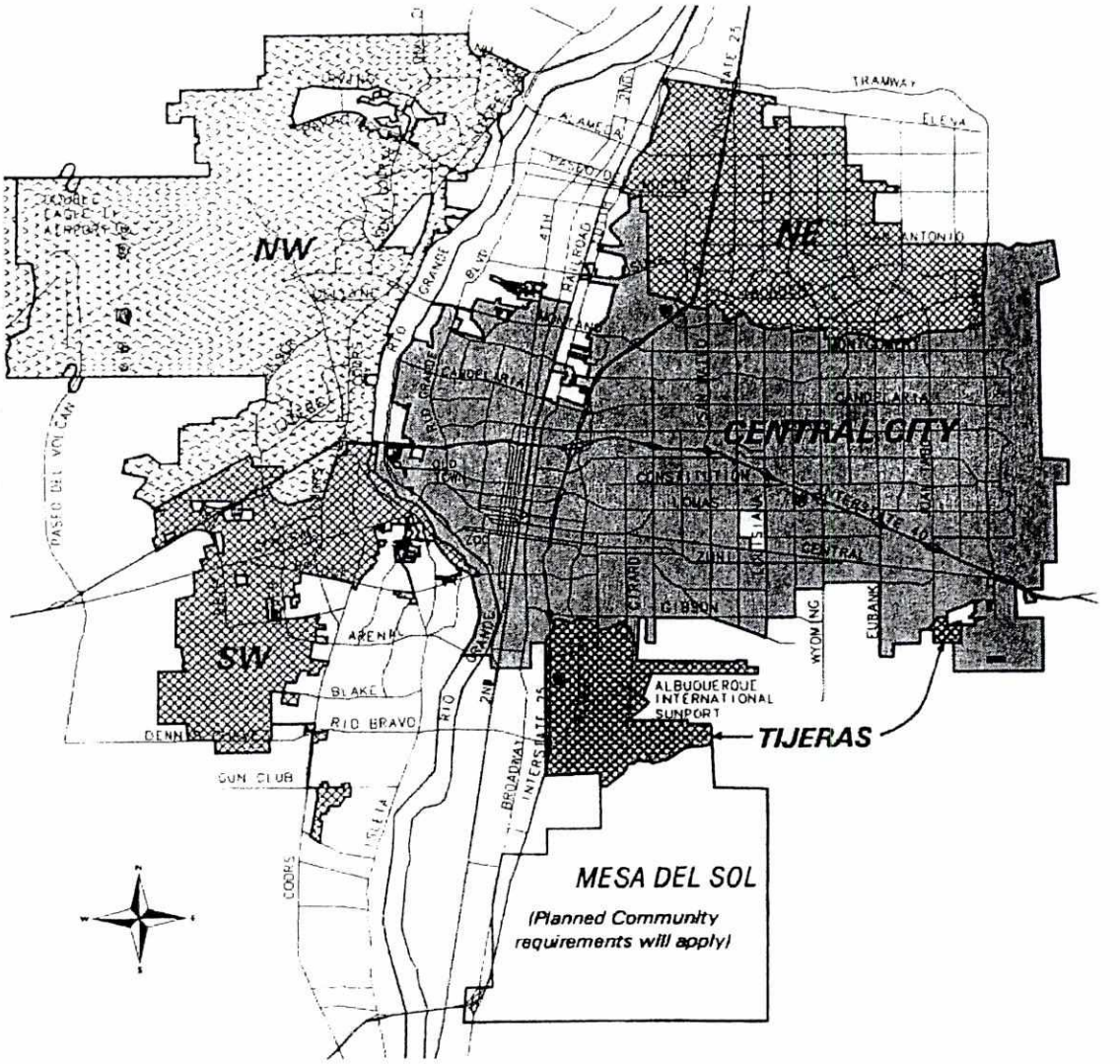
Notes:

1. These excess credits shall expire if not used or redeemed within seven (7) years of the approval date of this certificate.
2. These excess credits shall be freely assignable provided the credit holder provides prior written notice to the City. Failure to provide prior written notice to the City shall result in forfeiture of the excess credits.
3. Excess credits shall only be applied to offset impact fees for the same category of improvement and for projects within the same service area for which the credit was granted.
4. Application for reimbursement of excess credits must be made at least ninety (90) days prior to expiration of the excess credits. Failure to apply for reimbursement within ninety (90) days prior to expiration shall constitute a waiver of the credit holder's right to reimbursement.

# *EXHIBIT E*
# *SERVICE AREA MAPS AND IMPACT FEE SCHEDULES*

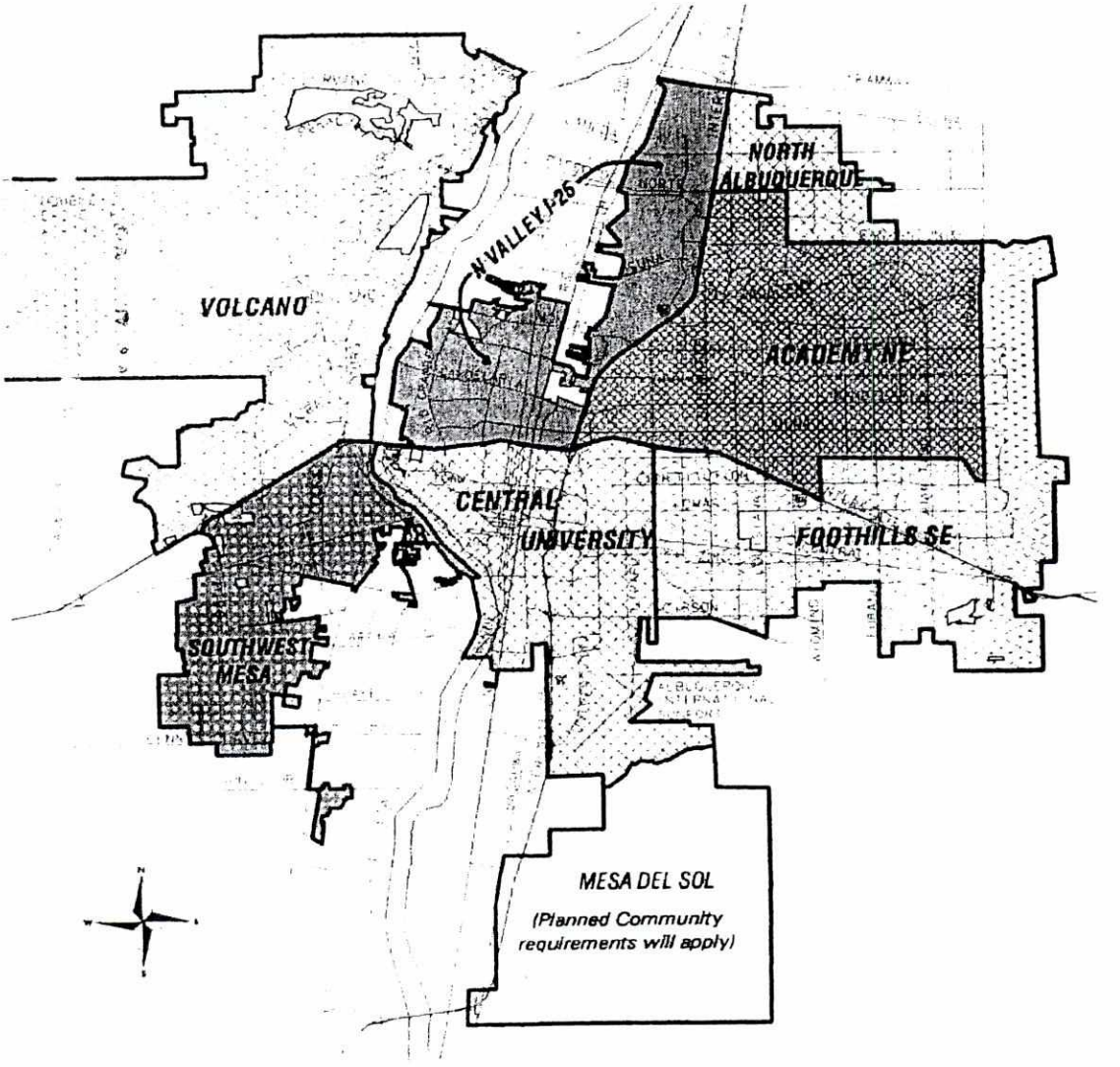
CITY OF ALBUQUERQUE

***Drainage Facilities Service Areas***



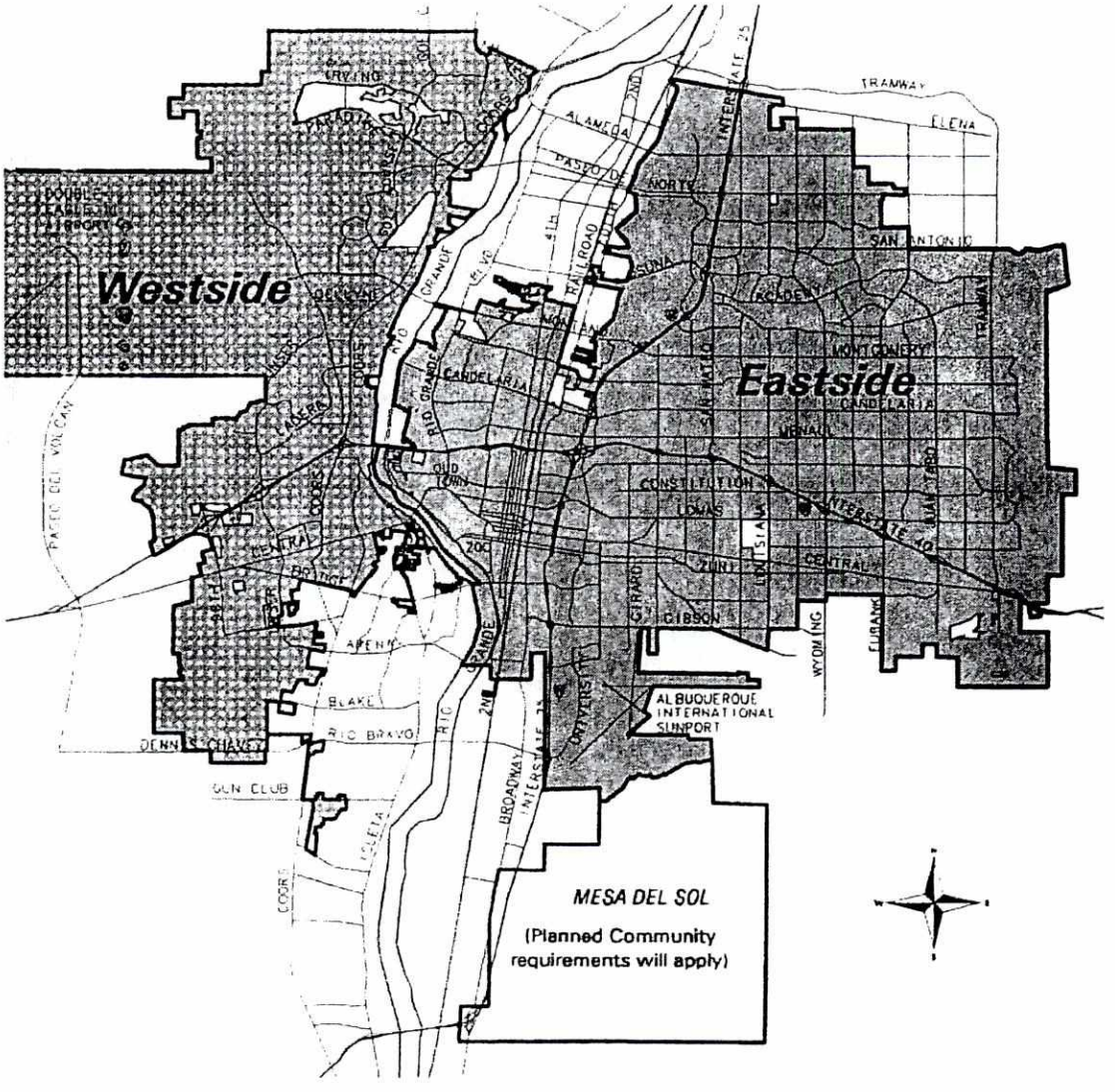
| *DRAINAGE FACILITIES IMPACT FEE COST SCHEDULE* | | | | | | |
|---|---|---|---|---|---|---|
| | | Service Area | | | | |
| Land Use | Unit | Central City | Far NE | Tijeras | SW Mesa | NW Mesa |
| All Land Uses | One impervious acre, as defined in the City of Albuquerque's Development Process Manual | $0 | $10,208 | $13,290 | $12,836 | $14,052 |

***Park, Recreation, Trails and Open Space Facilities***



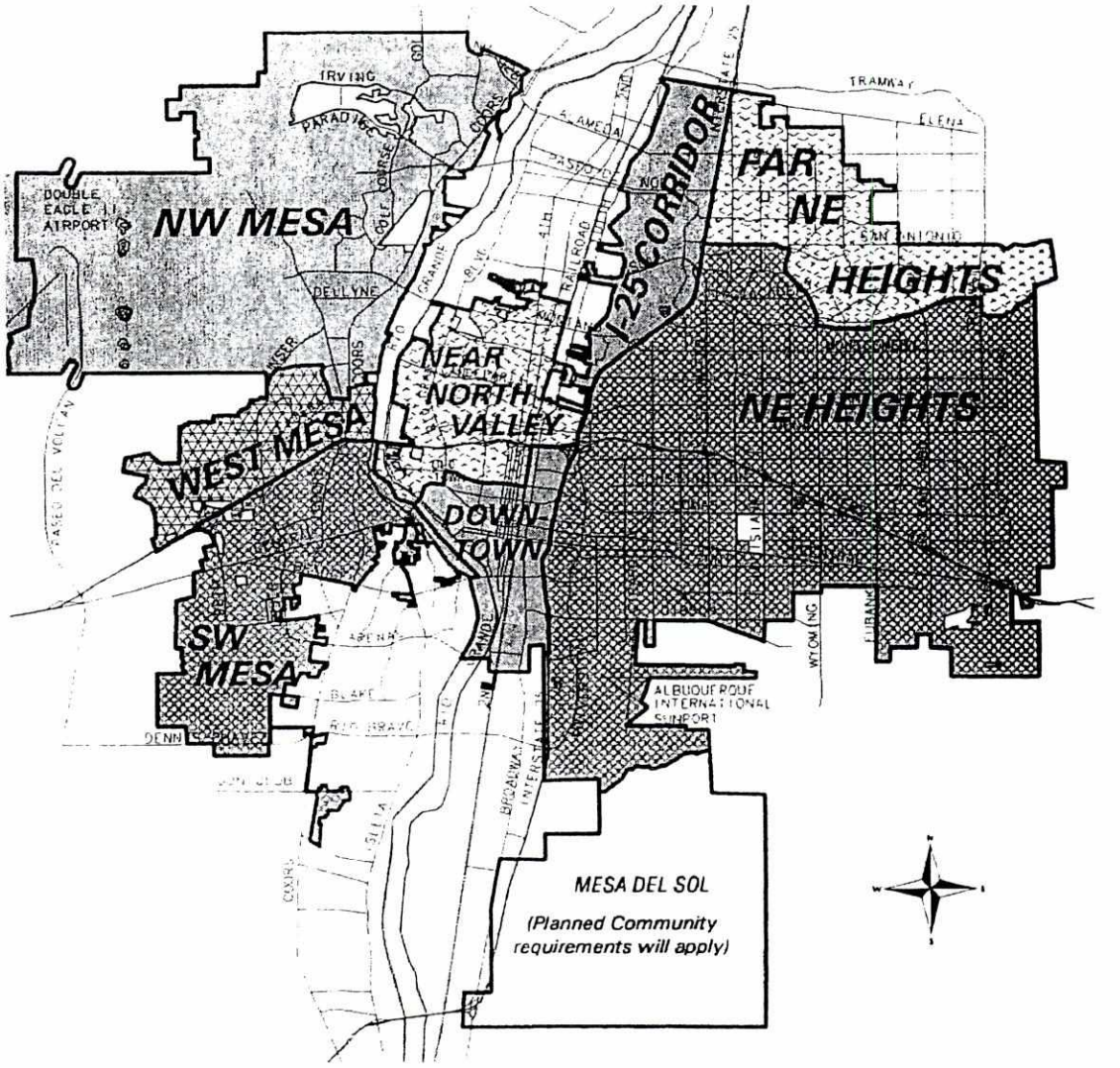
| *PARK, RECREATION, TRAILS, AND OPEN SPACE FACILITIES IMPACT FEE COST SCHEDULE* | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | Service Area | | | | | | |
| Land Use | Unit | North Valley/ I-25 | Foothills/SE | Academy/ NE | North Albuquerque | Central/ University | SW Mesa | NW Mesa/Volcano |
| Residential | 1,000 square feet | $1,630 | $520 | $1,220 | $1,550 | $390 | $1,610 | $1,210 |

*Public Safety Facilities Service Areas*



| *PUBLIC SAFETY IMPACT FEE COST SCHEDULE* | | | |
|---|---|---|---|
| | | Service Area | |
| Land Use | Unit | East Side | West Side |
| Residential | 1,000 square feet (sf) | $276 | $207 |
| Retail | 1,000 sf | $455 | $341 |
| Office | 1,000 sf | $100 | $75 |
| Industrial | 1,000 sf | $111 | $83 |
| Institutional | 1,000 sf | $108 | $81 |

*Roadway Facilities Service Areas*



| *ROADWAY FACILITIES IMPACT FEE COST SCHEDULE* | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Service Area | | | | | | | |
| Land Use | Unit | Near N. Valley | I-25 | Far NE Heights | NE Heights | Down-town | SW Mesa | NW Mesa | W Mesa |
| RESIDENTIAL | | | | | | | | | |
| Single Family Detached /Mobile Home Indv Lot | | | | | | | | | |
| Less than 1,500 square feet (sf) | Dwelling Unit (du) | $0 | $2,113 | $1,069 | $0 | $0 | $2,702 | $2,447 | $2,918 |
| 1,500 sf to 2,499 sf | du | $0 | $3,160 | $1,585 | $0 | $0 | $4,046 | $3,662 | $4,372 |
| 2,500 sf or Larger | du | $0 | $3,521 | $1,754 | $0 | $0 | $4,516 | $4,085 | $4,881 |
| Multi-Family | du | $0 | $1,276 | $512 | $0 | $0 | $1,706 | $1,520 | $1,864 |
| Condominium/ Townhouse | du | $0 | $885 | $218 | $0 | $0 | $1,260 | $1,098 | $1,398 |
| Mobile Home Park | du | $0 | $1,344 | $765 | $0 | $0 | $1,671 | $1,529 | $1,790 |
| Retirement Home | du | $0 | $335 | $74 | $0 | $0 | $481 | $418 | $535 |
| Congregate Care Facility | du | $0 | $193 | $67 | $0 | $0 | $264 | $234 | $290 |
| LODGING | | | | | | | | | |
| Hotel | Room | $0 | $869 | $0 | $0 | $0 | $1,371 | $1,153 | $1,555 |
| Motel | Room | $0 | $837 | $336 | $0 | $0 | $1,119 | $996 | $1,222 |
| RV Park | RV Space | $0 | $1,025 | $441 | $0 | $0 | $1,354 | $1,211 | $1,475 |
| RECREATION | | | | | | | | | |
| Golf Course | Hole | $0 | $8,206 | $3,513 | $0 | $0 | $10,848 | $9,703 | $11,818 |
| General Recreation (City Park) | Acre | $0 | $374 | $162 | $0 | $0 | $493 | $442 | $537 |
| Movie Theaters w/Matinee | Screen | $0 | $9,422 | $4,644 | $0 | $0 | $12,112 | $10,947 | $13,100 |
| Racquet Club/Health Club/Spa/Dance Studio | 1,000 sf | $0 | $10,440 | $6,231 | $0 | $0 | $12,810 | $11,783 | $13,680 |
| Community Center | 1,000 sf | $0 | $5,818 | $2,769 | $0 | $0 | $7,535 | $6,791 | $8,165 |
| INSTITUTIONAL | | | | | | | | | |
| Hospital | 1,000 sf | $0 | $2,902 | $954 | $0 | $0 | $3,998 | $3,523 | $4,401 |
| Nursing Home | Bed | $0 | $358 | $200 | $0 | $0 | $447 | $409 | $480 |
| Elementary School | Student | $265 | $618 | $502 | $0 | $0 | $683 | $655 | $707 |
| Middle School | Student | $252 | $814 | $630 | $0 | $0 | $919 | $873 | $957 |

| *ROADWAY FACILITIES IMPACT FEE COST SCHEDULE (Cont'd)* | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Service Area | | | | | | | |
| Land Use | Unit | Near N. Valley | I-25 | Far NE Heights | NE Heights | Down-town | SW Mesa | NW Mesa | W Mesa |
| INSTITUTIONAL (Cont'd) | | | | | | | | | |
| High School | Student | $141 | $752 | $551 | $0 | $0 | $865 | $816 | $906 |
| Junior/Community College | Student | $0 | $329 | $146 | $0 | $0 | $432 | $387 | $470 |
| University | Student | $0 | $661 | $299 | $0 | $0 | $865 | $777 | $940 |
| Church | 1,000 sf | $318 | $3,134 | $2,208 | $0 | $0 | $3,656 | $3,430 | $3,848 |
| Cemetery | Acre | $521 | $3,208 | $2,324 | $0 | $0 | $3,706 | $3,490 | $3,889 |
| OFFICE | | | | | | | | | |
| Under 50,000 sf | 1,000 sf | $0 | $4,412 | $2,076 | $0 | $0 | $5,727 | $5,157 | $6,210 |
| 50,000 - 100,000 sf | 1,000 sf | $0 | $3,427 | $1,612 | $0 | $0 | $4,449 | $4,006 | $4,823 |
| 100,001 - 200,000 sf | 1,000 sf | $0 | $2,922 | $1,375 | $0 | $0 | $3,793 | $3,416 | $4,113 |
| 200,001 - 400,000 sf | 1,000 sf | $0 | $2,491 | $1,172 | $0 | $0 | $3,234 | $2,912 | $3,507 |
| Greater than 400,000 sf | 1,000 sf | $0 | $2,124 | $999 | $0 | $0 | $2,757 | $2,483 | $2,990 |
| Business Park | 1,000 sf | $0 | $2,895 | $1,277 | $0 | $0 | $3,806 | $3,411 | $4,140 |
| RETAIL | | | | | | | | | |
| Under 100,000 sf | 1,000 sf | $0 | $2,760 | $200 | $0 | $0 | $4,201 | $3,577 | $4,730 |
| 100,000 - 400,000 sf | 1,000 sf | $0 | $2,894 | $662 | $0 | $0 | $4,151 | $3,607 | $4,613 |
| 400,001 to 800,000 sf | 1,000 sf | $0 | $2,920 | $792 | $0 | $0 | $4,118 | $3,599 | $4,558 |
| Greater than 800,000 sf | 1,000 sf | $0 | $2,932 | $875 | $0 | $0 | $4,090 | $3,588 | $4,515 |
| Quality Restaurant | 1,000 sf | $0 | $9,458 | $3,448 | $0 | $1 | $12,843 | $11,376 | $14,085 |
| Fast Food Rest. w/Drive-Thru | 1,000 sf | $0 | $25,755 | $5,594 | $0 | $2 | $37,107 | $32,188 | $41,273 |
| Auto Repair or Body Shop | 1,000 sf | $0 | $4,920 | $2,224 | $0 | $0 | $6,438 | $5,780 | $6,995 |
| New/Used Auto Sales | 1,000 sf | $0 | $3,758 | $444 | $0 | $0 | $5,624 | $4,815 | $6,309 |
| Supermarket | 1,000 sf | $0 | $4,580 | $2,135 | $0 | $0 | $5,957 | $5,360 | $6,462 |
| Convenience Store with Gas Pumps | 1,000 sf | $0 | $6,461 | $0 | $0 | $1 | $13,359 | $10,370 | $15,891 |
| Home Improvement Superstore | 1,000 sf | $0 | $5,031 | $2,170 | $0 | $0 | $6,642 | $5,944 | $7,233 |
| Pharmacy/Drug Store w/Drive-Thru | 1,000 sf | $0 | $2,885 | $1,082 | $0 | $0 | $3,901 | $3,461 | $4,273 |
| Furniture Store | 1,000 sf | $0 | $849 | $411 | $0 | $0 | $1,096 | $989 | $1,186 |

| *ROADWAY FACILITIES IMPACT FEE COST SCHEDULE (Cont'd)* | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | Service Area | | | | | | | |
| Land Use | Unit | Near N. Valley | I-25 | Far NE Heights | NE Heights | Down-town | SW Mesa | NW Mesa | W Mesa |
| INDUSTRY | | | | | | | | | |
| General Light Industrial/Utilities | 1,000 sf | $395 | $3,065 | $2,187 | $0 | $0 | $3,559 | $3,345 | $3,741 |
| General Heavy Industrial | 1,000 sf | $1,879 | $2,453 | $2,264 | $1,045 | $0 | $2,560 | $2,514 | $2,599 |
| Industrial Park | 1,000 sf | $0 | $2,185 | $1,308 | $0 | $0 | $2,679 | $2,465 | $2,860 |
| Manufacturing | 1,000 sf | $850 | $2,313 | $1,832 | $0 | $0 | $2,584 | $2,467 | $2,684 |
| Warehouse | 1,000 sf | $0 | $1,546 | $921 | $0 | $0 | $1,897 | $1,745 | $2,027 |
| Mini-Warehouse | 1,000 sf | $0 | $709 | $394 | $0 | $0 | $886 | $810 | $952 |

# EXHIBIT F
# DEVELOPMENT AGREEMENT FOR IMPACT FEE CREDITS

CITY OF ALBUQUERQUE

THIS AGREEMENT is made this ___ day of _____, 20 _____, by and between the City of Albuquerque, New Mexico ("City"), whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103, and _____ ("Developer"), a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] _____, whose address is _____ _____ and whose telephone number is _____ , in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

1. Recital. The Developer is developing certain lands within the City of Albuquerque, Bernalillo County, New Mexico, known as [describe:] _____ _____ recorded on the _____day of_____, 20 __ in the records of Bernalillo County at Book Misc. _____, pages _____ through _____ ("Developer's Property"). The Developer certifies that the Developer's Property is owned by [state the name of the present real property owner exactly as shown on the real estate document conveying title in Developer's Property to the present owner: _____ _____ ("Owner").

2. The City enacted a _____ Impact Fee Ordinance (_____) under which the Owner may receive credits for construction of the Improvements against the impact fee otherwise due:

3. Developer proposes to install public infrastructure Improvements identified on the City's Component Capital Improvements Plan ("CCIP") upon City property which abuts or is near or on Developer's Property, for the benefit of the City. The City requires, and the Developer is willing to provide certain assurances as a prerequisite to the City's granting credits to the Developer to construct the improvements, pursuant to the City's Impact Fee Ordinance _____.

THEREFORE, the City and Developer agree:

4. Deadline and Improvements. The Developer agrees to install and complete the following public infrastructure improvements, identified as Project No._____, to the satisfaction of the City, on or before the ___ day of _____, 20__ ("Construction Completion Deadline"), at no cost to the City: _____ _____ _____ _____ _____("Improvements").

5. Credits. The City agrees to grant impact fee credits for the construction of the Improvements and/or dedication of land provided Developer complies with the terms of this Agreement. Impact fee credits shall be granted pursuant to the following terms and conditions:

A. Credits shall only be granted for the value of the construction of the Improvements and the value of the dedication of the land;

B. The value of the dedication of the land shall be based on the fair market value of the property prior to any increase in value resulting from subdivision or development approval and shall be demonstrated by an appraisal prepared by an appraiser acceptable to the City;

C. The value of the construction of the Improvements shall at the option of the Owner be based on:

a. The fair market value of the completed Improvements at the time of acceptance by the City demonstrated by an appraisal prepared by an appraiser acceptable to the City; or

b. The actual design and construction cost of the completed Improvements, including testing, surveying, construction management and inspection demonstrated by documentation acceptable to the City; and

c. The Parties agree that the estimated value of the credits will be $_____ based on the actual design and construction cost of the Improvements and the value of the dedication of the land.

D. Credits shall first be applied against _____ impact fee imposed on _____ City Project No. _____.

E. Construction of the Improvements shall be completed and accepted by the City within two (2) years of the effective date of this Agreement. Failure to complete construction and procure acceptance within two (2) years may result in the withholding of credits.

F. If the value of the credits exceeds the amount of _____ impact fee otherwise due, the excess credits shall become the property of the Owner subject to the following conditions of disposition:

a. Excess credits shall only be applied to offset the impact fee for the same category of improvement and for projects within the same service area for which the credit was granted;

b. Excess credits shall not be used to offset the impact fee for other categories of improvements other than _____ improvements;

c. Excess credits shall be freely assignable by the Owner subject to prior written notice to the City. Failure to provide prior written notice to the City may result in forfeiture of the excess credits;

d. The Owner may request reimbursement of excess credits from the City, however, the City shall not be obligated to reimburse excess credits to the Owner;

e. Excess credits shall not accrue interest and shall not be considered public money or constitute a liability of the City for any purpose whatsoever; and

f. Excess credits shall expire if not used or redeemed (reimbursed) within seven (7) years after issuance.

G. The credits shall be granted and become effective on the date of acceptance of the Improvements by the City. Acceptance shall be contingent on Developer submitting the following documentation, if applicable, in form and content acceptable to the City:

a. General warranty deed or dedication by plat;

b. Title insurance policy;

c. Property tax assessment;

d. County treasurer certification; and

e. Performance and warranty bond.

H. Any dispute arising from the determination of impact fee credits under this Agreement shall be appealed to the City's Impact Fees Administrator.

6. Work Order Requirements. The City agrees to issue a Work Order for the construction of the Improvements after:

A. The Developer submits all documents and meets all requirements listed in Development Process Manual, Volume 1, Chapter 5, Work Order Process, and Figure 1, including submitting a Certificate of Insurance in a form acceptable to the City. The certificate must establish that the Developer has procured or has caused to be procured public liability insurance in the amount of not less than One Million Dollars ($1,000,000) combined single limit for accidents or occurrences which are related to the activities covered by this Agreement which cause bodily injury, death or property damage to any member of the public as a result of any condition of the Developer's Property; the Improvements; or the Developer's construction activities on Developer's Property or the City's property. The insurance policy must name the City of Albuquerque, its employees and elected officials, as their interest may appear, as additional insureds. The Developer must maintain the insurance until the City accepts the Improvements. The cancellation provision must provide that, if the policy is either canceled prior to the expiration date of the policy or is materially changed or not renewed, the issuing company will mail thirty (30) days written notice to the City, attention City Engineer.

B. The Developer complies with all applicable laws, ordinances and regulations, including, but not limited to the City Excavation Ordinance and Sidewalk Ordinance, and pays the following required engineering, staking, testing fees, price adjustment for asphalt and concrete paving, if applicable, and other related City fees and County Clerk recording fees:

| *Type of Fee* | *Amount* |
|---|---|
| Engineering Fee | 3.25% |
| Excavation and Sidewalk | As required per City-approved estimate |
| Ordinance, Street Restorations Fees | (Figure 7) |

(Note: The Developer must pay the City fees which have been incurred during construction before the City will accept the public improvements.)

7. Financial Guaranty. The City may grant credits for the Improvements prior to acceptance of the Improvements if the Developer provides the City with a financial guaranty ensuring completion in the form of an irrevocable letter of credit in the amount equal to 125% of the estimated cost of completing the Improvements including land acquisition costs, and design and construction costs. The City must be able to make demand on the letter of credit at any time within sixty (60) days immediately following the Construction Completion Deadline.

The Developer has requested credits prior to completion of the Improvements and has acquired or is able to acquire the following financial guaranty (attached hereto).

Type of Financial Guaranty: _____.
Amount: $_____. Name of financial institution or surety providing Guaranty: _____.
Date City first able to call Guaranty: _____, 200_.
Construction Completion Deadline: _____, 200_.
If Guaranty other than a bond, last day City able to call Guaranty is: _____, 200_.
Additional information: _____
_____.

8. Surveying, Inspection and Testing. The Improvements shall be inspected, surveyed and tested in accordance with all applicable laws, ordinances, and regulations, and according to the following terms:

A. Construction Surveying. Construction surveying for the construction of the Improvements shall be performed by _____. If the construction surveying is performed by an entity other than the City, the City may monitor the construction surveying and the Developer shall ensure that the construction surveying entity provides all construction surveying field notes, plats, reports and related data to the City which the City requires for review. The Developer shall pay the City a reasonable fee for any construction surveying performed by the City. As-built record drawings shall be provided to the City by the entity performing the survey.

B. Construction Inspection Methods. Inspection of the construction of the Improvements shall be performed by _____, a New Mexico Registered Professional Engineer. If the inspection is performed by an entity other than the City, the City may monitor the inspection and the Developer shall ensure that the inspecting entity provides all inspection results, reports and related data to the City which the City requires for review. The City retains the right to perform its own general overall inspection of the construction project at any time prior to final acceptance of the Improvements, if deemed necessary or advisable by the City Engineer. The Developer shall pay the City a reasonable fee for any inspections performed by the City.

C. Field Testing. Field testing of the construction of the Improvements shall be performed by _____, a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current City of Albuquerque Standard Specifications for Public Works Construction. If any field testing

is performed by an entity other than the City, the City may monitor the field testing and the Developer shall ensure that the field testing entity provides all field testing results, reports and related data to the City which the City requires for review. The Developer shall pay the City a reasonable fee for any field testing performed by the City.

D. Additional Testing. The City retains the right to perform all additional testing which the City Engineer deems is necessary or advisable, and the Developer shall pay the City a reasonable fee therefor.

9. Acceptance and Termination. After the Developer completes the Improvements to the satisfaction of the City and submits the final acceptance package, the City will review it, and, if acceptable, the City will issue a Certificate of Completion and Acceptance for the Improvements. Thereafter, Developer's credits shall be issued and the Developer's obligations to the City pursuant to this Agreement shall terminate, with the exception of the bond or other guarantee which the Developer must provide to assure the materials and workmanship, as required by the City's Development Process Manual.

10. Indemnification. Until the Improvements are accepted by the City, the Developer shall be solely responsible for maintaining the premises upon which the Improvements are being constructed in a safe condition. The Developer agrees to defend, 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 negligent acts or omissions of the Developer, its agents, representatives, contractors or subcontractors or arising from the failure of the Developer, its agents, representatives, contractors or subcontractors to perform any act or duty required of the Developer herein; provided, however, to the extent, if at all, Section 56-7-1 NMSA, 1978 is applicable to this Agreement, this Agreement to indemnify will not extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the indemnitee, or the agents or employees of the indemnitee; or (2) the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property. 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.

11. Conveyance of Property Rights. When the Improvements are completed, if the City does not own the property upon or in which the Improvements are constructed, the Developer will convey to the City all real and personal property rights which the City deems reasonably necessary, and all public Improvements, free and clear of all claims, encumbrances and liens before the City will accept the public Improvements. Conveyance may be made by appropriate dedication on the final plat of the subdivision.

12. Assignment. This Agreement shall not be assigned without the prior written consent of the City and the Developer and the express written concurrence of any surety which has undertaken to guarantee the completion of the Improvements. The City's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

13. Payment for Incomplete Improvements. If the Developer fails to complete construction of the Improvements satisfactorily by the Construction Completion Deadline the City may withhold the

granting of credits or the City may make demand upon the excavation bond posted in accordance with City Street Excavation Ordinance 6-5-2-3(A)(3) or any successor ordinance in order to obtain payment for completing the Improvements. If the cost of completing the Improvements exceeds the amount of the excavation bond, the City may proceed against the Developer for the balance of the completion costs and for any costs or damages incurred by the City as a result of Developer's failure to perform according to the terms of this Agreement.

14. Binding on Developer's Property. The provisions of this Agreement constitute covenants running with Developer's Property for the benefit of the City and its successors and assigns until terminated, and are binding on the Developer and the Owner and their heirs, successors and assigns.

15. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three (3) days after the notice is mailed if there is no actual evidence of receipt.

16. 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.

17. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

18. 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.

19. 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.

20. Form Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

21. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.

Executed on the date stated in the first paragraph of this Agreement.

DEVELOPER:

By:_____
Name:_____
Title:_____
Dated:_____

CITY OF ALBUQUERQUE:

_____
City Engineer
Dated: _____

Approved as to form:

_____
City Attorney

DEVELOPER'S ACKNOWLEDGMENT

STATE OF _____)
)ss
COUNTY OF _____)

This instrument was acknowledged before me on this ___ day of _____, 20__ by [name(s) of person(s):] _____, [title or capacity, for instance, "President" or "Owner":] _____ of [Developer:] _____

My Commission Expires:
_____

_____
Notary Public

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO )
)ss
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this ___ day of _____, 20__ by _____, as _____ of the City of Albuquerque, a municipal corporation.

My Commission Expires:
_____

_____
Notary Public

# *EXHIBIT G*
# *IRREVOCABLE LETTER OF CREDIT*

CITY OF ALBUQUERQUE

[Federally Insured Financial Institution letterhead]

[Date] _____, 20 ____

IRREVOCABLE LETTER OF CREDIT AND AGREEMENT NO. _____
AMOUNT: $_____

James B. Lewis
Chief Administrative Officer
City of Albuquerque
P. O. Box 1293
Albuquerque, NM 87103

Re: Letter of Credit for [Developer's name as stated in Development Agreement for Impact Fee Credits] _____
_____
City of Albuquerque Project No.: _____
Project Name: _____

Dear Mr. Lewis:

This letter is to advise the City of Albuquerque ("City") that, at the request of [Developer's name as stated in Development Agreement for Impact Fee Credits]
_____
_____ ("Developer"), [Financial Institution] _____ in [city] _____ [state] _____, has established an Irrevocable Letter of Credit in the sum of [written amount] _____ ([amount in figures] $ _____) ("Letter of Credit") for the exclusive purpose of providing the financial guarantee which the City requires [Developer] _____ to provide for the granting of Impact Fee Credits in connection with the installation of the improvements which must be constructed at [Name of Subdivision] _____, Project No. _____ ("Project"). The amount of the Letter of Credit is 125% of the City's estimated cost of construction of improvements as required by the City's Impact Fee Ordinance. The improvements are identified in the Agreement between the City of Albuquerque and Developer, which was recorded on [date, leave blank] _____, 20__in the records of the Clerk of Bernalillo County, New Mexico in Book Misc. [leave blank] _____, at pages [leave blank] _____to [leave blank] _____, as amended ("Agreement").

A Draft or Drafts for any amount up to, but not in excess of [written amount] _____([amount in figures] $ _____) is/are available at sight at [Financial Institution] _____ [street address] _____, [city]

_____ [state] _____ between [Construction Completion Deadline date established in Agreement] _____, 20___ and [60 days thereafter] _____, 20__.

When presented for negotiation, the Draft(s) is/are to be accompanied by the City's notarized certification stating: "1) [Developer] _____ has failed to comply with the terms of the Agreement; 2) the undersigned is the Chief Administrative Officer of the City of Albuquerque and is authorized to sign this certification; and 3) the amount of the Draft does not exceed 125% of the City's estimated cost of completing the improvements specified in the Agreement."

We hereby agree with the drawer of Draft(s) drawn under and in compliance with the terms of this credit that such Draft(s) will be duly honored upon presentation to the drawee if negotiated between [Construction Completion Deadline date established in Agreement:] _____, 20___and [60 days thereafter] _____, 20 ___.

The Draft(s) drawn under this credit must contain the clause: "Drawn under Letter of Credit and Agreement No._____ of [Financial Institution] _____ _____ [city] _____, [state] _____, dated _____, 20__" and the original Letter of Credit must be endorsed on the reverse side with the amount of each draft. This Letter of Credit must accompany each draft and be attached to the draft which exhausts this credit.

This Letter of Credit for the benefit of the City of Albuquerque shall be irrevocable until:

1. Sixty (60) days after the City accepts the completed improvements specified in the Agreement; or

2. City notification of [Developer] _____'s failure to comply with the terms of the Agreement, and payment by Certified Check from [Financial Institution] _____ to the City of Albuquerque of 125% of the City's estimated costs of completing the improvements specified in the Agreement; or

3. Expiration of the date [60 days after the Construction Completion Deadline date] _____, 20___; or

4. Written termination of this Letter of Credit by the City of Albuquerque, signed by its Chief Administrative Officer.

This Letter of Credit will terminate at _____o'clock p.m., New Mexico time, [date 60 days after Construction Completion Deadline] _____, 20___.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500.

Very truly yours,

[Financial Institution]

By: _____
Title: _____
Date: _____

ACCEPTED:

CITY OF ALBUQUERQUE

By: _____
James B. Lewis
Chief Administrative Officer

Date: _____

## *EXHIBIT H*
## *NOTICE OF ASSIGNMENT OF CREDITS*

CITY OF ALBUQUERQUE

The impact fee credit account below has previously been established for the undersigned to be used to offset impact fee assessments in City of Albuquerque, New Mexico. Accordingly, you are hereby directed to transfer these credits as identified above to:

_____/_____/_____
Name Signature Date

_____
Address

_____/_____/_____/_____
City State Zip Telephone

**Park, Recreation, Trails and Open Space Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

**Public Safety Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

**Roadway Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

**Drainage Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____/_____/_____
Credit Holder Signature Date

| | | |
|---|---|---|
| Impact Fees Administrator | Signature | Date |

The credit holder signing this notice certifies that the credit holder actually is in possession of the above referenced credits and shall indemnify and hold the City harmless from any action, lien, suit, or damages that may result from the erroneous or illegal transfer of credits.

In applying for the above mentioned transfer, it shall be the applicant's responsibility to furnish, as required by the Impact Fees Administrator, all materials and information necessary to validate the transfer including, but not limited to the following:

1. Copy of the Development Agreement approving the transferability of impact fee credits.
2. Copy of the approved Certificate of Credit (Exhibit J).

# *EXHIBIT I*
# *REQUEST FOR REIMBURSEMENT OF EXCESS CREDITS*

CITY OF ALBUQUERQUE

The below signed excess credit holder herby requests reimbursement of excess credits in the amounts indicated. The below signed hereby certifies that the requested amounts for reimbursement is current and correct.

_____/_____/_____
Name (Credit Holder) Signature Date

_____
Address

_____/_____/_____/_____
City State Zip Telephone

**Park, Recreation, Trails and Open Space Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)

**Public Safety Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)

**Roadway Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)

**Drainage Facilities**

_____/_____/_____/_____/_____/

Account Number Service Area CCIP Project Category of Improvements Amount

_____

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)

Approved:

| | | |
|---|---|---|
| _____/ | _____/ | _____/_____ |
| Impact Fees Administrator | Signature | Date |

Note: The Impact Fees Administrator shall not be obligated to provide reimbursement in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.

# EXHIBIT J
# CERTIFICATE OF CREDIT

CITY OF ALBUQUERQUE

_____
Name (Credit Holder)

_____
Address

_____/_____/_____/_____
City State Zip Telephone

_____/_____/_____
Project Name DRB Number Work Order No.

**Park, Recreation, Trails and Open Space Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____
Description of the Component Capital Improvement Plan Project for which the credit may be applied.

_____
Date (The year in which the credits may be applied)

**Public Safety Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____
Description of the Component Capital Improvement Plan Project for which the credit may be applied.

_____
Date (The year in which the credits may be applied)

**Roadway Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____
Description of the Component Capital Improvement Plan Project for which the credit may be applied.

_____
Date (The year in which the credits may be applied)

**Drainage Facilities**

_____/_____/_____/_____/
Account Number Service Area CCIP Project Category of Improvements

_____/
Amount

_____

_____
Description of the Component Capital Improvement Plan Project for which the credit may be applied.

_____
Date (The year in which the credits may be applied)

| Approved | | |
|---|---|---|
| _____/ | _____/ | _____ |
| Credit Holder | Signature | Date |

| Approved | | |
|---|---|---|
| _____/ | _____/ | _____ |
| Impact Fees Administrator | Signature | Date |

Notes:

1. Credits shall only be applied in the year the project appears in the CCIP.
2. Credits shall be applied first to offset the impact fee otherwise due for the development project for which the credit was granted.

EXHIBIT C

EXHIBIT C

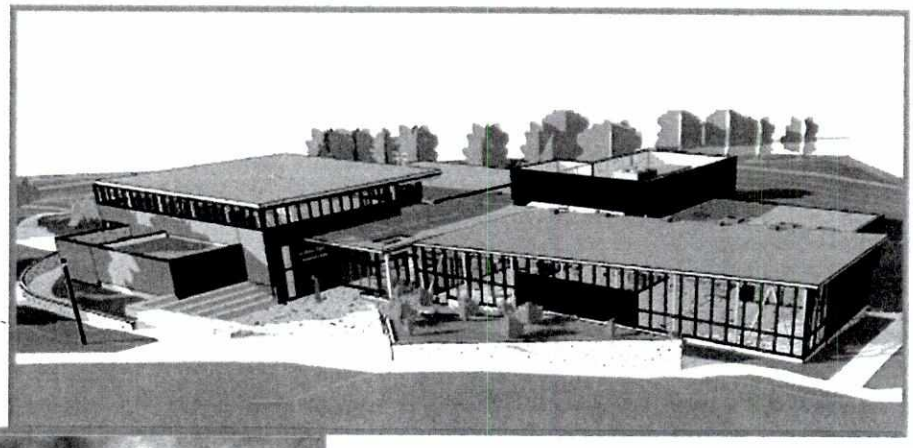
Los Duranes Community Center

# City of Albuquerque

## 2013 - 2022 Decade Plan for Capital Improvements
## 2013 General Obligation Bond Program

## Approved Program

Richard J. Berry, Mayor



Holiday Park Multigenerational Center

North Domingo Baca Multigenerational Center

Department of Municipal Development
*Michael J. Riordan, P.E., Director*

Capital Implementation Program - March 2013

2012 through 2022

| Open Space Land and Facilities | | | |
|---|---|---|---|
| **Service Area** | **Project Description** | **Est. Project Cost** | **Antic. Fee Funding** |
| City Wide | Land: Calabacillas Arroyo | $1,500,000 | |
| | Land: North Geologic Window | $3,500,000 | |
| | Land: Northern Sand Dunes | $2,000,000 | |
| | Land: North Rio Puerco Escarpment | $23,000,000 | |
| | Land: Volcano Cliffs/Volcano Heights Master Plan | $3,750,000 | |
| | Land: Cerro Colorado Volcano | $2,250,000 | |
| | Land: Southwest Mesa / "Ceja" | $17,500,000 | |
| | Land: South Rio Puerco Escarpment | $5,850,000 | |
| | Land: Southern Sand Dunes | $1,350,000 | |
| | Land: Tijeras Arroyo | $3,750,000 | |
| | Land: Tijeras Canyon | $1,250,000 | |
| | Fencing/Protection/Access Control | $1,500,000 | |
| | Atrisco Terrace Trails & Parking | $250,000 | |
| | Calabacillas Arroyo Facilities | $200,000 | |
| | Candelaria Farm | $200,000 | |
| | Equestrian Complex | $250,000 | |
| | Maloof Airfield | $250,000 | |
| | Northern Sand Dunes Trails & Parking | $350,000 | |
| | Petroglyph / West Mesa Trails & Parking | $500,000 | |
| | Piedras Marcadas Pueblo | $1,000,000 | |
| | Poblanos Fields | $250,000 | |
| | Shooting Range | $1,000,000 | |
| | Visitor Center | $1,000,000 | |
| | Hubbell Farm | $200,000 | |
| | Southwest Mesa / "Ceja" - Trails & Parking | $200,000 | |
| | Rio Grande Valley State Park Improvements | $2,000,000 | |
| | Elena Gallegos / Foothills | $500,000 | |
| | Tijeras Arroyo/Canyon Facilities | $250,000 | |
| | Manzano / Four Hills | $250,000 | |
| | Montessa Park | $200,000 | |
| | Tres Pistolas/ East Mountains Facilities | $200,000 | |
| | **TOTAL OPEN SPACE LAND & FACILITIES** | **$76,250,000** | **$6,168,547** |

| Trail Facilities | | | |
|---|---|---|---|
| **Service Area** | **Project Description** | **Est. Project Cost** | **Antic. Fee Funding** |
| City Wide | Central/Unser Gap | $100,000 | |
| | Unser Trail (Montano – Dellyne) | $125,000 | |
| | Unser Trail (McMahon – City Limits, Rio Rancho) | $75,000 | |
| | Unser Trail (McMahon – Bandelier) | $100,000 | |
| | Boca Negra Dam Trail (Around Dam) | $187,500 | |
| | Piedras Marcadas Trail | $300,000 | |
| | MRGCD Drain from PDN along Coors to Eagle Ranch Rd | $300,000 | |
| | I-40 West Trail – Continue La Presa Dam to 98th St. | $260,000 | |
| | University Blvd Trail from Gibson to Rio Bravo | $800,000 | |
| | East I-40 Trail from 6th St. to University | $500,000 | |
| | Balloon Museum Dr. to Jefferson | $100,000 | |
| | North Diversion Channel Trail @ Paseo del Norte to Edith Conn | $200,000 | |
| | 98th Tt. Gibson to Dennis Chavez | $350,000 | |
| | Skyview Trail | $250,000 | |
| | Ventana Ranch Community Park Trail (Around Dam) | $300,000 | |
| | **TOTAL TRAIL FACILITIES** | **$3,947,500** | **$675,549** |

EXHIBIT D

EXHIBIT D



CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF JUNE 31, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU JULY 11, 2018

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,176 | 280,309 | 417,485 | 222,232 | 0 | 195,253 | 191,797 | 53% |
| 6900310 | SOUTHEAST | 24,487 | 291,442 | 315,929 | 291,835 | 0 | 24,094 | 23,668 | 92% |
| 6900410 | NORTHWEST | 532,412 | 1,871,422 | 2,403,834 | 1,853,145 | 536,419 | 14,271 | 4,059 | 99% |
| 6900610 | SOUTHWEST | 114,547 | 749,155 | 863,702 | 752,120 | 109,512 | 2,070 | 0 | 100% |
| 6900800 | TRAILS | 31,717 | 289,914 | 321,631 | 233,842 | 0 | 87,789 | 86,235 | 73% |
| 6900900 | OPEN SPACE | 514,602 | 3,913,365 | 4,427,967 | 3,573,399 | 239,314 | 615,253 | 599,920 | 86% |
| TOTAL FUND 345 | | 1,354,941 | 7,395,607 | 8,750,548 | 6,926,573 | 885,245 | 938,730 | 905,680 | 89% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,550,310 | 128,859 | 212,831 | 206,672 | 93% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 4,119 | (35) | (111) | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,426,114 | 485,736 | 88,149 | 77,571 | 97% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 78,041 | 9,992 | 161,967 | 158,915 | 35% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 0 | 1,957,139 | 42,861 | 5,767 | 98% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 1,061 | 213,276 | 135,662 | 129,302 | 61% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543310 | CENTRAL STREET TREES | 100,000 | 0 | 100,000 | 89,830 | 0 | 10,170 | 9,990 | 90% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 788,861 | 648,298 | 62,841 | 49,692 | 96% |
| TOTAL PARKS MISC PROJ | | 8,846,840 | 7,894,332 | 16,741,172 | 11,246,160 | 3,447,419 | 2,047,593 | 1,947,348 | 88% |
| | FD 340 TRANSP INFRA TAX | | | | | | | | |
| 7100510 | TRAILS/BIKEWAYS | 2,791,735 | 0 | 2,791,735 | 2,651,536 | 0 | 140,199 | 137,717 | 95% |
| TOTAL TRANSP TX FD 340 | | 2,791,735 | 0 | 2,791,735 | 2,651,536 | 0 | 140,199 | 137,717 | 95% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 13,628,186 | 0 | 13,628,186 | 10,178,600 | 1,083,850 | 2,365,736 | 2,303,740 | 83% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 14,128,186 | 0 | 14,128,186 | 10,178,600 | 1,083,850 | 2,865,736 | 2,803,740 | 80% |
| | STATE GRANTS | | | | | | | | |
| 7349700 | '13 ALAMOSA PARK | 400 | 25,167 | 25,567 | 25,459 | 0 | 108 | 106 | 100% |
| 7349850 | 15 ARENAL DRAIN BLUFF AREA PK | 4,370 | 145,450 | 149,820 | 0 | 0 | 149,820 | 149,820 | 0% |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7349980 | 16 PARK SECURITY CAMERAS | 8,221 | 401,000 | 409,221 | 64,737 | 22,660 | 321,824 | 316,348 | 21% |
| 7349990 | 16 PETROGLYPH NATIONAL MONUMENT | 2,358 | 115,000 | 117,358 | 116,852 | 0 | 507 | 498 | 100% |
| 7350170 | LOS ALTOS PARK | 0 | 66,000 | 66,000 | 0 | 0 | 66,000 | 66,000 | 0% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 43,876 | 0 | 78,176 | 69,819 | 36% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 37,602 | 0 | 13,253 | 11,837 | 74% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 257,988 | 0 | 7,240 | 6,466 | 97% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 0 | 100,000 | 100,000 | 0% |
| TOTAL STATE GRANTS | | 32,837 | 1,889,617 | 1,922,454 | 1,038,112 | 23,605 | 860,738 | 831,377 | 55% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110 Tot** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **191,797** |
| **6900310 Tot** | **FD 345** | **SOUTHEAST** | | **0.00** | **0.00** | | | **23,668** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 10,741.65 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 inclu | |
| 6900410 | 01/03/18 | P658900 - WO#10 - INC#1 | | 0.00 | | | Rolled up into WO#10 - Lee Landscapes - Shawn Mcwe | |
| 6900410 | 01/19/18 | P658900 - WO#10 - INC#2 | | 0.00 | | | Rolled up into WO#10 - Lee Landscapes - Shawn Mcwe | |
| 6900410 | 03/28/18 | P658900 - WO#16 | | 0.00 | 482,257.62 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Imp | |
| 6900410 | 05/22/18 | P658900 - WO#16 - INC#1 | | 0.00 | | | Lee Landscapes - Shawn McWethy PH3 (Northwest Imp | |
| 6900410 | 09/29/17 | P671591 - CO#1 | | 0.00 | 0.00 | | Lee Landscapes - Shawn McWethy - Phase 1 $96,208.2( | |
| 6900410 | 11/21/17 | P671591 - CO#2 | | 0.00 | 0.00 | | Lee Landscapes - Shawn McWethy - Delays Casued by | |
| 6900410 | 03/28/18 | P902300 - WO#25 | | 0.00 | 39,391.76 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Imp | |
| 6900410 | 03/12/18 | **Reserve for Shawn McWethy Phase 3** | | 2,199.00 | | | Decreased Due to Activity being Overspent by $301 - 5/ | |
| 6900410 | 04/23/18 | **Reserve for Ouray Dog Park** | | 0.00 | | | Released Reserve Amount of $2,500 - 4/27/18 - Jordan. | |
| 6900410 | 03/13/17 | PRK0001536 | | 438.34 | | | Aign Arama - Acraylic Signage - Quote #12041 | |
| 6900410 | 04/20/17 | DMD0010253 | | 0.00 | 304.57 | | Valley Fence - Change Order -Original DMD0005219/E | |
| 6900410 | 06/01/17 | RPR0005921 | | 0.00 | | | Actual Work Came in Kower at $3,258.90 - 4/27/18 B& | |
| 6900410 | 06/15/17 | RMD0005661 | | 0.00 | 0.00 | | Hunter Bower - Vista Del Norte (NW Servie Area) - 6/3 | |
| 6900410 | 06/13/17 | RMD0005662 | | 0.00 | 170.18 | | Choice Steel - Vista Del Norte (NW Service Area) - INV | |
| 6900410 | 07/08/17 | RPR0006383 | | 0.00 | 0.00 | | Acadamey Reprographics (Sercon) - Shawn McWethy - | |
| 6900410 | 08/16/17 | RMD0005927 | | 0.00 | 0.00 | | Coyote Gravel - Vista Del Norte (NW Service Area) Pla | |
| 6900410 | 09/13/17 | RMD0006104 | | 0.00 | 300.00 | | Coyote Pumping Service - Split - 7529170 - Unser/Azuc | |
| 6900410 | 10/27/17 | RMD0006415 | | 0.00 | 430.20 | | Plant World - Black Arroyo Park - INV#669318/W | |
| 6900410 | 10/27/17 | RMD0006416 | | 0.00 | 0.00 | | Saiz Trucking - Black Arroyo Park - Est#1124 $1,120 | |
| 6900410 | 11/15/17 | RPR0007306 | | 0.00 | 0.00 | | Serycon - Shawn McWethy- EST#1643 | |
| 6900410 | 12/04/17 | RMD0006535 | | 146.58 | | | Choice Steel - Shawn McWethy - Quote#39630 $146.58 | |
| **6900410* To** | **FD 345** | **NORTHWEST** | | **2,822.62** | **533,595.98** | | | **4,059** |
| 6900610 | 02/27/18 | P563500 - NTP#4 | | 0.00 | 6,989.92 | | Encumbered amount is lower than approved amount - en | |
| 6900610 | 06/08/18 | P612700 - Ad | | 102,522.00 | | | Cost Estimate for Bid - 7557180 $293,791 / 6900610 $1 | |
| **6900610* To** | **FD 345** | **SOUTHWEST** | | **102,522.01** | **6,989.92** | | | **0** |
| **6900800* To** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **86,235** |
| 6900900 | 03/21/16 | **Reserve for Open Space Vistors Center** | | 238,705.10 | | | Reduced by $24,985.04 per D Jordan 1/4/18 - D. Jordar | |
| 6900900 | 01/09/18 | **Reserve for Open Space Track Lighting** | | 609.14 | | | D. Jordan | |
| **6900900* To** | **FD 345** | **OPEN SPACE** | | **239,314.24** | **0.00** | | | **599,920** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF JULY 31, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU AUG 11, 2018

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,176 | 280,309 | 417,485 | 222,232 | 0 | 195,253 | 191,797 | 53% |
| 6900310 | SOUTHEAST | 24,487 | 291,442 | 315,929 | 291,929 | 0 | 24,000 | 23,576 | 92% |
| 6900410 | NORTHWEST | 532,412 | 1,871,422 | 2,403,834 | 2,030,779 | 359,880 | 13,175 | 6,260 | 99% |
| 6900610 | SOUTHWEST | 114,547 | 749,155 | 863,702 | 754,490 | 107,186 | 2,026 | 0 | 100% |
| 6900800 | TRAILS | 31,717 | 289,914 | 321,631 | 233,842 | 0 | 87,789 | 86,235 | 73% |
| 6900900 | OPEN SPACE | 514,602 | 3,913,365 | 4,427,967 | 3,573,399 | 238,705 | 615,863 | 600,530 | 86% |
| TOTAL FUND 345 | | 1,354,941 | 7,395,607 | 8,750,548 | 7,106,671 | 705,771 | 938,105 | 908,398 | 89% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,563,866 | 80,809 | 247,325 | 241,447 | 91% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 4,118 | (35) | (111) | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,815,241 | 159,379 | 25,381 | 21,973 | 99% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 78,437 | 21,662 | 149,901 | 146,846 | 40% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 49,195 | 1,908,856 | 41,948 | 5,767 | 98% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 132,595 | 104,183 | 113,223 | 109,284 | 68% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543310 | CENTRAL STREET TREES | 100,000 | 0 | 100,000 | 89,830 | 0 | 10,170 | 9,990 | 90% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 926,646 | 601,348 | (27,994) | (38,663) | 102% |
| TOTAL PARKS MISC PROJ | | 8,846,840 | 7,894,332 | 16,741,172 | 11,967,752 | 2,880,355 | 1,893,065 | 1,806,083 | 89% |
| | FD 340 TRANSP INFRA TAX | | | | | | | | |
| 7100510 | TRAILS/BIKEWAYS | 2,791,735 | 0 | 2,791,735 | 2,797,634 | 0 | (5,899) | (5,795) | 100% |
| TOTAL TRANSP TX FD 340 | | 2,791,735 | 0 | 2,791,735 | 2,797,634 | 0 | (5,899) | (5,795) | 100% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 13,628,186 | 0 | 13,628,186 | 10,197,038 | 822,016 | 2,609,131 | 2,547,689 | 81% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 14,128,186 | 0 | 14,128,186 | 10,197,038 | 822,016 | 3,109,131 | 3,047,689 | 78% |
| | STATE GRANTS | | | | | | | | |
| 7349850 | 15 ARENAL DRAIN BLUFF AREA PK | 4,370 | 145,450 | 149,820 | 0 | 0 | 149,820 | 149,820 | 0% |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7349980 | 16 PARK SECURITY CAMERAS | 8,221 | 401,000 | 409,221 | 64,737 | 22,660 | 321,824 | 316,348 | 21% |
| 7349990 | 16 PETROGLYPH NATIONAL MONUMENT | 2,358 | 115,000 | 117,358 | 116,852 | 0 | 507 | 498 | 100% |
| 7350170 | LOS ALTOS PARK | 0 | 66,000 | 66,000 | 0 | 64,954 | 1,046 | 0 | 98% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 43,876 | 61,807 | 16,369 | 13,675 | 87% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 257,988 | 6,354 | 886 | 694 | 100% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 0 | 100,000 | 100,000 | 0% |
| TOTAL STATE GRANTS | | 32,437 | 1,864,450 | 1,896,887 | 1,007,511 | 156,720 | 732,657 | 707,948 | 61% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Rlt | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110 Tot** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **191,797** |
| **6900310 Tot** | **FD 345** | **SOUTHEAST** | | **0.00** | **0.00** | | | **23,576** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 10,741.65 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| 6900410 | 03/28/18 | P658900 - WO#16 | | 0.00 | 307,918.50 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Impact Service Area)- $620,289.31 (includ | |
| 6900410 | 03/28/18 | P902300 - WO#25 | | 0.00 | 39,391.76 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Impact Service Area)- $62762.26 (includes | |
| 6900410 | 03/13/17 | PRK0001536 | | 438.34 | | | Aign Arama - Acraylic Signage - Quote #12041 | |
| 6900410 | 04/20/17 | DMD0010253 | | 0.00 | 304.57 | | Valley Fence - Change Order -Original DMD0005219/Bullhead- 7514080 $3,600 - Change ord | |
| 6900410 | 06/13/17 | RMD0005662 | | 0.00 | 170.18 | | Choice Steel - Vista Del Norte (NW Service Area) - INV#14649 $196.36/ INV#14650 $170.18 | |
| 6900410 | 09/13/17 | RMD0006104 | | 0.00 | 300.00 | | Coyote Pumping Service - Split - 7529170 - Unser/Azuelo $200 Tax $15 - $215/ Dept 4516000 | |
| 6900410 | 10/27/17 | RMD0006415 | | 0.00 | 430.20 | | Plant World - Black Arroyo Park - INV#669318/W | |
| 6900410 | 12/04/17 | RMD0006535 | | 146.58 | | | Choice Steel - Shawn McWethy - Quote#39630 $146.58 | |
| **6900410* To** | **FD 345** | **NORTHWEST** | | **623.62** | **359,256.86** | | | **6,260** |
| 6900610 | 02/27/18 | P563500 - NTP#4 | | 0.00 | 4,663.60 | | Encumbered amount is lower than approved amount - emailed Rebecca for details (as file as no | |
| 6900610 | 08/02/18 | P612700 - NOA | | 102,522.00 | | | Lee Landscapes - Anderson Heights - Cost Estimate for Bid - 7557180 $293,791 / 6900610 $10 | |
| **6900610* To** | **FD 345** | **SOUTHWEST** | | **102,522.01** | **4,663.60** | | | **0** |
| **6900800* To** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **86,235** |
| 6900900 | 03/21/16 | **Reserve for Open Space Vistors Center** | | 238,705.10 | | | Valid per Gibson, Brandon - 7/19/18 - Reduced by $24,985.04 per D Jordan 1/4/18 - D. Jordan | |
| **6900900* To** | **FD 345** | **OPEN SPACE** | | **238,705.10** | **0.00** | | | **600,530** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF AUGUST 31, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU SEP 11, 2018

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,176 | 280,309 | 417,485 | 222,232 | 0 | 195,253 | 191,797 | 53% |
| 6900310 | SOUTHEAST | 24,487 | 291,442 | 315,929 | 291,929 | 0 | 24,000 | 23,576 | 92% |
| 6900410 | NORTHWEST | 532,412 | 1,871,422 | 2,403,834 | 2,239,950 | 358,091 | (194,207) | (197,417) | 108% |
| 6900610 | SOUTHWEST | 114,547 | 749,155 | 863,702 | 758,476 | 103,274 | 1,952 | 0 | 100% |
| 6900800 | TRAILS | 31,717 | 289,914 | 321,631 | 233,842 | 0 | 87,789 | 86,235 | 73% |
| 6900900 | OPEN SPACE | 514,602 | 3,913,365 | 4,427,967 | 3,573,399 | 238,705 | 615,863 | 600,530 | 86% |
| TOTAL FUND 345 | | 1,354,941 | 7,395,607 | 8,750,548 | 7,319,829 | 700,070 | 730,650 | 704,720 | 92% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,563,866 | 20,132 | 308,002 | 302,176 | 89% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 1,454 | 2,630 | 2,556 | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,815,241 | 146,917 | 37,842 | 34,445 | 99% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 80,468 | 19,668 | 149,864 | 146,846 | 40% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 49,195 | 1,067,236 | 883,568 | 848,116 | 56% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 143,696 | 111,946 | 94,358 | 90,610 | 73% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543310 | CENTRAL STREET TREES | 100,000 | 0 | 100,000 | 89,830 | 0 | 10,170 | 9,990 | 90% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 967,012 | 567,659 | (34,671) | (44,596) | 102% |
| TOTAL PARKS MISC PROJ | | 8,846,840 | 7,894,332 | 16,741,172 | 12,021,250 | 1,935,011 | 2,784,910 | 2,699,693 | 83% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 13,628,186 | 0 | 13,628,186 | 10,473,267 | 671,846 | 2,483,073 | 2,426,650 | 82% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 14,128,186 | 0 | 14,128,186 | 10,473,267 | 671,846 | 2,983,073 | 2,926,650 | 79% |
| | STATE GRANTS | | | | | | | | |
| 7349850 | 15 ARENAL DRAIN BLUFF AREA PK | 4,370 | 145,450 | 149,820 | 0 | 0 | 149,820 | 149,820 | 0% |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7349980 | 16 PARK SECURITY CAMERAS | 8,221 | 401,000 | 409,221 | 64,737 | 22,660 | 321,824 | 316,348 | 21% |
| 7349990 | 16 PETROGLYPH NATIONAL MONUMENT | 2,358 | 115,000 | 117,358 | 116,852 | 0 | 507 | 498 | 100% |
| 7350170 | LOS ALTOS PARK | 0 | 66,000 | 66,000 | 0 | 0 | 66,000 | 66,000 | 0% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 43,876 | 0 | 78,176 | 69,819 | 36% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 257,988 | 0 | 7,240 | 6,466 | 97% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 0 | 100,000 | 100,000 | 0% |
| TOTAL STATE GRANTS | | 32,437 | 1,864,450 | 1,896,887 | 1,007,511 | 23,605 | 865,772 | 835,863 | 54% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110 Tot:** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **191,797** |
| **6900310 Tot:** | **FD 345** | **SOUTHEAST** | | **0.00** | **0.00** | | | **23,576** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 10,741.65 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| 6900410 | 03/28/18 | P658900 - WO#16 | | 0.00 | 307,918.50 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Impact Service Area)- $620,289.31 (includ | |
| 6900410 | 03/28/18 | P902300 - WO#25 | | 0.00 | 39,391.76 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Impact Service Area)- $62762.26 (includes | |
| **6900410* To** | **FD 345** | **NORTHWEST** | | **38.70** | **358,051.91** | | | **(197,417)** |
| 6900610 | 02/27/18 | P563500 - NTP#4 | | 0.00 | 751.78 | | Morrow Readon Wilkinson Miller - Anderson Heights Park (Southwest Area) - $16,105 Tax $1, | |
| 6900610 | 08/02/18 | P612700 - NOA | | 102,522.00 | | | Lee Landscapes - Anderson Heights - Cost Estimate for Bid - 7557180 $293,791 / 6900610 $10 | |
| **6900610* To** | **FD 345** | **SOUTHWEST** | | **102,522.01** | **751.78** | | | **0** |
| **6900800* To** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **86,235** |
| 6900900 | 03/21/16 | **Reserve for Open Space Vistors Center** | | 238,705.10 | | | Valid per Gibson, Brandon - 7/19/18 - Reduced by $24,985.04 per D Jordan 1/4/18 - D. Jordan | |
| **6900900* To** | **FD 345** | **OPEN SPACE** | | **238,705.10** | **0.00** | | | **600,530** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF SEPTEMBER 30, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU OCTOBER 10, 2018

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,176 | 280,309 | 417,485 | 222,232 | 0 | 195,253 | 191,797 | 53% |
| 6900310 | SOUTHEAST | 24,487 | 291,442 | 315,929 | 291,929 | 0 | 24,000 | 23,576 | 92% |
| 6900410 | NORTHWEST | 532,412 | 1,871,422 | 2,403,834 | 2,389,094 | 6,576 | 8,164 | 7,897 | 100% |
| 6900610 | SOUTHWEST | 114,547 | 749,155 | 863,702 | 758,476 | 103,274 | 1,952 | 0 | 100% |
| 6900800 | TRAILS | 31,717 | 289,914 | 321,631 | 233,842 | 0 | 87,789 | 86,235 | 73% |
| 6900900 | OPEN SPACE | 514,602 | 3,913,365 | 4,427,967 | 3,573,408 | 238,705 | 615,854 | 600,522 | 86% |
| TOTAL FUND 345 | | 1,354,941 | 7,395,607 | 8,750,548 | 7,468,980 | 348,555 | 933,012 | 910,027 | 89% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,564,168 | 19,830 | 308,002 | 302,182 | 89% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 1,011 | 3,072 | 2,999 | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,830,506 | 139,351 | 30,143 | 27,022 | 99% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 82,042 | 28,542 | 139,416 | 136,418 | 44% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,255,724 | 724,708 | 19,568 | 5,767 | 99% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 149,199 | 160,764 | 40,037 | 36,343 | 89% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543310 | CENTRAL STREET TREES | 100,000 | 0 | 100,000 | 89,830 | 9,980 | 190 | 1 | 100% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 967,057 | 567,659 | (34,716) | (44,640) | 102% |
| TOTAL PARKS MISC PROJ | | 8,846,840 | 7,894,332 | 16,741,172 | 13,250,468 | 1,651,845 | 1,838,858 | 1,775,643 | 89% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 13,628,186 | 0 | 13,628,186 | 10,477,879 | 720,367 | 2,429,940 | 2,373,556 | 82% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 14,128,186 | 0 | 14,128,186 | 10,477,879 | 720,367 | 2,929,940 | 2,873,556 | 79% |
| | STATE GRANTS | | | | | | | | |
| 7349850 | 15 ARENAL DRAIN BLUFF AREA PK | 4,370 | 145,450 | 149,820 | 0 | 0 | 149,820 | 149,820 | 0% |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7349980 | 16 PARK SECURITY CAMERAS | 8,221 | 401,000 | 409,221 | 64,737 | 22,660 | 321,824 | 316,348 | 21% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 0 | 60,000 | 0 | (951) | 100% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 43,876 | 61,807 | 16,369 | 13,675 | 87% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 257,988 | 0 | 7,240 | 6,466 | 97% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 0 | 100,000 | 100,000 | 0% |
| TOTAL STATE GRANTS | | 30,079 | 1,743,450 | 1,773,529 | 890,659 | 145,412 | 737,458 | 712,270 | 58% |

| Project | Date | Reference | Acct | Transfers | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **191,797** |
| **6900310** | **FD 345** | **SOUTHEAST** | | **0.00** | **0.00** | | | **23,576** |
| 6900410 | 12/05/17 | P563500 - NTP#2 | | 38.70 | 0.00 | | Morrow, Reardon, Wilkson, Miller - Shawn McWethy - Landscape Architectural | |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| 6900410 | 03/28/18 | P658900 - WO#16 | | 0.00 | 0.00 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Impact Service Area)- $620,289.31 (includ | |
| 6900410 | 03/28/18 | P902300 - WO#25 | | 0.00 | 0.00 | | Lee Landscapes - Shawn McWethy PH3 (Northwest Impact Service Area)- $62762.26 (includes | |
| **6900410** | **FD 345** | **NORTHWEST** | | **38.70** | **6,537.76** | | | **7,897** |
| 6900610 | 02/27/18 | P563500 - NTP#4 | | 0.00 | 751.78 | | Morrow Readon Wilkinson Miller - Anderson Heights Park (Southwest Area) - $16,105 Tax $1. | |
| 6900610 | 06/08/18 | P612700 - Ad | | 0.00 | | | Cost Estimate for Bid - 7557180 $293,791 / 6900610 $102,522 / $7557090 $483,184.44 = $87 | |
| 6900610 | 08/02/18 | P612700 - NOA | | 102,522.00 | | | Lee Landscapes - Anderson Heights - Cost Estimate for Bid - 7557180 $293,791 / 6900610 $10 | |
| **6900610** | **FD 345** | **SOUTHWEST** | | **102,522.01** | **751.78** | | | **0** |
| **6900800** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **86,235** |
| 6900900 | 03/21/16 | **Reserve for Open Space Vistors Center** | | 238,705.10 | | | Valid per Gibson, Brandon - 7/19/18 - Reduced by $24,985.04 per D Jordan 1/4/18 - D. Jordan | |
| **6900900* To** | **FD 345** | **OPEN SPACE** | | **238,705.10** | **0.00** | | | **600,522** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF OCTOBER 31, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU NOVEMBER 10, 2018

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,548 | 303,151 | 440,699 | 222,232 | 0 | 218,467 | 214,600 | 50% |
| 6900310 | SOUTHEAST | 24,608 | 301,819 | 326,427 | 291,929 | 662 | 33,837 | 33,225 | 90% |
| 6900410 | NORTHWEST | 534,747 | 2,206,277 | 2,741,024 | 2,389,094 | 6,538 | 345,393 | 339,158 | 87% |
| 6900610 | SOUTHWEST | 114,831 | 837,799 | 952,630 | 758,476 | 103,274 | 90,880 | 87,354 | 90% |
| 6900800 | TRAILS | 31,717 | 339,612 | 371,329 | 233,842 | 0 | 137,487 | 135,053 | 63% |
| 6900900 | OPEN SPACE | 517,223 | 4,131,970 | 4,649,193 | 3,573,408 | 238,705 | 837,080 | 817,832 | 82% |
| TOTAL FUND 345 | | 1,360,674 | 8,120,628 | 9,481,302 | 7,468,980 | 349,178 | 1,663,143 | 1,627,223 | 82% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,564,168 | 319,830 | 8,002 | 1,922 | 100% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 1,011 | 3,072 | 2,999 | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,774,508 | 186,351 | 39,141 | 34,989 | 99% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 85,596 | 25,054 | 139,350 | 136,418 | 44% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,255,724 | 724,708 | 19,568 | 5,767 | 99% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 259,973 | 70,475 | 19,552 | 17,898 | 94% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543310 | CENTRAL STREET TREES | 100,000 | 0 | 100,000 | 89,830 | 9,980 | 190 | 1 | 100% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 971,503 | 563,296 | (34,798) | (44,640) | 102% |
| TOTAL PARKS MISC PROJ | | 8,846,840 | 7,894,332 | 16,741,172 | 13,313,244 | 1,900,705 | 1,527,223 | 1,464,904 | 91% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 15,278,186 | 0 | 15,278,186 | 10,510,670 | 1,035,556 | 3,731,960 | 3,646,678 | 76% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 15,778,186 | 0 | 15,778,186 | 10,510,670 | 1,035,556 | 4,231,960 | 4,146,678 | 73% |
| | STATE GRANTS | | | | | | | | |
| 7349850 | 15 ARENAL DRAIN BLUFF AREA PK | 4,370 | 145,450 | 149,820 | 0 | 0 | 149,820 | 149,820 | 0% |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7349980 | 16 PARK SECURITY CAMERAS | 8,221 | 401,000 | 409,221 | 64,737 | 22,660 | 321,824 | 316,348 | 21% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 0 | 60,000 | 0 | (951) | 100% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 94,686 | 10,557 | 16,809 | 14,851 | 86% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 257,988 | 0 | 7,240 | 6,466 | 97% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 99,627 | 373 | (1,188) | 100% |
| 7350300 | 18 ALAMEDA LL | 0 | 50,000 | 50,000 | 0 | 0 | 50,000 | 44,655 | 0% |
| 7350290 | 18 ANDERSON HIGHLANDS PARK | 0 | 15,000 | 15,000 | 0 | 0 | 15,000 | 13,397 | 0% |
| 7350190 | 18 ARENAL DRAIN | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 66,983 | 0% |
| 7350280 | 18 EASTDALE LL FENCING | 0 | 11,900 | 11,900 | 0 | 0 | 11,900 | 10,628 | 0% |
| 7350250 | 18 EASTDALE LL | 0 | 30,000 | 30,000 | 0 | 0 | 30,000 | 26,793 | 0% |
| 7350240 | 18 JUAN TABO HILLS PK | 0 | 73,100 | 73,100 | 0 | 0 | 73,100 | 65,286 | 0% |
| 7350240 | 18 LOBO LL | 0 | 90,000 | 90,000 | 0 | 0 | 90,000 | 80,379 | 0% |
| 7350230 | 18 MONTGOMERY PK | 0 | 31,000 | 31,000 | 0 | 0 | 31,000 | 27,686 | 0% |
| 7350260 | 18 AMOLE WOMEN'S MEMORIAL | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 107,172 | 0% |
| 7267310 | 18 PAT HURLEY IMP | 0 | 198,000 | 198,000 | 0 | 0 | 198,000 | 176,834 | 0% |
| 7350320 | 18 SE-MID-HEIGHTS PARK | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 66,983 | 0% |
| 7350310 | 18 ROADRUNNER LL | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 53,586 | 0% |
| 7350330 | 18 SUNRISE TERRACE PK IMP | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 53,586 | 0% |
| 7350210 | 18 PETROGLYPH LL SAFTEY IMP | 0 | 45,000 | 45,000 | 0 | 0 | 45,000 | 40,190 | 0% |
| 7350200 | 18 ZIA LL FAC IMP | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 107,172 | 0% |
| 7350220 | 18 MILE HIGH LL | 0 | 255,800 | 255,800 | 0 | 0 | 255,800 | 228,455 | 0% |
| TOTAL STATE GRANTS | | 30,079 | 3,053,250 | 3,083,329 | 941,469 | 193,788 | 1,948,071 | 1,782,040 | 37% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| | | | | 0.00 | 0.00 | | | 214,600 |
| **6900110** | **FD 345** | **NORTHEAST** | | | | | | |
| 6900310 | 10/19/18 | RPR0010247 | | 0.00 | 661.81 | | B&D Industries - Zia Little Leauge (New Fence) - Southeast Impact Service Area (Manzano Me | |
| | | | | 0.00 | 661.81 | | | 33,225 |
| **6900310** | **FD 345** | **SOUTHEAST** | | | | | | |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| | | | | 0.00 | 6,537.76 | | | 339,158 |
| **6900410** | **FD 345** | **NORTHWEST** | | | | | | |
| 6900610 | 02/27/18 | P563500 - NTP#4 | | 0.00 | 751.78 | | Morrow Readon Wilkinson Miller - Anderson Heights Park (Southwest Area) - $16,105 Tax $1, | |
| 6900610 | 08/02/18 | P612700 - NOA | | | 102,522.00 | | Lee Landscapes - Anderson Heights - Cost Estimate for Bid - 7557180 $293,791 / 6900610 $10 | |
| | | | | 0.00 | 103,273.78 | | | 87,354 |
| **6900610** | **FD 345** | **SOUTHWEST** | | | | | | |
| | | | | 0.00 | 0.00 | | | 135,053 |
| **6900800** | **FD 345** | **TRAILS** | | | | | | |
| 6900900 | 03/21/16 | **Reserve for Open Space Vistors Center** | | 238,705.10 | | | Valid per Gibson, Brandon - 7/19/18 - Reduced by $24,985.04 per D Jordan 1/4/18 - D. Jordan | |
| | | | | 238,705.10 | 0.00 | | | 817,832 |
| **6900900* To** | **FD 345** | **OPEN SPACE** | | | | | | |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF NOVEMBER 30, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU DECEMBER 10, 2018

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,548 | 303,151 | 440,699 | 222,232 | 0 | 218,467 | 214,600 | 50% |
| 6900310 | SOUTHEAST | 24,608 | 301,819 | 326,427 | 291,929 | 662 | 33,837 | 33,225 | 90% |
| 6900410 | NORTHWEST | 534,747 | 2,206,277 | 2,741,024 | 2,389,094 | 6,538 | 345,393 | 339,158 | 87% |
| 6900610 | SOUTHWEST | 114,831 | 837,799 | 952,630 | 796,916 | 65,546 | 90,167 | 87,354 | 91% |
| 6900800 | TRAILS | 31,717 | 339,612 | 371,329 | 233,842 | 0 | 137,487 | 135,053 | 63% |
| 6900900 | OPEN SPACE | 517,223 | 4,131,970 | 4,649,193 | 3,928,728 | 698,705 | 21,760 | 8,403 | 100% |
| TOTAL FUND 345 | | 1,360,674 | 8,120,628 | 9,481,302 | 7,862,741 | 771,451 | 847,110 | 817,794 | 91% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,564,168 | 319,830 | 8,002 | 1,922 | 100% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 1,011 | 3,072 | 2,999 | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,826,303 | 135,517 | 38,180 | 34,989 | 99% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 93,042 | 17,746 | 139,212 | 136,418 | 44% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,994,129 | 0 | 5,871 | 5,767 | 100% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 259,973 | 70,471 | 19,556 | 17,902 | 94% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543310 | CENTRAL STREET TREES | 100,000 | 0 | 100,000 | 89,830 | 9,980 | 190 | 1 | 100% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 971,503 | 383,422 | 145,076 | 135,389 | 90% |
| TOTAL PARKS MISC PROJ | | 8,846,840 | 7,894,332 | 16,741,172 | 14,110,889 | 937,977 | 1,692,305 | 1,644,938 | 90% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 15,278,186 | 0 | 15,278,186 | 10,572,768 | 979,784 | 3,725,634 | 3,641,500 | 76% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 15,778,186 | 0 | 15,778,186 | 10,572,768 | 979,784 | 4,225,634 | 4,141,500 | 73% |
| | STATE GRANTS | | | | | | | | |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 0 | 60,000 | 0 | (951) | 100% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 105,424 | 0 | 16,628 | 14,851 | 86% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 262,229 | 2,184 | 815 | 694 | 100% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 99,627 | 373 | (1,188) | 100% |
| 7350300 | 18 ALAMEDA LL | 0 | 50,000 | 50,000 | 0 | 0 | 50,000 | 50,000 | 0% |
| 7350290 | 18 ANDERSON HIGHLANDS PARK | 0 | 15,000 | 15,000 | 0 | 0 | 15,000 | 15,000 | 0% |
| 7350190 | 18 ARENAL DRAIN | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350280 | 18 EASTDALE LL FENCING | 0 | 11,900 | 11,900 | 0 | 0 | 11,900 | 11,900 | 0% |
| 7350250 | 18 EASTDALE LL | 0 | 30,000 | 30,000 | 0 | 0 | 30,000 | 30,000 | 0% |
| 7350240 | 18 JUAN TABO HILLS PK | 0 | 73,100 | 73,100 | 0 | 0 | 73,100 | 73,100 | 0% |
| 7350180 | 18 LOBO LL | 0 | 90,000 | 90,000 | 0 | 0 | 90,000 | 90,000 | 0% |
| 7350230 | 18 MONTGOMERY PK | 0 | 31,000 | 31,000 | 0 | 0 | 31,000 | 31,000 | 0% |
| 7350260 | 18 AMOLE WOMEN'S MEMORIAL | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350270 | 18 ALAMOSA SECURITY CAM | 0 | 25,000 | 25,000 | 0 | 25,317 | (317) | (670) | 101% |
| 7350320 | 18 SE-MID-HEIGHTS PARK | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350310 | 18 ROADRUNNER LL | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350330 | 18 SUNRISE TERRACE PK IMP | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350210 | 18 PETROGLYPH LL SAFTEY IMP | 0 | 45,000 | 45,000 | 0 | 0 | 45,000 | 45,000 | 0% |
| 7350200 | 18 ZIA LL FAC IMP | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350220 | 18 MILE HIGH LL | 0 | 255,800 | 255,800 | 0 | 0 | 255,800 | 255,800 | 0% |
| 7349981 | 18 PARK SECURITY CAMERAS (RE-AUTH | 0 | 337,351 | 337,351 | 0 | 0 | 337,351 | 337,351 | 0% |
| 7349851 | 18 ARENAL DRAIN BLUFF AREA PK (RE-A | 0 | 145,450 | 145,450 | 0 | 0 | 145,450 | 145,450 | 0% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **214,600** |
| 6900310 | 10/19/18 | RPR0010247 | | 0.00 | 661.81 | | B&D Industries - Zia Little Leauge (New Fence) - Southeast Impact Service Area (Manzano Mc | |
| **6900310** | **FD 345** | **SOUTHEAST** | | **0.00** | **661.81** | | | **33,225** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| **6900410** | **FD 345** | **NORTHWEST** | | **0.00** | **6,537.76** | | | **339,158** |
| 6900610 | 02/27/18 | P563500 - NTP#4 | | 0.00 | 751.78 | | Morrow Readon Wilkinson Miller - Anderson Heights Park (Southwest Area) - $16,105 Tax $1 | |
| 6900610 | 08/02/18 | P612700 - NOA | | | 64,794.69 | | Lee Landscapes - Anderson Heights - Cost Estimate for Bid - 7557180 $293,791 / 6900610 $10 | |
| **6900610** | **FD 345** | **SOUTHWEST** | | **0.00** | **65,546.47** | | | **87,354** |
| **6900800** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **135,053** |
| 6900900 | 03/21/16 | **Reserve for Open Space Vistors Center** | | 238,705.10 | | | Valid per Gibson, Brandon - 7/19/18 - Reduced by $24,985.04 per D Jordan 1/4/18 - D. Jordan | |
| 6900900 | 11/28/18 | **Reserve for Chant Property** | | 120,000.00 | | | Jordan, Deb | |
| 6900900 | 11/28/18 | **Reserve for Kruger Property** | | 340,000.00 | | | Jordan, Deb | |
| **6900900* Total** | **FD 345** | **OPEN SPACE** | | **698,705.10** | **0.00** | | | **8,403** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF DECEMBER 31, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU JANUARY 10, 2019

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,548 | 303,151 | 440,699 | 222,232 | 0 | 218,467 | 214,600 | 50% |
| 6900310 | SOUTHEAST | 24,608 | 301,819 | 326,427 | 291,929 | 6,002 | 28,496 | 27,880 | 91% |
| 6900410 | NORTHWEST | 534,747 | 2,206,277 | 2,741,024 | 2,389,094 | 6,538 | 345,393 | 339,158 | 87% |
| 6900610 | SOUTHWEST | 114,831 | 837,799 | 952,630 | 863,702 | 5,350 | 83,579 | 82,000 | 91% |
| 6900800 | TRAILS | 31,717 | 339,612 | 371,329 | 233,842 | 0 | 137,487 | 135,053 | 63% |
| 6900900 | OPEN SPACE | 517,223 | 4,131,970 | 4,649,193 | 4,233,948 | 367,101 | 48,144 | 40,477 | 99% |
| TOTAL FUND 345 | | 1,360,674 | 8,120,628 | 9,481,302 | 8,234,746 | 384,990 | 861,566 | 839,168 | 91% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,609,319 | 265,164 | 17,517 | 12,284 | 99% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 1,031 | 3,053 | 2,979 | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,913,575 | 94,628 | (8,203) | (9,815) | 100% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 103,142 | 7,834 | 139,025 | 136,418 | 44% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,994,129 | 0 | 5,871 | 5,767 | 100% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 290,347 | 40,598 | 19,054 | 17,963 | 95% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 971,503 | 396,553 | 131,945 | 122,247 | 91% |
| TOTAL PARKS MISC PROJ | | 8,746,840 | 7,894,332 | 16,641,172 | 14,193,956 | 805,808 | 1,641,408 | 1,597,395 | 90% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 15,278,186 | 0 | 15,278,186 | 10,575,230 | 978,598 | 3,724,358 | 3,640,269 | 76% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 15,778,186 | 0 | 15,778,186 | 10,575,230 | 978,598 | 4,224,358 | 4,140,269 | 73% |
| | STATE GRANTS | | | | | | | | |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 57,832 | 3,140 | (972) | (1,007) | 102% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 105,424 | 0 | 16,628 | 14,851 | 86% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 262,229 | 2,184 | 815 | 694 | 100% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 99,627 | 373 | (1,188) | 100% |
| 7350300 | 18 ALAMEDA LL | 0 | 50,000 | 50,000 | 0 | 46,096 | 3,904 | 2,783 | 92% |
| 7350290 | 18 ANDERSON HIGHLANDS PARK | 0 | 15,000 | 15,000 | 0 | 0 | 15,000 | 15,000 | 0% |
| 7350190 | 18 ARENAL DRAIN | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350280 | 18 EASTDALE LL FENCING | 0 | 11,900 | 11,900 | 0 | 0 | 11,900 | 11,900 | 0% |
| 7350250 | 18 EASTDALE LL | 0 | 30,000 | 30,000 | 0 | 0 | 30,000 | 30,000 | 0% |
| 7350240 | 18 JUAN TABO HILLS PK | 0 | 73,100 | 73,100 | 0 | 73,100 | 0 | (1,116) | 100% |
| 7350180 | 18 LOBO LL | 0 | 90,000 | 90,000 | 0 | 0 | 90,000 | 90,000 | 0% |
| 7350230 | 18 MONTGOMERY PK | 0 | 31,000 | 31,000 | 0 | 0 | 31,000 | 31,000 | 0% |
| 7350260 | 18 AMOLE WOMEN'S MEMORIAL | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350270 | 18 ALAMOSA SECURITY CAM | 0 | 25,000 | 25,000 | 0 | 25,317 | (317) | (670) | 101% |
| 7350320 | 18 SE-MID-HEIGHTS PARK | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350310 | 18 ROADRUNNER LL | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350330 | 18 SUNRISE TERRACE PK IMP | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350210 | 18 PETROGLYPH LL SAFTEY IMP | 0 | 45,000 | 45,000 | 0 | 0 | 45,000 | 45,000 | 0% |
| 7350200 | 18 ZIA LL FAC IMP | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350220 | 18 MILE HIGH LL | 0 | 255,800 | 255,800 | 0 | 0 | 255,800 | 255,800 | 0% |
| 7349981 | 18 PARK SECURITY CAMERAS (RE-AUTH I | 0 | 337,351 | 337,351 | 0 | 0 | 337,351 | 337,351 | 0% |
| 7349851 | 18 ARENAL DRAIN BLUFF AREA PK (RE-A | 0 | 145,450 | 145,450 | 0 | 0 | 145,450 | 145,450 | 0% |
| TOTAL STATE GRANTS | | 17,488 | 2,816,601 | 2,834,089 | 949,542 | 250,409 | 1,634,138 | 1,612,760 | 42% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Rlt | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **214,600** |
| 6900310 | 10/19/18 | RPR0010247 | | 0.00 | 661.81 | | B&D Industries - Zia Little Leauge (New Fence) - Southeast Impact Service Area | |
| 6900310 | 01/09/19 | RPR0010768 | | 5,340.38 | | | B&D Industries - Manzano Mesa Scoreboard - Southeast Impact Service Area (Ma | |
| **6900310** | **FD 345** | **SOUTHEAST** | | **5,340.38** | **661.81** | | | **27,880** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| **6900410** | **FD 345** | **NORTHWEST** | | **0.00** | **6,537.76** | | | **339,158** |
| 6900610 | 12/11/18 | RPR0010583 | | 5,349.50 | | | America Fence (OGC) - Ouray (Northwest Impact Service Area) - $4,958.98 Tax S | |
| **6900610** | **FD 345** | **SOUTHWEST** | | **5,349.51** | **0.00** | | | **82,000** |
| **6900800** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **135,053** |
| 6900900 | 11/28/18 | **Reserve for Chant Property** | | 367,101.00 | | | Increased by $247,101 12/19/18 - Jordan, Deb | |
| **6900900* Total** | **FD 345** | **OPEN SPACE** | | **367,101.00** | **0.00** | | | **40,477** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF JANUARY 31, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU FEBRUARY 9, 2019

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,548 | 303,151 | 440,699 | 222,232 | 0 | 218,467 | 214,600 | 50% |
| 6900310 | SOUTHEAST | 24,608 | 301,819 | 326,427 | 291,929 | 662 | 33,837 | 33,225 | 90% |
| 6900410 | NORTHWEST | 534,747 | 2,206,277 | 2,741,024 | 2,389,094 | 25,605 | 326,326 | 320,074 | 88% |
| 6900610 | SOUTHWEST | 114,831 | 837,799 | 952,630 | 863,702 | 0 | 88,928 | 87,354 | 91% |
| 6900800 | TRAILS | 31,717 | 339,612 | 371,329 | 233,842 | 0 | 137,487 | 135,053 | 63% |
| 6900900 | OPEN SPACE | 517,223 | 4,131,970 | 4,649,193 | 4,224,650 | 76,411 | 348,132 | 340,551 | 93% |
| TOTAL FUND 345 | | 1,360,674 | 8,120,628 | 9,481,302 | 8,225,448 | 102,678 | 1,153,176 | 1,130,859 | 88% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,654,653 | 219,830 | 17,517 | 13,125 | 99% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 4,244 | (161) | (237) | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,965,140 | 8,026 | 26,835 | 26,211 | 99% |
| 7552130 | DISTRICT 9 PARKS | 250,000 | 0 | 250,000 | 128,482 | 11,492 | 110,026 | 107,865 | 56% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,994,129 | 0 | 5,871 | 5,767 | 100% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 306,073 | 32,193 | 11,733 | 10,928 | 97% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 1,339,115 | 43,189 | 117,696 | 114,811 | 92% |
| TOTAL PARKS MISC PROJ | | 8,746,840 | 7,894,332 | 16,641,172 | 14,699,534 | 318,974 | 1,622,664 | 1,588,021 | 90% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 15,278,186 | 0 | 15,278,186 | 10,626,235 | 1,396,540 | 3,255,412 | 3,171,864 | 79% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 15,778,186 | 0 | 15,778,186 | 10,626,235 | 1,396,540 | 3,755,412 | 3,671,864 | 76% |
| | STATE GRANTS | | | | | | | | |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 61,026 | 0 | (1,026) | (1,010) | 102% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 105,424 | 0 | 16,628 | 14,851 | 86% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 262,229 | 2,184 | 815 | 694 | 100% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 0 | 99,627 | 373 | (1,188) | 100% |
| 7350300 | 18 ALAMEDA LL | 0 | 50,000 | 50,000 | 0 | 46,096 | 3,904 | 2,783 | 92% |
| 7350290 | 18 ANDERSON HIGHLANDS PARK | 0 | 15,000 | 15,000 | 0 | 0 | 15,000 | 15,000 | 0% |
| 7350190 | 18 ARENAL DRAIN | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350280 | 18 EASTDALE LL FENCING | 0 | 11,900 | 11,900 | 0 | 0 | 11,900 | 11,900 | 0% |
| 7350250 | 18 EASTDALE LL | 0 | 30,000 | 30,000 | 0 | 0 | 30,000 | 30,000 | 0% |
| 7350240 | 18 JUAN TABO HILLS PK | 0 | 73,100 | 73,100 | 0 | 73,100 | 0 | (1,116) | 100% |
| 7350180 | 18 LOBO LL | 0 | 90,000 | 90,000 | 0 | 9,927 | 80,073 | 71,362 | 11% |
| 7350230 | 18 MONTGOMERY PK | 0 | 31,000 | 31,000 | 0 | 0 | 31,000 | 31,000 | 0% |
| 7350260 | 18 AMOLE WOMEN'S MEMORIAL | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350270 | 18 ALAMOSA SECURITY CAM | 0 | 25,000 | 25,000 | 0 | 25,317 | (317) | (670) | 101% |
| 7350320 | 18 SE-MID-HEIGHTS PARK | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350310 | 18 ROADRUNNER LL | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350330 | 18 SUNRISE TERRACE PK IMP | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350210 | 18 PETROGLYPH LL SAFTEY IMP | 0 | 45,000 | 45,000 | 0 | 0 | 45,000 | 45,000 | 0% |
| 7350200 | 18 ZIA LL FAC IMP | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350220 | 18 MILE HIGH LL | 0 | 255,800 | 255,800 | 0 | 0 | 255,800 | 255,800 | 0% |
| 7349981 | 18 PARK SECURITY CAMERAS (RE-AUTH I | 0 | 337,351 | 337,351 | 0 | 0 | 337,351 | 337,351 | 0% |
| 7349851 | 18 ARENAL DRAIN BLUFF AREA PK (RE-AI | 0 | 145,450 | 145,450 | 0 | 0 | 145,450 | 145,450 | 0% |
| TOTAL STATE GRANTS | | 17,488 | 2,816,601 | 2,834,089 | 952,736 | 257,196 | 1,624,158 | 1,594,119 | 43% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **214,600** |
| 6900310 | 10/19/18 | RPR0010247 | | 0.00 | 661.81 | | B&D Industries - Zia Little Leauge (New Fence) - Southeast Impact Service Area (Manzano Mc | |
| **6900310** | **FD 345** | **SOUTHEAST** | | **0.00** | **661.81** | | | **33,225** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| 6900410 | 01/18/19 | P658202 - NTP#2 | | 19,066.91 | | | Consensus Planning - BFP - $19,066.91 (includes NMGRT) | |
| **6900410** | **FD 345** | **NORTHWEST** | | **19,066.91** | **6,537.76** | | | **320,074** |
| **6900610** | **FD 345** | **SOUTHWEST** | | **0.00** | **0.00** | | | **87,354** |
| **6900800** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **135,053** |
| 6900900 | 11/28/18 | **Reserve for Chant Property** | | 76,411.45 | | | Decreased $290,000 Property Paid & $389.55 Closing Cost 1/25/19 - Increased by $247,101.12 | |
| **6900900* Total** | **FD 345** | **OPEN SPACE** | | **76,411.45** | **0.00** | | | **340,551** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF FEBRUARY 28, 2018 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU MARCH 8, 2019

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,548 | 303,151 | 440,699 | 222,232 | 0 | 218,467 | 214,600 | 50% |
| 6900310 | SOUTHEAST | 24,608 | 301,819 | 326,427 | 292,348 | 24,933 | 9,146 | 8,522 | 97% |
| 6900410 | NORTHWEST | 534,747 | 2,206,277 | 2,741,024 | 2,389,094 | 46,401 | 305,529 | 299,260 | 89% |
| 6900610 | SOUTHWEST | 114,831 | 837,799 | 952,630 | 863,702 | 50,925 | 38,004 | 36,386 | 96% |
| 6900800 | TRAILS | 31,717 | 339,612 | 371,329 | 233,842 | 0 | 137,487 | 135,053 | 63% |
| 6900900 | OPEN SPACE | 517,223 | 4,131,970 | 4,649,193 | 4,224,650 | 0 | 424,543 | 417,029 | 91% |
| TOTAL FUND 345 | | 1,360,674 | 8,120,628 | 9,481,302 | 8,225,867 | 122,258 | 1,133,177 | 1,110,850 | 88% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,654,653 | 219,830 | 17,517 | 13,125 | 99% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,495,917 | 3,211 | 872 | 797 | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,965,140 | 88,194 | (53,333) | (54,026) | 102% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,994,129 | 0 | 5,871 | 5,767 | 100% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 307,973 | 41,247 | 779 | (0) | 100% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 1,339,115 | 36,254 | 124,631 | 121,752 | 92% |
| TOTAL PARKS MISC PROJ | | 8,496,840 | 7,894,332 | 16,391,172 | 14,572,952 | 388,736 | 1,429,484 | 1,396,965 | 91% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 15,219,274 | 0 | 15,219,274 | 10,717,662 | 1,474,560 | 3,027,052 | 2,946,097 | 80% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 15,719,274 | 0 | 15,719,274 | 10,717,662 | 1,474,560 | 3,527,052 | 3,446,097 | 78% |
| | GRANTS | | | | | | | | |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 61,026 | 0 | (1,026) | (1,010) | 102% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LL | 2,052 | 120,000 | 122,052 | 106,740 | 0 | 15,312 | 13,675 | 87% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 325 | 16,788 | 14,989 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LL | 5,228 | 260,000 | 265,228 | 260,912 | 2,184 | 2,132 | 1,870 | 99% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 43,027 | 57,323 | (350) | (1,188) | 100% |
| 7350300 | 18 ALAMEDA LL | 0 | 50,000 | 50,000 | 0 | 46,096 | 3,904 | 2,783 | 92% |
| 7350290 | 18 ANDERSON HIGHLANDS PARK | 0 | 15,000 | 15,000 | 0 | 0 | 15,000 | 15,000 | 0% |
| 7350190 | 18 ARENAL DRAIN | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350280 | 18 EASTDALE LL FENCING | 0 | 11,900 | 11,900 | 0 | 0 | 11,900 | 11,900 | 0% |
| 7350250 | 18 EASTDALE LL | 0 | 30,000 | 30,000 | 0 | 0 | 30,000 | 30,000 | 0% |
| 7350240 | 18 JUAN TABO HILLS PK | 0 | 73,100 | 73,100 | 0 | 73,100 | 0 | (1,116) | 100% |
| 7350180 | 18 LOBO LL | 0 | 90,000 | 90,000 | 395 | 9,538 | 80,067 | 71,362 | 11% |
| 7350230 | 18 MONTGOMERY PK | 0 | 31,000 | 31,000 | 0 | 0 | 31,000 | 31,000 | 0% |
| 7350260 | 18 AMOLE WOMEN'S MEMORIAL | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350270 | 18 ALAMOSA SECURITY CAM | 0 | 25,000 | 25,000 | 0 | 25,317 | (317) | (670) | 101% |
| 7350320 | 18 SE-MID-HEIGHTS PARK | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350310 | 18 ROADRUNNER LL | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350330 | 18 SUNRISE TERRACE PK IMP | 0 | 60,000 | 60,000 | 0 | 60,000 | 0 | (916) | 100% |
| 7350210 | 18 PETROGLYPH LL SAFTEY IMP | 0 | 45,000 | 45,000 | 0 | 0 | 45,000 | 45,000 | 0% |
| 7350200 | 18 ZIA LL FAC IMP | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350220 | 18 MILE HIGH LL | 0 | 255,800 | 255,800 | 0 | 0 | 255,800 | 255,800 | 0% |
| 7349981 | 18 PARK SECURITY CAMERAS (RE-AUTH I | 0 | 337,351 | 337,351 | 0 | 334,873 | 2,479 | (2,900) | 99% |
| 7349851 | 18 ARENAL DRAIN BLUFF AREA PK (RE-AI | 0 | 145,450 | 145,450 | 0 | 0 | 145,450 | 145,450 | 0% |
| 7373100 | A301032 ALAMEDA DRAIN TRAIL | | 153,750 | 153,750 | 0 | 0 | 153,750 | 153,750 | 0% |
| TOTAL GRANTS | | 17,488 | 2,970,351 | 2,987,839 | 996,158 | 609,376 | 1,382,305 | 1,346,701 | 54% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **214,600** |
| 6900310 | 03/27/19 | P756190 - NOA | | 24,396.41 | | | Lee Lanscapes - Juan Tabo Hills Park - SE Impact Service Area (New Park) - Split - 7350240 $73,000 / 7552130 $12 | |
| 6900310 | 10/19/18 | RPR0010247 | | 0.00 | 0.00 | | B&D Industries - Zia Little Leauge (New Fence) - Southeast Impact Service Area (Manzano Mesa Park)- PROP#18-1 | |
| 6900310 | 02/15/19 | RPR0010247 / PRK0014856 | | 536.44 | | | Change Order Decreased to $536.44 from $651.97 - 2/15/19 - B&D Industries - Zia Little Leauge (New Fence) - Sou | |
| **6900310** | **FD 345** | **SOUTHEAST** | | **24,932.85** | **0.00** | | | **8,522** |
| 6900410 | 10/16/17 | P658900 - WO#10 | | 0.00 | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $388,012.26 includes NMGRT | |
| 6900410 | 02/27/19 | P902300 - WO#41 | | 29,937.48 | | | Franklin Earthmoving - Ouray Dog Park (Ligh. fence hydrant) - North West Service Area - $23,937.48 (includes NM( | |
| 6900410 | 03/04/19 | V01158497 | | 70.12 | | | PlaySafe - Shawn McWethy Swing Audit - INV#19-0115 $65 Tax $5.12 = $70.12 | |
| 6900410 | 03/29/19 | RPR0011456 | | 5,271.00 | | | Trees of Corrales (POR) - Andalucai Park (New Trees) - NW Service Area - Order#138547 $5,271 | |
| 6900410 | 03/29/19 | RPR0011471 | | 4,584.69 | | | Desert Gardens (POR) - Andalucai Park (New Trees) - NW Service Area - PROP#0325191 $4,250 Tax $334.69 = $4 | |
| **6900410** | **FD 345** | **NORTHWEST** | | **39,863.29** | **6,537.76** | | | **299,260** |
| 7350270 | 03/14/19 | P902300 - WO#43 | | 50,924.56 | | | Franklin Earthmoving - Memoral Park Lighting - SW Service Area - Split - 7350270 ($111,239.86) $120,000 (w/NM | |
| **6900610** | **FD 345** | **SOUTHWEST** | | **50,924.57** | **0.00** | | | **36,386** |
| **6900800** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **135,053** |
| 6900900 | 11/28/18 | **Reserve for Chant Property** | | 0.00 | | | Released Remaining Amount $76,411.45 Jordan 3/6/19 - Decreased $290,000 Property Paid & $389.55 Closing Cost | |
| **6900900* Total** | **FD 345** | **OPEN SPACE** | | **0.00** | **0.00** | | | **417,029** |

CAPITAL IMPLEMENTATION PROGRAM
FINANCIAL STATUS REPORT
AS OF MARCH 31,2019 ERP POSTED TRANSACTIONS
& TRANSITORIES RECEIVED THRU APRIL 9, 2019

**PARKS AND RECREATION**

| PROJECT NUMBER | PROJECT NAME | BOND AMOUNT | GRANT AMOUNT | TOTAL APPROPRIATED | TOTAL EXPENDED | TOTAL ENCUMBERED | UNENCUM BALANCE | UNENCUM LESS INDIRECT | PCT EXP ENC |
|---|---|---|---|---|---|---|---|---|---|
| | FUND 345 IMPACT FEES | | | | | | | | |
| 6900110 | NORTHEAST | 137,548 | 303,151 | 440,699 | 222,232 | 0 | 218,467 | 214,600 | 50% |
| 6900310 | SOUTHEAST | 24,608 | 301,819 | 326,427 | 292,348 | 24,396 | 9,683 | 9,058 | 97% |
| 6900410 | NORTHWEST | 534,747 | 2,206,277 | 2,741,024 | 2,389,165 | 46,331 | 305,528 | 299,260 | 89% |
| 6900610 | SOUTHWEST | 114,831 | 837,799 | 952,630 | 863,702 | 50,925 | 38,004 | 36,386 | 96% |
| 6900800 | TRAILS | 31,717 | 339,612 | 371,329 | 233,842 | 0 | 137,487 | 135,053 | 63% |
| 6900900 | OPEN SPACE | 517,223 | 4,131,970 | 4,649,193 | 4,224,650 | 0 | 424,543 | 417,029 | 91% |
| TOTAL FUND 345 | | 1,360,674 | 8,120,628 | 9,481,302 | 8,225,938 | 121,652 | 1,133,712 | 1,111,386 | 88% |
| | MISC PROJ | | | | | | | | |
| 7299910 | PETROGLYPH NATL ACQ | 0 | 5,002,332 | 5,002,332 | 3,743,151 | 0 | 1,259,181 | 1,236,894 | 75% |
| 7514340 | RIVER BOSQUE RESTORE & TRAIL | 0 | 2,892,000 | 2,892,000 | 2,654,653 | 219,830 | 17,517 | 13,125 | 99% |
| 7538040 | MONZANO MESA SPORTS COMPLEX | 1,500,000 | 0 | 1,500,000 | 1,496,912 | 3,211 | (123) | (180) | 100% |
| 7538050 | LOS ALTOS POOL & PK IMPROVMENTS | 3,000,000 | 0 | 3,000,000 | 2,988,313 | 44,823 | (33,136) | (33,382) | 101% |
| 7552140 | LOS ALTOS POOL | 2,000,000 | 0 | 2,000,000 | 1,994,129 | 0 | 5,871 | 5,767 | 100% |
| 7552170 | WESTSIDE MEMORIAL | 350,000 | 0 | 350,000 | 337,063 | 13,235 | (299) | (539) | 100% |
| 7542260 | OS_LAND_AQUISTIONS | 146,840 | 0 | 146,840 | 72,874 | 0 | 73,966 | 72,657 | 50% |
| 7543300 | LOS ALTOS GOLF COURSE | 1,500,000 | 0 | 1,500,000 | 1,364,549 | 11,292 | 124,159 | 121,752 | 92% |
| TOTAL PARKS MISC PROJ | | 8,496,840 | 7,894,332 | 16,391,172 | 14,651,645 | 292,391 | 1,447,136 | 1,416,093 | 91% |
| | FD 341 TRANSP INFRA TAX | | | | | | | | |
| 7600300 | TRAILS/BIKEWAYS | 15,219,274 | 0 | 15,219,274 | 10,745,477 | 1,213,363 | 3,260,434 | 3,180,198 | 79% |
| 7600400 | BIKEWAYS/TRAILS | 500,000 | 0 | 500,000 | 0 | 0 | 500,000 | 500,000 | 0% |
| TOTAL TRANSP TX FD 341 | | 15,719,274 | 0 | 15,719,274 | 10,745,477 | 1,213,363 | 3,760,434 | 3,680,198 | 76% |
| | GRANTS | | | | | | | | |
| 7349970 | WOMENS MEMORIAL | 0 | 50,000 | 50,000 | 50,224 | 620 | (844) | (841) | 102% |
| 7350170 | LOS ALTOS PARK | 0 | 60,000 | 60,000 | 61,026 | 0 | (1,026) | (1,010) | 102% |
| 7349860 | 14 ALAMEDA LL | 4,370 | 314,000 | 318,370 | 218,370 | 0 | 100,000 | 89,310 | 69% |
| 7349900 | 14 WESTGATE LL | 923 | 45,000 | 45,923 | 43,755 | 0 | 2,168 | 1,937 | 95% |
| 7350060 | 16 DALE BELLAMA MILE HIGH LI | 2,052 | 120,000 | 122,052 | 106,740 | 0 | 15,312 | 13,675 | 87% |
| 7350110 | 15 WESTMESA LL | 855 | 50,000 | 50,855 | 32,460 | 0 | 18,395 | 16,429 | 64% |
| 7350120 | 15 ROADRUNNER LL | 2,809 | 137,000 | 139,809 | 122,696 | 0 | 17,113 | 15,283 | 88% |
| 7350150 | 15 ZIA LL | 1,251 | 61,000 | 62,251 | 56,554 | 0 | 5,697 | 5,088 | 91% |
| 7350160 | 15 DALE BELLAMAH LI | 5,228 | 260,000 | 265,228 | 260,912 | 2,184 | 2,132 | 1,870 | 99% |
| 7350090 | 16 ALAMEDA LL | 0 | 100,000 | 100,000 | 79,177 | 21,781 | (958) | (1,188) | 101% |
| 7350300 | 18 ALAMEDA LL | 0 | 50,000 | 50,000 | 0 | 0 | 50,000 | 50,000 | 0% |
| 7350290 | 18 ANDERSON HIGHLANDS PARK | 0 | 15,000 | 15,000 | 0 | 0 | 15,000 | 15,000 | 0% |
| 7350190 | 18 ARENAL DRAIN | 0 | 75,000 | 75,000 | 247 | 26,514 | 48,240 | 42,678 | 36% |
| 7350280 | 18 EASTDALE LL FENCING | 0 | 11,900 | 11,900 | 0 | 0 | 11,900 | 11,900 | 0% |
| 7350250 | 18 EASTDALE LL | 0 | 30,000 | 30,000 | 0 | 0 | 30,000 | 30,000 | 0% |
| 7350240 | 18 JUAN TABO HILLS PK | 0 | 73,100 | 73,100 | 0 | 73,100 | 0 | (1,116) | 100% |
| 7350180 | 18 LOBO LL | 0 | 90,000 | 90,000 | 711 | 9,228 | 80,061 | 71,362 | 11% |
| 7350230 | 18 MONTGOMERY PK | 0 | 31,000 | 31,000 | 0 | 20,671 | 10,329 | 8,909 | 67% |
| 7350260 | 18 AMOLE WOMEN'S MEMORIAL | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350270 | 18 ALAMOSA SECURITY CAM | 0 | 25,000 | 25,000 | 0 | 25,317 | (317) | (670) | 101% |
| 7350320 | 18 SE-MID-HEIGHTS PARK | 0 | 75,000 | 75,000 | 0 | 0 | 75,000 | 75,000 | 0% |
| 7350310 | 18 ROADRUNNER LL | 0 | 60,000 | 60,000 | 0 | 0 | 60,000 | 60,000 | 0% |
| 7350330 | 18 SUNRISE TERRACE PK IMP | 0 | 60,000 | 60,000 | 0 | 60,000 | 0 | (916) | 100% |
| 7350210 | 18 PETROGLYPH LL SAFTEY IMP | 0 | 45,000 | 45,000 | 0 | 0 | 45,000 | 45,000 | 0% |
| 7350200 | 18 ZIA LL FAC IMP | 0 | 120,000 | 120,000 | 0 | 0 | 120,000 | 120,000 | 0% |
| 7350220 | 18 MILE HIGH LL | 0 | 255,800 | 255,800 | 0 | 45,252 | 210,548 | 187,349 | 18% |
| 7349981 | 18 PARK SECURITY CAMERAS (RE-AUTH fr | 0 | 337,351 | 337,351 | 0 | 334,873 | 2,479 | (2,900) | 99% |
| 7349851 | 18 ARENAL DRAIN BLUFF AREA PK (RE-AU | 0 | 145,450 | 145,450 | 0 | 0 | 145,450 | 145,450 | 0% |
| 7373100 | A301032 ALAMEDA DRAIN TRAIL | 0 | 153,750 | 153,750 | 0 | 153,750 | 0 | (2,436) | 100% |
| TOTAL GRANTS | | 17,488 | 2,970,351 | 2,987,839 | 1,032,871 | 773,290 | 1,181,679 | 1,115,163 | 60% |

| Project | Date | Reference | Acct | Transitory | Encumbrance | Hit | Notes | Proj Bal |
|---|---|---|---|---|---|---|---|---|
| **6900110** | **FD 345** | **NORTHEAST** | | **0.00** | **0.00** | | | **214,600** |
| 6900310 | 03/27/19 | P756190 - NOA | | 24,396.41 | | | Lee Lanscapes - Juan Tabo Hills Park | |
| **6900310** | **FD 345** | **SOUTHEAST** | | **24,396.41** | **0.00** | | | **9,058** |
| 6900410 | 04/03/14 | OLD PO | | | 500.00 | | ERP Issue PO#890358 | |
| 6900410 | 10/16/17 | P658900 - WO#10 | | | 6,537.76 | | Lee Landscapes - Shawn Mcwethy - $ | |
| 6900410 | 02/27/19 | P902300 - WO#41 | | | 29,937.48 | | Franklin Earthmoving - Ouray Dog Pa | |
| 6900410 | 03/29/19 | RPR0011456 | | 5,271.00 | | | Trees of Corrales (POR) - Andalucai F | |
| 6900410 | 03/29/19 | RPR0011471 | | 4,584.69 | | | Desert Gardens (POR) - Andalucai Pa | |
| **6900410** | **FD 345** | **NORTHWEST** | | **9,855.69** | **36,475.24** | | | **299,260** |
| 6900610 | 03/14/19 | P902300 - WO#43 | | | 50,924.56 | | Franklin Earthmoving - Memoral Park | |
| **6900610** | **FD 345** | **SOUTHWEST** | | **0.00** | **50,924.56** | | | **36,386** |
| **6900800** | **FD 345** | **TRAILS** | | **0.00** | **0.00** | | | **135,053** |
| **6900900* Total** | **FD 345** | **OPEN SPACE** | | **0.00** | **0.00** | | | **417,029** |

EXHIBIT E

FILED IN MY OFFICE
DISTRICT COURT CLERK
2/1/2016 1:23:57 PM
James A. Noel
Shellene Romero

EXHIBIT E

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

KEERAN 1, LLC, ROBERT KEERAN,
and CYNTHIA KEERAN,

Petitioners,

v.

D-202-CV-2014-07331

THE CITY OF ALBUQUERQUE,

Respondent.

# MEMORANDUM OPINION AND ORDER

**THIS MATTER** is an appeal of a decision by the City of Albuquerque denying Petitioners' request for cash reimbursement of impact fee credits under the Impact Fee Ordinance, Albuquerque, N.M., Code of Ordinances, §§ 14-19-1 through -24, -98 through -99 (2012) (the "IFO"). The Court has reviewed the record and the parties' briefs, and heard argument of counsel. The Court **AFFIRMS in part, REVERSES in part, and REMANDS** this matter for additional proceedings as described in this opinion.

## I. FACTS AND BACKGROUND

The record reflects the following facts. In 2008, the City granted Petitioners approximately $3.2 million in impact fee credits in exchange for building a portion of a concrete-lined drainage channel in the Far Northeast Service Area. On February 14, 2014, Petitioners applied to the City for a cash reimbursement. [ROA 000290.] The City's Impact Fee Administrator denied the request on March 14, 2014. [ROA 000498–99.] Petitioners appealed the Impact Fee Administrator's decision to the Environmental Planning Commission. On May 8, 2014, the Environmental Planning Commission affirmed the Impact Fee Administrator's decision. [ROA 000013–14.] Petitioners appealed to the City's Planning Department and the matter was assigned to be heard by a Land Use Hearing Officer (LUHO). [ROA 000017.]

An evidentiary hearing was held before the LUHO on August 13, 2014, and continued on September 19, 2014. On September 26, 2014, the LUHO issued a recommendation that Petitioners' appeal be denied. The City Council adopted the LUHO's recommendation by a seven-to-one vote on October 21, 2014. [ROA 000728–43.]

Petitioners seek judicial review of the City's administrative action denying their application for reimbursement. Petitioners' claims for constitutional and statutory violations are not currently before the Court.

## II. STANDARD OF REVIEW

Rule 1-075(R) NMRA[1] provides that the district court shall apply the following standards of review:

> (1) whether the agency acted fraudulently, arbitrarily or capriciously;
> (2) whether based upon the whole record on review, the decision of the agency is not supported by substantial evidence;
> (3) whether the action of the agency was outside the scope of authority of the agency; or
> (4) whether the action of the agency was otherwise not in accordance with law.

Substantial evidence is evidence that a reasonable mind would regard as adequate to support a conclusion. *Fitzhugh v. N.M. Dep't of Labor*, 1996-NMSC-044, ¶ 24, 122 N.M. 173 The party challenging the agency's decision bears the burden on appeal of showing that the decision meets one of the grounds for reversal. *Id.* ¶ 25.

## III. DISCUSSION

### A. Issues ripe for review

This matter raises several questions, but only three issues are ripe for appellate review based on the record that currently exists: (1) Does the IFO give priority to a credit-holder who

[1] Neither side has identified a statutory right of review for the type of decision at issue here. Accordingly, the Court reviews this matter under Rule 1-075 NMRA which governs "when there is no statutory right to an appeal or other statutory right of review." Rule 1-075(A) NMRA.

has applied for cash reimbursement? (2) Was there an unencumbered balance of drainage impact fees for the Far Northeast Service Area when Petitioners applied for reimbursement? and (3) Did the City spend drainage impact fees collected for the Far Northeast Service Area on ineligible projects?

Petitioners preserved all three issues during the administrative proceedings and the LUHO addressed these issues in the recommendation that was adopted by the City Council. The Court therefore proceeds to address each issue.

**B. Does the IFO give priority to a credit-holder who has applied for cash reimbursement?**

Petitioners argue the City is required to reimburse credit-holders from impact fees collected in the future. Petitioners' argument is that once a credit holder has submitted an application for reimbursement, his claim to impact fees collected thereafter takes priority over any other eligible expenditures under the IFO. The LUHO concluded Petitioners' claim for a cash reimbursement does not have priority over eligible capital improvements. The Court affirms this conclusion.

The IFO permits credit holders to "[r]equest reimbursement from the city for all or part of the amount of the excess credits from revenue generated by impact fees paid by new development for system improvements within the same service category and service area for which the credit was granted." IFO, § 14-19-19(J)(6)(c). Based on this provision, the Court concludes there is no prohibition against using impact fees collected after the date of the application to reimburse credit-holders. However, there is no basis in the IFO to support Petitioners' position that claims for cash reimbursement take precedence over other eligible expenditures. Whether the City is required to reimburse a credit holder in cash depends solely on whether the funds are encumbered.

C. **Was there an unencumbered balance?**

The IFO states:

> The city shall, upon request from the credit-holder of excess credits, after acceptance by the city of the project creating credits, provide reimbursements for excess credits on a first in, first out basis and shall not be obligated to provide reimbursements in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.

IFO, § 14-19-19(J)(7)(c). It is undisputed that Petitioners are credit-holders or acting on behalf of credit-holders, that the City accepted the project creating the credits, and that the account at issue is the drainage impact fee account for the Far Northeast Service Area. The parties also are in agreement that over a period of time the City had collected approximately $1,022,000 in drainage impact fees for the Far Northeast Service Area and that it had expended approximately $939,500 from that account.

Petitioners argue the difference—approximately $82,500—is unencumbered and therefore available to reimburse credit-holders. The City argues, and the LUHO agreed, that the entire balance is encumbered and therefore there is no unencumbered balance available to reimburse credit-holders.

The threshold question of law is one of interpreting the IFO: what is an "encumbered" balance? The IFO provides a definition. Encumbered means: "Impact fee funds committed for a specified capital improvement on a specified time schedule which does not exceed seven years from the date of payment of the impact fees." IFO, § 14-19-3 (Definitions). The Court concludes this definition means that to qualify as encumbered the funds must be committed, or in other words—ear-marked—to a specific capital improvement, and must be scheduled to be spent on that specific capital improvement within seven years from the date the fees were paid.

The LUHO agreed with the Impact Fee Administrator that funds are encumbered if they have not been spent and there are projects on the Component Capital Improvement Plan (CCIP)

that have yet to be funded. The Court rejects this definition. While the Court agrees that drainage impact fees collected in the Far Northeast Service Area may be spent on any project listed on the CCIP, merely listing a project on the CCIP is not sufficient to encumber the unspent balance. If listing an improvement on the CCIP were sufficient to encumber any outstanding funds, it would be unnecessary for the IFO to provide a definition of the term "encumbered."

As evidence that the funds in the account were encumbered, the City offered a document designated in the record as "Attachment G." [ROA 000641.] Attachment G is a spreadsheet which the City's witness described as a "rundown of all the expenses for the far northeast [drainage] impact fee[s]" going back to February of 2008, which is when the City reportedly began collecting impact fees for this area. [ROA 000545.] Attachment G states the "Total Collected" is $1,022,000.00, which corresponds to the approximate amount the parties agree the City had collected in drainage impact fees for the Far Northeast Service Area up to that time. Attachment G also identifies expenditures of impact fees for the Far Northeast Service Area. For each expenditure, Attachment G provides the amount, vendor name and number, and a brief description of the project. The total of the expenditures, designated on the spreadsheet at "Total Spent," is $939,443.00. The difference between the "Total Collected" and "Total Spent"—$82,557.00—is designated "Total Encumbered (future proj.)." [ROA 000641.] The LUHO found Attachment G demonstrates that the unspent funds in the account were encumbered. [ROA 000738.]

The Court does not agree Attachment G demonstrates the funds are encumbered. Attachment G does not identify: (1) to which capital improvement the funds are committed; or (2) a specified time schedule for spending the funds. The IFO requires both criteria be met both

before funds can be characterized as encumbered. Attachment G shows, at most, that the funds remaining in the account have not been spent—it does not demonstrate they are encumbered.

The IFO does not specify a procedure for encumbering funds and the Court therefore declines to define or mandate a procedure. However, the Court rejects Petitioners' position that projects must be defined with more specificity than the allegedly general descriptions in the CCIP. What the definition of "encumbered" requires is that the funds be identified to a particular improvement and scheduled to be expended on a specified schedule; it does not require more detailed project descriptions than are given in the CCIP. The Court also rejects Petitioners' argument that impact fees are encumbered only if a purchase order has been issued. There is no support in the IFO for this proposition.

To the extent the City concluded impact fees are encumbered merely because they are unspent, the decision is reversed and this matter is remanded with instructions to conduct additional proceedings to determine if the funds are encumbered according to a correct construction of the term "encumbered." When determining if funds are encumbered, the City should be guided by the requirements of the IFO. Encumbering impact fees the City collects is part of administering them. The IFO requires administration of impact fees be transparent and documented. IFO, § 14-19-17 (Administration of Fees). Whether the City has encumbered some or all of the funds in an account, to which specific capital improvement, and upon what specified schedule should be readily discernible and open to inspection.

**D. Did the City spend impact fees on ineligible projects?**

Petitioners claim the balance of drainage impact fees for the Far Northeast Service Area is too low because the City expended impact fees on projects that that were not eligible for impact fees. The LUHO found $272,752.67 spent on acquiring two lots on Glendale Avenue

was a proper expenditure and rejected Petitioners' arguments that impact fees could only be spent on the La Cueva Channel project.

An impact fee is a "charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development." NMSA 1978, § 5-8-2(I) (1993). "Money from impact fees may be spent only for the purposes for which the impact fee was imposed as shown by the capital improvements plan and as authorized by the Development Fees Act." *Id.* § 5-8-16(C). Under the IFO, authorized expenditures include: planning, design and construction, land acquisition, land improvement, design and engineering related thereto. IFO, § 14-19-14(A)(1).

Substantial evidence supports the LUHO's finding that the purchase of two lots on Glendale Avenue for a total of $272,752.67 was an eligible expenditure. The Impact Fee Administrator testified that these two lots, acquired between August and November 2012, were part of the El Camino Trunk Line project. [CD Sept. 19, 2014, at 37:00–50:00.] The El Camino Trunk Line project is on the CCIP for fiscal year 2011 through fiscal year 2018 [ROA 000277] and land acquisition is a permissible use of impact fees.

However, the record is not sufficiently developed to permit appellate review of Petitioners' claim that other expenditures listed on Attachment G were not eligible for impact fees. Petitioners' counsel attempted to elicit testimony from the City's witnesses regarding expenditures listed on Attachment G. Neither the Impact Fee Administrator nor the City's Fiscal Manager for Municipal Development was able to answer questions regarding the purpose of expenditures other than the purchase of the Glendale lots. The Impact Fee Administrator stated he was unable to answer questions regarding expenditures of impact fees because the questions

require engineering knowledge and because expenditures are handled by the Department of Municipal Development with the assistance of the Engineering Department. [CD Sept. 19, 2014, 58:00–1:13:00.]

The nature of the expenditures is relevant because impact fees may not be used to pay for certain types of projects.[2] To determine whether an expenditure was a proper use of impact fees, the nature of the project must be established. The Court considers the nature of the expenditure to be a fact question within the purview of the administrative process that is subject to substantial evidence review on appeal. Because the Court's review in its appellate capacity is limited to the record, the Court declines to consider any factual matter submitted with the briefs.

The record contains no evidence regarding most of the expenditures on Attachment G. Accordingly, this case is remanded for further evidentiary proceedings as necessary, and findings to determine if the challenged expenditures were permissible under the Development Fees Act and the IFO.

## IV. CONCLUSION

The Court: (1) **AFFIRMS** the City's conclusion that the IFO does not give priority to credit-holders who have applied for cash reimbursement; (2) **REVERSES** the City's finding that there is no unencumbered balance of drainage impact fees for the Far Northeast Service Area because the finding is based on an erroneous interpretation of the term "encumbered"; and (3)

[2] For example, impact fees may not be used to pay for: (1) facilities that are not identified on the capital improvements plan; (2) repair, operation or maintenance of existing or new capital improvements or facility expansions; (3) upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards; (4) upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development; (5) administrative and operating costs except as provided by the Development Fees Act; (6) principal payments or debt service charges on bonds or other indebtedness, except as allowed by the Development Fees Act; or (7) libraries, community centers, schools and certain other specified facilities. NMSA 1978, § 5-8-5. The IFO also contains a section defining eligible and ineligible expenditures. IFO, § 14-19-14.

**AFFIRMS** the City's finding that the purchase of the two Glendale lots was a permissible use of impact fees because this finding is supported by substantial evidence.

This matter is **REMANDED** for proceedings to: (1) determine if the funds were encumbered according to the corrected definition described in this opinion; and (2) develop an evidentiary record and findings as to whether other challenged expenditures were eligible for impact fees.

**IT IS SO ORDERED.**

**ALAN MALOTT**
**DISTRICT COURT JUDGE**

This is to certify that a true and correct copy of the foregoing document was mailed and/or otherwise delivered to the following on 2-1-16, 2016:

J. Douglas Foster
Foster, Rieder, and Jackson, P.C.
P.O. Box 1607
Albuquerque, NM 87103-1607

Blake Whitcomb.
Nataley I. Quintana
City of Albuquerque
P.O. Box 2248
Albuquerque, NM 87103

CV-2014-07331

EXHIBIT F

EXHIBIT F

# CITY OF ALBUQUERQUE
## CITY COUNCIL

**SUBJECT:** **Remand of AC-14-4 per order of the Second Judicial District Court**

**DATE:** **May 16, 2016**

The City Council denied a request for a refund or reimbursement of Drainage Impact Fee Excess Credits by accepting and adopting a recommendation and findings of the City Council's Land Use Hearing Officer on October 20, 2014. That decision was appealed to the Second Judicial District Court by the Appellants, Bob Keeran as Agent for, Bob Keeran, Donald Hoech of Hoech Real Estate Corp. and Hoech Profit & Sharing Plan, JT Michelson and Michael Montoya.

The District Court affirmed part of the City Council's decision, and reversed and remanded other parts. Specifically, the Council was affirmed on its determination that the Impact Fee Ordinance does not give priority to impact fee credit-holders requesting cash reimbursements over properly encumbered CCIP projects, and that the purchase of two parcels of land was a permissible expenditure of impact fees.

However, the District Court reversed and remanded for the City to hold additional proceedings to: 1) determine if certain impact fee funds were properly encumbered according to the definition of "encumbered funds" as interpreted by the District Court, and 2) to develop an evidentiary record and findings as to whether certain other expenditures were eligible for impact fees.

The City Council hereby refers the remand of AC-14-4 to the Land Use Hearing Officer to hold any necessary hearings on the matters remanded by the District Court (unless otherwise settled by the parties prior to a hearing) and to submit a recommendation and findings on these matter for acceptance or rejection by the City Council pursuant to the relevant City Ordinances and City Council Rules for land use appeals and the following instructions:

- The Parties shall submit written briefs with any relevant supporting evidence to the Land Use Hearing Officer putting forth their respective positions and arguments on the matters in controversy not later than July 15, 2016.
- The Land Use Hearing Officer shall hold a hearing on this matter as soon as practicable after completion of briefing.

**Attachment:** Remand Order in the Matter of *Keeran 1, LLC Robert Keeran and Cynthia Keeran v. the City of Albuquerque*, D-202-CV-2014-07331

FILED IN MY OFFICE
DISTRICT COURT CLERK
2/1/2016 1:23:57 PM
James A. Noel
Shellene Romero

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
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Petitioners claim the balance of drainage impact fees for the Far Northeast Service Area is too low because the City expended impact fees on projects that that were not eligible for impact fees. The LUHO found $272,752.67 spent on acquiring two lots on Glendale Avenue

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Substantial evidence supports the LUHO's finding that the purchase of two lots on Glendale Avenue for a total of $272,752.67 was an eligible expenditure. The Impact Fee Administrator testified that these two lots, acquired between August and November 2012, were part of the El Camino Trunk Line project. [CD Sept. 19, 2014, at 37:00–50:00.] The El Camino Trunk Line project is on the CCIP for fiscal year 2011 through fiscal year 2018 [ROA 000277] and land acquisition is a permissible use of impact fees.

However, the record is not sufficiently developed to permit appellate review of Petitioners' claim that other expenditures listed on Attachment G were not eligible for impact fees. Petitioners' counsel attempted to elicit testimony from the City's witnesses regarding expenditures listed on Attachment G. Neither the Impact Fee Administrator nor the City's Fiscal Manager for Municipal Development was able to answer questions regarding the purpose of expenditures other than the purchase of the Glendale lots. The Impact Fee Administrator stated he was unable to answer questions regarding expenditures of impact fees because the questions

require engineering knowledge and because expenditures are handled by the Department of Municipal Development with the assistance of the Engineering Department. [CD Sept. 19, 2014, 58:00–1:13:00.]

The nature of the expenditures is relevant because impact fees may not be used to pay for certain types of projects.[2] To determine whether an expenditure was a proper use of impact fees, the nature of the project must be established. The Court considers the nature of the expenditure to be a fact question within the purview of the administrative process that is subject to substantial evidence review on appeal. Because the Court's review in its appellate capacity is limited to the record, the Court declines to consider any factual matter submitted with the briefs.

The record contains no evidence regarding most of the expenditures on Attachment G. Accordingly, this case is remanded for further evidentiary proceedings as necessary, and findings to determine if the challenged expenditures were permissible under the Development Fees Act and the IFO.

## IV. CONCLUSION

The Court: (1) **AFFIRMS** the City's conclusion that the IFO does not give priority to credit-holders who have applied for cash reimbursement; (2) **REVERSES** the City's finding that there is no unencumbered balance of drainage impact fees for the Far Northeast Service Area because the finding is based on an erroneous interpretation of the term "encumbered"; and (3)

[2] For example, impact fees may not be used to pay for: (1) facilities that are not identified on the capital improvements plan; (2) repair, operation or maintenance of existing or new capital improvements or facility expansions; (3) upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards; (4) upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development; (5) administrative and operating costs except as provided by the Development Fees Act; (6) principal payments or debt service charges on bonds or other indebtedness, except as allowed by the Development Fees Act; or (7) libraries, community centers, schools and certain other specified facilities. NMSA 1978, § 5-8-5. The IFO also contains a section defining eligible and ineligible expenditures. IFO, § 14-19-14.

**AFFIRMS** the City's finding that the purchase of the two Glendale lots was a permissible use of impact fees because this finding is supported by substantial evidence.

This matter is **REMANDED** for proceedings to: (1) determine if the funds were encumbered according to the corrected definition described in this opinion; and (2) develop an evidentiary record and findings as to whether other challenged expenditures were eligible for impact fees.

**IT IS SO ORDERED.**

**ALAN MALOTT**
**DISTRICT COURT JUDGE**

This is to certify that a true and correct copy of the foregoing document was mailed and/or otherwise delivered to the following on 2-1-16, 2016:

J. Douglas Foster
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P.O. Box 1607
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Blake Whitcomb.
Nataley I. Quintana
City of Albuquerque
P.O. Box 2248
Albuquerque, NM 87103

CV-2014-07331

EXHIBIT G

EXHIBIT L

Notice of Decision
City Council
City of Albuquerque
December 6, 2016

[illegible] PM 12:52

AC-14-4 (Project# 1010019/14EPC-40023) Bob Keeran as Agent for, Bob Keeran, Donald Hoech of Hoech Real Estate Corp. and Hoech Profit & Sharing Plan, JT Michelson and Michael Montoya appeal the Environmental Planning Commission's (EPC) decision to Affirm the Impact Fees Administrator's decision to deny a request for a refund and/or reimbursement of drainage excess impact fee credits for system improvements in the far northeast service area that were tied to Tract A-1 Oakland Heights Subdivision recorded on April 17, 2006, in the records of the Bernalillo County Clerk Book 2006C and page 119 (Zone Atlas page C-20), located between Barstow on the west and Ventura on the east and between Eagle Rock on the north and Alameda on the south

Decision

On December 5, 2016, by a vote of 8 FOR, 0 AGAINST, the City Council accepted and adopted the recommendation and findings of its Land Use Hearing Officer that: 1) use of drainage impact fees were appropriate for the La Cueva Dip Project but not the Barstow Drain Project, and 2) that the City applied an acceptable method of encumbering drainage impact fees at the time of the refund request at issue in this appeal.

Excused: Davis

IT IS THEREFORE ORDERED THAT APPELLANT IS ELIGIBLE FOR A REFUND OF ONLY THOSE FUNDS THAT WERE IMPROPERLY EXPENDED ON THE BARSTOW DRAIN PROJECT OR THAT WERE OTHERWISE UNENCUMBERED AT THE TIME OF THE REFUND REQUEST.

Attachments

1. Land Use Hearing Officer's Recommendation
2. Action Summary from the December 5, 2016 City Council Meeting

A person aggrieved by this decision may appeal the decision to the Second Judicial District Court by filing in the Court a notice of appeal within thirty (30) days from the date this decision is filed with the City Clerk.

Isaac Benton, President
City Council

Date: 12-19-16

Received by:
City Clerk's Office

Date: 12/19/16

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BEFORE THE CITY OF ALBUQUERQUE
LAND USE HEARING OFFICER

October 31, 2016

APPEAL NO. AC-14-4
Project No. 1010019
14EPC-40023

BOB KEERAN as agent for BOB KEERAN,
HOECH REAL ESTATE CORP., HOECH PROFIT & SHARING PLAN,
JT MICHELSON, and MICHAEL MONTOYA, Appellants.

## I. BACKGROUND

The record of this appeal has considerable history. It originated in 2014 from a decision of the City Impact Fee Administrator denying the Appellant, Bob Keeran's request to redeem excess impact fee credits for cash. Mr. Keeran appealed that decision to the Environmental Planning Commission (EPC) and in a public hearing the EPC upheld the decision of the Administrator. The Appellant filed a timely appeal to the City Council. The City Council referred the appeal to be heard by this Land Use Hearing Officer (LUHO). Mr. Keeran's appeal was heard during the course of two Land Use appeal hearings in 2014. The City Council then denied Mr. Keeran's appeal. Mr. Keeran filed an appeal to the District

Court, and in a written decision, the District Court partially upheld the City Council's decision, but because the factual record had not been well-developed for a ruling on some issues, the Court remanded the two undeveloped issues to the City so that the record could be better developed. The City Council remanded the two issues to this LUHO to develop the facts in a public hearing and to make recommendations. A Land Use appeal hearing to fulfill the Court's remand order was held on September 29, 2016.

In remanding the appeal back to the City, the Court also made some very specific findings. The Court held that redemption of excess credits does not have priority over eligible capital improvements. The Court also found that there is no prohibition in the Impact Fee Ordinance (IFO) that prevents the City from using impact fees collected in the same category, and service area, after Mr. Kerran applied to cash in the credits. In addition, the Court determined that redeeming credits for cash is solely dependent on whether or not impact fees have been encumbered. The Court agreed also that "[e]ncumbering impact fees the City collects is part of administering them." However, the Court clearly rejected the City's findings regarding how the City encumbers impact fees and in doing so, based on the existing record, the Court rejected the City's evidence demonstrating that the funds were actually encumbered in the manner required by the IFO.[1] The City took the position that the

1. I note that I interpret the Court's ruling as not outright rejecting the procedure DMD exercises to encumber impact fees. I believe the Court rejected that the existing evidence of listing projects in the CCIP and listing expenditures in Attachment G supported the procedure for encumbering impact fees. In addition, I believe the Court's rejection of Appellant's contention that impact fees are encumbered when a purchase order or contract was issued was based on the lack of evidence in the previous record supporting it. I make this note because the Appellant and the City have taken the position that the Court outright rejected how DMD encumbered impact fees.

City is not obligated to redeem impact fee excess credits for cash if there are projects listed in a Component Capital Improvement Plan (CCIP) for the service area that demands funding. The Court rejected the City's argument because listing the projects in the CCIP does not in itself satisfy the definition of "encumbered" in the text of the IFO. In the text of the IFO, the definition of the term "encumbered" means that:

> "Impact fee funds committed for a specified capital improvement on a specified time schedule which does not exceed seven years from the date of payment of the impact fees" [§ 14-19-3 Definition of "encumbered"].

Thus, the proposition that impact fee funds are encumbered if they are simply listed in the CCIP is insufficient. Similarly, the Court found that Attachment "G" does not demonstrate that the funds are encumbered because it does not identify that the funds are committed or on a specified time schedule which does not exceed seven years from when the impact fees are collected. Attachment G only shows expenditures of impact fees in the various accounts and service areas. Furthermore, other than the definition of the term, the IFO provides no help in determining the correct process of encumbering impact fees. Additional evidence detailing the method how impact fees are encumbered is necessary to resolve the question of whether there were unencumbered funds in the drainage account for the Far Northeast Service Area at the time when Mr. Keeran submitted his application to redeem his credits. Because the evidence of the City's procedure for encumbering impact fees was not well developed in the previous record, the Court refused to dictate a procedure for encumbering funds. Thus, one purpose of the remand is to make more detailed factual findings on the City's procedure for

encumbering impact fees and to determine if any unencumbered impact fees were available at the time when Mr. Keeran submitted his application to redeem his excess credits.

The second reason for the Court's remand concerns the nature of capital improvement projects the City has funded with impact fee funds. The City has maintained that since Appellant submitted his application to cash-in his impact fee excess credits for cash, there were /are no unencumbered impact fee funds that can be utilized to redeem Appellant's credits because all impact fee funds were either encumbered or were expended on eligible drainage capital improvement projects. However, Appellant contends that impact fees were expended on at least two ineligible projects, and if the impact fee funds had not been diverted for these ineligible projects, there would have been "unencumbered" funds from which to exchange for some of Mr. Keeran's excess credits.

As discussed in greater detail below, under New Mexico State law and under the IFO some capital improvement projects, even if in the appropriate service area, cannot be funded with impact fees. In reviewing Appellant's contention that some projects should not have been funded with impact fee funds, the Court ruled that two contested capital improvement expenditure items (the appraisal and land acquisition on Glendale) were permissible expenditures under the IFO. The Court, however, found that the evidence in the record regarding the other expenditures listed in Attachment G or in the CCIP were not sufficiently developed for the Court to determine if they are ineligible under the IFO § 14-19-14.

Accordingly, in this remand, we must revisit the issue and determine if, when Mr.

Keeran applied to cash in his excess credits, impact fees in the drainage category for the Far Northeast Service Area were 1) committed to a specific eligible capital improvement, (2) scheduled to be spent on that improvement on a specified schedule 3) not exceeding seven years from the date the impact fees were paid [§ 14-19-3 Definition of "encumbered"]. In addition, the record must be sufficiently developed by the parties so that findings can be made on whether the challenged expenditures of impact fees were eligible under the IFO §14-19-14. Pursuant to the Court's order, the evidence must be supported by substantial evidence.

I take up the second issue first—whether the City spent impact fee funds for ineligible projects. Appellant contends that the La Cueva Dip Replacement Project (LCDRP) was an ineligible project because it was not a drainage project and it was not growth-related. Appellant also contends that the impact fees expended on the Barstow Drain Project should never have been expended because the project had already been completed before the impact fees were actually expended on the project. Several hours of testimony from five witnesses was taken at the LUHO hearing. In addition, the record was supplemented with deposition testimony of a sixth witness. The Appellant offered a professional engineer as an expert witness to testify about the eligibility of two specific capital improvement projects.

## III. DISCUSSION

### A. Eligibility of the LCDRP Capital Improvement for Impact Fee Funding

At the remand hearing, Appellant presented the testimony of two well-qualified professional engineers, both of whom have considerable experience with drainage facilities. Graeme Means, a retained expert for Appellant confirmed much of the testimony of professional engineer, Brad Bingham, who previously, (1999 to 2010) was employed by the City as a hydrologist and was specifically charged with working with other City professionals to identify specific capital improvement projects that were eligible for impact fee funding.[2] As drainage engineers, both Mr. Bingham and Mr. Means have considerable experience working on drainage capital improvements in the City.

The City presented two witnesses; Tony Lloyd and Kevin Daggett. Mr. Lloyd was the City's Impact Fee Administrator from 2010 to 2016. Mr. Daggett, a professional engineer, has been employed with the City for the last three years as the Storm Water Section Manager in the Department of Municipal Development (DMD). Before working with the City, Mr. Daggett worked for AMAFCA for four years as a storm water quality engineer, responsible for design and construction of capital improvements. During his employment with AMAFCA and with the City, Mr. Daggett has dealt with the La Cueva Channel as a professional engineer. Also included in the record is the deposition testimony of the City's acting Director of the Department of Municipal Development (DMD), Melissa Lozoya. Ms. Lozoya is also a

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2 I assume that Mr. Bingham was engaged in identifying projects for the 2005 and 2007 CCIP.

professional engineer.

The City's Engineer witness, Kevin Daggett, and Appellant's two engineer witnesses gave somewhat conflicting testimony on two of the significant issues having to do with whether the LCDRP was eligible for impact fee funding. Appellant's witnesses testified that the LCDRP was not part of the "North and South La Cueva and El Camino Trunk Line - phased improvements between North Diversion Channel and municipal limits to the east," which all agree was a listed project in the 2005, 2007, and the 2010 CCIP. Second, to a lesser extent, the City's engineer and Appellant's engineers disagree somewhat on the nature of the LCDRP, that is whether it was a drainage capital improvement or some other category of improvement.

*i. There is Substantial Evidence in the Record that the LCDRP Was Appropriately Categorized as a Drainage Project*

No one disputes that the LCDRP was a capital improvement. There is also no question that some impact fees collected for the drainage category in the Far Northeast Service Area were used for the LCDRP. There is also no dispute from any of the witnesses that the LCDRP was necessary. The dispute, however, is why it was necessary and what category of improvement it was. The nature of the project is an important piece of the puzzle because if the LCDRP was not a drainage project, under the IFO, it was not eligible for impact fee funding from impact fees collected for drainage in the Far Northeast Service Area.

Appellant contends that the LCDRP should not have been categorized as a drainage

capital improvement, funded from drainage impact fees collected, because the project essentially corrected a deficiency in the road (Wyoming Blvd.), making it a transportation project. The City contends that while one intention of the project was to also correct a deficiency in the road (a low dip, that allowed storm water to run across it), the fundamental purpose of the project was to move storm water drainage from the surface into concrete lined culverts to prevent erosion and increase safety from storm run-off at the La Cueva Channel. In short, the City contends that while the LCDRP impacted the transportation system, it primarily improved the La Cueva Channel drainage system, and therefore was appropriately categorized as a drainage project.

After reviewing all the evidence in the record, including the evidence in the previous record of Appellant's appeal, it is clear that the LCDRP capital improvement has concurrent benefits to transportation and to drainage. However, I find that there exists substantial evidence in the record that the LCDRP was appropriately categorized as a drainage project, eligible for drainage impact fee funding collected from the Far Northeast Service Area. Although there is evidence that the LCDRP did impact transportation, the City did not abuse its discretion to categorize the LCDRP as a drainage capital improvement project.

I start with the testimony. Both Appellant's expert and Mr. Bingham initially testified that they believed that the LCDRP was not a drainage project, and therefore was ineligible for impact fee funding. On direct examination, they both testified that they believe the LCDRP was a road project because it resulted in reconstructing the dip section of Wyoming

Blvd. to correct a defect (the dip section) in the road. Although Appellant's expert believes that the LCDRP was not a drainage project because it resulted in correcting a defect in the road, Mr. Means, reluctantly agreed in cross examination that the LCDRP could have also been a drainage project because it concerned moving drainage water [Rmd. Tr. Means, 66:15-25].[3] When pressed, Appellant's own expert expressed the opinion "that's it's hard to separate drainage from transportation because they necessarily impact one another" [Rmd. Tr Means, 162:7-9].

Similarly, Appellant's other engineer witness, Brad Bingham testified that he believed the LCDRP was not a drainage capital improvement because it did not increase flow capacity in the La Cueva Channel [Rmd. Tr., B. Bingham, 25:17-21]. During cross examination, however, Mr. Bingham agreed that the LCDRP included reconstruction of about 120 feet of the dip section of Wyoming Blvd. and was construction of approximately 1000 feet of new concrete lined channel for the La Cueva Channel [Rmd. Tr., B. Bingham, 39:5-11]. Mr. Bingham, also agreed that the LCDRP, although reconstructed the road, had an impact on the drainage system [Rmd. Tr., B. Bingham, 41:13-16].

Furthermore, although the capacity of storm water drainage flowing in the La Cueva Channel was not expanded by the LCDRP, the LCDRP would not have been necessary if the La Cueva Channel did not flow across Wyoming Blvd. at the dip section [Rmd. Tr. G. Means, 67:1-12]. In laymen's terms, an overriding purpose of the LCDRP was to line the gap

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3 I will refer to the transcript from this Remand Hearing as "Rmd. Tr., [name of witness and citation].

in the La Cueva Channel and to move storm water drainage from on top of the roadway to underneath the roadway. Thus, a fundamental purpose of the project concerned moving storm water.

In support of this finding, I also find that the photographic evidence of the construction of the LCDRP demonstrates that lining the gap in the La Cueva Channel was a major undertaking as opposed to the construction of a small section of Wyoming Blvd. that was reconstructed [Rmd., City Ex. E-1 to E-6]. The photographs obtained from the City's LCDRP file folder corroborates that the LCDRP was primarily a drainage project. The photographs unmistakably show that most of the construction concerned lining the approximate 1000 feet of the unlined La Cueva Channel with an underground concrete lined box culvert system for storm drainage from the La Cueva Channel. City Engineer, Kevin Daggett described the LCDRP as completing a "gap" in the La Cueva Channel that prevented erosion within the gap [Rmd. Tr., K. Daggett, 132:8-12]. His testimony is not inconsistent with how Appellant's expert also characterized the project [Rmd. Tr., G. Means, 66:4-5; 159:19-25]. Therefore, there is substantial evidence in the record that demonstrates the LCDRP was fundamentally a "storm water, drainage and flood control facility" [IFO, § 14-19-3]. Accordingly, the LCDRP satisfies the definition in the IFO for a drainage capital improvement.

*ii. The LCDRP is One Phased Part of the Overall La Cueva Channel Capital Improvement Project Listed in the CCIP; it Meets the Broad Definition of a System Improvement, a Facility Expansion, and Is Rationally Related to New Development*

There is conflicting evidence in the record as to whether or not the LCDRP was attributable to growth or new development in the Far Northeast Service Area. The IFO, however, only requires that an improvement be rationally related to new development. There was no disagreement between the witnesses that the *"North and South La Cueva and El Camino Trunk Line - phased improvements between North Diversion Channel and municipal limits to the east"* (La Cueva Channel project) is listed in the CCIP. There was no dispute that the La Cueva Channel project listed in the CCIP is a growth related project.[4] I have carefully considered all the testimony and the documentary evidence in the record. In doing so, I find that the LCDRP was a system improvement which expanded the La Cueva Channel, not in flow capacity, but in other tangible ways which are rationally related to new development (growth). I also find that the IFO does not require that the LCDRP increase flow capacity to the La Cueva Channel to be rationally related to new development.

First, with regard to the issue of whether the LCDRP was related to growth, there are a number of relevant provisions in the texts of both the New Mexico Development Fees Act (NMDFA) and in the City's Impact Fee's Ordinance that add clarity to the factual dispute

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4 The evidence shows that there are incomplete phases in the La Cueva Channel Project listed in the CCIP. Note that under the IFO, a project must be removed from the CCIP when the project is complete. IFO, § 14-19-8(D). The La Cueva Channel is still listed in the CCIP.

regarding whether the LCDRP was eligible for funding from impact fees. It is clear that the NMDFA and the IFO must be read together because the City's IFO is expressly "intended to implement and comply with the New Mexico Development Fees Act (Sections 5-8-1 et seq. NMSA 1978) and shall be interpreted to so comply" [§ 14-19-2(B)]. A number of relevant provisions help in the analysis.

The New Mexico Development Fees Act (NMDFA) authorizes specified service categories of projects to be funded from City impact fees, including:

> "...costs of constructing capital improvements or facility expansions:
>
> (1) estimated capital improvements plan cost;
>
> (2) planning, surveying and engineering fees paid to an independent qualified professional who is not an employee of the municipality or county for services provided for and directly related to the construction of capital improvements or facility expansions;
>
> (3) fees actually paid or contracted to be paid to an independent qualified professional, who is not an employee of the municipality or county, for the preparation or updating of a capital improvements plan; and
>
> (4) up to three percent of total impact fees collected for administrative costs for municipal or county employees who are qualified professionals.
>
> B. Projected debt service charges may be included in determining the amount of impact fees only if the impact fees are used for the payment of principal and interest on bonds, notes or other obligations issued to finance construction of capital improvements or facility expansions identified in the capital improvements plan" [NMSA 1993, § 5-8-4].

The terms "capital improvement" and "facility expansion" have separate detailed

definitions in the statute and are both relevant to the issue of project eligibility. A capital improvement under the NMDFA means:

> "... any of the following facilities that have a life expectancy of ten or more years and are owned and operated by or on behalf of a municipality or county:
>
> (1) water supply, treatment and distribution facilities; wastewater collection and treatment facilities; and storm water, drainage and flood control facilities;
>
> (2) roadway facilities located within the service area, including roads, bridges, bike and pedestrian trails, bus bays, rights of way, traffic signals, landscaping and any local components of state and federal highways;
>
> (3) buildings for fire, police and rescue and essential equipment costing ten thousand dollars ($10,000) or more and having a life expectancy of ten years or more; and
>
> (4) parks, recreational areas, open space trails and related areas and facilities" [NMSA 1993, § 5-8-2(D)].

Under the City IFO, capital improvements include "existing facilities, facility expansions or new facilities, that have a life expectancy of ten or more years and are owned and operated by or on behalf of the city" [City IFO, § 14-19-3]. And drainage capital improvements mean "[s]torm water, drainage and flood control facilities" [City IFO, § 14-19-3]. A facility expansion means:

> "... the expansion of the capacity of an existing facility that serves the same function as an otherwise necessary new capital improvement, in order that the existing facility may serve new development. The term does not include the repair, maintenance, modernization or expansion of an existing facility to better serve

existing development, including schools and related facilities" [NMSA 1993, § 5-8-2(G)].[5] (Emphasis added).

In the City's IFO, the term "new development" means:

> "The division of land; **reconstruction**, redevelopment, conversion, **structural alteration**, relocation **or enlargement of any structure**; or any use, **change of use or extension of the use of land**; any of which **increases the number of service units**" [City IFO, § 14-19-3]. (Emphasis added).

In the NMDFA, the term "new development" is similarly defined [NMSA 1993, § 5-8-2(L)]. It is clear that the terms "facility expansions" and "new development" are broad and can encompass varying types of capital improvements which qualify for impact fee funding. Furthermore, the term "service unit" is also broad. A "service unit is similarly in both the NMDFA and in the City's IFO. A service unit is:

> "a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements or facility expansions" [NMSA 1993, § 5-8-2(P)].

In addition to the general definition of a service unit in the NMDFA, the City IFO also includes individual definitions for service units in each of the capital improvement categories. For purposes of this appeal which concerns the drainage category, a service unit is specifically defined in the IFO as "**[a]cres of impervious cover**" [IFO, § 14-19-3, Definitions].

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5. A similar definition of facility expansion is in the City IFO, § 14-19-3.

Turning to the La Cueva Channel and the LCDRP, with these broad terms in mind, the record clearly shows that the LCDRP is physically connected to the La Cueva Channel. I find that Appellant's contention that the LCDRP is not part of the La Cueva Channel project which is listed in the CCIP irreconcilable with the facts. There is no question that the LCDRP is physically part of the La Cueva Channel. Furthermore, it is also undeniable that the location of the LCDRP is "between the North Diversion Channel and the Municipal limits to the east" [AMAFCA Maintenance Map]. Because the LCDRP is physically connected to the La Cueva Channel, it is rational that the LCDRP was also a phased drainage improvement to the La Cueva Channel. None of the evidence showed that the overall La Cueva Channel was ineligible for drainage impact fee funding.

The record reveals that the history of improvements to the La Cueva Channel dates back to 1983 through 1986 when AMAFCA designed it and constructed it as a "soil-cement dike" to carry 4,540 cfs of storm water [Rmd. Tr., Means, 158:15-25]. The La Cueva Channel was designed for a full buildout of development, plus 3.5 percent to account for new development [Rmd. Tr., Means, 57:15-2; 58:1-25]. The designed channel was incorporated in the City's Master Drainage Plan in 1999 [Rmd. Tr., Means, 56:14-22]. It was also identified from the Master Drainage Plan to be placed in the 2005 CCIP for phased improvements [Rmd. Tr., Bingham,18:5-13]. There is no question that "everything that the CCIP produced was a CCIP or growth-related project" [Rmd. Tr., Bingham, 34:12-13]. In addition, Appellant's own engineer fact witness agreed that individual projects along the length of the

La Cueva Channel are included under the main heading for the La Cueva Channel listing in the CCIP [Rmd. Tr., B. Bingham, 40:8-13].

In 2004, the City retained an engineering firm, Integrated Utilities Group, Inc. (IUG) to develop a schedule of impact fee storm water projects in the specified service areas of the City. The outcome of that study comprise the "Drainage Impact Fee Study." As part of the study process the IUG and the City reviewed the project listings and removed all drainage projects that were ineligible for impact fee funding. The final list of projects was placed in the 2005 CCIP for impact fee funding. Appellant's witness, Brad Bingham, an engineer who participated in the process of creating the list of growth related projects with IUG insinuates that because the LCDRP was not expressly identified in the CCIP, it must have been one of the projects removed.

It is clear that the LCDRP itself is not expressly listed in the CCIP. However, the District Court found that there is no requirement for "more detailed project descriptions than are given in the CCIP" [2/1/16, Court Order, p.6]. In addition, Mr. Bingham did not establish that the LCDRP was extracted in the process of "culling of the ineligible projects" undertaken by IUG and City Staff [Appellant's Ex. 2, page 5]. There is no evidence in the record that the LCDRP was removed as an ineligible project. The La Cueva Channel (trunk-line) was clearly targeted in the CCIP for *phased* construction in the Far Northeast Service Area [Appellant's Dep. Ex. 2, page 32] [November 10, 2004, City "Drainage Impact Fee Study"]. The precise description of the La Cueva Channel project in the CCIP is: "Construct

phased improvements to the North and South La Cueva and El Camino trunk between the North Diversion Channel and the municipal limits." The LCDRP is between the North Diversion Channel and the municipal limits. The City's Acting Director of DMD substantiated that the LCDRP is "identified within the limits of the CCIP project list for the Far Northeast Service Area" [Dep., M. Lozoya, 25:12-20]. The fact that the La Cueva Channel (and its phased improvements) was placed into the 2005 CCIP is substantial evidence that at some point it was a capital improvement that was rationally related to new development. Appellant did not contend otherwise.

The LCDRP was, at a minimum, a conversion of approximately 1000 feet of the existing La Cueva Channel which was previously a gap in the Channel of unlined arroyo [Bingham, TR. 39:9-20]. It was previously unimproved because the gap was unlined (with concrete), allowing drainage to flow from the lined La Cueva Channel onto the unlined 1000-foot approximate length of the Channel that also crossed over Wyoming Blvd., and back into the lined La Cueva Channel. The La Cueva Channel and the LCDRP are inextricably physically linked. In the Engineering Study performed on the LCDRP, it is described this way:

> "The City of Albuquerque is planning to construct a crossing of the La Cueva Arroyo in Northeast Albuquerque, and Resource Technology, Inc. (RTI) has been contracted to design this structure. The crossing to be designed and constructed will connect trapezoidal channels upstream and downstream with a concrete box culvert and transition (contraction and expansion) structures. This box culvert and additional road work will replace two existing dip sections in Wyoming Boulevard and Eagle Rock Avenue.

> This study presents an investigation of the existing conditions at the site and identifies the preferred hydraulic alternative. This alternative will be subterranean to facilitate the potential addition of traffic lanes and property development" [*La Cueva Arroyo Dip Replacement/Crossing at Wyoming Boulevard and Eagle Rock Avenue Study Phase Report*] (Hereinafter "La Cueva Study").

The LCDRP, among other things, resulted in closing the unlined gap [Rmd. Tr., Daggett, 138:1-8]. The LCDRP linked the lined Channel West of Wyoming with the lined Channel East of Wyoming with lined improvements, including box culverts under Wyoming Blvd [Bingham, 24:13-15]. The LCDRP inextricably was a capital improvement that linked the La Cueva Channel. Thus, in examining whether it was rationally related to new development, the La Cueva Channel must also be considered.

Appellant's drainage engineer expert believes, however, that the LCDRP itself did not have any effect on new development because it did not increase water flows through the Channel. He also contends that the La Cueva Channel was designed for full-buildout of development. As demonstrated in the AMAFCA and the City's master drainage plans [Rmd. Tr. Means, 57:10-15]. Mr. Means takes the position that when AMAFCA and the City designed the La Cueva Channel, in the previous Master Drainage Plan, it was assumed that the service area, presumably the Far Northeast Service Area, would be fully developed [Rmd. Tr. Means, 57:15-25, 58:1-25]. Mr. Means, agreeing with Mr. Bingham, believes that because the La Cueva Channel was designed this way, the LCDRP did not accommodate "future growth" because it "doesn't add to the peak flow rate appreciably" [Rmd. Tr. Means,

59:24-25]. This evidence was not rebutted. I note that the La Cueva Study also confirms that the LCDRP did not increase flow capacities in the La Cueva Channel. I find that this evidence only demonstrates that if the entire length of the La Cueva Channel was designed for full-buildout of development, there was no need to increase flow capacities with construction of the LCDRP, because flows were already designed for a fully developed Far Northeast Service Area.

More importantly though, there is no requirement in the NMDFA or in the IFO that drainage capital improvement projects need to increase storm water drainage capacity to be rationally related to new development or eligible for impact fee funding. There is no support in the NMDFA, the IFO, or in any of the other guiding documents in the record that supports Appellant's narrow construction of the IFO. Certainly, increasing storm water capacity could be considered as an expansion of the capacity of the La Cueva Channel caused by new development, but the IFO's definition of a "facility expansion" and of a "system improvement" is not that narrow and does not specifically require an expansion of flow capacity to be attributable to growth or to satisfy the broad definition of the term "new development." There is no definition of the term "capacity" in the IFO. The standard dictionary definition of the term is: an ability to receive or contain. [Dictionary.com]. As long as a facility expansion "serves the same function as an otherwise necessary new capital improvement in order that the [La Cueva Channel] may serve new development, the LCDRP is rationally related to new development [see definition of "facility expansion, NMSA 1993,

§ 5-8-2(G)]. In the IFO, "system improvements" that can be related to new development are broadly defined as *"capital improvements that expand the capacity of the type of facility to accommodate the impacts of additional development"* [IFO, § 14-19-3]. Reading the definitions of these two terms together, I find that the LCDRP expanded the La Cueva Channel capacity to contain erosion and storm water by expanding the system's (La Cueva Channel) concrete lining in a location where concrete lining did not otherwise exist. Put another way, the definition of system improvements that expand capacity, accommodating impacts of additional development is broad enough to include the LCDRP because the LCDRP resulted in an expansion of the La Cueva Channel's concrete lining through the earthen gap in the La Cueva Channel which increased capacity to prevent erosion.

There is no disagreement that completing the gap prevented erosion, and enhances water quality downstream by reducing sediment in the run-off. In addition, all agree that the LCDRP produced the effect of increasing safety to motorists and to pedestrians. However, just because it also had an impact on the roadway, does not undermine the drainage impacts. When determining whether an impact fee project is growth-related, the phased parts of a project cannot be examined in isolation or in a time vacuum. All that is required is that the project be rationally related to new development [IFO, § 14-19-2(B)]. To correctly determine if a facility expansion is rationally related to new development, the entire facility that is designed and targeted for expansion must be examined, not just a phase in isolation of the entire facility, or only at the time of construction, as Appellant suggests. As shown above,

the La Cueva Channel is listed in the CCIP. All its phases are presumptively rationally related to new development.

The unrebutted evidence shows that the LCDRP not only benefits the drainage system, but also that it improved capacities for preventing erosion because it improved the drainage system at Wyoming Blvd. And, although the LCDRP improved the transportation system, it clearly halted the erosion that was increasing partly due to the continued development in the service area. The IFO sets a low (rational relationship) standard for the association. City Storm Water Section Manager K. Daggett stated the critical nexus well:

> "the simplest way I look at it is if you have ten homes north of there, it's not a good situation, but it's tolerable because of the infrequency of the use. But as you get more and more houses, more [sic] higher density, more residents' lives north of there, you're increasing the probability that -- you're increasing the danger to health and safety and welfare of the general public" [Rmd. Tr., K. Daggett, 151:16-23].
>
> ...
>
> "What I'm saying is the more people you have, the greater the probability of that happening to somebody. The less people you have, the less the probability" [Rmd. Tr., K. Daggett, 152:16-19].

This testimony was unrebutted. The nexus is subtle, but it is apparent. Thus, the LCDRP, even as an isolated phase of the La Cueva Channel is rationally related to serving new development in the Far Northeast Service Area. Safety and erosion prevention facilities impacts new development just as much as it also impacts existing development.

I further find that the Appellant, in focusing on just the LCDRP in isolation of the whole system facility, and all improvements thereto, did not meet his burden with substantial

evidence that the whole system is not rationally related to new development.

B. **The City's Expenditure of $86,101.53 from Impact Fee Drainage Funds for the Barstow Drain Project was an Ineligible Use of Impact Fees**

Appellant demonstrated with substantial evidence that the project identified in the City's CCIP as the "Barstow Drain Project" was already fully designed, and constructed when the City expended $86,101.53 from the Drainage Impact fee fund for the project in September, 2011. Apparently, for whatever reason the City DMD contracted with a local contractor to design and construct a 36-inch storm drain line on Barstow Street, between Glendale Avenue and Modesto Avenue. Installation of the 36-inch storm drain was the objective of the project and is what relates it to use of impact fees to fund it. However, when the contractor removed the street, it was determined that the 36-inch storm drain had already been installed. Nevertheless, the City paid the contractor $86,101.53 from the Drainage Impact Fee Fund. Presumably the $86,101.53 was to restore the Street to the condition it was in before the Street was removed. As proof of the "mistake," Appellant presented the work order and a string of email conversations from the contractor and from DMD Staff regarding the gaffe [See Appellant's Ex. 4-5]. The City all but conceded this evidence, by electing to not put on any testimony or evidence to rebut Appellant's arguments and evidence on the expenditure.

It is clear that impact fees should not have been used to pay for the mistake. Impact fees

cannot be used in the manner the DMD used the $86,101.53. The expenditure was not rationally related to new development because the objective---installing a 36-inch storm drain—was not achieved. The impact fee funds were not utilized to expand or improve an existing facility as required under the IFO or under the NMDFA. The precise use of the $86,101.53 in impact fee funds was to tear up and then repair the road. The storm drain was not improved or expanded in any manner. There is no evidence to the contrary.

Appellant asks that I recommend that the Drainage Impact Fee Fund be reimbursed $86,101.53. Under the circumstances of these facts, I respectfully recommend that the City Council find a manner of restoring the $86,101.53 in ineligible impact fees used for the Barstow Project to the drainage Impact Fee Fund for the Far Northeast Service category.

Secondly, I further recommend that Mr. Keeran be paid the $86,101.53 that was wrongly expended on the Barstow Drain Project. Under the DMD's manner of encumbering impact fees (as described in more detail below) at the time, if the funds had not been wrongly committed to the Barstow Drain Project, the funds would have realistically remained unencumbered.

### C. The City's Process, as of February 2014, for Encumbering Impact Fees in the Drainage Category for the Far Northeast Service Area Conforms to the Three-Prong Definition of Encumbered in the IFO

At first glance, especially when one only examines the expenditure side of the process for encumbering impact fees (Attachment G), it seems far removed from the technical

requirements of the term "encumbered" in the IFO. However, I find now, after examining the process in detail, based on the new testimony, this process is not incongruent with the IFO. Though intricate, the process utilized in February 2014 satisfies the three-prong technical definition of "encumbered" in the IFO.

As stated above, merely listing the projects in the CCIP or in the DMD's accounting Spreadsheet ("Attachment G"), in itself, was deemed by the Court to be an insufficient method for (or basis for showing) encumbering impact fees. To properly encumber impact fees *under the IFO*, impact fee funds must be 1) committed for a specified capital improvement, 2) on a specified time schedule, and 3) not exceeding seven years from the date of payment of the impact fees [§ 14-19-3, Definition of "encumbered"]. The detailed process of encumbering funds was not well-developed in the first Land Use hearings on the appeal. I see that now. My recommendation and the City Council's decision was based on insufficient evidence. It was based merely on listing the projects in the CCIP and in the City's expenditure spreadsheet (Attachment G). Thus, the finding was not only wrong, but it was not supported by the evidence when it went before the District Court. Attachment G shows only expenditures for impact fees. The CCIP shows only projects targeted for impact fee funding. The focus should have been on the detailed process that occurs after the projects are listed in the CCIP but before they are placed in Attachment G. In revisiting the issue in the remand LUHO hearing, I find that the manner in which DMD encumbered, and expends impact fees, at the time Mr. Keeran submitted his application to redeem excess credits

satisfies the three prong test.

First, it is clear from the testimony of City DMD Fiscal Manager, Christine Ching, Capital improvement projects require funding from various sources, including collected impact fees, General Obligation bond monies (GO Bonds), contributions from bond money collected by AMAFCA, and even franchise fees [Rmd. Tr. C. Ching, 200:6-9]. It is clear that contributions for particular projects are sometimes unpredictable and sometimes collected on mismatching time schedules. For example, bond cycles occur every two years for funding projects several years in the future [Dep. Tr., M. Lozoya, 15:4-11]. In addition, sometimes funding is collected for projects that have been identified in the Decade Plan [Dep. Tr., M. Lozoya, 15:18-22]. To complicate the process, it is clear that impact fees are collected incrementally and not always concurrently as development occurs. I take notice that development may not always occur according to predictable schedules. Despite these circumstances, only when sufficient funds are accumulated, available from all funding sources, does the DMD commit (encumber), under their accounting practices, impact fees to a specific capital improvement project [Rmd. Tr., C. Ching, 188:14-22]. According to Ms. Ching, impact fees were encumbered only when a specific capital improvement project is contracted out for construction [Rmd. Tr., C. Ching, 188:14-22]. I presume that a contract for construction cannot be executed unless there is available funding to pay for the entire project. This process clearly demonstrates satisfaction of the first and second prongs for "encumbered" in the IFO, § 14-19-3. The unrebutted evidence further shows that this process

takes two or three years [Rmd. Tr., C. Ching, 189:11-16]. Under the IFO, § 14-19-3, to fully satisfy the IFO's technical definition of encumbered, the City has seven years from the time the impact fees are collected to encumber the funds (third prong). Accordingly, the DMD's incremental method of accumulating impact fees before committing the fees to a specified project on a specified schedule within seven years from the time the fees are collected does conform to the IFO.

Thus, under the DMD's incremental process of encumbering impact fees, impact fees theoretically are *unencumbered* as they are slowly being collected and banked until sufficient funds are available, from all sources, to construct a CCIP project or phase. Under this method, the $86,101.53 wrongfully expended for the Barstow project should have been unencumbered (uncommitted) in February 2014.

*i. The Evidence Reveals that $82,557.00 (Not Including the Barstow Project Funds) Remained in the Impact Fee Fund When Appellant sought to Cash-in his Excess Credits. If this Amount was Not Tied to a Specific Project Contract, It Should Be Paid to Appellant in Exchange for Excess Credits*

Not including the erroneous expenditure for the Barstow Drainage Project, in the appeal to District Court, the Court declined to order that the City pay Appellant the $82,557.00 that was determined to remain in the drainage impact fee fund for the Far Northeast Service Area. The Court declined because there was insufficient factual evidence in the record for determining that this amount was unencumbered as Appellant contends. Again, in rejecting the listing of projects in the CCIP, and in showing expenditures

(Attachment G), the Court found that the record needed to be further developed to support a finding regarding the $82,557.00 that remained in the fund.

As shown above, in this administrative remand hearing the City Staff clarified the process for encumbering impact fees as of February 2014. Impact fees were only encumbered at the time the City goes to contract for the construction of a specific capital improvement project. The City earmarks the funds when it has collected sufficient funds from all sources to pay for the project. When it can fully fund a project or a phase of a project (as in the LCDRP), the DMD encumbers the funds and sets them on a specified schedule. Conversely, if impact fees were not earmarked for a specific construction contract, they were unencumbered. The evidence from the first appeal LUHO hearing revealed that at the time Appellant sought a cash redemption of his excess credits (February, 2014), $82,557.00 (not including the Barstow Project funds) remained in the Far Northeast Service Area, drainage category account. If this amount was not earmarked for a specific contract, then it was unencumbered. If it was tied to a specific contract for a specific project, the funds were encumbered. The IFO requires that the City:

> **shall**, upon request from the credit-holder of excess credits, after acceptance by the city of the project creating credits, provide reimbursements for excess credits on a first in, first out basis **and shall not be obligated to provide reimbursements in the event there is no unencumbered** account balance in the city's impact fee account for the appropriate service category and service area. [IFO, §14-19-19(J)(7)(c)].

Based on the new developed factual evidence, I find that the total amount of impact fees collected for the Far Northeast Service Area in the drainage category at the time

Appellant submitted his application to redeem the excess credits (February, 2014) and which were not already tied-up (for lack of a better term) by a project contract should be paid to Mr. Keeran pursuant to §14-19-19(J)(7)(c). There is no evidence that was presented from City Staff that would demonstrate that the $82,557.00 was committed to a project contract. Accordingly, in February 2014, there remained $82,557.00 in the drainage category for the Far Northeast Service Area unencumbered. Appellant is entitled to redeem excess credits for unencumbered funds. I therefore respectfully recommend that this amount also be paid to Appellant in exchange for his excess credits in the same amount.

*ii. The DMD's New Process for Encumbering Funds Does Not Clearly Satisfy the Third Prong for Encumbering Impact Fees*

In the remand hearing held on September 29, 2016, the City DMD Fiscal Manager testified that there are no impact fees *currently* in the impact fee fund for the Far Northeast Service Area. In support of her contention, a Memorandum entitled "Encumbering Current and Future Impact Fee Funds," dated February 25, 2016 (The Memo) from the Acting Director of DMD to the Impact Fee Administrator was tendered to Appellant. The Memo is now in the record as Appellant's Exhibit 7.

The Memo fundamentally changes DMD's process of encumbering impact fees because it appears to show that DMD automatically encumbers all fees as they are collected or which exists in the fund as of February 25, 2016. Formally, as described above, DMD

held collected impact fees in an account unencumbered until there was sufficient funding for DMD to actually contract for construction of that project. Now, the Memo appears to indicate that the DMD encumbers all impact fees for specified projects, on specified time-lines automatically, presumably, as impact fees are collected. Appellant claims that the DMD Staff do not have the delegated authority to create this new method. I disagree. Appellant has not shown that this new procedure violates any laws or ordinances. I note that the evidence has shown that the process of encumbering funds has always been an administrative process. And as the District Court found: "[e]ncumbering impact fees the City collects is part of administering them" [2-16-2016, Order, p. 6].

This new method of encumbering impact fees merely changes how DMD already administratively encumbers impact fees. Appellant has not argued that the DMD did not have authority to administratively encumber impact fees prior to issuance of the Memo. There is no rule in the DPM or in the IFO dictating the method of encumbering funds other than the three prong definition in §14-19-3. Without evidence to the contrary, I find that the DMD has authority to institute a new method of encumbering impact fees.

The District Court ruled that "[w]hether the City has encumbered some or all of the funds in an account, to which capital improvement, and upon what specified schedule should be readily discernable and open to inspection" [Court Order, 2-1-2016, page 6]. I interpret the Court's ruling as a requirement that all three prongs must be "readily discernable" and transparent in the method DMD employs to encumber impact fees. The new procedure

clearly has an impact on the Appellant and others who own excess credits. Yet, under §14-19-19(J)(7)(d) of the IFO, excess credits cannot constitute a liability to the City. At the very least, the contents of the Memo should be open to the public and to the development community who pay impact fees. Appellant argues that changing the process through an inter-office memorandum is not open or transparent as ordered by the Court. To some degree, I agree. Because the change in process is considerable, at the very least, the new procedure should be published in a manner that is open and readily available for inspection and comment by those impacted before employing the new method.

In addition, DMD's compliance with the third prong for encumbering impact fees laid out in the IFO, § 14-19-3 is not clearly shown in this procedure. The Memo does demonstrate that impact fees are committed for specified projects and a specified time schedule. However, the time schedule must "not exceed seven years from the date of payment of the impact fees" [§ 14-19-3]. Thus, it is not "readily discernable" that the time schedules do not exceed seven years *from the date of payment of the impact fees*. There was testimony from DMD Fiscal Manager Ching, however, that there currently exists a zero-balance of impact fees in the Far Northeast Service Area for the drainage category. [Rmd. Tr., C. Ching, 184:13-15]. As a consequence of this fact, theoretically, the Memo has prospective effect on new impact fees currently uncollected. But, nevertheless, this status is only made clear from the appeal evidence and the Memo does not make it readily discernable that the third prong will be met. If the DMD is truly prospectively modifying its procedure for encumbering impact fees, I

respectfully recommend that the City Council direct the DMD to assure that all three prongs are satisfied for encumbering impact fees. Moreover, the detailed method must also be readily discernable to inspection. The interoffice Memo as it exists does not make the cut. I further respectfully recommend that the procedure be made a rule, incorporated into DPM, Chapter 18, Impact Fee Regulations so that all developers have an opportunity to make comment and have easy access to the new procedure if finally adopted.

Steven M. Chavez, Esq.
Land Use Hearing Officer

# City of Albuquerque

## Action Summary

## City Council

Albuquerque/Bernalillo
County
Government Center
One Civic Plaza
Albuquerque, NM 87102

*Council President, Isaac Benton, District 2*
*Vice-President, Brad Winter, District 4*

*Ken Sanchez, District 1; Klarissa J. Peña, District 3*
*Dan Lewis, District 5; Patrick Davis, District 6*
*Diane G. Gibson, District 7; Trudy E. Jones, District 8*
*Don Harris, District 9*

Monday, December 5, 2016 | 5:00 PM | Vincent E. Griego Chambers, One Civic Plaza NW, Albuquerque/Bernalillo County Government Center

TWENTY-SECOND COUNCIL - TWENTY-THIRD MEETING

## 1. ROLL CALL

Present 9 - Isaac Benton, Brad Winter, Ken Sanchez, Klarissa Peña, Dan Lewis, Patrick Davis, Diane Gibson, Trudy Jones, and Don Harris

## 2. MOMENT OF SILENCE

Pledge of Allegiance - Trudy E. Jones, Councilor, District 8

## 3. PROCLAMATIONS & PRESENTATIONS

## 4. ECONOMIC DEVELOPMENT DISCUSSION

## 14. FINAL ACTIONS

i. [redacted] Renaming The Community Room At The Shawn McWethy Southwest Police Substation, As The Louis Tafoya Community Room In Honor Of Former West Mesa Neighborhood Association President And Community Advocate, To Recognize His Distinguished Service To The Citizens Of The Westside And His Commitment To The Men And Women Of The Albuquerque Police Department (Sanchez, Peña)

**A motion was made by Councilor Sanchez that this matter be Passed. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

## 15. OTHER BUSINESS: {Reports, Presentations, and Other Items}

a. **Election of President**

*President Lewis opened the floor for nominations for President.*

*Councilor Gibson nominated Councilor Benton.*

**A motion was made by Councilor Harris that Councilor Benton be elected President by acclamation. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

a. Election of Vice-President

*President Lewis opened the floor for nominations for Vice-President.*

*Councilor Lewis nominated Councilor Winter.*

**A motion was made by Councilor Lewis that Councilor Winter be elected Vice-President by acclamation. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

b. Election of Chair of the Committee-of-the-Whole

*Councilor Lewis opened the floor for nominations for Committee of the Whole Chair.*

*Councilor Gibson nominated Councilor Harris.*

**A motion was made by Councilor Lewis that Councilor Harris be elected Committee of the Whole Chair by acclamation. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

c. Approval of Committee Appointments

**A motion was made by Councilor Lewis that the rules be suspended for the purpose of deferring the Approval of the Committee Appointments to the December 19, 2016 Council meeting and that the current make-up of the Council Committees remain in place until the new Committee Appointments are approved. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

## 5. ADMINISTRATION QUESTION & ANSWER PERIOD

## 6. APPROVAL OF JOURNAL

November 21, 2016

## 7. COMMUNICATIONS AND INTRODUCTIONS

## 8. REPORTS OF COMMITTEES

**Land Use, Planning & Zoning Committee - November 30, 2016**

### Deferrals/Withdrawals

c. [illegible] Moving The Office Of Neighborhood Coordination From The Planning Department To The Council Services Department; Making An Appropriation (Peña)

**A motion was made by Councilor Peña that this matter be Postponed to December 19, 2016. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

b. [illegible] Declaring The Intent Of The City Council Of The City Of Albuquerque, New Mexico To Consider For Adoption A Resolution Approving The Formation Of The Lower Petroglyphs Tax Increment Development District; Approving, Subject To Further Proceedings Of The City Council, A Tax Increment Development Plan For The District, The Purposes Of The District, Identification Of Gross Receipts Tax Increment And Property Tax Increment Financing Mechanisms, And Bonds Secured By Gross Receipts Tax Increment Revenue And Property Tax Increment Revenue (Sanchez)

**A motion was made by Councilor Sanchez that this matter be Postponed to January 18, 2017. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

f. [illegible] Making An Appropriation To The Albuquerque Police Department To Provide For Additional Police Service Aide Positions (Sanchez)

**A motion was made by Councilor Sanchez that this matter be Postponed to December 19, 2016. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

h. R-16-125 Establishing A Property Crime Reduction Pilot Program (Winter, Davis)

**A motion was made by Councilor Davis that this matter be Postponed to December 19, 2017. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

j. R-16-3 Amending The City Council Rules Of Procedure Article III, Procedures, Relating To The Provision Of Funding For Cultural, Educational And Social Service Projects (Gibson)

**A motion was made by Councilor Gibson that this matter be Postponed to January 4, 2017. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

## 9. CONSENT AGENDA: {Items may be removed at the request of any Councilor}

b. [illegible] Approval of the Third Supplemental Agreement to the Legal Services Agreement between Yenson, Allen & Wosick, P.C and the City of Albuquerque

**A motion was made by Vice-President Winter that this matter be Approved. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

c. [illegible] Approval of Contract with New Mexico Golf Inc., for the Operation of Puerto del Sol Golf Course and Liquor License Agreement

**A motion was made by Vice-President Winter that this matter be Withdrawn by Administration. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

d. [illegible] Ground Lease Agreement, between YDI (Head Start Program) and the City of Albuquerque

**A motion was made by Vice-President Winter that this matter be Approved. The motion carried by the following vote:**

For: 8 - Benton, Winter, Sanchez, Lewis, Davis, Gibson, Jones, and Harris

Recused: 1 - Peña

e. EC-16-[illegible] Approval of the Second Supplemental Agreement to add monies for FY17 Outside Counsel Legal Services Agreement between Kaplan, Kirsch and Rockwell, LLP and the City of Albuquerque

**A motion was made by Vice-President Winter that this matter be Approved. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

f. EC-16-219 Approval of the First Supplemental Agreement to add monies for FY17 Outside Counsel Legal Services Agreement between Conklin, Woodcock & Ziegler, PC and the City of Albuquerque

**A motion was made by Vice-President Winter that this matter be Approved. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

g. EC-16-232

Mayor's Appointment of Mrs. Haley C. Kadish to the Metropolitan Parks & Recreation Advisory Board

**A motion was made by Vice-President Winter that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

h. EC-16-233

Mayor's Appointment of Ms. Breanna M. Frazier to the Youth Advisory Council

**A motion was made by Vice-President Winter that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

i. [illegible]

Mayor's Reappointment of Mr. Ronald R. Bohannan to the Technical Standard Committee

**A motion was made by Vice-President Winter that this matter be Confirmed. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

j. [illegible]

A Nuisance Dwelling Or Structure In Need Of Abatement At 373 64th St NW 87105 Within The City Limits Of Albuquerque, New Mexico Is So Ruined, Damaged And Dilapidated As To Be A Menace To The Public Comfort, Health, Peace Or Safety And That It Is To Be Required To Be Removed (Sanchez)

**A motion was made by Vice-President Winter that this matter be Withdrawn by Sponsor. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

k. [illegible]

Approving And Authorizing The Acceptance Of A Grant Agreement With The State Of New Mexico, Department Of Health For A Chronic Disease Prevention Program And Providing An Appropriation To The Department Of Senior Affairs (Gibson)

**A motion was made by Vice-President Winter that this matter be Passed. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

l. [illegible]

Amending The Adopted Capital Implementation Program Of The City Of Albuquerque By Reappropriating Funding For The Los Altos Pool Project (Winter, Gibson)

**A motion was made by Vice-President Winter that this matter be Passed. The motion carried by the following vote:**

**For:** 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

## 13. APPROVALS: {Contracts, Agreements, and Appointments}

a. EC-16-2[illegible]

Quarterly reporting of expenditures by the Albuquerque Police Department related to the implementation of the Settlement Agreement negotiated with the United States Department of Justice

**A motion was made by President Benton that this matter be Receipt Be Noted. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

## 10. GENERAL PUBLIC COMMENTS

## 11. ANNOUNCEMENTS

## 12. PUBLIC HEARINGS: {Appeals, SAD Protest Hearings}

a. [illegible]

(Project# 1010019/14EPC-40023) Bob Keeran as Assigns agent for, Bob Keeran, Donald Hoech of Hoech Real Estate Corp. and Hoech Profit & Sharing Plan, JT Michelson and Michael Montoya appeal the Environmental Planning Commission's (EPC) decision to Affirm the Impact Fees Administrator's decision to deny the request for a refund and/or reimbursement of drainage excess impact fee credits for system improvements in the far northeast service area that were tied to Tract A-1 Oakland Heights Subdivision recorded on April 17, 2006, in the records of the Bernalillo County Clerk Book 2006C and page 119 (Zone Atlas page C-20), located between Barstow on the west and Ventura on the east and between Eagle Rock on the north and Alameda on the south

**A motion was made by Councilor Jones that this matter be To Accept the Land Use Hearing Officer Recommendation and Findings. The motion carried by the following vote:**

For: 8 - Benton, Winter, Sanchez, Peña, Lewis, Gibson, Jones, and Harris

Excused: 1 - Davis

b. [illegible]

(Project #1008952/16EPC-40034 & 40035) Timothy Flynn-O'Brien Appeals the Environmental Planning Commission's Approval of a Sector Development Plan Map Amendment (Zone Change) & Site Development Plan for Building Permit for all or a portion of Tract A, Morningstar at Palomas, zoned SU-2 for O-1 to SU-2 C-1, located on Palomas Ave. NE between Wyoming Blvd. NE, and Barstow St. NE, containing approximately .9 acre

**A motion was made by Vice-President Winter that this matter be To Reject the Land Use Hearing Officer's Recommendation and schedule this matter for a full hearing on December 19, 2016. The motion carried by the following vote:**

For: 8 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, and Jones

Against: 1 - Harris

## 14. FINAL ACTIONS

a. O-16-11

C/S Adopting A New Article In Chapter 14 ROA 1994, Zoning, Planning And Building, To Be Known As The "Vacant Commercial Buildings Ordinance" (Harris, Davis)

**A motion was made by Councilor Harris that this matter be Postponed to January 4, 2017. The motion carried by the following vote:**

For: 5 - Benton, Sanchez, Davis, Gibson, and Harris

Against: 4 - Winter, Peña, Lewis, and Jones

d.

F/S Providing For The Authorized Storage And Administration Of Naloxone In Public Spaces To Help Reverse An Opioid Overdose (Gibson, Lewis)

**A motion was made by Councilor Gibson that this matter be Passed. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

e.

Establishing Policy To Allow Residents Aged 16-17 Years To Utilize Gym Facilities At City Multigenerational And Community Centers (Winter)

**A motion was made by Vice-President Winter that this matter be Passed. The motion carried by the following vote:**

For: 9 - Benton, Winter, Sanchez, Peña, Lewis, Davis, Gibson, Jones, and Harris

g.

Establishing A Bus Fare Waiver For Patrons Of Businesses Along The Central Avenue Corridor During Evenings And Weekends Throughout The Construction Of The Albuquerque Rapid Transit Project (Sanchez)

**A motion was made by Councilor Sanchez that this matter be Postponed to December 19, 2016. The motion failed by the following vote:**

For: 4 - Benton, Winter, Gibson, and Harris

Against: 5 - Sanchez, Peña, Lewis, Davis, and Jones

**A motion was made by Councilor Sanchez that this matter be Passed. The motion failed by the following vote:**

For: 4 - Benton, Sanchez, Peña, and Lewis

Against: 5 - Winter, Davis, Gibson, Jones, and Harris

*Thee being no further business, the meeting adjourned at 8:04 p.m.*

EXHIBIT H

EXHIBIT H

# REAL ESTATE PURCHASE AGREEMENT
# BETWEEN

# THE CITY OF ALBUQUERQUE,
# AS PURCHASER
# AND
# VISTA FOUR HILLS LLC., A NEW MEXICO LIMITED LIABILITY COMPANY
# AS SELLER

## EFFECTIVE DATE:

# REAL ESTATE PURCHASE AGREEMENT

Real Estate Purchase Agreement ("Agreement") made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation ("City" or "Buyer"), Vista Four Hills LLC., a New Mexico Limited Liability Company, ("Seller").

WHEREAS, the City has identified the need for real property for the Tijeras Arroyo Bio Zone for acquisition by the City for Albuquerque Parks and Recreation Department, Open Space Division to be used for permanent Open Space; and,

WHEREAS, Seller is the owner of approximately 20.804 acres +/- acres or 906,222 +/- square feet of vacant land located at the Southeast Side of the Tijeras Arroyo West of Four Hills Road ; and,

WHEREAS, the City is willing to purchase and Seller is willing to sell approximately 20.804 acres +/- acres or 906,222 +/- square feet of vacant land located at the Southeast Side of the Tijeras Arroyo West of Four Hills Road.

NOW, THEREFORE, mutual consideration, and on the terms set forth herein, the City and Seller agree as follows:

## I. PURCHASE AGREEMENT

### 1. Sale.

The Seller shall sell and the City shall purchase that certain tract of real estate in Bernalillo County, New Mexico ("Property") generally known as vacant land located at the Southeast Side of the Tijeras Arroyo West of Four Hills Road, and more specifically described as shown on Exhibit A, attached to this Agreement.

### 2. Purchase Price.

The purchase price ("Purchase Price") of the Property is Three Hundred Forty Thousand and No/100 Dollars ($340,000.00) plus or minus the prorations payable by the City to the Seller at the closing of the Sale.

## II. SURVEY, TITLE COMMITMENT AND TITLE POLICIES

### 1. Title Insurance.

At least thirty (30) days prior to the closing of the Sale, the City, at the expense of the City, shall cause the Title Company, defined below, to deliver to the City a commitment ("Title Commitment") for a policy of title insurance covering the Property issued by Fidelity National Title Insurance Company ("Title Company") with offices at 3740 Ellison Rd. NW, Suite 102, Albuquerque, NM, 87114, together with legible copies of documents shown on Schedule B as exceptions. In the Title Commitment, the Title Company or its underwriter will agree to issue to the City, upon the recording of a general warranty deed conveying title to the Property from the Seller to the City, an owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price and insuring the title of the City in the Property free and clear of all liens, encumbrances, taxes, subject only to the Permitted Exceptions (defined below).

### 2. Survey.

At least thirty (30) days prior to the closing of the Sale, the Buyer, at the expense of the Buyer, shall obtain a survey of the Property to be purchased (the "Survey") which is to be prepared in accordance with the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (effective February 23, 2016), and shall include Table A optional items 1 – 6(a), 8, 11, 13, 16-19 and 20. The Surveys will (i) state that the Survey is prepared for the Buyer, the Seller, the Title Company and the underwriter of the Title Company; (ii) contain a written legal description of the Property ; (iii) be certified by a New Mexico licensed surveyor ("Surveyor") as of a date no more than sixty (60) days before the date of the closing of the Sale; (iv) be in form and content acceptable to the Buyer; (v) be sufficient to delete all survey exceptions from and to satisfy all requirements for issuance of the Title Policy; (vi) contain a certification by the Surveyor of the exact area of the Property in square feet or acres; and (vii) show, without limitation, the exact location of all existing or proposed streets, easements, encroachments, protrusions, overlaps, overhangs, utilities, set-backs and restrictions affecting the Property.

### 3. Notice of Objections to Surveys or Title Commitment.

Within ten (10) days after receipt by the City of the Survey, the City will give written notice to the Seller of any objections the City may have to any matter shown on the Survey and within ten (10) days after receipt by the City of the Title Commitment, the City will give written notice to the Seller of any objections the City may have as to the condition of title to the Property as shown in the Title Commitment (collectively, "Objections"). If the City fails to object to any matter shown on the Survey or fails to object to the condition of title to the Property as shown in the Title Commitment within the ten (10) day period, the City shall be deemed to have waived such matters or conditions. The Seller will attempt to eliminate or modify all Objections to the satisfaction of the City. If the Seller is unable to or does not satisfy the Objections before the closing of the Sale (the "Cure Period"), then the Seller will give notice to the City ten (10) days

before the date of the closing of the Sale of any Objections that the Seller will not be able to or does not satisfy, and the City shall have the following options, one of which shall be exercised by written notice given to Seller within five (5) days after the expiration of the Cure Period: (i) if the Seller has indicated that it will attempt to cure the Objection but it has not been able to do so, the City may agree to an additional period of time up to thirty (30) days in which the Seller may continue to attempt to satisfy the Objections; (ii) the City will give written notice to the Seller that the City will accept title to the Property subject to any unsatisfied Objections, in which event the unsatisfied Objections will be deemed to be waived for all purposes; or (iii) if the City does not exercise options (i) or (ii), the City may terminate this Agreement in which event the Seller and the City will have no further rights, obligations or liabilities to one another under this Agreement. If the City does not deliver written notice to the Seller five (5) days after the expiration of the Cure Period electing one of the above options, the City shall be deemed to have waived the unsatisfied Objections for all purposes pursuant to item (ii) above. Seller shall cause Title Company to remove from the Title Policy at Closing all deeds of trust, mortgages, liens and other interests in the Property or any part thereof (collectively, "Seller's Financing Documents"), and Seller's Financing Documents and property liens shall not be deemed Permitted Exceptions hereunder.

**4. Permitted Exceptions.**

The Schedule B Standard Exceptions set forth in 13 NMAC 14.5, Section 9 and all matters shown on the Initial Title Commitment, any Updated Title Commitment and the Survey which the City approves or is deemed to have approved pursuant to this paragraph, and any liens or encumbrances caused or created by the City or the City's employees, agents or contractors, will constitute "Permitted Exceptions" for purposes of this Agreement and the Deed.

**5. Deed.**

The Seller shall convey title to the Property to the City by statutory form General Warranty deed, subject only to the Permitted Exceptions. The description of the Property to be contained in the General Warranty deed shall conform to the description of the Property contained in the Survey, except that if a subdivision plat is required to close the Sale, the description of the Property in the General Warranty deed shall conform to the description of the Property in the recorded subdivision plat.

## III. ENVIRONMENTAL INSPECTION

**1. Definitions.**

As used in this Agreement, the following terms shall have the following definitions:

A. "Environmental Condition" means any condition regarding the presence of Hazardous Materials located on, in, under or originating from the property or located within the improvements thereon with respect to air, soil, surface water or groundwater, which require

response under any Environmental Requirements in effect at the time of their application.

B. "Environmental Requirements" means all applicable federal, state and local governmental agency environmental statutes, ordinances, rules, notices, regulations, standards, permits orders and any other governmental requirements relating, by way of example and not limitation, to the following: (i) the spill, leaked, discharge, emission or release of any Hazardous Material, to the air, surface water, ground water or soil; (ii) the storage, treatment, disposal or handling of any Hazardous Materials and (iii) the construction, operation, maintenance, repair or closing of aboveground or underground storage tanks or impoundments containing Hazardous Materials.

C. "Hazardous Materials" means substances defined as such pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended; or as hazardous waste, as that term is defined under the Resource Conservation Recovery Act; PCB's; petroleum hydrocarbons; and substances so defined pursuant to requirements prevailing and applicable on the Effective Date as established by the State of New Mexico.

D. "Other Materials" means any materials or substances which do not come within the definition of Hazardous Materials, including, but not limited to, ACM, radon or other radioactive substances, lead-based paint, nonhazardous wastes or any toxic or polluting substances.

E. "Documents" means all documents, photographs, maps, data, notes, reports, chromatograms, in digital form, print, videotape or other media used to transmit information regarding the environmental condition of any aspect of the property, including, but not limited to the Phase I Report, the Phase II Report, if any, and the Cleanup Plan, if any.

**2. Buyer Inspections.**

The Buyer shall have the right to conduct any and all investigations it desires to fully examine the environmental characteristics of the Property ("Due Diligence") including, but not limited to, the examination of any improvements located thereon and the evaluation of the Environmental Condition of the Property for the presence of any Hazardous Materials or Other Materials located on, in, under or originating from the Property. The Seller, at City's expense to be paid at closing, shall order the Phase I inspection report by a consultant approved by City. The due diligence period shall be during the period of time ("Due Diligence Period") commencing on the Effective Date and terminating on the later to occur of (i) five (5) days after Buyer 's receipt of a Seller's consultant's Phase I Report, if no further environmental investigations are recommended by the Seller's consultant in the Phase I Report; (ii) ten (10) days after the Buyer 's receipt of the Seller's consultant's Phase II Report and Cleanup Plan, provided, if the Phase I Report recommends the conduct of further investigations to evaluate the presence of Hazardous Materials; and (iii) sixty (60) days after the Effective Date. The Buyer shall have the right to approve the selection of Seller's consultant for the Phase I Report, and if needed, approve the consultant to prepare and

perform the Phase II Report and Cleanup Plan. The Phase II Report and Cleanup Plan shall be approved by the Buyer prior to the implementation of the Cleanup Plan. However, if the Seller is not required to arrange for the conduct of a Phase II Report, the Buyer, at its option, exercisable by written notice to the Seller within five (5) days following the Buyer's receipt of the Phase I Report (Due Diligence Notice"), may extend the Due Diligence Period through the date which is forty-five (45) days after the date of the Seller's receipt of the Due Diligence Notice. The Due Diligence Period, as so extended, shall be used by the Buyer solely for the purpose of conducting any further investigation or examination of the Environmental Condition of the Property as the Buyer shall deem necessary or desirable. The Seller shall provide the Buyer with the unfettered opportunity to conduct its environmental investigations during the Due Diligence Period.

**3. Termination.**

If the Buyer or the consultant identify Hazardous Materials or Other Materials on, in, under or originating from the Property which cannot be cleaned up or remediated as required by applicable Environmental Requirements utilizing technological methods currently available or which in the sole and absolute judgment of the Buyer will prevent the Buyer from using the Property, the Buyer may terminate this Agreement and upon termination, the Buyer and the Seller shall have no further right or obligations as between the Buyer and the Seller under this Agreement. In the event Seller elects not to proceed with a Phase II Report and Cleanup Plan, if required by the Buyer, then Buyer, at Buyer's sole discretion, may terminate this Agreement and the parties shall have no further rights or obligations under this Agreement. Seller shall have ten (10) days after receipt of the Phase I Report to provide written notice to the Buyer of its intent not to proceed with a Phase II Report or Cleanup Plan and termination of this Agreement.

**4. Notice of Violation.**

If the Seller has received or receives notice of a violation of any Environmental Requirement with respect to the Property prior to the date of the Closing, then prior to the Closing, the Seller shall give to the Buyer a letter from the governmental entity charged with the enforcement of the applicable Environmental Requirement stating that the matter has currently been resolved to the satisfaction of that governmental entity, or other equivalent language.

## IV. WARRANTIES AND REPRESENTATIONS

**1. Seller's Warranties.**

The Seller warrants and represents that:

A. The Seller has good, indefeasible and marketable title to the Property.

B. The Property is in compliance with all applicable laws, ordinances, rules and regulations affecting the Property and the use and occupancy of the Property.

C. The Property has free and uninhibited access to and from a public street, road, alley or other right-of-way.

D. This Agreement and the documents provided for or contemplated by this Agreement will not violate, be in conflict with, result in the breach of or constitute a default under any agreement, mortgage, indenture, deed of trust, lien, order, judgment or instrument to which the Seller is a party or by which the Seller is bound or affected.

E. There are no unpaid bills or claims in connection with construction or repair work on the Property.

F. There are no actions, suits, proceedings or investigations pending or threatened against the Seller or relating to the Property in any court or before any governmental department or agency which would in any material respect affect the validity of this Agreement, or the obligations or the ability of the Seller to perform under this Agreement, including the execution, acknowledgment and delivery of the documents provided for or contemplated by this Agreement and the Seller does not know of any basis for any such action, suit, proceeding or investigation.

G. If the Property is subject to a mortgage, real estate contract, or deed of trust, the Seller is not in default and has not received notice of default under or breach of the mortgage, real estate contract or deed of trust or of the documents evidencing the indebtedness or other obligations secured by the mortgage, real estate contract or deed of trust.

H. If Seller is a corporation, partnership, or other legal entity, Seller warrants that it is duly formed and validly existing under the laws of its domicile, is in good standing with and authorized to do business in the State of New Mexico, and has all requisite authorization and documentation to enter into and close this transaction, and the named corporate officer, partner or agent who executed, acknowledged and delivered this contract, for and on behalf of the Seller, is and was, at all material times, the duly authorized corporate officer, member, partner or agent of the Seller.

**2. Real Estate Sales Commissions.**

A. The Seller represents and warrants to the City that no other broker, agent, finder or salesman has been involved in the origination, negotiation or consummation of this Agreement and no other fee, commission, compensation or similar payment is due to any other broker, agent, finder or salesman as a result of the origination, negotiation or consummation of this Agreement.

B. The Seller shall defend, indemnify and hold the City harmless from and against any and all loss, cost or expense (including attorneys' fees and expenses) resulting from any claim for any fee, commission, compensation or similar payment by any broker, agent, finder or salesman as a result of any action of the Seller related to the origination, negotiation or consummation of this Agreement.

**3. Survival of Warranties.**

The warranties and representations of the Seller are a material inducement for the City to purchase the Property. The execution and delivery of the general warranty deed by the Seller shall constitute a confirmation and further representation and warranty by the Seller to the City, as of the date of the warranty deed, as to the matters specified in this Agreement and shall survive the closing of the Sale and shall not be merged into the execution and delivery of the warranty deed or any other document executed and delivered subsequently to the execution and delivery of this Agreement.

## V. CLOSING

**1. Closing of Sale.**

Within thirty (30) days after acceptance of title, the City will give the Seller notice of a proposed time and date of closing of the Sale ("Closing"). The Closing will be at the office of the Title Company, either (i) at the time and on the date stated in the notice, or (ii) at such other time, date and place as the Seller and the City may agree in writing. At the Closing, the Seller, the City and the Title Company will perform the following duties:

A. The Seller's Duties. The Seller shall execute and deliver to the Title Company a General Warranty deed conveying the Property to the City, subject only to the Permitted Exceptions.

B. City's Duties. The City shall pay to the Title Company, as escrow agent, the Purchase Price, plus or minus the prorations and any closing costs to be paid by the City. The City's payment shall be made by check of the City or such other method of payment as may be required by the Title Company to make an immediate payment at the Closing of the Purchase Price due to the Seller as provided in this Agreement, or by such other method of payment as the Seller and the City may agree in writing.

C. Title Company's Duties. At or promptly after the Closing, unless otherwise instructed by the Seller and the City, the Title Company will:

(i) record the General Warranty deed in the records of Bernalillo County, New Mexico, and deliver the recorded warranty deed to the City;

(ii) issue and deliver the Title Policy to the City as provided in the Title Commitment, except for any matters which have been eliminated or modified as provided in this Agreement; and

(iii) disburse to the Seller the balance of the Purchase Price due to the Seller and make all other disbursements as provided in the escrow closing statements to be prepared by the Title Company and signed by the Seller and the City at the Closing, including, but not limited to, any disbursements and payments necessary to discharge any obligations which are liens upon the Property, including, but not limited to, liens arising from judgments, taxes or debts secured by deed of trust or mortgage.

**2. Possession.**

The City shall have the right to possession of the Property as of the Closing and the Seller shall put the City in both legal and actual possession of the Property as of the Closing.

**3. Failure to Close.**

If the Seller fails to close the Sale for any reason, except as provided in this Agreement, and if the City has fully performed or tendered performance of all the obligations of the City as provided in this Agreement, then, the City shall have the right to either terminate this Agreement or for specific performance. If the City fails to close the Sale, for any reason, except as provided in this Agreement, and if the Seller has fully performed or tendered performance of all of the obligations of the Seller as provided in this Agreement, then the Seller shall have the right to either terminate this Agreement or for specific performance. If this Agreement is terminated by either party as provided in this paragraph, the City and the Seller shall have no further rights, obligations or liabilities as between the City and the Seller as provided in this Agreement.

**4. Prorations; Closing Costs.**

A. Ad valorem taxes and standby or similar charges for utility services for the year in which the Sale is closed, and rents or other income from the Property, if any, will be prorated to the Closing between the City and the Seller. If the current figures cannot be obtained, the proration shall be based upon the figures for the last assessment period.

B. If the Property is within an improvement district created pursuant to Sections 3-33-1 through 3-33-34, NMSA 1978 as amended or replaced:

(i) The Seller shall, by the Closing, pay all assessments levied against the Property if the improvements for which the assessment has been levied have been constructed; and

(ii) The assessments levied against the Property shall be prorated

between the Seller and the City as of the Closing if the improvements for which the assessment has been levied have not been constructed.

C. The Seller shall pay all pro rata charges which are imposed on the Property for public utility facilities that were constructed prior to the effective date of this Agreement whether the obligation to pay the pro rata charges arises before or subsequent to the Closing.

D. As closing costs, the Buyer will each pay any escrow charges and expenses charged by the Title Company. The Seller and the Buyer will each pay their respective attorneys' fees. The Seller shall pay all costs of the Cleanup Plan, if applicable. The Buyer shall pay the filing fee for recording the warranty deeds. The Buyer shall pay for the Title Commitment. The Buyer shall pay all costs of the Survey, and Phase I Report. The Buyer shall pay for Title Policy, including the premiums for deletion of Exceptions 1 through 4 from the Title Policy. Seller shall pay any recording fees to remove or release any liens or Seller's Financing Documents from title.

## VI. MISCELLANEOUS.

### 1. Waiver Of Default.

No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Agreement or to exercise any right or remedy available on the breach thereof will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Agreement that the Seller is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City. No exercise or failure to exercise any right or power of the Seller or of the City as provided in this Agreement will be considered to exhaust that right or power.

### 2. Time Is Of The Essence.

Time is of the Essence in the performance of this Agreement.

### 3. Notices.

All notices, requests, demands and other communications given under this Agreement will be in writing, and, unless otherwise specified in this Agreement, will be deemed to have been given if delivered in person or if delivery is refused, or on receipt or upon the date of refusal of delivery, if mailed by certified or registered mail, postage pre-paid, and addressed to the Seller or to the City at the following addresses, unless either the Seller or the City changes the Seller's or the City's address by giving written notice of the change to the other. The addresses for notices are:

A. Notice to the Sellers:
Vista Four Hills LLC
P.O. Box 999

Corrales, NM 87048-0999

B. Notice to the City:
City of Albuquerque
Planning Department
P. O. Box 1293
Albuquerque, New Mexico 87103
Attn: Real Property Division Manager

**4. Exhibits.**

All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.

**5. Further Action.**

At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**6. Severability/invalidity.**

In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Seller in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

**7. Governing Laws and Venue.**

This Agreement is governed by the laws of the State of New Mexico. Both Seller and the City agree to the exclusive jurisdiction of the courts of the State of New Mexico for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Bernalillo.

**8. Attorneys' Fees and Legal Costs**

If either party to this Agreement institutes any action or proceeding in court to enforce any provision hereof, for an alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each

party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

**9. Force Majeure.**

If performance of part or any portion of this Agreement is made impossible by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor or materials or reasonable substitutes for those items; government actions; civil commotions, fire; flood or other casualty; or other causes beyond the reasonable control of the Party obligated to perform, performance by that Party for a period equal to the period of that prevention, delay, or stoppage is excused.

**10. Approval of the City; Binding Effect.**

This Agreement is subject to approval and signature by the Chief Administrative Officer of the City or her designee. Upon execution of this Agreement by the Chief Administrative Officer, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the City and of the Seller and of their respective heirs, devisees, personal representatives, successors and assigns.

**11. Effective Date.**

The effective date of this Agreement shall be the date of approval and execution by the Chief Administrative Officer of the City or her designee.

**12. Final Dates.**

If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it shall be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

**13. Limitations on Liability.**

Neither party has any liability with respect to the obligations under this contract or otherwise for incidental, consequential, special, indirect, exemplary or punitive damages even if it has been advised of the possibility of such damages.

**14. Representation.**

Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that is has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Contract.

**15. Multiple Counterparts.**

The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

**16. Audits and Inspections.**

Sellers understand and will abide by all provisions of the Accountability In Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.

**17. Headings and Captions.**

Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

**18. Public Document.**

City is a municipal corporation under the laws of the State of New Mexico. City and Seller acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a "public record" within the meaning of said Act.

**19. Interpretation.**

Whenever the context hereof will so require, the singular will include the plural, the male gender will include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms will be construed to mean "without limitation". All references to Sections, subsections, Exhibits and Articles will be deemed references to Sections, subsections, and Articles of this Agreement and to Exhibits, which are attached hereto and made a part hereof for all purposes.

**20. Entire Agreement.**

This Agreement, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. All prior negotiations and agreements are merged into this agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. No subsequent agreement may modify this Real Estate Sales Agreement unless it is in writing and signed by the parties or their authorized agents. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have signed this agreement as of the date indicated by each signature, and the Agreement is effective after approval and signature of the City's Chief Administrative Officer or her authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**
**The remaining space is intentionally left blank.**

**CITY OF ALBUQUERQUE:**

Sarita Nair
Chief Administrative Officer

Date of Approval:

11/13/18

**RECOMMENDED:**

David Simon, Director
Parks & Recreation Department

10/12/18

Date of Recommendation:

10/19/18

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

The foregoing instrument was acknowledged before me on this 13th day of November 2018, by Sarita Nair, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Notary Public

OF JANEL SON
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 3/22/22

My Commission Expires:

3/22/22

**SELLER:**
**Vista Four Hills LLC, a New Mexico Limited Liability Company**

By: T. Flynn

Its: Managing Member

Date: 10-10-2018

**STATE OF NEW MEXICO** )
)ss
**COUNTY OF** Bernalillo )

The foregoing instrument was acknowledged before me on this 10th day of October 2018 by Todd Kruger, Managing Member

Notary Public

My Commission Expires:

June 5, 2018

**EXHIBIT A**

## EXHIBIT A

The North one-half [N. 1/2] of the Northwest one-quarter [NW 1/4] of Northeast one-quarter [NE 1/4] and Northwest one-quarter [NW 1/4] of Northeast one-quarter [NE 1/4] of Northeast one-quarter [NE 1/4], Township 10 North, Range 4 East, Section 34, N.M.P.M., Bernalillo County, New Mexico.

EXCEPTING THEREFROM portion described as:

A certain tract of land situate within the NW 1/4, NE 1/4, NE 1/4 of Section 34, Township 10 North, Range 4 East, N.M.P.M., Bernalillo County, New Mexico, and being more particularly described as follows: Beginning at the Northeast corner of the tract herein described, from whence the Northeast corner of Section 34, Township 10 North, Range 4 East, N.M.P.M., bears N. 86 deg. 13' 11" E., 682.99 feet distant; thence S. 01 deg. 25' 33" W., 602.65 feet; thence N, 88 deg. 55' 00" W., 680.60 feet; thence N. 01 deg. 05' 00" E., 419.30 feet; thence N. 76 deg. 05' 00" E., 708.34 feet to the point of beginning.

AND FURTHER EXCEPTING THEREFROM portion described as:

A certain tract of land situate within the NW1/4, NE1/4, NE1/4 of Section 34, T 10 N, R 4 E, NMPM, and being more particularly described as follows:

Beginning at the Northeast corner of the tract herein described from whence the North 1/4 corner of said Section 34, T 10 N, R 4 E, NMPM bears N 52 deg 14' 55" W, 848.64 feet distant; thence, S 00 deg 54'52" W, 140.00 feet to a point on the North line of VISTA FOUR HILLS, a Subdivision in Bernalillo County, New Mexico, recorded in the Office of the County Clerk of Bernalillo County, New Mexico, on May 25, 1979 in Volume D9, folio 133 and being the same and identical Northeast corner of Lot 1, Block 1 of said VISTA FOUR HILLS; thence, along said North line N 88 deg. 49' 42" W, 400.11 feet to a point being the same and identical Northwest corner of Lot 4, Block 1 of said VISTA FOUR HILLS: thence, leaving said North line N 00 deg. 51'29" E, 50.00 feet; thence, S 88 deg. 49' 42" E, 100.00 feet; thence, N 00 deg. 51'29" E, 90.00 feet; thence, S 88 deg. 49'42" 300.25 feet to the point of beginning.

AND FURTHER EXCEPTING THEREFROM portion described as:

A certain tract of land situate within the NW1/4, NW1/4, NE1/4 of Section 34, T10N, R4E, N.M.P.M., and being more particularly described as follows:
Beginning at the Northeast corner of the tract herein described from whence the North 1/4 corner of said Section 34, T10N, R4E, NMPM bears N. 24 deg. 08' 17" W., 658.99 feet distant; Thence S. 00 deg. 51' 29" W., 50.0 feet to a point on the North line of Vista Four Hills, a subdivision in Bernalillo County, New Mexico, recorded in the Office of the County Clerk of Bernalillo County, New Mexico, on May 25, 1979, in Volume D9, folio 133 and being the same and identical Northeast corner of said Lot 5, N. 88 deg. 49' 42" W., 100.65 feet to the Northwest corner of said Lot 5; Thence, leaving said North line N. 00 deg. 51' 29" E., 50.0 feet, Thence S. 88 deg. 49'42" E., 100.65 feet to the point of beginning.

EXHIBIT H

# REAL ESTATE PURCHASE AGREEMENT
# BETWEEN

# THE CITY OF ALBUQUERQUE,
# AS PURCHASER
# AND
# CHANT FAMILY II LIMITED LIABILITY PARTNERSHIP, A NEW MEXICO LIMITED PARTNERSHIP
# AS SELLER

## EFFECTIVE DATE:

# REAL ESTATE PURCHASE AGREEMENT

Real Estate Purchase Agreement ("Agreement") made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation ("City" or "Buyer"), Chant Family II Limited Partnership, a New Mexico limited partnership, ("Seller").

WHEREAS, the City has identified the need for real property for the Tijeras Arroyo Bio Zone for acquisition by the City for Albuquerque Parks and Recreation Department, Open Space Division to be used for permanent Open Space; and,

WHEREAS, Seller is the owner of approximately 13.4020 acres +/- or 583,790 +/- square feet of vacant land, also known as Tract A-4-A , Chant Property Addition, and approximately 3.3191 acres +/- or 144,579 +/- square feet of vacant land, also known as Tract A-4-B, Chant Property Addition and,

WHEREAS, the City is willing to purchase and Seller is willing to sell approximately 13.4020 acres +/- or 583,790 +/- square feet of vacant land, also known as Tract A-4-A , Chant Property Addition, and approximately 3.3191 acres +/- or 144,579 +/- square feet of vacant land, also known as Tract A-4-B, Chant Property Addition.

NOW, THEREFORE, mutual consideration, and on the terms set forth herein, the City and Seller agree as follows:

## I. PURCHASE AGREEMENT

### 1. Sale.

The Seller shall sell and the City shall purchase that certain tract of real estate in Bernalillo County, New Mexico ("Property") generally known Tract A-4-A and Tract A-4-B of Chant Property Additions as more specifically described and shown on Exhibit A attached hereto and made a part of this Agreement.

### 2. Purchase Price.

The purchase price ("Purchase Price") of the Property is TWO HUNDRED NINETY THOUSAND and No/100 Dollars ($290,000.00) plus or minus the prorations payable by the City to the Seller at the closing of the Sale.

## II. SURVEY, TITLE COMMITMENT AND TITLE POLICIES

**1. Title Insurance.**

At least thirty (30) days prior to the closing of the Sale, the City, at the expense of the City, shall cause the Title Company, defined below, to deliver to the City a commitment ("Title Commitment") for a policy of title insurance covering the Property issued by Stewart Title of Albuquerque ("Title Company") with offices located at 7801 Academy Rd NE, Bldg. 1, Ste. 101, Albuquerque, NM 87109, together with legible copies of documents shown on Schedule B as exceptions. In the Title Commitment, the Title Company or its underwriter will agree to issue to the City, upon the recording of a general warranty deed conveying title to the Property from the Seller to the City, an owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price and insuring the title of the City in the Property free and clear of all liens, encumbrances, taxes, subject only to the Permitted Exceptions (defined below).

**2. Notice of Objections to Title Commitment.**

Within ten (10) days after receipt by the City of the Title Commitment, the City will give written notice to the Seller of any objections the City may have as to the condition of title to the Property as shown in the Title Commitment (collectively, "Objections"). If the City fails to object to the condition of title to the Property as shown in the Title Commitment within the ten (10) day period, the City shall be deemed to have waived such matters or conditions. The Seller will attempt to eliminate or modify all Objections to the satisfaction of the City. If the Seller is unable to or does not satisfy the Objections before the closing of the Sale (the "Cure Period"), then the Seller will give notice to the City ten (10) days before the date of the closing of the Sale of any Objections that the Seller will not be able to or does not satisfy, and the City shall have the following options, one of which shall be exercised by written notice given to Seller within five (5) days after the expiration of the Cure Period: (i) if the Seller has indicated that it will attempt to cure the Objection but it has not been able to do so, the City may agree to an additional period of time up to thirty (30) days in which the Seller may continue to attempt to satisfy the Objections; (ii) the City will give written notice to the Seller that the City will accept title to the Property subject to any unsatisfied Objections, in which event the unsatisfied Objections will be deemed to be waived for all purposes; or (iii) if the City does not exercise options (i) or (ii), the City may terminate this Agreement in which event the Seller and the City will have no further rights, obligations or liabilities to one another under this Agreement. If the City does not deliver written notice to the Seller five (5) days after the expiration of the Cure Period electing one of the above options, the City shall be deemed to have waived the unsatisfied Objections for all purposes pursuant to item (ii) above. Seller shall cause Title Company to remove from the Title Policy at Closing all deeds of trust, mortgages, liens and other interests in the Property or any part thereof (collectively, "Seller's Financing Documents"), and Seller's Financing Documents and property liens shall not be deemed Permitted Exceptions hereunder.

**3. Permitted Exceptions.**

The Schedule B Standard Exceptions set forth in 13 NMAC 14.5, Section 9 and all matters shown on the Initial Title Commitment, and any Updated Title Commitment which the City approves or is deemed to have approved pursuant to paragraph 2, and any liens or encumbrances caused or created by the City or the City's employees, agents or contractors, will constitute "Permitted Exceptions" for purposes of this Agreement and the Deed.

**4. Deed.**

The Seller shall convey title to the Property to the City by statutory form Special Warranty deed, subject only to the Permitted Exceptions. The description of the Property to be contained in the Special Warranty deed shall conform to the description of the Property contained in the Survey, except that if a subdivision plat is required to close the Sale, the description of the Property in the Special Warranty deed shall conform to the description of the Property in the recorded subdivision plat.

## III. ENVIRONMENTAL INSPECTION

**1. Definitions.**

As used in this Agreement, the following terms shall have the following definitions:

A. "Environmental Condition" means any condition regarding the presence of Hazardous Materials located on, in, under or originating from the property or located within the improvements thereon with respect to air, soil, surface water or groundwater, which require response under any Environmental Requirements in effect at the time of their application.

B. "Environmental Requirements" means all applicable federal, state and local governmental agency environmental statutes, ordinances, rules, notices, regulations, standards, permits orders and any other governmental requirements relating, by way of example and not limitation, to the following: (i) the spill, leaked, discharge, emission or release of any Hazardous Material, to the air, surface water, ground water or soil; (ii) the storage, treatment, disposal or handling of any Hazardous Materials and (iii) the construction, operation, maintenance, repair or closing of aboveground or underground storage tanks or impoundments containing Hazardous Materials.

C. "Hazardous Materials" means substances defined as such pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended; or as hazardous waste, as that term is defined under the Resource Conservation Recovery Act; PCB's; petroleum hydrocarbons; and substances so defined pursuant to requirements prevailing and

applicable on the Effective Date as established by the State of New Mexico.

D. "Other Materials" means any materials or substances which do not come within the definition of Hazardous Materials, including, but not limited to, ACM, radon or other radioactive substances, lead-based paint, nonhazardous wastes or any toxic or polluting substances.

E. "Documents" means all documents, photographs, maps, data, notes, reports, chromatograms, in digital form, print, videotape or other media used to transmit information regarding the environmental condition of any aspect of the property, including, but not limited to the Phase I Report, the Phase II Report, if any, and the Cleanup Plan, if any.

**2. Buyer Inspections.**

Within ten (10) days after receipt by all parties of the executed purchase agreement, Seller, at Seller's expense, will cause to have performed a Phase I Environmental Condition report for the Property. The Buyer shall have the right to conduct any and all investigations it desires to fully examine the environmental characteristics of the Property ("Due Diligence") including, but not limited to, the examination of any improvements located thereon and the evaluation of the Environmental Condition of the Property for the presence of any Hazardous Materials or Other Materials located on, in, under or originating from the Property during the period of time ("Due Diligence Period") commencing on the Effective Date and terminating on the later to occur of (i) five (5) days after Buyer's receipt of a Seller's Consultant's Phase I Report, if no further environmental investigations are recommended by the Seller's Consultant in the Phase I Report; and (ii) ten (10) days after the Buyer 's receipt of the Seller's Consultant's Phase II Report and Cleanup Plan, provided, that the Phase I Report recommends the conduct of further investigations to evaluate the presence of Hazardous Materials and Buyer elects to obtain a Phase II Report. The Buyer shall have the right to approve the selection of Seller's consultant for the Phase I Report, and if needed, approve the consultant to prepare and perform the Phase II Report and Cleanup Plan. The Phase II Report and Cleanup Plan shall be approved by the Buyer prior to the implementation of the Cleanup Plan. However, if the Seller is not required to arrange for the conduct of a Phase II Report, the Buyer, at its option, exercisable by written notice to the Seller within five (5) days following the Buyer's receipt of the Phase I Report (Due Diligence Notice"), may extend the Due Diligence Period through the date which is forty-five (45) days after the date of the Seller's receipt of the Due Diligence Notice. The Due Diligence Period, as so extended, shall be used by the Buyer solely for the purpose of conducting any further investigation or examination of the Environmental Condition of the Property as the Buyer shall deem necessary or desirable. The Seller shall provide the Buyer with the unfettered opportunity to conduct its environmental investigations during the Due Diligence Period. Any Phase II Report shall be paid for by Buyer. Buyer acknowledges that there are monitoring wells located on the Property, and Seller represents that it has provided up-to-date reports from such

monitoring to Eric R. Johnson of NV5, the environmental consultant performing the Phase I.

**3. Termination.**

If the Buyer or the Consultant identify Hazardous Materials or Other Materials on, in, under or originating from the Property which cannot be cleaned up or remediated as required by applicable Environmental Requirements utilizing technological methods currently available or which in the sole and absolute judgment of the Buyer will prevent the Buyer from using the Property, the Buyer may terminate this Agreement and upon termination, the Buyer and the Seller shall have no further right or obligations as between the Buyer and the Seller under this Agreement. In the event Seller elects not to proceed with a Phase II Report and Cleanup Plan, if required by the Buyer, then Buyer, at Buyer's sole discretion, may terminate this Agreement and the parties shall have no further rights or obligations under this Agreement. Seller shall have ten (10) days after receipt of the Phase I Report to provide written notice to the Buyer of its intent not to proceed with a Phase II Report or Cleanup Plan and termination of this Agreement.

**4. Notice of Violation.**

If the Seller has received or receives notice of a violation of any Environmental Requirement with respect to the Property prior to the date of the Closing, then prior to the Closing, the Seller shall give to the Buyer a letter from the governmental entity charged with the enforcement of the applicable Environmental Requirement stating that the matter has currently been resolved to the satisfaction of that governmental entity, or other equivalent language.

## IV. WARRANTIES AND REPRESENTATIONS

**1. Seller's Warranties.**

The Seller warrants and represents that:

A. The Seller has good, indefeasible and marketable title to the Property.

B. To Seller's knowledge, the Property is in compliance with all applicable laws, ordinances, rules and regulations affecting the Property and the use and occupancy of the Property.

C. The Property shall have free and uninhibited access to and from a public street, road, alley or other right-of-way through other property owned by the City as of the Closing.D. This Agreement and the documents provided for or contemplated by this Agreement will not violate, be in conflict with, result in the breach of or constitute a default under any agreement, mortgage, indenture, deed of trust, lien, order, judgment or instrument to which the Seller is a party or by which the Seller is bound or affected.

E. There are no unpaid bills or claims in connection with construction or repair work on the Property.

F. There are no actions, suits, proceedings or investigations pending or threatened against the Seller or relating to the Property in any court or before any governmental department or agency which would in any material respect affect the validity of this Agreement, or the obligations or the ability of the Seller to perform under this Agreement, including the execution, acknowledgment and delivery of the documents provided for or contemplated by this Agreement and the Seller does not know of any basis for any such action, suit, proceeding or investigation.

G. If the Property is subject to a mortgage, real estate contract, or deed of trust, the Seller is not in default and has not received notice of default under or breach of the mortgage, real estate contract or deed of trust or of the documents evidencing the indebtedness or other obligations secured by the mortgage, real estate contract or deed of trust.

H. If Seller is a corporation, partnership, or other legal entity, Seller warrants that it is duly formed and validly existing under the laws of its domicile, is in good standing with and authorized to do business in the State of New Mexico, and has all requisite authorization and documentation to enter into and close this transaction, and the named corporate officer, partner or agent who executed, acknowledged and delivered this contract, for and on behalf of the Seller, is and was, at all material times, the duly authorized corporate officer, member, partner or agent of the Seller.

**2. Real Estate Sales Commissions.**

A. The Seller represents and warrants to the City that no other broker, agent, finder or salesman has been involved in the origination, negotiation or consummation of this Agreement and no other fee, commission, compensation or similar payment is due to any other broker, agent, finder or salesman as a result of the origination, negotiation or consummation of this Agreement.

B. The Seller shall defend, indemnify and hold the City harmless from and against any and all loss, cost or expense (including attorneys' fees and expenses) resulting from any claim for any fee, commission, compensation or similar payment by any broker, agent, finder or salesman as a result of any action of the Seller related to the origination, negotiation or consummation of this Agreement.

**3. Survival of Warranties.**

The warranties and representations of the Seller are a material inducement for the City to purchase the Property. The execution and delivery of the special warranty deed by the Seller shall constitute a confirmation and further representation and warranty by the Seller to the City, as of the date of the special warranty deed, as to the matters specified in Section 1(B) through (H) of this Agreement and shall survive the closing of the Sale for a period of twelve (12) months and shall not be merged into the execution and delivery of the special warranty deed or any other document executed and delivered subsequently to the execution and delivery of this Agreement. The representation contained in Section IV(1)(A) shall merge with the special warranty deed at Closing and shall thereupon expire.

## V. CLOSING

**1. Closing of Sale.**

Within thirty (30) days after acceptance of title, the City will give the Seller notice of a proposed time and date of closing of the Sale ("Closing"). The Closing will be at the office of the Title Company, either (i) at the time and on the date stated in the notice, or (ii) at such other time, date and place as the Seller and the City may agree in writing. At the Closing, the Seller, the City and the Title Company will perform the following duties:

A. The Seller's Duties. The Seller shall execute and deliver to the Title Company a General Warranty deed conveying the Property to the City, subject only to the Permitted Exceptions.

B. City's Duties. The City shall pay to the Title Company, as escrow agent, the Purchase Price, plus or minus the prorations and any closing costs to be paid by the City. The City's payment shall be made by check of the City or such other method of payment as may be required by the Title Company to make an immediate payment at the Closing of the Purchase Price due to the Seller as provided in this Agreement, or by such other method of payment as the Seller and the City may agree in writing.

C. Title Company's Duties. At or promptly after the Closing, unless otherwise instructed by the Seller and the City, the Title Company will:

(i) record the Special Warranty deed in the records of Bernalillo County, New Mexico, and deliver the recorded warranty deed to the City;

(ii) issue and deliver the Title Policy to the City as provided in the Title Commitment, except for any matters which have been eliminated or modified as provided

in this Agreement; and

(iii) disburse to the Seller the balance of the Purchase Price due to the Seller and make all other disbursements as provided in the escrow closing statements to be prepared by the Title Company and signed by the Seller and the City at the Closing, including, but not limited to, any disbursements and payments necessary to discharge any obligations which are liens upon the Property, including, but not limited to, liens arising from judgments, taxes or debts secured by deed of trust or mortgage.

**2. Possession.**

The City shall have the right to possession of the Property as of the Closing and the Seller shall put the City in both legal and actual possession of the Property as of the Closing.

**3. Failure to Close.**

If the Seller fails to close the Sale for any reason, except as provided in this Agreement, and if the City has fully performed or tendered performance of all the obligations of the City as provided in this Agreement, then, the City shall have the right to either terminate this Agreement or for specific performance. If the City fails to close the Sale, for any reason, except as provided in this Agreement, and if the Seller has fully performed or tendered performance of all of the obligations of the Seller as provided in this Agreement, then the Seller shall have the right to either terminate this Agreement or sue for specific performance. If this Agreement is terminated by either party as provided in this paragraph, the City and the Seller shall have no further rights, obligations or liabilities as between the City and the Seller except as otherwise provided in this Agreement.

**4. Prorations; Closing Costs.**

A. Ad valorem taxes and standby or similar charges for utility services for the year in which the Sale is closed, and rents or other income from the Property, if any, will be prorated to the Closing between the City and the Seller. If the current figures cannot be obtained, the proration shall be based upon the figures for the last assessment period.

B. If the Property is within an improvement district created pursuant to Sections 3-33-1 through 3-33-34, NMSA 1978 as amended or replaced:

(i) The Seller shall, by the Closing, pay all assessments levied against the Property if the improvements for which the assessment has been levied have been constructed; and

(ii) The assessments levied against the Property shall be prorated

between the Seller and the City as of the Closing if the improvements for which the assessment has been levied have not been constructed.

C. The Seller shall pay all pro rata charges which are imposed on the Property for public utility facilities that were constructed prior to the effective date of this Agreement whether the obligation to pay the pro rata charges arises before or subsequent to the Closing.

D. As closing costs, the Seller and the Buyer will each pay one half of any escrow charges and expenses charged by the Title Company. The Seller and the Buyer will each pay their respective attorneys' fees. The Seller shall pay all costs of the Cleanup Plan, if applicable. The Buyer shall pay the filing fee for recording the warranty deeds. The City shall pay for the Title Commitment. The Seller shall pay all costs of the Phase I Report. The Seller shall pay all costs for the Title Policy, including the premiums for deletion of Exceptions 1 through 4 from the Title Policy. Seller shall pay any recording fees to remove or release any liens or Seller's Financing Documents from title.

## VI. MISCELLANEOUS.

### 1. Waiver Of Default.

No failure by the City to insist upon the strict performance of any term, condition, or covenant of this Agreement or to exercise any right or remedy available on the breach thereof will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Agreement that the Seller is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the City. No exercise or failure to exercise any right or power of the Seller or of the City as provided in this Agreement will be considered to exhaust that right or power.

### 2. Time Is Of The Essence.

Time is of the Essence in the performance of this Agreement.

### 3. Notices.

All notices, requests, demands and other communications given under this Agreement will be in writing, and, unless otherwise specified in this Agreement, will be deemed to have been given if delivered in person or if delivery is refused, or on receipt or upon the date of refusal of delivery, if mailed by certified or registered mail, postage pre-paid, and addressed to the Seller or to the City at the following addresses, unless either the Seller or the City changes the Seller's or the City's address by giving written notice of the change to the other. The addresses for notices are:

A. Notice to the Sellers:

Chant Family II Limited Partnership
PO Box 94058
Albuquerque, NM 87199

With a copy to:

Bruce Castle
Castle & Castle
3915 Carlisle Blvd NE
Albuquerque, NM 87107

B. Notice to the City:
City of Albuquerque
Planning Department
P. O. Box 1293
Albuquerque, New Mexico 87103
Attn: Real Property Division Manager

**4. Exhibits.**

All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.

**5. Further Action.**

At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**6. Severability/invalidity.**

In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this

Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Seller in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

**7. Governing Laws and Venue.**

This Agreement is governed by the laws of the State of New Mexico. Both Seller and the City agree to the exclusive jurisdiction of the courts of the State of New Mexico for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Bernalillo.

**8. Attorneys' Fees and Legal Costs**

If either party to this Agreement institutes any action or proceeding in court to enforce any provision hereof, for an alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each party shall be responsible for its own attorneys' fees (including the reasonable fees and disbursements and charges of internal legal counsel) and litigation expenses, including, but not limited to expert witness fees, and service of process fees.

**9. Force Majeure.**

If performance of part or any portion of this Agreement is made impossible by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor or materials or reasonable substitutes for those items; government actions; civil commotions, fire; flood or other casualty; or other causes beyond the reasonable control of the Party obligated to perform, performance by that Party for a period equal to the period of that prevention, delay, or stoppage is excused.

**10. Approval of the City; Binding Effect.**

This Agreement is subject to approval and signature by the Chief Administrative Officer of the City or her designee. Upon execution of this Agreement by the Chief Administrative Officer, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the City and of the Seller and of their respective heirs, devisees, personal representatives, successors and assigns.

**11. Effective Date.**

The effective date of this Agreement shall be the date of approval and execution by the Chief Administrative Officer of the City or her designee.

**12. Final Dates.**

If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be

extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it shall be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

**13. Limitations on Liability.**

Neither party has any liability with respect to the obligations under this contract or otherwise for incidental, consequential, special, indirect, exemplary or punitive damages even if it has been advised of the possibility of such damages.

**14. Representation.**

Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that is has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Contract.

**15. Multiple Counterparts.**

The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

**16. Audits and Inspections.**

Sellers understand and will abide by all provisions of the Accountability In Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.

**17. Headings and Captions.**

Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

**18. Public Document.**

City is a municipal corporation under the laws of the State of New Mexico. City and Seller acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a "public record" within the meaning of said Act.

**19. Interpretation.**

Whenever the context hereof will so require, the singular will include the plural,

the male gender will include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms will be construed to mean "without limitation". All references to Sections, subsections, Exhibits and Articles will be deemed references to Sections, subsections, and Articles of this Agreement and to Exhibits, which are attached hereto and made a part hereof for all purposes.

**20. Entire Agreement.**

This Agreement, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. All prior negotiations and agreements are merged into this agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. No subsequent agreement may modify this Real Estate Sales Agreement unless it is in writing and signed by the parties or their authorized agents. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have signed this agreement as of the date indicated by each signature, and the Agreement is effective after approval and signature of the City's Chief Administrative Officer or her authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**
**The remaining space is intentionally left blank.**

**CITY OF ALBUQUERQUE:**

Sarita Nair
Chief Administrative Officer

Date: 12-14-18

**RECOMMENDED:**

David J. Simon, Director
Parks & Recreation Department

12/12/2018

Date of Recommendation: 12/13/18

**SELLER:**
CHANT FAMILY II LIMITED PARTNERSHIP,
a New Mexico limited partnership

By: CHANT FAMILY II LIMITED LIABILITY COMPANY,
a New Mexico limited liability company,
Its General Partner

By: _____ Date: 11.27.18
Gregory A. Chant, Member

By: _____ Date: 11.27.18
Ethan N. Chant, Member

By: _____ Date: 11-27-18
Christopher H. Chant, Member

**EXHIBIT A**

**[See following two pages]**

# Plat for
# Tract A-4-A
# Chant Property Addition
## Being Comprised of
## A Portion of Tract A-4
## Chant Property Addition
## Bernalillo County, New Mexico
## March 2018

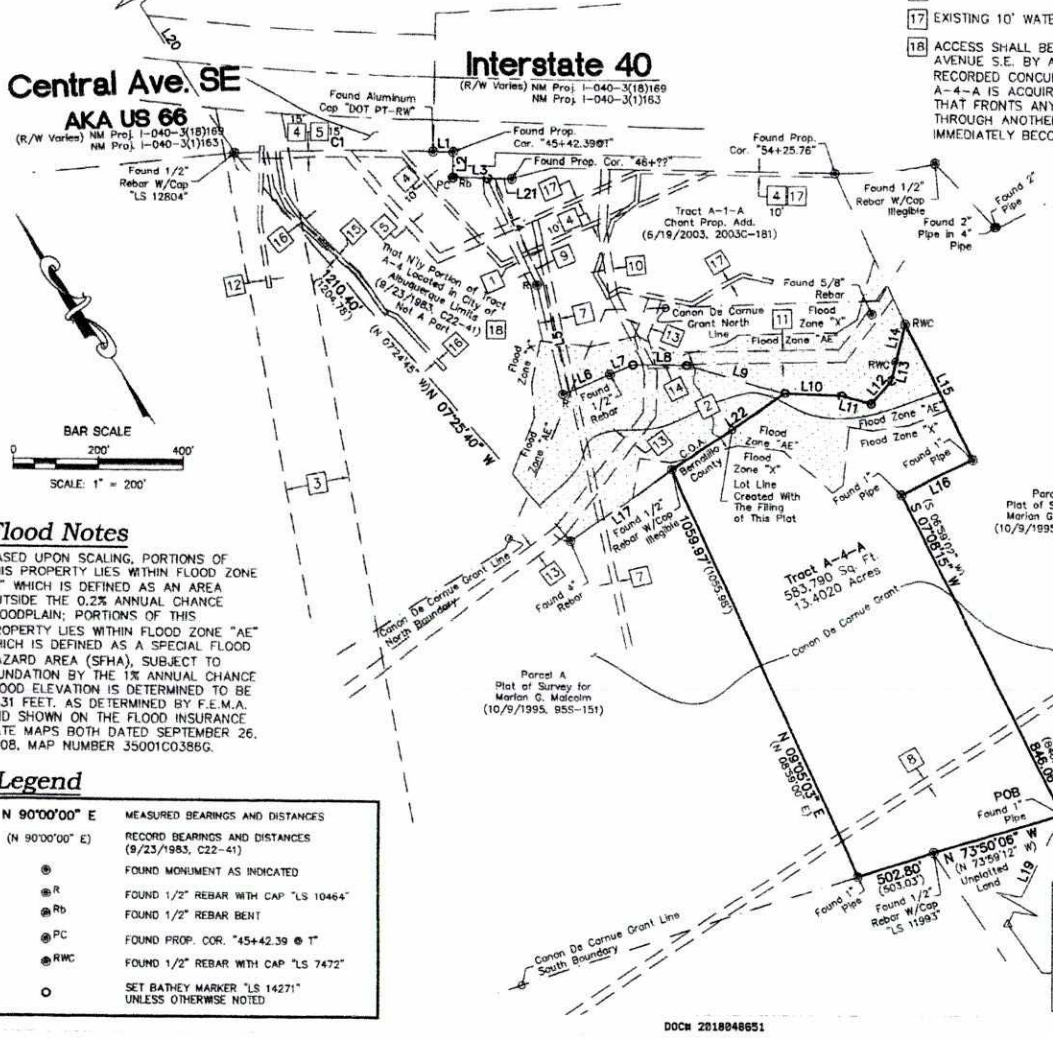
## Easement Notes

1. EXISTING 30' DRAINAGE EASEMENT (9/22/1983, C22-41)
2. EXISTING DRAINAGE EASEMENT (9/22/1983, C22-41) SHOWN HEREON AS [ ] THIS AREA IS ALSO THE BOUNDARY OF FLOOD ZONE "AE"
3. EXISTING 150' WIDE PNM TRANSMISSION LINE AND RIGHT OF WAY EASEMENT (1/28/1958, BK. D-412, PG. 215)
4. EXISTING 10' - 15' WATER, SEWER AND PUBLIC UTILITIES EASEMENT (4/6/1972, BK. 255, PG. 342)
5. EXISTING PERMANENT PUBLIC WATERLINE EASEMENT (4/25/1997, BK. 97-11, PG. 2379) AND (5/22/1997, BK. 97-13, PG. 8114)
6. INTENTIONALLY OMITTED
7. EXISTING 15' WIDE WATER LINE EASEMENT (10/1/1973, BK. MISC. 334, PG. 487)

## Easement Notes (Cont'd)

8. EXISTING 20' WIDE 4GKV POWER TRANSMISSION LINE EASEMENT (2/15/1968, BK. MISC. 94, PG. 421)
9. EXISTING 15' PUBLIC DRAINAGE EASEMENT (6/19/2003, 2003C-181)
10. EXISTING 20' PUBLIC SANITARY SEWER EASEMENT (6/5/2000, BK. A6, PG. 4176)
11. EXISTING PUBLIC SEWER SANITARY SEWER EASEMENT (6/19/2003, 2003C-181)
12. EXISTING 10' PNM AND MST&T EASEMENT (2/6/1970, BK. MISC. 163, PG. 864)
13. EXISTING DRAINAGE, WATER, SEWER AND PUBLIC UTILITIES EASEMENT (10/7/1977, BK. MISC. 563, PG. 380)
14. EXISTING CONSTRUCTION MAINTENANCE EASEMENT (4/8/1994, BK. 94-11, PG. 6545) SHOWN HEREON AS [ ]
15. EXISTING 10' PNM AND US WEST COMMUNICATIONS, INC. EASEMENT (6/3/1997, BK. 97-15, PG. 1622)
16. EXISTING 10' PNM GAS SERVICES EASEMENT (4/13/1998, BK. 9808, PG.2172)
17. EXISTING 10' WATER AND SANITARY SEWER EASEMENT (6/19/2003, 2003C-181)
18. ACCESS SHALL BE PROVIDED ACROSS THE NORTHERLY PORTION OF TRACT A-4 TO CENTRAL AVENUE S.E. BY A SEPARATE DECLARATION AND GRANT OF PRIVATE ACCESS EASEMENT RECORDED CONCURRENTLY WITH THIS PLAT, THAT PROVIDES, IN PART, THAT "IF TRACT A-4-A IS ACQUIRED BY ANY PERSON OR ENTITY THAT ALSO OWNS AN ADJOINING TRACT THAT FRONTS ANY ROADWAY OR HAS OR OBTAINS ACCESS TO TRACT A-4-A OF ANY KIND THROUGH ANOTHER OFFSITE ACCESS POINT, THIS EASEMENT SHALL AUTOMATICALLY AND IMMEDIATELY BECOME NULL AND VOID AND BE OF NO FURTHER FORCE AND EFFECT."

ACS Monument " WINDY "
NAD 1983 CENTRAL ZONE
X=1569614.07 *
Y=1480464.466 *
Z=N/A * (NAVD 1988)
G-G=0.999631315
Mapping Angle= -0°08'09.44"
* U.S. Survey Foot




| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C1 | 469.20' (464.95') | 7465.00' (7465.00') | 3°36'04" | 469.12' | S 56°54'00" E |

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L1 | S 55°06'56" E (S 55°32'46" E) | 46.87' (46.53') |
| L2 | S 34°23'18" W (S 34°27'14" W) | 59.49' (60.13') |
| L3 | S 55°22'38" E (S 55°30'11" E) | 82.12' (82.76') |
| L4 | S 08°38'56" W (S 08°56'14" W) | 277.95' (276.79') |
| L5 | S 20°11'27" W (S 20°01'00" W) | 265.35' (265.36') |
| L6 | S 79°12'30" E (S 79°20'58" E) | 120.28' (120.00') |
| L7 | S 79°10'39" E (S 79°20'58" E) | 58.60' (59.60') |
| L8 | S 55°45'46" E (S 55°56'05" E) | 125.47' (125.47') |
| L9 | S 40°43'51" E (S 40°54'10" E) | 239.72' (239.72') |
| L10 | S 54°07'40" E (S 54°17'59" E) | 134.51' (134.51') |
| L11 | S 41°30'32" E (S 41°40'51" E) | 73.06' (73.06') |
| L12 | N 74°40'39" E (N 74°30'20" E) | 73.41' (73.41') |
| L13 | N 46°49'44" E (N 46°39'25" E) | 44.40' (44.40') |
| L14 | N 46°49'56" E (N 46°39'25" E) | 94.44' (94.37') |
| L15 | S 07°11'46" W (S 07°00'20" W) | 357.28' (357.68') |
| L16 | N 82°49'53" W (N 83°00'28" W) | 186.02' (185.86') |
| L17 | S 88°20'19" W (S 88°59'00" W) | 292.00' (292.00') |
| L18 | S 74°48'25" E (S 73°59'12" E) | 139.00' (138.46') |
| L19 | S 78°25'58" W (S 78°16'58" W) | 905.18' (905.46') |
| L20 | N 06°37'39" W | 1558.79' |
| L21 | S 55°22'38" E (S 55°30'11" E) | 57.15' (57.57') |
| L22 | N 89°26'04" E | 320.51' |

## Flood Notes

BASED UPON SCALING, PORTIONS OF THIS PROPERTY LIES WITHIN FLOOD ZONE "X" WHICH IS DEFINED AS AN AREA OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN; PORTIONS OF THIS PROPERTY LIES WITHIN FLOOD ZONE "AE" WHICH IS DEFINED AS A SPECIAL FLOOD HAZARD AREA (SFHA), SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD ELEVATION IS DETERMINED TO BE 5631 FEET. AS DETERMINED BY F.E.M.A. AND SHOWN ON THE FLOOD INSURANCE RATE MAPS BOTH DATED SEPTEMBER 26, 2008, MAP NUMBER 35001C0386G.

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/23/1983, C22-41) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ◉R | FOUND 1/2" REBAR WITH CAP "LS 10464" |
| ◉Rb | FOUND 1/2" REBAR BENT |
| ◉PC | FOUND PROP. COR. "45+42.39 @ T" |
| ◉RWC | FOUND 1/2" REBAR WITH CAP "LS 7472" |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |

ACS Monument " AGGIE "
NAD 1983 CENTRAL ZONE
X=1569671.06 *
Y=1476357.642 *
Z=N/A * (NAVD 1988)
G-G=0.999632446
Mapping Angle= -0°08'08.84"
* U.S. Survey Foot

## Public Utility Easements

PUBLIC UTILITY EASEMENTS shown on this plat are granted for the common and joint use of:

A. Public Service Company of New Mexico ("PNM"), a New Mexico corporation, (PNM Electric) for installation, maintenance, and service of overhead and underground electrical lines, transformers, and other equipment and related facilities reasonably necessary to provide electrical services.

B. New Mexico Gas Company for installation, maintenance, and service of natural gas lines, valves and other equipment and facilities reasonably necessary to provide natural gas services.

C. Qwest Corporation d/b/a CenturyLink QC for the installation, maintenance, and service of such lines, cable, and other related equipment and facilities reasonably necessary to provide communication services.

D. Cable TV for the installation, maintenance, and service of such lines, cable, and other related equipment and facilities reasonably necessary to provide Cable services.

Included, is the right to build, rebuild, construct, reconstruct, locate, relocate, change, remove, replace, modify, renew, operate and maintain facilities for purposes described above, together with free access to, from, and over said easements, with the right and privilege of going upon, over and across adjoining lands of Grantor for the purposes set forth herein and with the right to utilize the right of way and easement to extend services to customers of Grantee, including sufficient working area space for electric transformers, with the right and privilege to trim and remove trees, shrubs or bushes which interfere with the purposes set forth herein. No building, sign, pool (aboveground or subsurface), hot tub, concrete or wood pool decking, or other structure shall be erected or constructed on said easements, nor shall any well be drilled or operated thereon. Property owners shall be solely responsible for correcting any violations of National Electrical Safety Code by construction of pools, decking, or any structures adjacent to or near easements shown on this plat. Easements for electric transformer/switchgears, as installed, shall extend ten (10) feet in front of transformer/switchgear doors and five (5) feet on each side.

Disclaimer
In approving this plat, Public Service Company of New Mexico (PNM) and New Mexico Gas Company (NMGC) did not conduct a Title Search of the properties shown hereon. Consequently, PNM and NMGC do not waive or release any easement or easement rights which may have been granted by prior plat, replat or other document and which are not shown on this plat.


CSI-CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244





DOC# 2018048651
06/04/2018 12:53 PM Page: 2 of 2
PLAT R:$25.00 B: 2018C P: 0075 Linda Stover, Bernalillo County

DOC# 2018090789
10/17/2018 11:06 AM Page 2 of 2
PLAT R $25.00 B 2018C P 0132 Linda Stover Bernalillo County

# Plat for Tracts A-4-B and A-4-C Chant Property Addition

*Being Comprised of Tract A-4, less that Portion outside Albuquerque City Limits known as A-4-A, Chant Property Addition*

*City of Albuquerque*
*Bernalillo County, New Mexico*
*July 2018*

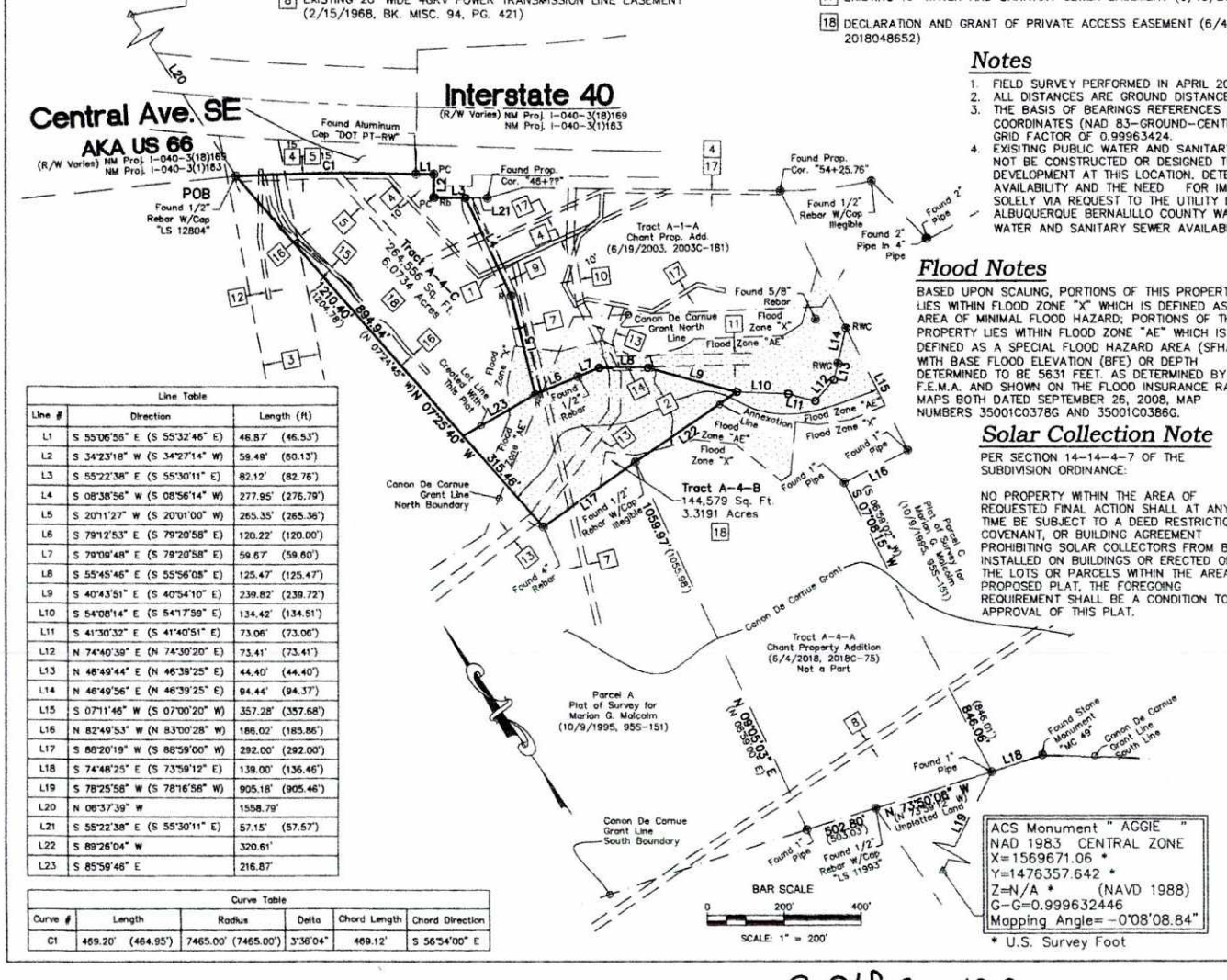
## Easement Notes

1. EXISTING 30' DRAINAGE EASEMENT (9/22/1983, C22-41)
2. EXISTING DRAINAGE EASEMENT (9/22/1983, C22-41) SHOWN HEREON AS [ ] THIS AREA IS ALSO THE BOUNDARY OF FLOOD ZONE "AE"
3. EXISTING 150' WIDE PNM TRANSMISSION LINE AND RIGHT OF WAY EASEMENT (1/28/1958, BK. D-412, PG. 215)
4. EXISTING 10' – 15' WATER, SEWER AND PUBLIC UTILITIES EASEMENT (4/6/1972, BK. 255, PG. 342)
5. EXISTING PERMANENT PUBLIC WATERLINE EASEMENT (4/25/1997, BK. 97-11, PG. 2379) AND (5/22/1997, BK. 97-13, PG. 8114)
6. INTENTIONALLY OMITTED
7. EXISTING 15' WIDE WATER LINE EASEMENT (10/1/1973, BK. MISC. 334, PG. 487)
8. EXISTING 20' WIDE 4GKV POWER TRANSMISSION LINE EASEMENT (2/15/1968, BK. MISC. 94, PG. 421)

## Easement Notes (Cont'd)

9. EXISTING 15' PUBLIC DRAINAGE EASEMENT (6/19/2003, 2003C-181)
10. EXISTING 20' PUBLIC SANITARY SEWER EASEMENT (6/5/2000, BK. A6, PG. 4176)
11. EXISTING PUBLIC SEWER SANITARY SEWER EASEMENT (6/19/2003, 2003C-181)
12. EXISTING 10' PNM AND MST&T EASEMENT (2/6/1970, BK. MISC. 163, PG. 864)
13. EXISTING DRAINAGE, WATER, SEWER AND PUBLIC UTILITIES EASEMENT (10/7/1977, BK. MISC. 563, PG. 380)
14. EXISTING CONSTRUCTION MAINTENANCE EASEMENT (4/8/1994, BK. 94-11, PG. 6545) SHOWN HEREON AS [ ]
15. EXISTING 10' PNM AND US WEST COMMUNICATIONS, INC. EASEMENT (6/3/1997, BK. 97-15, PG. 1622)
16. EXISTING 10' PNM GAS SERVICES EASEMENT (4/13/1998, BK. 9808, PG.2172)
17. EXISTING 10' WATER AND SANITARY SEWER EASEMENT (6/19/2003, 2003C-181)
18. DECLARATION AND GRANT OF PRIVATE ACCESS EASEMENT (6/4/2018, DOC. NO. 2018048652)

ACS Monument " WINDY "
NAD 1983 CENTRAL ZONE
X=1569614.07 *
Y=1480464.466 *
Z=N/A * (NAVD 1988)
G-G=0.999631315
Mapping Angle= -0°08'09.44"
* U.S. Survey Foot

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|---|---|---|
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| L4 | S 08°38'56" W (S 08°56'14" W) | 277.95' (276.79') |
| L5 | S 20°11'27" W (S 20°01'00" W) | 265.35' (265.36') |
| L6 | S 79°12'53" E (S 79°20'58" E) | 120.22' (120.00') |
| L7 | S 79°09'48" E (S 79°20'58" E) | 59.67' (59.60') |
| L8 | S 55°45'46" E (S 55°56'08" E) | 125.47' (125.47') |
| L9 | S 40°43'51" E (S 40°54'10" E) | 239.82' (239.72') |
| L10 | S 54°08'14" E (S 54°17'59" E) | 134.42' (134.51') |
| L11 | S 41°30'32" E (S 41°40'51" E) | 73.06' (73.06') |
| L12 | N 74°40'39" E (N 74°30'20" E) | 73.41' (73.41') |
| L13 | N 48°49'44" E (N 48°39'25" E) | 44.40' (44.40') |
| L14 | N 48°49'56" E (N 48°39'25" E) | 94.44' (94.37') |
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| L20 | N 08°37'39" W | 1558.79' |
| L21 | S 55°22'38" E (S 55°30'11" E) | 57.15' (57.57') |
| L22 | S 89°26'04" W | 320.61' |
| L23 | S 85°59'48" E | 216.87' |

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C1 | 469.20' (464.95') | 7465.00' (7465.00') | 3°36'04" | 469.12' | S 56°54'00" E |

ACS Monument " AGGIE "
NAD 1983 CENTRAL ZONE
X=1569671.06 *
Y=1476357.642 *
Z=N/A * (NAVD 1988)
G-G=0.999632446
Mapping Angle= -0°08'08.84"
* U.S. Survey Foot

## Notes

1. FIELD SURVEY PERFORMED IN APRIL 2016.
2. ALL DISTANCES ARE GROUND DISTANCES; US SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NEW MEXICO STATE PLANE COORDINATES (NAD 83-GROUND-CENTRAL ZONE), USING GROUND TO GRID FACTOR OF 0.99963424.
4. EXISITING PUBLIC WATER AND SANITARY SEWER INFRASTRUCTURE MAY NOT BE CONSTRUCTED OR DESIGNED TO SERVE POTENTIAL FUTURE DEVELOPMENT AT THIS LOCATION. DETERMINATION OF SERVICE AVAILABILITY AND THE NEED FOR IMPROVEMENTS WILL BE MADE SOLELY VIA REQUEST TO THE UTILITY DEVELOPMENT SECTION OF THE ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY FOR A WATER AND SANITARY SEWER AVAILABILITY/SERVICEABILITY STATEMENT.

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/23/1983, C22-41) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ◉R | FOUND 1/2" REBAR WITH CAP "LS 10464" |
| ◉Rb | FOUND 1/2" REBAR BENT |
| ◉PC | FOUND PROP. COR. "45+42.39 ⊕ T" |
| ◉RWC | FOUND 1/2" REBAR WITH CAP "LS 7472" |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |

## Flood Notes

BASED UPON SCALING, PORTIONS OF THIS PROPERTY LIES WITHIN FLOOD ZONE "X" WHICH IS DEFINED AS AN AREA OF MINIMAL FLOOD HAZARD; PORTIONS OF THIS PROPERTY LIES WITHIN FLOOD ZONE "AE" WHICH IS DEFINED AS A SPECIAL FLOOD HAZARD AREA (SFHA) WITH BASE FLOOD ELEVATION (BFE) OR DEPTH DETERMINED TO BE 5631 FEET. AS DETERMINED BY F.E.M.A. AND SHOWN ON THE FLOOD INSURANCE RATE MAPS BOTH DATED SEPTEMBER 26, 2008, MAP NUMBERS 35001C0378G AND 35001C0386G.

## Solar Collection Note

PER SECTION 14-14-4-7 OF THE SUBDIVISION ORDINANCE:

NO PROPERTY WITHIN THE AREA OF REQUESTED FINAL ACTION SHALL AT ANY TIME BE SUBJECT TO A DEED RESTRICTION, COVENANT, OR BUILDING AGREEMENT PROHIBITING SOLAR COLLECTORS FROM BEING INSTALLED ON BUILDINGS OR ERECTED ON THE LOTS OR PARCELS WITHIN THE AREA OF PROPOSED PLAT, THE FOREGOING REQUIREMENT SHALL BE A CONDITION TO APPROVAL OF THIS PLAT.

## Public Utility Easements

PUBLIC UTILITY EASEMENTS shown on this plat are granted for the common and joint use of:

A. Public Service Company of New Mexico ("PNM"), a New Mexico corporation, (PNM Electric) for installation, maintenance, and service of overhead and underground electrical lines, transformers, and other equipment and related facilities reasonably necessary to provide electrical services.

B. New Mexico Gas Company for installation, maintenance, and service of natural gas lines, valves and other equipment and facilities reasonably necessary to provide natural gas services.

C. Qwest Corporation d/b/a CenturyLink QC for the installation, maintenance, and service of such lines, cable, and other related equipment and facilities reasonably necessary to provide communication services.

D. Cable TV for the installation, maintenance, and service of such lines, cable, and other related equipment and facilities reasonably necessary to provide Cable services.

included, is the right to build, rebuild, construct, reconstruct, locate, relocate, change, remove, replace, modify, renew, operate and maintain facilities for purposes described above, together with free access to, from, and over said easements, with the right and privilege of going upon, over and across adjoining lands of Grantor for the purposes set forth herein and with the right to utilize the right of way and easement to extend services to customers of Grantee, including sufficient working area space for electric transformers, with the right and privilege to trim and remove trees, shrubs or bushes which interfere with the purposes set forth herein. No building, sign, pool (aboveground or subsurface), hot tub, concrete or wood pool decking, or other structure shall be erected or constructed on said easements, nor shall any well be drilled or operated thereon. Property owners shall be solely responsible for correcting any violations of National Electrical Safety Code by construction of pools, decking, or any structures adjacent to or near easements shown on this plat.
Easements for electric transformer/switchgears, as installed, shall extend ten (10) feet in front of transformer/switchgear doors and five (5) feet on each side.

Disclaimer
In approving this plat, Public Service Company of New Mexico (PNM) and New Mexico Gas Company (NMGC) did not conduct a Title Search of the properties shown hereon. Consequently, PNM and NMGC do not waive or release any easement or easement rights which may have been granted by prior plat, replat or other document and which are not shown on this plat.

CSI-CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244



2018C-132

(2)

EXHIBIT I

EXHIBIT I

# REAL ESTATE PURCHASE AGREEMENT WITH OPTION TO PURCHASE BETWEEN

**THE CITY OF ALBUQUERQUE, A NEW MEXICO MUNICIPAL CORPORATION AS PURCHASER**

**AND**

**ELK HAVEN, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY AND FRANCES PAVICH, LLC, A NEW MEXICO LIMITED LIABILITY COMPANY AS SELLER**

# REAL ESTATE PURCHASE AGREEMENT

Real Estate Purchase Agreement ("Agreement") made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation ("Buyer"), and Elk Haven, LLC, A New Mexico limited liability company, as to an undivided 50% interest and Frances Pavich, LLC, a New Mexico limited liability company, as to an undivided 50% interest ("Seller").

WHEREAS, the Buyer has identified and designated certain La Cuentista land along the escarpment on the west mesa for acquisition by the City of Albuquerque for use as permanent Open Space; and,

WHEREAS, Seller is the owner of approximately 59.2624+/- acres in what is commonly known as Tract D and Tract E-1 of La Cuentista Subdivision and being more specifically identified on Exhibit A; and,

WHEREAS, the Open Space Advisory Board has placed this property on the approved priority list for acquisition and has consistently supported the purchase of lands within the La Cuentista Subdivision along the escarpment on the west mesa for acquisition by the City of Albuquerque for use as permanent Open Space; and

WHEREAS, the City of Albuquerque desires to purchase approximately 37.2608 acres described as a portion of Tract E-1, and the Seller desires to donate 22.009 acres or 38% of the total property described as Tract D and, a portion of Tract E-1, as shown on the attached exhibit as E-1-A of the La Cuentista Subdivision.

WHEREAS, the City of Albuquerque desires to acquire the entire property with an initial purchase of 10.0018± acres and with three (3) subsequent option acquisitions that consist of 10.2526 acres, 8.5 acres and 8.5054 acres and the Seller desires to donate approximately 5 acres, 5 acres, 5.006 acres and 7.0003 acres that correspond with each purchase.

NOW, THEREFORE, mutual consideration, and on the terms set forth herein, the Buyer and Seller agree as follows:

## I. PURCHASE AGREEMENT

**1. Sale.**

Subject to the terms and conditions of this Agreement, the Seller shall sell and the Buyer shall purchase from Seller a ten (10.0018) acre portion, more or less, of Tract E-1 and what is identified as Tract E-1-E on the attached Exhibit A, said property being located in Bernalillo County, New Mexico ("Property").

**2. Purchase Price.**

The per acre purchase price of the Property, due and payable by Buyer to Seller at Closing, is One Hundred Fifteen Thousand and no/100 Dollars ($115,000.00) and the total purchase price ("Purchase Price") of the Property is One Million One Hundred Fifty Thousand Two Hundred Seven and no/100 Dollars ($1,150,207.00) plus or minus the prorations payable by the Buyer to the Seller at the closing of the Sale.

**3. Donation.**

Simultaneously with the Closing of the Purchase of the Property, Seller shall convey title to the Buyer a five (5.00±) acre portion of Tract D, more or less, as is identified as Tract D1 on the attached Exhibit A (the "Donation"). The grant to the Buyer shall be a gift conveyed/granted for no consideration.

**4. Options to Purchase.**

Seller hereby grants to Buyer options to purchase the remaining portions of 59.26 acres on the terms and conditions as set forth in Article VI hereof.

## II. SURVEY, TITLE COMMITMENT AND TITLE POLICIES

**1. Title Insurance.**

A. Title Insurance for Property: At least thirty (30) days prior to the closing of the Sale, the Seller, at the sole expense of Seller, shall deliver to the Buyer a commitment ("Title Commitment") for a policy of title insurance covering the Property issued by Stewart Title of Albuquerque, LLC, ("Title Company") with offices at 6759 Academy, NE, Albuquerque, NM 87109, together with legible copies of documents shown on Schedule B of the Title Commitment as exceptions. In the Title Commitment, the Title Company or its underwriter will agree to issue to the Buyer, upon the recording of a general warranty deed conveying title of the Property from the Seller to the Buyer, an ALTA owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price and insuring the title of the Buyer in the Property free and clear of all liens, encumbrances, taxes and other exceptions, subject only to the Permitted Exceptions (defined below). Within five (5) days after the date that the New Plat (defined below) is recorded, Seller, at the expense of the Seller, will deliver to the City, an updated Title Commitment covering the Property issued by the Title Company, together with any Title Document not delivered with the original Title Commitment.

B. Title Insurance for Donation: At least thirty (30) days prior to the closing of the Sale, the Seller, at the sole expense of Buyer, shall deliver to the Buyer a Title Commitment for a policy of title insurance covering the Donation issued by the Title Company together with legible copies of documents shown on Schedule B of the Title Commitment as exceptions. In the Title Commitment, the Title Company or its underwriter will agree to issue to the Buyer, upon the

recording of a general warranty deed conveying title of the Donation from the Seller to the Buyer, an ALTA owner's policy of title insurance ("Title Policy") in the amount of the market value price of $115,000.00 per acre and insuring the title of the Buyer in the Donation free and clear of all liens, encumbrances, taxes and other exceptions, subject only to the Permitted Exceptions (defined below). Within five (5) days after the date that the New Plat (defined below) is recorded, Seller, at the expense of the Buyer, will deliver to the City, an updated Title Commitment covering the Property issued by the Title Company, together with any Title Document not delivered with the original Title Commitment.

**2. Zoning and Subdivision Approvals.**

A. The parties acknowledge that the intent of both Seller and Buyer is to convey all 59.26+/- acres by four separate purchases over six years. If the initial purchase is completed and all three options to purchase are exercised, the total of Tract E-1 and Tract D of the La Cuentista Subdivision will be owned by the Buyer and will require no re-platting of the property.

B. If Buyer fails to exercise any of the Options to Purchase, as described in Section VI, Buyer, at Buyers sole expense, shall obtain a new plat of Properties, delineating properties conveyed to Buyer (Defined in Article VI, below) from the remaining unpurchased Properties retained by Seller (the "New Plats"). The New Plats will be in accordance with the requirements of the City of Albuquerque's Subdivision Ordinance except that the any financial guarantees required for the New Plats of the properties shall be the sole responsibility of the Seller. In addition to obtaining New Plats, Buyer agrees to cooperate with Seller for a reasonably placed sewer utility easement on the Buyer's Property.

C. If Seller defaults and fails to convey property in accordance with this Agreement, then Seller, at Seller's sole expense, shall obtain the New Plat delineating the Properties and the Option Properties conveyed to Buyer from the remaining unpurchased Option Properties and Donation Properties retained by Seller, in accordance with the requirements of the City of Albuquerque's Subdivision Ordinance. Any financial guarantees required for the New Plats of the properties shall be the sole responsibility of the Seller.

**3. Survey.**

A. Both Seller and Buyer agree that Buyer will pay 75% of the costs for the bulk plat and survey work performed, and the buyer will pay 100% of the development of the metes and bounds legal descriptions for each of the Properties performed by Cartesian Surveys, Inc. The Seller, at the expense of the Seller, shall obtain ALTA surveys of the Property to be purchased and the property to be Donated. The ALTA surveys will be prepared at the time the City exercises each of the options, which are to be prepared in accordance with the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (effective February 23, 2016) ("the Survey"), and shall include Table A optional items 1 – 6(a), 8, 11, 13, 16-19 and 20. The Surveys will (i) state that the Survey is prepared for the Buyer, the Seller, the Title Company and the underwriter of the Title

Company; (ii) contain a written metes and bounds legal description of the Property in narrative form for each of the purchase parcels and donation parcels; (iii) be certified by a New Mexico licensed surveyor ("Surveyor") as of a date no more than sixty (60) days before the date of the closing of the Sale; (iv) be in form and content acceptable to the Buyer; (v) be sufficient to delete all survey exceptions from and to satisfy all requirements for issuance of the Title Policy; (vi) contain a certification by the Surveyor of the exact area of the Property in square feet or acres; and (vii) show, without limitation, the exact location of all existing or proposed streets, easements, encroachments, protrusions, overlaps, overhangs, utilities, set-backs and restrictions affecting the Property.

**4. Notice of Objections to Surveys or Title Commitment.**

Within ten (10) days after receipt by the Buyer of the Survey or Title Commitment (the "Objection Period"), the Buyer will give written notice to the Seller of any objections the Buyer may have to any matter shown on the Survey or in the Title Commitment ("Objections"). If the Buyer fails to object to any matter shown on the Survey or fails to object to the condition of title to the Property as shown in the Title Commitment within the ten (10) day period, the Buyer shall be deemed to have waived such matters or conditions. The Seller may attempt to cure, eliminate or modify any or all Objections to the satisfaction of the Buyer, but shall have no obligation to do so. Seller will give notice to the Buyer five (5) days after the expiration of the Objections Period (the "Cure Period") as to whether or not Seller will satisfy or attempt to satisfy any of the Buyer's Objections. If the Seller is unable to or does not satisfy the Objections upon the expiration of the Cure Period, the Buyer shall have the following options, one of which shall be exercised by written notice given to Seller within five (5) days after the expiration of the Cure Period: (i) the Buyer may agree to an additional period of time in which the Seller may continue to attempt to satisfy the Objections; (ii) the Buyer may waive the Objection and accept title to the Property subject to any unsatisfied Objections, in which event the unsatisfied Objections will be deemed to be waived for all purposes and constitute Permitted Exceptions; or (iii) the Buyer may terminate this Agreement, in which event, the Seller and the Buyer will have no further rights, obligations or liabilities to one another under this Agreement. If the Buyer does not deliver written notice to the Seller five (5) days after the expiration of the Cure Period electing one of the above options, this Agreement will automatically terminate, and the Seller and the Buyer will have no further rights, obligations or liabilities between the Seller and the Buyer as provided in this Agreement. If the Seller does not satisfy the Objections, then the rights available to the Buyer, as provided in this paragraph, are the sole rights and remedies of the Buyer to the exclusion of all other rights and remedies existing in law or equity.

**5. Permitted Exceptions.**

The Schedule B Standard Exceptions set forth in 13 NMAC 14.5, Section 9 and all matters shown on the Initial Title Commitment, the Updated Title Commitment and the Survey which the Buyer approves or is deemed to have approved pursuant to this paragraph, and any liens or encumbrances caused or created by the Buyer or the Buyer's employees, agents or

contractors, will constitute "Permitted Exceptions" for purposes of this Agreement and the Deed.

**6. Warranty Deed.**

The Seller shall convey title to the Property to the Buyer by statutory form general warranty deed subject only to the Permitted Exceptions. The description of the Property to be contained in the general warranty deed shall conform to the description of the Property contained in the Survey, except that if a subdivision plat is required to close the Sale, the description of the Property in the general warranty deed shall conform to the description of the Property in the recorded subdivision plat.

## III. ENVIRONMENTAL INSPECTION

**1. Definitions.**

As used in this Agreement, the following terms shall have the following definitions:

A. "Environmental Condition" means any condition regarding the presence of Hazardous Materials located on, in, under or originating from the property or located within the improvements thereon with respect to air, soil, surface water or groundwater, which require response under any Environmental Requirements in effect at the time of their application.

B. "Environmental Requirements" means all applicable federal, state and local governmental agency environmental statutes, ordinances, rules, notices, regulations, standards, permits orders and any other governmental requirements relating, by way of example and not limitation, to the following: (i) the spill, leaked, discharge, emission or release of any Hazardous Material, to the air, surface water, ground water or soil; (ii) the storage, treatment, disposal or handling of any Hazardous Materials and (iii) the construction, operation, maintenance, repair or closing of aboveground or underground storage tanks or impoundments containing Hazardous Materials.

C. "Hazardous Materials" means substances defined as such pursuant to the Comprehensive Environmental Response Compensation and Liability Act, as amended; or as hazardous waste, as that term is defined under the Resource Conservation Recovery Act; PCB's; petroleum hydrocarbons; and substances so defined pursuant to requirements prevailing and applicable on the Effective Date as established by the State of New Mexico.

D. "Other Materials" means any materials or substances which do not come within the definition of Hazardous Materials, including, but not limited to, ACM, radon or other radioactive substances, lead-based paint, nonhazardous wastes or any toxic or polluting substances.

E. "Documents" means all documents, photographs, maps, data, notes, reports, chromatograms, in digital form, print, videotape or other media used to transmit information regarding the environmental condition of any aspect of the property, including, but not limited to the Phase I Report, the Phase II Report, if any, and the Cleanup Plan, if any.

**2. Buyer Inspections.**

The Buyer shall have the right to conduct any and all investigations it desires to fully examine the environmental characteristics of the Property ("Due Diligence") including, but not limited to, the examination of any improvements located thereon and the evaluation of the Environmental Condition of the Property for the presence of any Hazardous Materials or Other Materials located on, in, under or originating from the Property during the period of time ("Due Diligence Period") commencing on the Effective Date and terminating on the later to occur of (i) five (5) days after Buyer's receipt of a Seller's Consultant's Phase I Report, supplied to Buyer at Seller's sole expense, if no further environmental investigations are recommended by the Seller's Consultant in the Phase I Report; (ii) ten (10) days after the Buyer's receipt of the Seller's Consultant's Phase II Report and Cleanup Plan, provided, if the Phase I Report recommends the conduct of further investigations to evaluate the presence of Hazardous Materials; and (iii) sixty (60) days after the Effective Date. The Buyer shall have the right to approve the selection of Seller's consultant for the Phase I Report, and if needed, approve the consultant to prepare and perform the Phase II Report and Cleanup Plan. The Phase II Report and Cleanup Plan shall be approved by the Buyer prior to the implementation of the Cleanup Plan. However, if the Seller is not required to arrange for the conduct of a Phase II Report, the Buyer, at its option, exercisable by written notice to the Seller within five (5) days following the Buyer's receipt of the Phase I Report (Due Diligence Notice"), may extend the Due Diligence Period through the date which is forty-five (45) days after the date of the Seller's receipt of the Due Diligence Notice. The Due Diligence Period, as so extended, shall be used by the Buyer solely for the purpose of conducting any further investigation or examination of the Environmental Condition of the Property as the Buyer shall deem necessary or desirable. The Seller shall provide the Buyer with the unfettered opportunity to conduct its environmental investigations during the Due Diligence Period.

**3. Termination.**

If the Buyer or the Consultant identify Hazardous Materials or Other Materials on, in, under or originating from the Property which cannot be cleaned up or remediated as required by applicable Environmental Requirements utilizing technological methods currently available or which in the sole and absolute judgment of the Buyer will prevent the Buyer from using the Property, the Buyer may terminate this Agreement and upon termination, the Buyer and the Seller shall have no further right or obligations as between the Buyer and the Seller under this Agreement. In the event Seller elects not to proceed with a Phase II Report and Cleanup Plan, if required by the Buyer, then Buyer, at Buyer's sole discretion, may terminate this Agreement and the parties shall have no further rights or obligations under this Agreement. Seller shall have ten (10) days after receipt of the Phase I Report to provide written notice to the Buyer of its intent not to proceed with a Phase II Report or Cleanup Plan and termination of this Agreement.

**4. Notice of Violation.**

If the Seller has received or receives notice of a violation of any Environmental

Requirement with respect to the Property prior to the date of the Closing, then prior to the Closing, the Seller shall give to the Buyer a letter from the governmental entity charged with the enforcement of the applicable Environmental Requirement stating that the matter has currently been resolved to the satisfaction of that governmental entity, or other equivalent language.

## IV. WARRANTIES AND REPRESENTATIONS

**1. Seller's Warranties.**

The Seller warrants and represents that:

A. The Seller has good, indefeasible and marketable title to the Property.

B. There are no leases or other use, occupancy or possession agreements in effect pertaining to the Property, except those lease agreements by and between the Seller and Buyer, which will be in effect at the time of or survive the closing of the Sale.

C. The Property is in compliance with all applicable laws, ordinances, rules and regulations affecting the Property and the use and occupancy of the Property.

D. The Property has free access to and from a public street, road, alley or other right-of-way.

E. This Agreement and the documents provided for or contemplated by this Agreement will not violate, be in conflict with, result in the breach of or constitute a default under any agreement, mortgage, indenture, deed of trust, lien, order, judgment or instrument to which the Seller is a party or by which the Seller is bound or affected.

F. There are no unpaid bills or claims in connection with construction or repair work on the Property.

G. Except for the potential threat by the City of Albuquerque to condemn the Property, Seller has received no written notice of any actions, suits, proceedings or investigations pending or threatened against the Seller or relating to the Property in any court or before any governmental department or agency which would in any material respect affect the validity of this Agreement, or the obligations or the ability of the Seller to perform under this Agreement, including the execution, acknowledgment and delivery of the documents provided for or contemplated by this Agreement and the Seller does not know of any basis for any such action, suit, proceeding or investigation.

H. There has not been and are not and will not be, at the closing of the Property and the Donation, any Hazardous Materials or Other Materials located on or released on

or from the Property and the Property is not and will not, at the closing of the Sale, be in violation of any federal, state or local law, ordinance or regulation relating to Hazardous Materials, Other Materials industrial hygiene or the environmental conditions on, under or about the Property, including, but not limited to, soil and ground water conditions, and there are no circumstances which will give rise to any litigation, proceedings, investigations, citations or notices of violations or of responsibility resulting from the use, generation, manufacture, release, storage or disposition of, on, under or about the Property or the transport to or from the Property of any Hazardous Materials or Other Materials. In addition to the definition of Hazardous Materials contained in Section III herein, the term "Hazardous Materials" includes, but is not limited to, petroleum products and substances defined as hazardous substances, hazardous materials or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq; and those substances defined as hazardous waste or as hazardous substances under the laws of New Mexico or in the regulations adopted in publications promulgated pursuant to the laws.

I. If the Property is subject to a mortgage, real estate contract, or deed of trust, the Seller is not in default and has not received notice of default under or breach of the mortgage, real estate contract or deed of trust or of the documents evidencing the indebtedness or other obligations secured by the mortgage, real estate contract or deed of trust.

J. If Seller is a corporation, partnership, or other legal entity, Seller warrants that it is duly formed and validly existing under the laws of its domicile, is in good standing with and authorized to do business in the State of New Mexico, and has all requisite authorization and documentation to enter into and close this transaction, and the named corporate officer, partner or agent who executed, acknowledged and delivered this contract, for and on behalf of the Seller, is and was, at all material times, the duly authorized corporate officer, member, partner or agent of the Seller.

**2. Real Estate Sales Commissions.**

A. The Seller represents and warrants to the Buyer that no broker, agent, finder or salesman has been involved in the origination, negotiation or consummation of this Agreement and no fee, commission or similar payment is due to any broker, agent, finder or salesman as a result of the origination, negotiation or consummation of this Agreement.

B. The Seller shall defend, indemnify and hold the Buyer harmless from and against any and all loss, cost or expense (including attorneys' fees and expenses) resulting from any claim for any fee, commission or similar payment by any broker, agent, finder or salesman as a result of any action of the Seller related to the origination, negotiation or consummation of this Agreement.

**3. Survival of Warranties.**

The warranties and representations of the Seller are a material inducement for the Buyer to purchase the Property. The execution and delivery of the general warranty deed by the Seller shall constitute a confirmation and further representation and warranty by the Seller to the Buyer, as of the date of the warranty deed, as to the matters specified in this Agreement and shall survive the closing of the Sale and shall not be merged into the execution and delivery of the warranty deed or any other document executed and delivered subsequently to the execution and delivery of this Agreement.

## V. CLOSING

**1. Closing of Sale.**

Within ten (10) days after acceptance of title and the environmental condition of the Property, the Buyer will give the Seller notice of a proposed time and date of closing of the Sale ("Closing"). The Closing will be at the office of the Title Company, either (i) at the time and on the date stated in the notice, or (ii) at such other time, date and place as the Seller and the Buyer may agree in writing. At the Closing, the Seller, the Buyer and the Title Company will perform the following duties:

A. The Seller's Duties. At or prior to Closing, Seller will deliver or cause to be delivered each of the following items:

(i) The Deed, suitable for recording, conveying title to the Property and the Donation to Buyer, subject to the Permitted Exceptions;

(ii) Any reasonable and customary certificates and affidavits that may be required in the normal course by Title Company, in form and substance reasonably satisfactory to Sellers, duly executed by Sellers;

(iii) A Non-foreign Certification of Entity Transferor from Sellers or other evidence satisfying the requirements of Section 1445 of the Internal Revenue Code

Seller shall also execute any document reasonably required by the Title Company in order to delete any standard exceptions from the Title Policy at Buyer's request and expense.

B. Buyer's Duties. The Buyer shall pay to the Title Company, as escrow agent, the Purchase Price, plus or minus the prorations and any closing costs to be paid by the Buyer. The Buyer's payment shall be made by check of the Buyer or such other method of payment as may be required by the Title Company to make an immediate payment at the Closing of the Purchase Price due to the Seller as provided in this Agreement, or by such other method of payment as the Seller and the Buyer may agree in writing.

C. Title Company's Duties. At or promptly after the Closing, unless otherwise instructed by the Seller and the Buyer , the Title Company will:

(i) record the warranty deeds in the records of Bernalillo County, New Mexico, and deliver the recorded warranty deed to the Buyer;

(ii) issue and deliver the Title Policy to the Buyer as provided in the Title Commitment, except for any matters which have been eliminated or modified as provided in this Agreement; and

(iii) disburse to the Seller the balance of the Purchase Price due to the Seller and make all other disbursements as provided in the escrow closing statements to be prepared by the Title Company and signed by the Seller and the Buyer at the Closing, including, but not limited to, any disbursements and payments necessary to discharge any obligations which are liens upon the Property, including, but not limited to, liens arising from judgments, taxes or debts secured by deed of trust or mortgage.

**2. Possession.**

The Buyer shall have the right to possession of the Property and the Donation as of the Closing and the Seller shall put the Buyer in possession of the Property and the Donation as of the Closing.

**3. Failure to Close.**

If the Seller fails to close the Sale for any reason, except as provided in this Agreement, and if the Buyer has fully performed or tendered performance of all the obligations of the Buyer as provided in this Agreement, then, the Buyer shall have the right to either terminate this Agreement or to bring an action for damages and/or for specific performance. If the Buyer fails to close the Sale, for any reason, except as provided in this Agreement, and if the Seller has fully performed or tendered performance of all of the obligations of the Seller as provided in this Agreement, then the Seller shall have the right to either terminate this Agreement or to bring an action for damages and/or for specific performance. If this Agreement is terminated by either party as provided in this paragraph, the Buyer and the Seller shall have no further rights, obligations or liabilities as between the Buyer and the Seller as provided in this Agreement.

**4. Prorations; Closing Costs.**

A. Ad valorem taxes and standby or similar charges for utility services for the year in which the Sale is closed, and rents or other income from the Property and Donation, if any, will be prorated to the date of Closing between the Buyer and the Seller. If the current figures cannot be obtained, the proration shall be based upon the figures for the last assessment period.

B. If the Property is within an improvement district created pursuant to Sections 3-33-1 through 3-33-34, NMSA 1978 as amended or replaced:

(i) The Seller shall, by the Closing, pay all assessments levied against the Property if the improvements for which the assessment has been levied have been constructed; and

(ii) The assessments levied against the Property shall be prorated between the Seller and the Buyer as of the Closing if the improvements for which the assessment has been levied have not been constructed.

C. The Seller shall pay all charges which are imposed on the Property for public utility facilities that were constructed prior to the effective date of this Agreement whether the obligation to pay the prorata charges arises before or subsequent to the Closing.

D. As closing costs, the Seller and the Buyer will each pay one-half of any escrow charges and expenses charged by the Title Company. The Seller and the Buyer will each pay their respective attorneys' fees. The Seller shall pay all costs of the Cleanup Plan, if applicable. The Buyer shall pay the filing fee for recording the warranty deeds. The Seller shall pay all costs of the Title Commitment and the Title Policy, including the premiums for deletion of Exceptions 1 through 4 from the Title Policy.

## VI. OPTION TO PURCHASE

**1. Option to Purchase.**

Seller owns the bulk land, 59.26+/- acres in what is commonly known as Tract E-1 and Tract D of La Cuentista Subdivision and being more specifically identified on Exhibit A.

A. The parties agree that the fair market value of the property is One Hundred Fifteen Thousand Dollars ($115,000.00) per acre. The values of the three remaining parcels in Tract E-1 as shown in Exhibit A are as follows:

i. The parcel designated as E-1-D, contains 10.2526 acres, more or less, and is being purchased for One Million One Hundred seventy nine Thousand and forty nine Dollars ($1,179,049.00);

ii. The parcel designated as E-1-C, contains 8.5064) acres, more or less, and the purchase price is Nine Hundred Seventy Eight Thousand Two Hundred and Thirty Six Dollars ($978,236.00);

iii. The parcel designed as E-1-B, contains 8.50 acres, more or less, and the purchase price is Nine Hundred Seventy Seven Thousand Five Hundred Dollars ($977,500.00).

B. Conditioned upon the Buyer having closed on the purchase of Property (Parcel E-1-E as shown in Exhibit A) on or before July 31, 2017, Seller hereby grants Buyer the option to purchase the balance of the parcels in 3 separate options for a total of Three Million One Hundred Thirty Four Thousand Seven Hundred Eighty Five Dollars (27.259± acres x $115,000/acre = $3,134,785.00) or each parcel according to its per acre value as stated above, on the following terms and conditions:

i. The first option to purchase the property identified as Parcel E-1-D of exhibit A, will become effective upon the closing of Parcel E-1-E and shall expire May 1, 2018 ("Option Period for E-1-D).

ii. The second option to purchase the property identified as Parcel E-1-C, will become effective upon the purchase and closing of Parcel E-1-D, and shall expire May 1, 2020 ("Option Period for E-1-C).

iii. The third option to purchase the property identified as Parcel E-1-B, will become effective upon the purchase and closing of Parcel E-1-C, and shall expire May 1, 2022 ("Option Period for E-1-B").

C. Each option may be exercised only by the City giving written notice ("Notice of Exercise of Option") to Seller by first class mail, postage prepaid, registered or certified, return receipt required, as well as an email copy, addressed to Seller, at Seller's address set forth below before the expiration of the Option Period, time being of the essence with regard thereto. Said notice shall be deemed to have been duly given if postmarked prior to the expiration date and time specified herein. The date that the City exercises the Options is herein referred to as the "Exercise Date."

D. Simultaneously with the Closing of the Purchase of each option, Seller shall convey title to the Buyer for portions of the donation land identified on Exhibit A as D2, D3 and E-1-A. The donation land granted to the Buyer with the exercise of each option shall be a gift conveyed/granted for no consideration. The grant per option shall be as follows:

i. For the first option, the purchase of Parcel E-1-D, containing 10.2528± acres, Seller shall convey at closing the fee simple title to the Buyer of parcel D-2 containing 5± acres.

ii. For the second option, the purchase of Parcel E-1-C, containing 8.5064±, Seller shall convey at closing the fee simple title to Buyer of parcel D3, containing 5± acres.

iii. For the third option, the purchase of Parcel E-1-B, containing 8.5± acres, Seller shall convey at closing the fee simple title to Buyer of parcel E-1-A as described in paragraph J of this section.

E. At any time prior to the expiration of an option period, the City may elect at its sole option to purchase all remaining acreage without a prepayment fee.

F. During the term of the Option periods, the City shall protect the portion of the Property not purchased by the City to insure no trash, junk or hazardous materials are disposed of on the property remaining under option. No roads will be graded and no buildings will be erected. The City, at its option and at its sole cost, may fence the entire Tract E-1 and Tract D, post appropriate signage and generally take care of the property.

G. Upon the City's notification of its intent to exercise any particular option, Seller shall cooperate in closing the sale and, if the parties do not agree otherwise, the closing shall be within sixty (60) days of the City's Notice of Exercise of Option. The "Real Estate Purchase Agreement for Option", attached, as Exhibit B, shall be the agreement used by Seller and City for each of the option purchases.

H. At the closing of Property, Tracts E-1-E and D-1, Seller shall escrow executed warranty deeds approved by City with escrow instructions for release of the escrowed warranty deeds upon exercise of the respective options to purchase and payment at closing as provided herein. Seller shall also escrow an executed quitclaim deed to the entire Tract E-1 and Tract D to be released from escrow to the City after final payment by City of the options.

I. After the initial inspection of reports provided prior to the closing of the Property, Seller shall not be required to provide additional surveys or Phase I environment reports. If the City desires such, they shall be acquired by the City at the City's sole expense. Seller shall provide to the City, at the Seller's expense, a standard owner's policy to evidence title in the City for all Option Parcels (Parcels E-1-D, E-1-C, and E-1-B.) City, at City's sole expense, shall pay for a standard owner's policy to evidence title in the City for all donated parcels (Parcels D2, D3, and E-1-A) associated with each Option Parcel purchase.

J. Notwithstanding the forgoing subsections of Article VI.1., should seller only wish to donate four (4) acres of parcel E-1-A rather than the proposed seven (7) acres for the exercise of the third option and the purchase of E-1-B, the purchase price of Parcel E-1-B will be reduced to Six Hundred Thirty Two Thousand Five Hundred and No/100 Dollars (8.5± x$115,000 = $977,500) -(3± acres x $115,000/acre = $345,000) = $632,500.00). Seller shall notify City on or before April 1, 2022, of Seller's intention to donate either four (4) or seven (7) acres of Parcel E-1-A. Should Seller wish to only donate four acres, more or less, Seller, at Sellers sole cost, shall replat Parcel E-1 in accordance with the requirements of the City of Albuquerque's Subdivision Ordinance and submit it to the City of Albuquerque for review and approval and any financial guarantees required for the replats of the properties shall be the sole responsibility of the Seller.

## VII. MISCELLANEOUS.

**1. Waiver Of Default.**

No failure by the Buyer to insist upon the strict performance of any term, condition, or covenant of this Agreement or to exercise any right or remedy available on the breach thereof will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Agreement that the Seller is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the Buyer. No exercise or failure to exercise any right or power of the Seller or of the Buyer as provided in this Agreement will be considered to exhaust that right or power.

**2. Time Is Of The Essence.**

Time is of the Essence in the performance of this Agreement.

**3. Notices.**

All notices, requests, demands and other communications given under this Agreement will be in writing, and, unless otherwise specified in this Agreement, will be deemed to have been given if delivered in person, or on receipt, if mailed by certified or registered mail, postage pre-paid, and addressed to the Seller or to the Buyer at the following addresses, unless either the Seller or the Buyer changes the Seller's or the Buyer's address by giving written notice of the change to the other. The addresses for notices are:

A. Notice to the Sellers:

Elk Haven, LLC
21 Vista Valle Circle
Lamy, NM 87540

Frances Pavich, LLC.
21 Vista Valle Circle
Lamy, NM 87540

B. Notice to the City:
City of Albuquerque
Planning Department
P. O. Box 1293
Albuquerque, New Mexico 87103
Attn: Real Property Division Manager

**4. Exhibits.**

All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement, including but not limited to the exhibits referred to in this

Agreement, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.

**5. Further Action.**

At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**6. Severability/invalidity.**

In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the Buyer or Seller in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

**7. Modification and Governing Laws.**

This Agreement may be modified only in writing and is governed by the laws of the State of New Mexico. Both Seller and the Buyer agree to the exclusive jurisdiction of the courts of the State of New Mexico for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Bernalillo.

**8. Force Majeure.**

If performance of part or any portion of this Agreement is made impossible by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor or materials or reasonable substitutes for those items; government actions; civil commotions, fire; flood or other casualty; or other causes beyond the reasonable control of the Party obligated to perform, performance by that Party for a period equal to the period of that prevention, delay, or stoppage is excused.

**9. Approval of the Buyer; Binding Effect.**

This Agreement is subject to approval and signature by the Chief Administrative Officer of the Buyer. Upon execution of this Agreement by the Chief Administrative Officer, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the Buyer and of the Seller and of their respective heirs, devisees, personal representatives, successors and assigns.

**10. Effective Date.**

The effective date of this Agreement shall be the date of approval by the Chief Administrative Officer of the Buyer.

**11. Final Dates.**

If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it shall be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

**12. Limitations on Liability.**

Neither party has any liability with respect to the obligations under this contract or otherwise for incidental, consequential, special, indirect, exemplary or punitive damages even if it has been advised of the possibility of such damages.

**13. Representation.**

Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that is has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Contract.

**14. Multiple Counterparts.**

The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

**15. Headings and Captions.**

Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

**16. Interpretation.**

Whenever the context hereof will so require, the singular will include the plural, the male gender will include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms will be construed to mean "without limitation". All references to Sections, subsections, Exhibits and Articles will be deemed references to Sections, subsections, and Articles of this Agreement and to Exhibits, which are attached hereto and made a part hereof for all purposes.

**17. Entire Agreement.**

This Agreement, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings

between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. All prior negotiations and agreements are merged into this agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. No subsequent agreement may modify this Real Estate Sales Agreement unless it is in writing and signed by the parties or their authorized agents. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

**IN WITNESS WHEREOF,** THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT AS OF THE DATE indicated by each signature, and the Agreement is effective upon the signature of the City's Chief Administrative Officer or his authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**

**BUYER:**
**CITY OF ALBUQUERQUE:**

By:_____
Robert J. Perry
Chief Administrative Officer
Division

Date of Approval:

7/19/17

**RECOMMENDED:**

Barbara Taylor
Director Parks and Recreation/Open Space

Date of Recommendation:

12 July 2017

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

**This instrument was acknowledged** before me on this 19th day of July, 2017, by Robert J. Perry, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

Notary Public

OFFICIAL SEAL
Giselle M. Alvarez
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 4-4-2021

My Commission Expires:

4-4-2021

**SELLER:**
**ELK HAVEN, LLC, A New Mexico Limited Liability Company**

By: _____ Date: 7 5 2017

Its: Manager

**STATE OF** New Mexico )
).ss
**COUNTY OF** Bernalillo )

**This instrument was acknowledged** before me on this __ day of _____, 2017, by Stan Diamond, the Manager of Elk Haven LLC on behalf of Elk Haven, LLC, A New Mexico Limited Liability Company.

_____
Notary Public

My Commission Expires:

4-8-2019

**SELLER:**
**FRANCES PAVICH, LLC, A New Mexico Limited Liability Company**

By: _____ Date: 7-6-2017

Its: Manager

**STATE OF** New Mexico )
).ss
**COUNTY OF** Bernalillo )

**This instrument was acknowledged** before me on this __ day of _____, 2017, by Frances Pavich, the Manager of Frances Pavich, LLC on behalf of Frances Pavich, LLC, A New Mexico Limited Liability Company.

_____
Notary Public

My Commission Expires:

4-8-2019

**EXHIBIT A**

# Exhibit for
# Tract E-1-E
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A SOUTHWESTERLY PORTION OF TRACT LETTERED "E-1", OF LA CUENTISTA SUBDIVISION, (A REPLAT OF TRACT E OF THE CORRECTION PLAT OF THE BULK LAND PLAT OF LA CUENTISTA SUBDIVISION), WITHIN SECTIONS 14 & 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON SEPTEMBER 4, 2009, IN PLAT BOOK 2009C, PAGE 137, AS DOC. NO. 2009100835, HEREIN DESCRIBED TRACT KNOWN AS TRACT E-1-E.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT, BEING A POINT ON THE EASTERLY BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT "8-C10", THE FOLLOWING FIVE COURSES:

TRAVERSING SAID TRACT E-1, S 70°42'19" W, A DISTANCE OF 1059.54 FEET TO THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 14°52'20" W, A DISTANCE OF 524.44 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 88°02'15" W, A DISTANCE OF 485.69 FEET, TO A POINT ON THE WEST BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

COINCIDING WITH SAID WEST BOUNDARY OF SAID TRACT E-1, N 04°09'56" W, A DISTANCE OF 239.95 FEET TO THE NORTHWEST CORNER OF SAID TRACT E-1, ALSO BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A PK NAIL WITH CAP "LS 14271";

N 53°30'18" W, A DISTANCE OF 2600.61 FEET;

THENCE, FROM SAID POINT OF BEGINNING, COINCIDING WITH EAST BOUNDARY OF SAID TRACT E-1, THE FOLLOWING SIX COURSES:

S 28°23'08" E, A DISTANCE OF 76.68 FEET, TO AN ANGLE POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

76.86 FEET ALONG A CURVE TO THE LEFT, NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 329.73, A DELTA OF 13°21'23", AND A CHORD BEARING S 53°48'11" W, A DISTANCE OF 76.69 FEET TO A POINT OF CURVATURE, MARKED WITH A BRASS CAP "T11N/R2E S-AP-PNM";

**(CONTINUED ON SHEET 2)**

## Surveyor's Certificate

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. Date
N.M.R.P.S. No. 14271

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-E
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

38.39 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 24.37, A DELTA OF 90°15'06", AND A CHORD BEARING S 01°59'42" W, A DISTANCE OF 34.54 FEET TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 43°21'27" E, A DISTANCE OF 180.05 FEET TO A POINT MARKED WITH A 1/2" REBAR WITH CAP "LS 15268";

S 43°58'54" W, A DISTANCE OF 54.81 FEET TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 43°19'06" E, A DISTANCE OF 182.85 FEET TO THE MOST EASTERLY CORNER OF THE SAID HEREIN DESCRIBED TRACT, ALSO BEING THE MOST EASTERLY CORNER OF SAID TRACT E-1 AND A POINT ON THE SOUTHERLY LOT LINE OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, COINCIDING WITH THE SOUTHERLY BOUNDARY OF SAID TRACT E-1, THE FOLLOWING THREE COURSES:

S 78°30'05" W, A DISTANCE OF 357.30 FEET TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 54°40'31" W, A DISTANCE OF 246.62 FEET TO A POINT MARKED WITH A 1/2" REBAR WITH CAP ILLEGIBLE;

S 68°26'24" W, A DISTANCE OF 224.42 FEET TO THE MOST SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, LEAVING SAID SOUTHERLY BOUNDARY OF SAID TRACT E-1, AND TRAVERSING SAID TRACT E-1 THE FOLLOWING TWO COURSES:

N 46°54'59" W, A DISTANCE OF 580.98 FEET TO THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

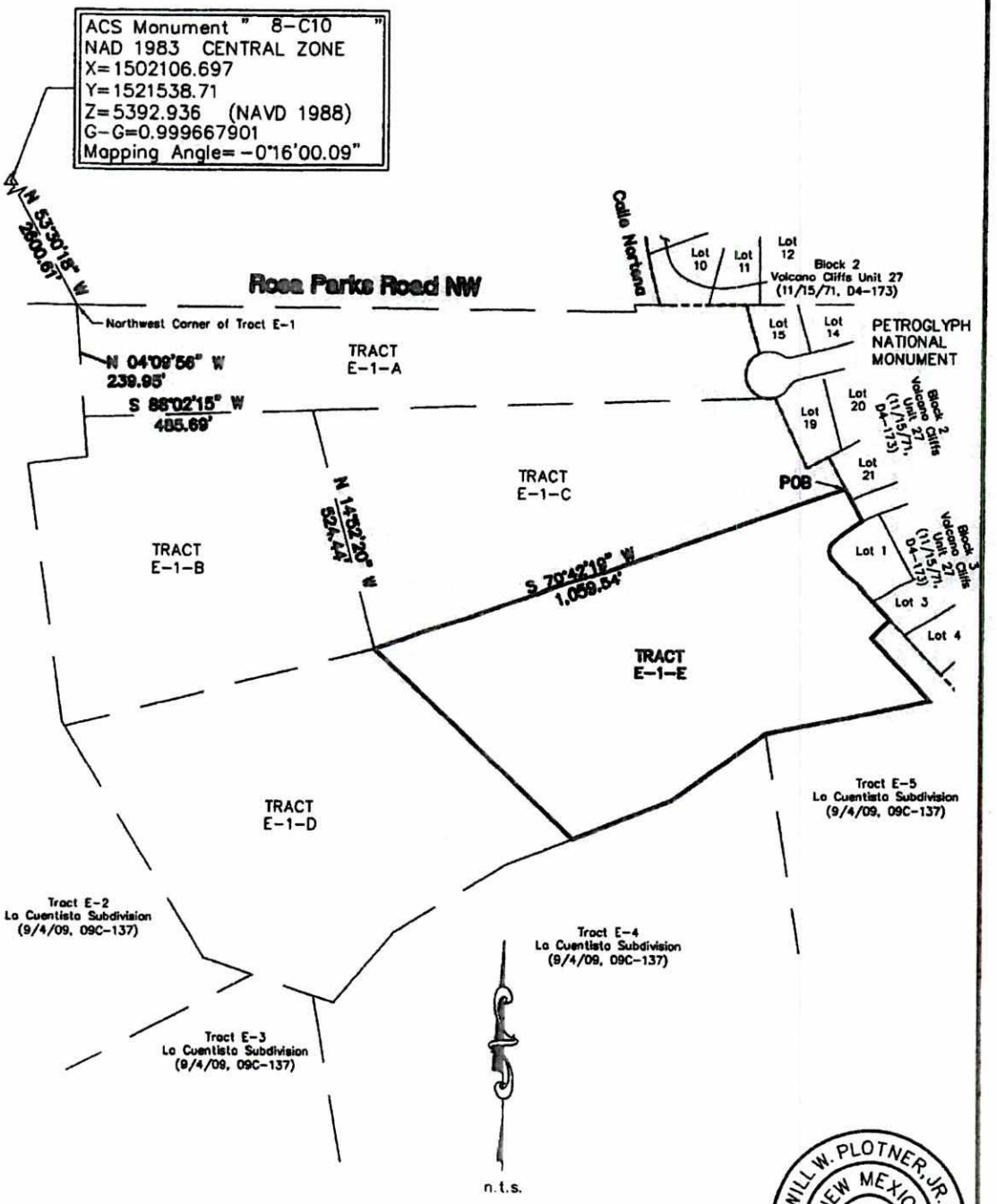
N 70°42'19" E, A DISTANCE OF 1059.54 FEET, TO THE POINT OF BEGINNING, CONTAINING 10.0018 ACRES (435,678 SQ. FT.), MORE OR LESS.

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015 AND IN MARCH 2017.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT E-1 OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# *Exhibit for*
# *Tract E-1-E*
# *La Cuentista Subdivision*
*City of Albuquerque*
*Bernalillo County, New Mexico*
*June 2017*





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WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-E
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

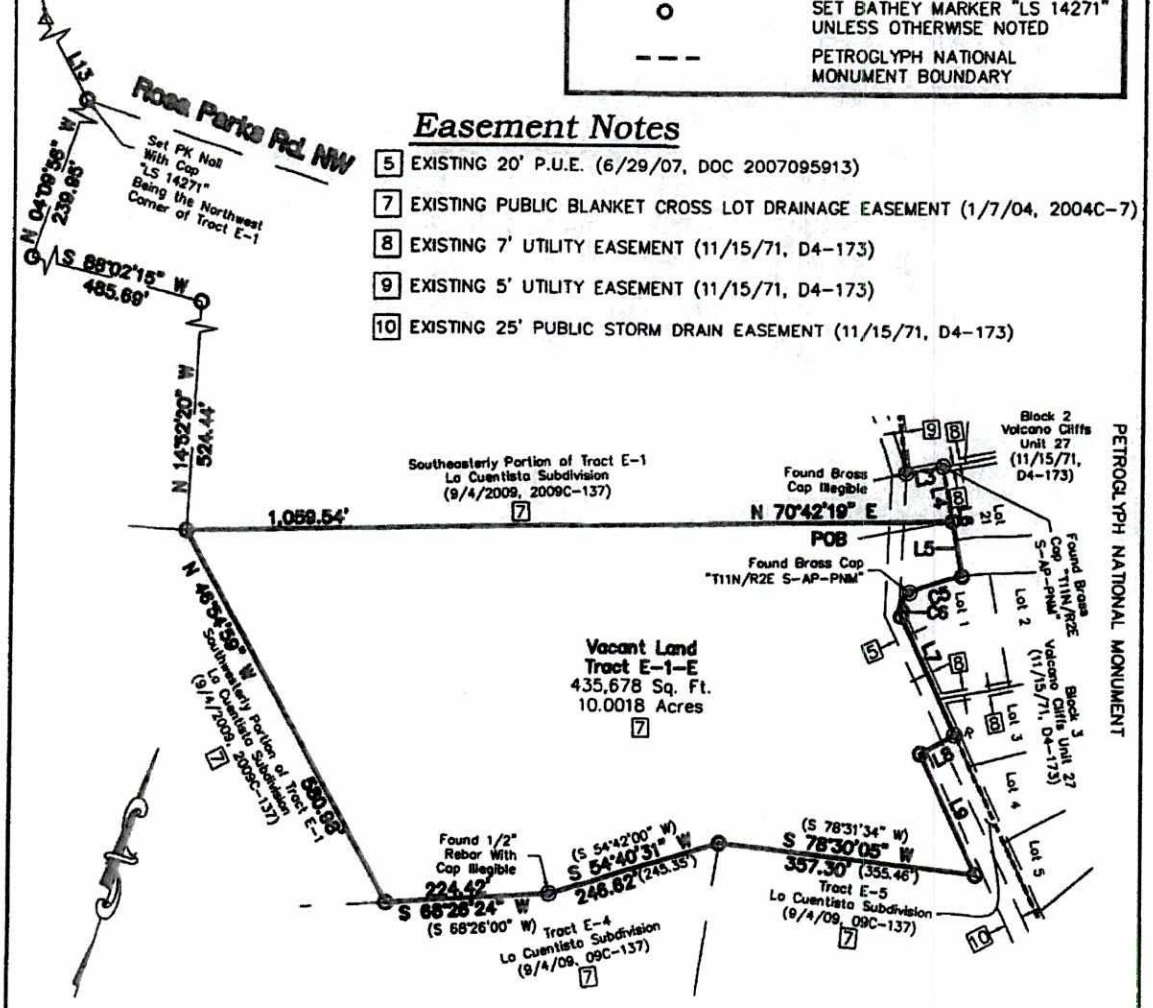
ACS Monument " 8-C10 "
NAD 1983 CENTRAL ZONE
X=1502106.697
Y=1521538.71
Z=5392.936 (NAVD 1988)
G-G=0.999667901
Mapping Angle= -0°16'00.09"

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/4/2009, 2009C-137) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ◉R | FOUND 1/2" REBAR WITH CAP "LS 15268" |
| O | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |

## Easement Notes

5 EXISTING 20' P.U.E. (6/29/07, DOC 2007095913)
7 EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)
8 EXISTING 7' UTILITY EASEMENT (11/15/71, D4-173)
9 EXISTING 5' UTILITY EASEMENT (11/15/71, D4-173)
10 EXISTING 25' PUBLIC STORM DRAIN EASEMENT (11/15/71, D4-173)




BAR SCALE
0 200' 400'
SCALE: 1" = 200'

WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR


CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract E-1-E
# La Cuentista Subdivision

*City of Albuquerque*
*Bernalillo County, New Mexico*
*June 2017*

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L4 | S 28°23'08" E (S 28°23'08" E) | 76.68' |
| L5 | S 28°23'08" E (S 28°23'08" E) | 76.68' |
| L6 | S 28°23'08" E (S 28°23'08" E) | 153.36' (153.36') |
| L7 | S 43°21'27" E (S 43°05'23" E) | 180.05' (180.00') |
| L8 | S 43°58'54" W (S 44°00'23" W) | 54.81' (56.73') |
| L9 | S 43°19'06" E (S 43°17'37" E) | 182.85' (181.91') |
| L13 | N 53°30'18" W | 2600.61' |

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C5 | 76.86' (76.87') | 329.73' (329.73') | 13°21'23" | 76.69' | S 53°48'11" W |
| C6 | 38.39' (38.39') | 24.37' (24.37') | 90°15'06" | 34.54' | S 01°59'42" W |

CARTESIAN SURVEYS INC.
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WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# *Exhibit for*
# *Tract D1*
# *La Cuentista Subdivision*
## *City of Albuquerque*
## *Bernalillo County, New Mexico*
## *June 2017*

## *Legal Description*

A NORTHERLY PORTION OF TRACT "D" OF TRACTS "A" THROUGH "E", BULK LAND PLAT OF LA CUENTISTA SUBDIVISION (THE "BULK PLAT") WITHIN SECTIONS 14, 15, 22 AND 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, CITY OF ALBUQUERQUE, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON SAID PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 9, 2003 IN PLAT BOOK 2003C, PAGE 368 AND RE-RECORDED ON JANUARY 7, 2004, IN BOOK 2004C, PAGE 7, HEREIN DESCRIBED TRACT KNOWN AS TRACT D1.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT, BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, ALSO BEING THE NORTHWEST CORNER OF SAID TRACT D, MARKED WITH A CHISELED "X" IN GUTTER PAN, WHENCE A TIE TO ACS MONUMENT "8-C10", BEARING N 45°45'01" W, A DISTANCE OF 2212.53 FEET;

THENCE, FROM SAID POINT OF BEGINNING, COINCIDING WITH THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, S 89°40'42" E, A DISTANCE OF 402.81 FEET TO THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, ALSO BEING THE NORTHEAST CORNER OF SAID TRACT D, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, LEAVING THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, S 16°28'51" W, A DISTANCE OF 607.89 FEET TO A POINT MARKED WITH A 5/8" REBAR WITH CAP "LS 14733";

THENCE, S 28°05'13" W, A DISTANCE OF 125.62 FEET TO THE SOUTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 58°46'17" W, A DISTANCE OF 316.91 FEET TO THE SOUTHWESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, 129.62 FEET ALONG A CURVE TO THE LEFT, NON TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 972.00, A DELTA OF 07°38'27", AND A CHORD BEARING N 16°45'44" E, A DISTANCE OF 129.53 FEET TO A POINT OF TANGENCY, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 12°56'31" E, A DISTANCE OF 386.90 FEET TO A POINT OF CURVATURE, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, 44.78 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 25.00, A DELTA OF 102°37'42", AND A CHORD BEARING N 38°22'20" W, A DISTANCE OF 39.03 FEET, TO THE POINT OF BEGINNING, CONTAINING 5.0006 ACRES (217,827 SQ. FT.) MORE OR LESS.

## *Surveyor's Certificate*

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. Date
N.M.R.P.S. No. 14271

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract D1
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT D OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C1 | 129.62' | 972.00' (972.00') | 7°38'27" | 129.53' | N 16°45'44" E |
| C6 | 44.78' (44.78') | 25.00' (25.00') | 102°37'42" | 39.03' | N 38°22'20" W |

## Easement Notes

[5] 10' P.U.E. (6/29/07, DOC 2007095913)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

[8] 56' PUBLIC DRAINAGE, PUBLIC WATER, PUBLIC SEWER, PUBLIC ACCESS AND PUBLIC MAINTENANCE EASEMENT (1/7/04, 2004C-7)

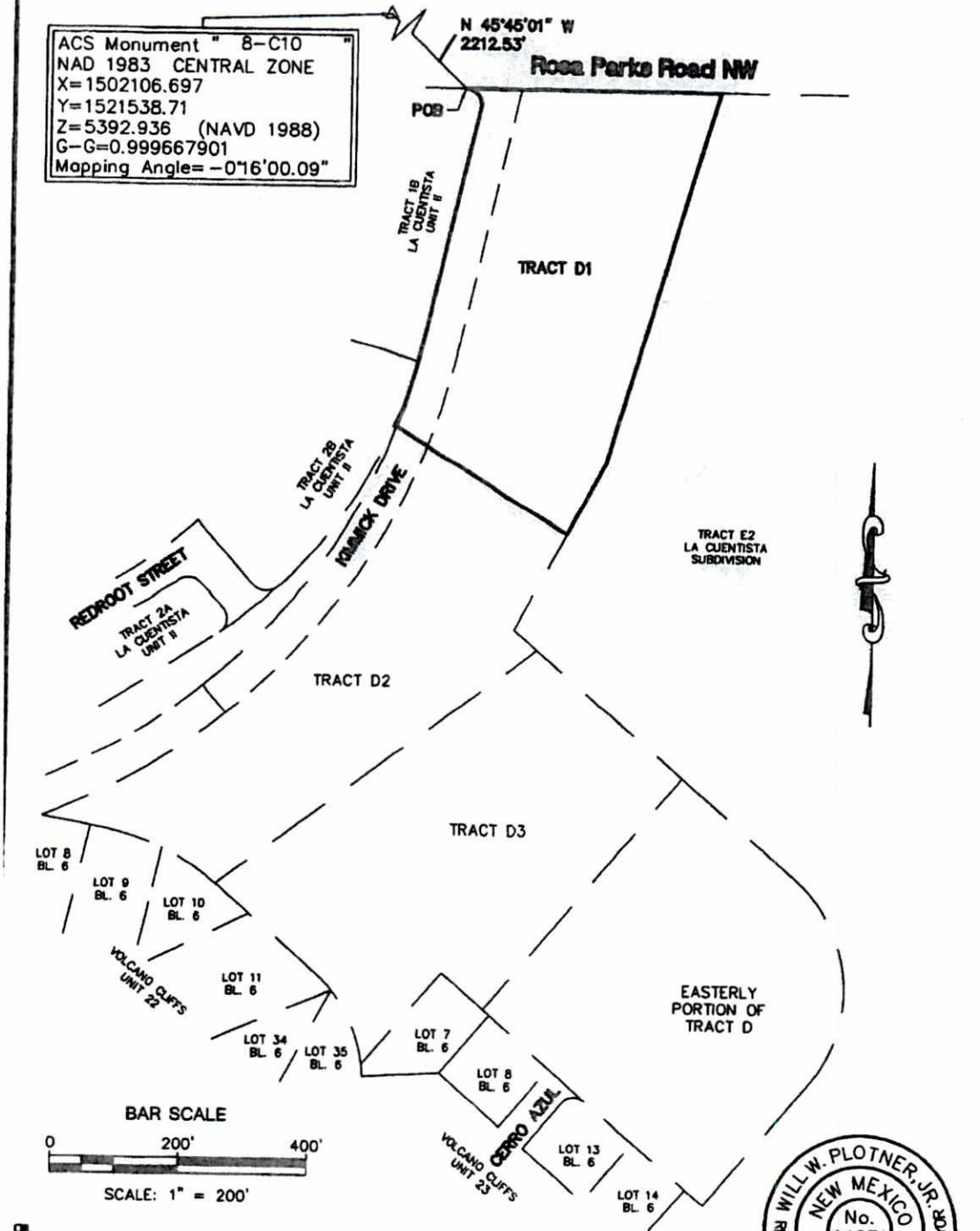
## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (1/7/2004, 2004C-7) |
| ◎ | FOUND MONUMENT AS INDICATED |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract D1
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

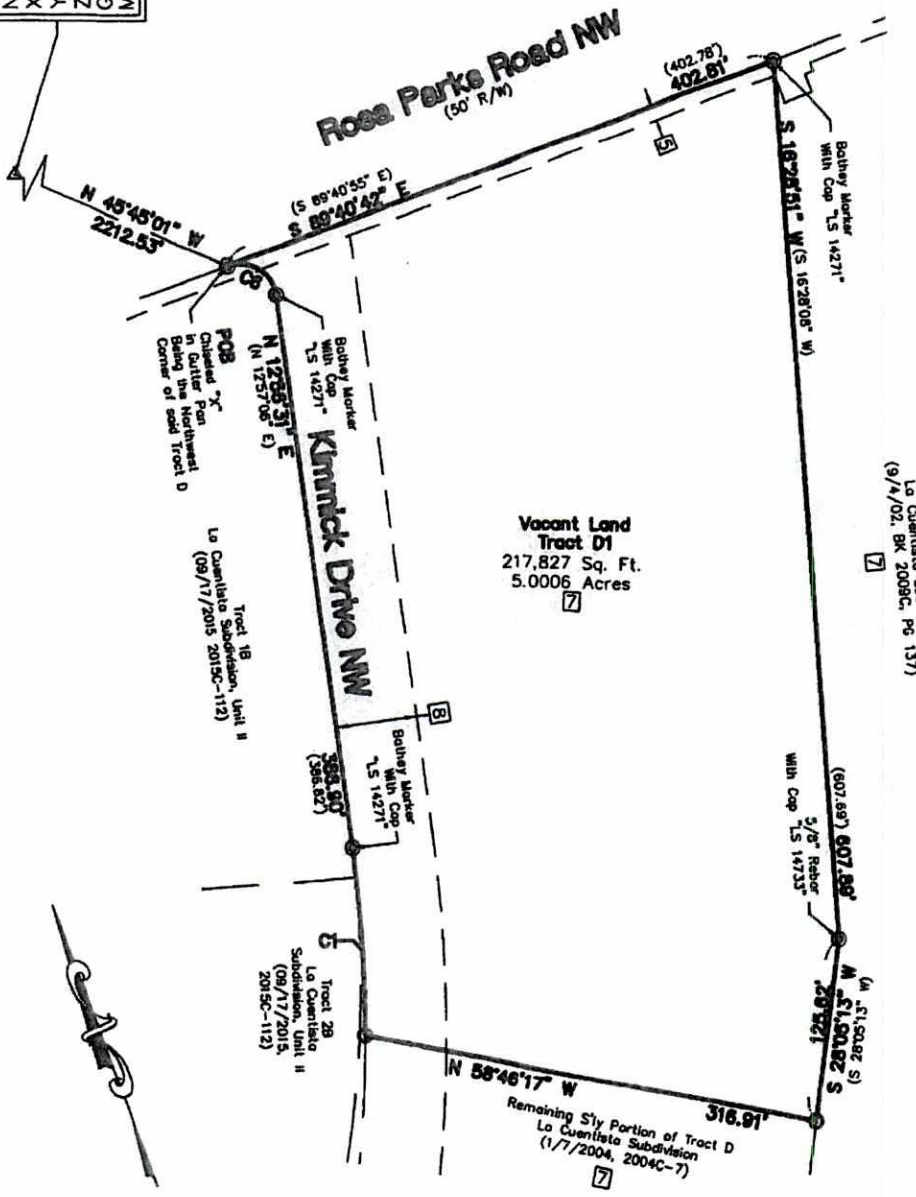

WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR



1103378

# Exhibit for
# Tract D1
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

ACS Monument " 8-C10 "
NAD 1983 CENTRAL ZONE
X=1502106.697
Y=1521538.71
Z=5392.936 (NAVD 1988)
G-G=0.999667901
Mapping Angle= -0°16'00.09"




BAR SCALE

0 100' 200'

SCALE: 1" = 100'


CARTESIAN SURVEYS INC.

P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244


WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR



1110337B

# *Exhibit for*
# *Tract E-1-D*
# *La Cuentista Subdivision*
## *City of Albuquerque*
## *Bernalillo County, New Mexico*
## *June 2017*

## *Legal Description*

A SOUTHWESTERLY PORTION OF TRACT LETTERED "E-1", OF LA CUENTISTA SUBDIVISION, (A REPLAT OF TRACT E OF THE CORRECTION PLAT OF THE BULK LAND PLAT OF LA CUENTISTA SUBDIVISION), WITHIN SECTIONS 14 & 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON SEPTEMBER 4, 2009, IN PLAT BOOK 2009C, PAGE 137, AS DOC. NO. 2009100835, HEREIN DESCRIBED TRACT KNOWN AS TRACT E-1-D.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, BEING A POINT ON THE WESTERLY BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT "8-C10", THE FOLLOWING FIVE COURSES:

COINCIDING WITH SAID WESTERLY BOUNDARY OF SAID TRACT E-1, N 31°46'56" W, A DISTANCE OF 10.83 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 07°53'56" W, A DISTANCE OF 555.04 FEET TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 82°56'04" E, A DISTANCE OF 125.01 FEET TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 04°09'56" W, A DISTANCE OF 325.02 FEET TO THE NORTHWEST CORNER OF SAID TRACT E-1, BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A PK NAIL WITH CAP "LS 14271";

N 53°30'18" W, A DISTANCE OF 2600.61 FEET;

THENCE, FROM SAID POINT OF BEGINNING AND TRAVERSING SAID TRACT E-1, THE FOLLOWING TWO COURSES:

N 75°33'10" E, A DISTANCE OF 677.32 FEET TO THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 46°54'59" E, A DISTANCE OF 580.98 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF SAID TRACE E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, COINCIDING WITH SOUTHERLY BOUNDARY OF SAID TRACT E-1, THE FOLLOWING FOUR COURSES:

S 68°26'24" W, A DISTANCE OF 155.53 FEET, TO A POINT MARKED WITH A 1/2" REBAR WITH CAP "LS 15268";

**(CONTINUED ON SHEET 2)**

## *Surveyor's Certificate*

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. Date
N.M.R.P.S. No. 14271

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

S 58°08'57" W, A DISTANCE OF 273.00 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 40°09'37" W, A DISTANCE OF 195.33 FEET, TO A POINT MARKED WITH A 1/2" REBAR WITH CAP "LS 15268", ALSO BEING THE MOST SOUTHERLY CORNER OF SAID TRACT E-1;

N 71°27'56" W, A DISTANCE OF 292.02 FEET, TO A POINT ON THE EASTERLY BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 31°46'56" W, A DISTANCE OF 571.21 FEET, TO THE POINT OF BEGINNING, CONTAINING 10.2526 ACRES (446,605 SQ. FT.), MORE OR LESS.

## Notes

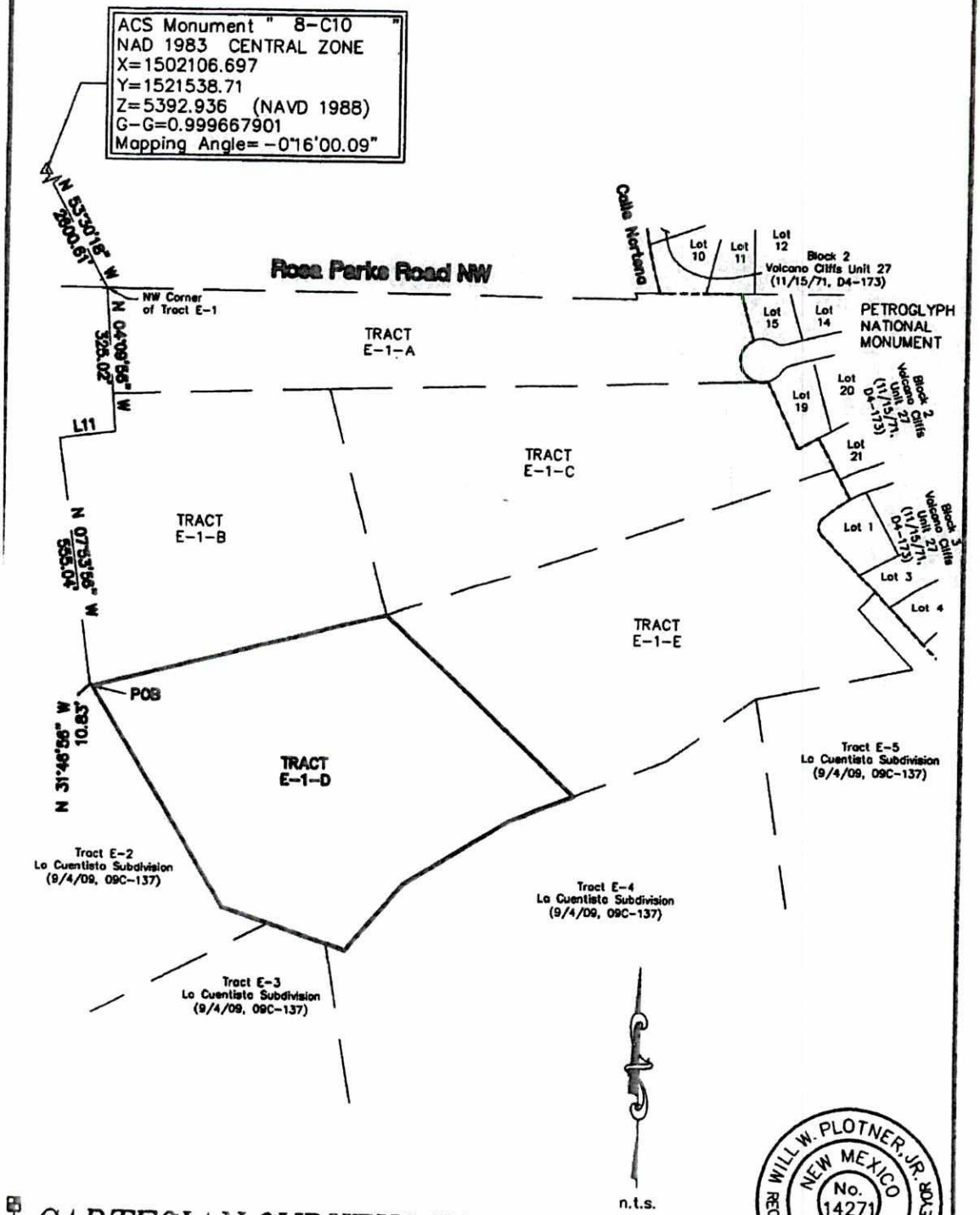
1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015 AND IN MARCH 2017.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT E-1 OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L10 | S 40°09'37" W (S 40°10'00" W) | 195.33' (195.33') |
| L11 | N 82°56'04" E (N 82°56'00" E) | 125.01' (125.00') |
| L13 | N 53°30'18" W | 2600.61' |

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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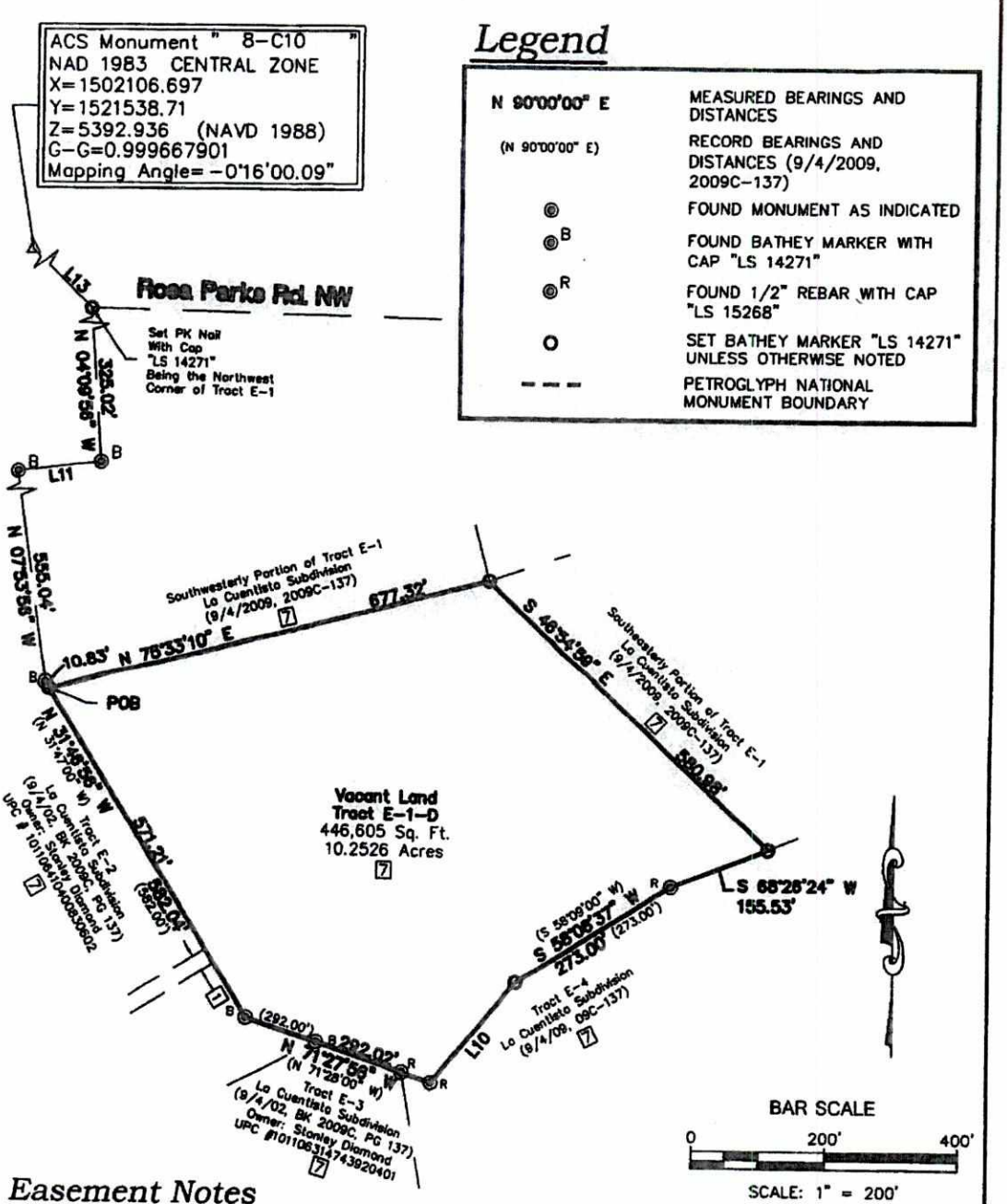
WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

ACS Monument " 8-C10 "
NAD 1983 CENTRAL ZONE
X=1502106.697
Y=1521538.71
Z=5392.936 (NAVD 1988)
G-G=0.999667901
Mapping Angle= -0°16'00.09"

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/4/2009, 2009C-137) |
| ◎ | FOUND MONUMENT AS INDICATED |
| ◎B | FOUND BATHEY MARKER WITH CAP "LS 14271" |
| ◎R | FOUND 1/2" REBAR WITH CAP "LS 15268" |
| O | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |




BAR SCALE
0 200' 400'
SCALE: 1" = 200'

## Easement Notes

[1] EXISTING 25' PUBLIC STORM DRAINAGE EASEMENT (9/4/09, BK 09C, PG 137)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)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WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-C
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A EASTERLY PORTION OF TRACT LETTERED "E-1", OF LA CUENTISTA SUBDIVISION, (A REPLAT OF TRACT E OF THE CORRECTION PLAT OF THE BULK LAND PLAT OF LA CUENTISTA SUBDIVISION), WITHIN SECTIONS 14 & 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON SEPTEMBER 4, 2009, IN PLAT BOOK 2009C, PAGE 137, AS DOC. NO. 2009100835, HEREIN DESCRIBED TRACT KNOWN AS TRACT E-1-C.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT "8-C10", THE FOLLOWING THREE COURSES:

TRAVERSING SAID TRACT E-1, S 88°02'15" W, A DISTANCE OF 485.69 FEET TO A POINT ON THE WEST LINE OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 04°09'56" W, A DISTANCE OF 239.95 FEET, TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A BATHEY MARKER WITH CAP, ALSO BEING THE NORTHWEST CORNER OF SAID TRACT E-1;

N 53°30'18" W, A DISTANCE OF 2600.61 FEET;

THENCE, FROM SAID POINT OF BEGINNING AND TRAVERSING SAID TRACT E-1, N 88°02'15" E, A DISTANCE OF 964.11 FEET, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", BEING A POINT ON A CURVE;

THENCE, 19.30 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 49.99, A DELTA OF 22°07'12", AND A CHORD BEARING N 85°41'07" E, A DISTANCE OF 19.18 FEET TO A POINT MARKED WITH A 5/8" REBAR, ALSO BEING THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE, COINCIDING WITH SAID EAST BOUNDARY OF SAID TRACT E-1, THE FOLLOWING THREE COURSES:

S 25°03'07" E, A DISTANCE OF 164.17 FEET TO A POINT MARKED WITH A BRASS CAP ILLEGIBLE;

N 61°30'51" E, A DISTANCE OF 52.33 FEET TO A POINT MARKED WITH A BRASS CAP "T11N/R2E S-AP-PNM";

**(CONTINUED ON SHEET 2)**

## Surveyor's Certificate

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. Date
N.M.R.P.S. No. 14271

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-C
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

S 28°23'08" E, A DISTANCE OF 76.68 FEET TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, TRAVERSING SAID TRACT E-1, THE FOLLOWING TWO COURSES:

S 70°42'19" W, A DISTANCE OF 1059.54 FEET TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 14°52'20" W, A DISTANCE OF 524.44 FEET, TO THE POINT OF BEGINNING, CONTAINING 8.5064 ACRES (370,540 SQ. FT.), MORE OR LESS.

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015 AND IN MARCH 2017.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT E-1 OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L2 | S 25°03'07" E (S 25°03'07" E) | 164.17' (164.17') |
| L3 | N 61°30'51" E (N 61°30'51" E) | 52.33' (52.33') |
| L4 | S 28°23'08" E (S 28°23'08" E) | 76.68' |
| L5 | S 28°23'08" E (S 28°23'08" E) | 76.68' |
| L6 | S 28°23'08" E (S 28°23'08" E) | 153.36' (153.36') |
| L13 | N 53°30'18" W | 2600.61' |

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C2 | 129.50' | 49.99' (49.99') | 148°25'37" | 96.21' | S 09°02'29" E |
| C3 | 19.30' | 49.99' (49.99') | 22°07'12" | 19.18' | N 85°41'07" E |
| C4 | 148.80' (165.37') | 49.99' (49.99') | 170°32'49" | 99.64' | S 20°06'05" E |
| C5 | 76.86' (76.87') | 329.73' (329.73') | 13°21'23" | 76.69' | S 53°48'11" W |

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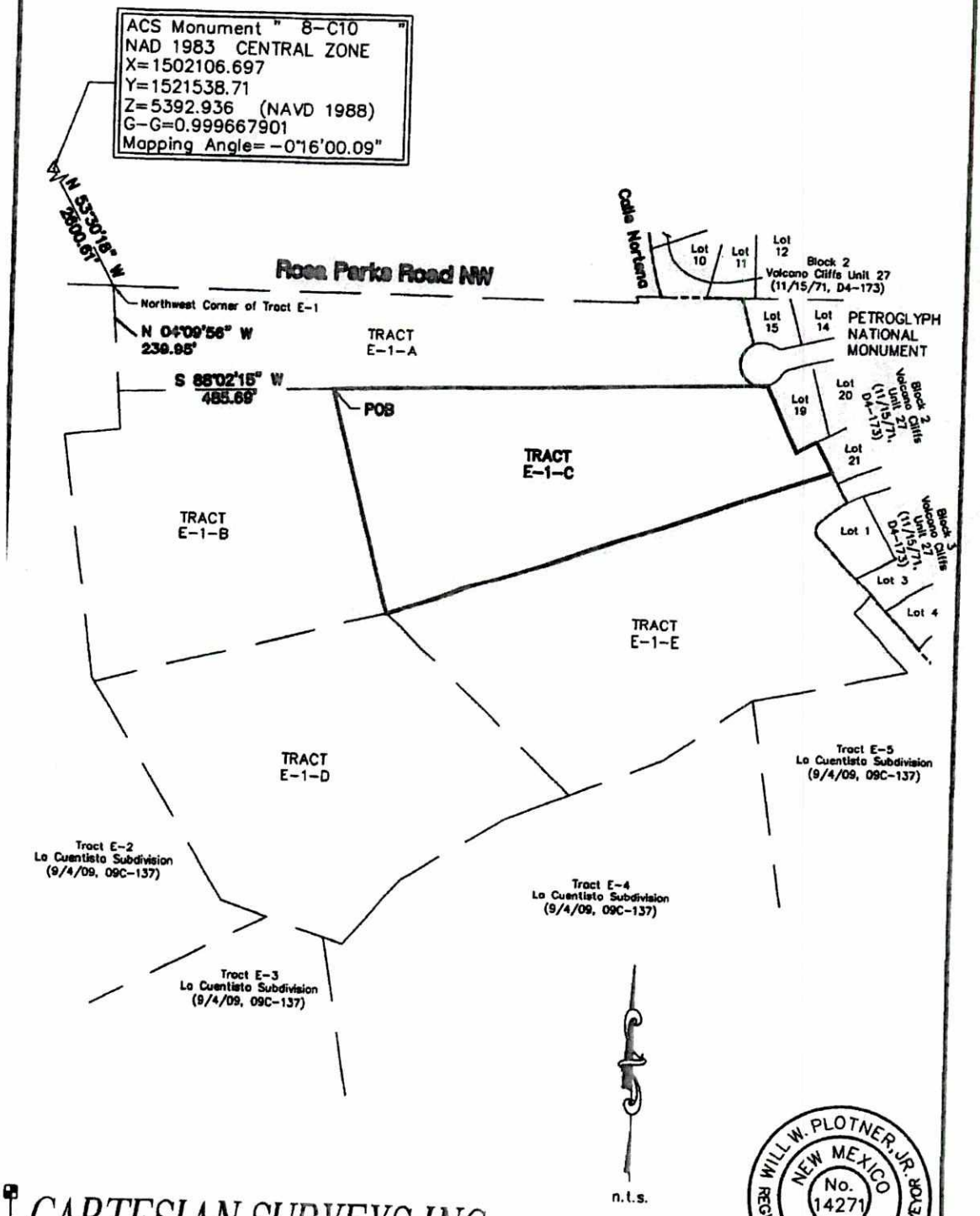
WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR


1103370

# Exhibit for
# Tract E-1-C
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-C
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

ACS Monument " 8-C10 "
NAD 1983 CENTRAL ZONE
X=1502106.697
Y=1521538.71
Z=5392.936 (NAVD 1988)
G-G=0.999667901
Mapping Angle= -0°16'00.09"

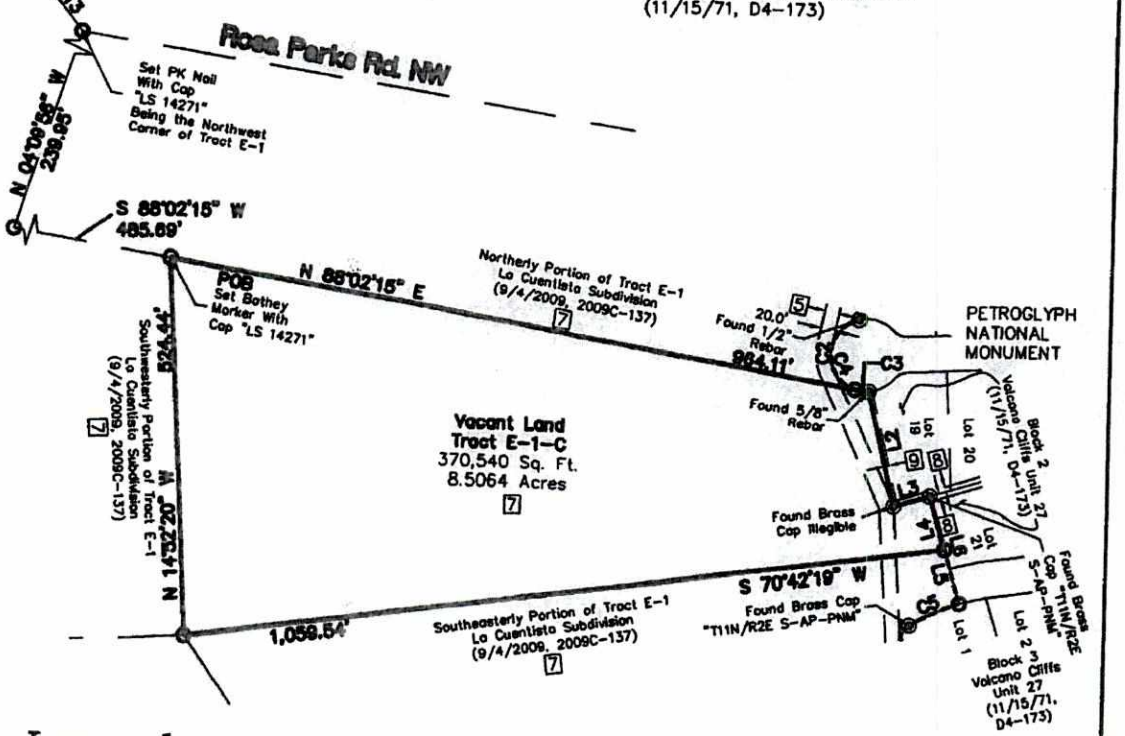
### Easement Notes

[5] EXISTING 20' P.U.E. (6/29/07, DOC 2007095913)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

[8] EXISTING 7' UTILITY EASEMENT (11/15/71, D4-173)

[9] EXISTING 5' UTILITY EASEMENT (11/15/71, D4-173)




### Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/4/2009, 2009C-137) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ◉B | FOUND BATHEY MARKER WITH CAP "LS 14271" |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |

BAR SCALE
0 200' 400'
SCALE: 1" = 200'

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR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1103370

# Exhibit for
# Tract E-1-B
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A WESTERLY PORTION OF TRACT LETTERED "E-1", OF LA CUENTISTA SUBDIVISION, (A REPLAT OF TRACT E OF THE CORRECTION PLAT OF THE BULK LAND PLAT OF LA CUENTISTA SUBDIVISION), WITHIN SECTIONS 14 & 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON SEPTEMBER 4, 2009, IN PLAT BOOK 2009C, PAGE 137, AS DOC. NO. 2009100835, HEREIN DESCRIBED TRACT KNOWN AS TRACT E-1-B.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, ALSO BEING A POINT ON THE WEST BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT "8-C10", THE FOLLOWING TWO COURSES:

COINCIDING WITH SAID WEST BOUNDARY OF SAID TRACT E-1, N 04°09'56" W, A DISTANCE OF 239.95 FEET, TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A BATHEY MARKER WITH CAP, ALSO BEING THE NORTHWEST CORNER OF SAID TRACT E-1;

N 53°30'18" W, A DISTANCE OF 2600.61 FEET;

THENCE, FROM SAID POINT OF BEGINNING, AND TRAVERSING SAID TRACT E-1 THE FOLLOWING THREE COURSES:

N 88°02'15" E, A DISTANCE OF 485.69 FEET, TO THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 14°52'20" E, A DISTANCE OF 524.44 FEET, TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 75°33'10" W, A DISTANCE OF 677.32 FEET, TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", ALSO BEING A POINT ON THE WEST LINE OF SAID TRACT E-1;

THENCE, COINCIDING WITH SAID WEST BOUNDARY OF TRACT E-1 THE FOLLOWING FOUR COURSES:

N 31°46'56" W, A DISTANCE OF 10.83 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 07°53'56" W, A DISTANCE OF 555.04 FEET, TO THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

**(CONTINUED ON SHEET 2)**

## Surveyor's Certificate

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. Date
N.M.R.P.S. No. 14271

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244


110337C

# Exhibit for
# Tract E-1-B
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

N 82°56'04" E, A DISTANCE OF 125.01 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 04°09'56" W, A DISTANCE OF 85.08 FEET, TO THE POINT OF BEGINNING, CONTAINING 8.5000 ACRES (370,258 SQ. FT.), MORE OR LESS.

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015 AND IN MARCH 2017.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83–GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT E–1 OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

| Line Table | | | | |
|---|---|---|---|---|
| Line # | Direction | | Length (ft) | |
| L11 | N 82°56'04" E | (N 82°56'00" E) | 125.01' | (125.00') |
| L12 | N 89°40'42" W | (N 89°40'55" W) | 103.00' | (103.00') |
| L13 | N 53°30'18" W | | 2600.61' | |

## Easement Notes

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C–7)

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

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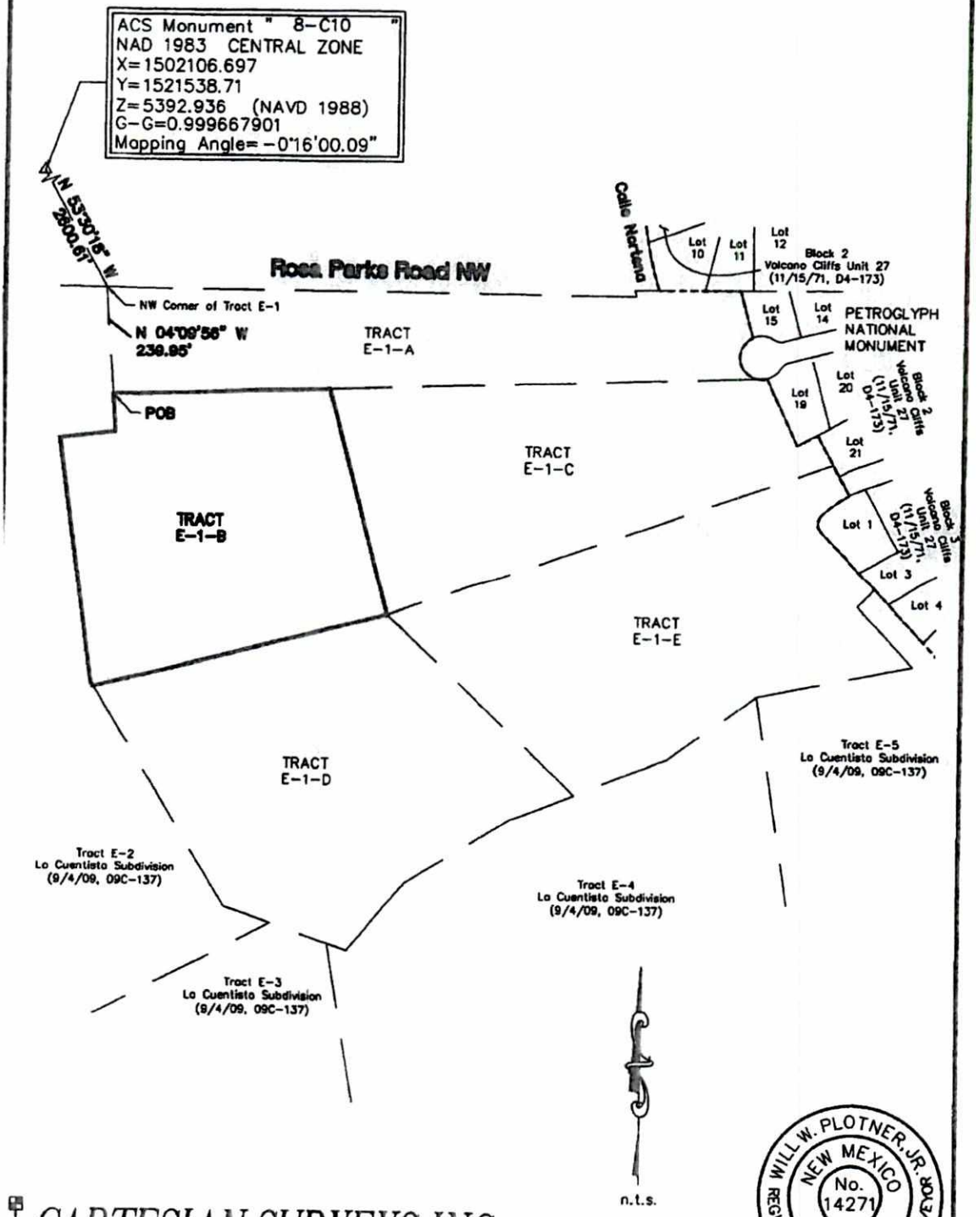
# Exhibit for
# Tract E-1-B
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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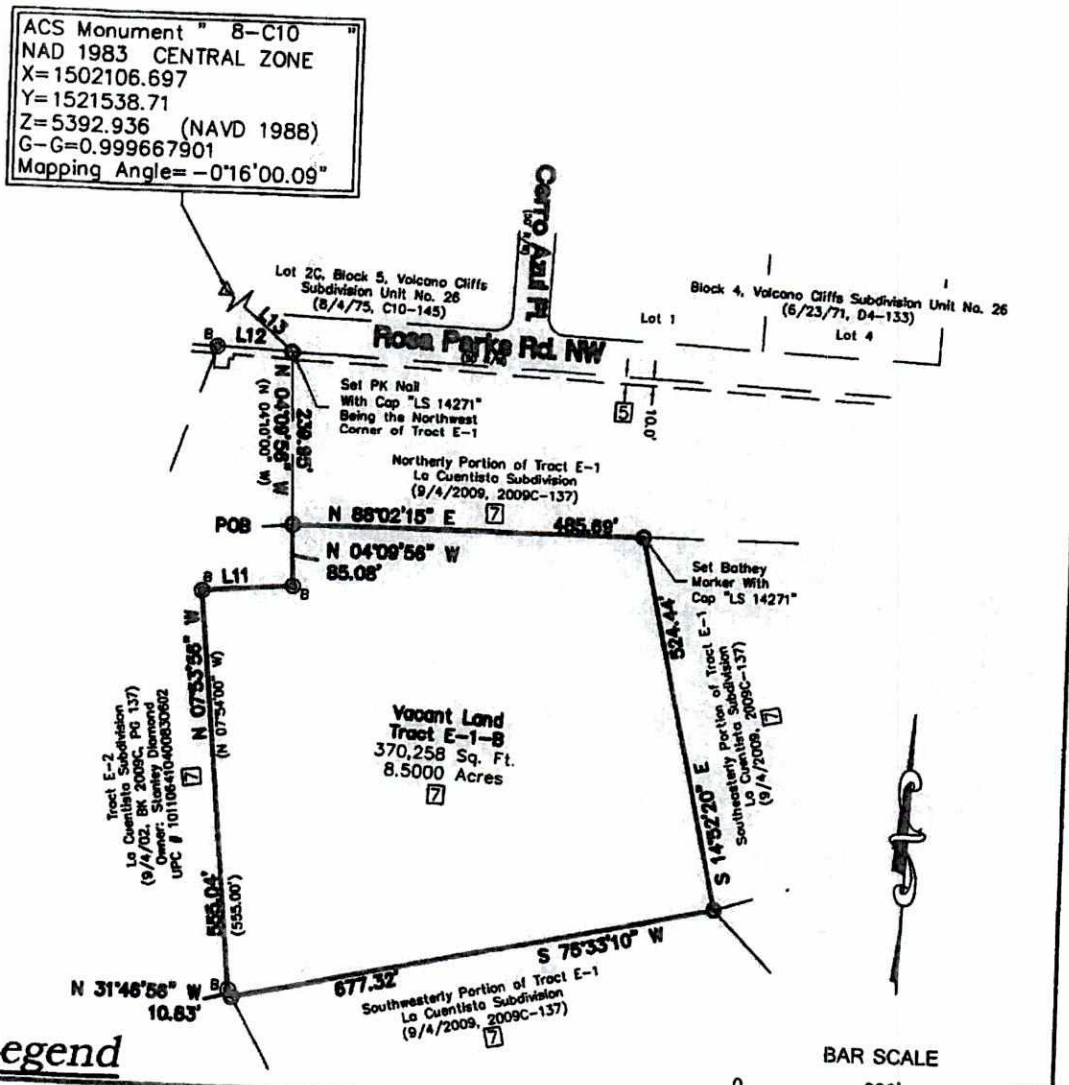
WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-B
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017




## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/4/2009, 2009C-137) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ◉B | FOUND BATHEY MARKER WITH CAP "LS 14271" |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |


CARTESIAN SURVEYS INC.

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WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A SOUTHWESTERLY PORTION OF TRACT "D", OF TRACTS "A" THROUGH "E", BULK LAND PLAT OF LA CUENTISTA SUBDIVISION (THE "BULK PLAT") WITHIN SECTIONS 14, 15, 22 AND 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, CITY OF ALBUQUERQUE, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON SAID PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 9, 2003 IN PLAT BOOK 2003C, PAGE 368 AND RE-RECORDED ON JANUARY 7, 2004, IN BOOK 2004C, PAGE 7, HEREIN DESCRIBED TRACT KNOWN AS TRACT D2.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY POINT OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT THE FOLLOWING FOUR COURSES:

129.62 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 972.00, A DELTA OF 07°38'27", AND A CHORD BEARING N 16°45'44" E, A DISTANCE OF 129.53 FEET TO A POINT OF TANGENCY, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 12°56'31" E, A DISTANCE OF 386.90 FEET TO A POINT OF CURVATURE, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

44.78 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 25.00, A DELTA OF 102°37'42", AND A CHORD BEARING N 38°22'20" W, A DISTANCE OF 39.03 FEET, BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A CHISELED "X" IN GUTTER PAN, BEING THE NORTHWEST CORNER OF TRACT D;

N 45°45'01" W, A DISTANCE OF 2212.53 FEET;

THENCE, FROM THE POINT OF BEGINNING, S 58°46'17" E, A DISTANCE OF 316.91 FEET TO THE NORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, S 28°05'13" W, A DISTANCE OF 173.34 FEET, TO A POINT MARKED WITH A 1/2" REBAR WITH CAP "LS 14733";

THENCE, S 49°36'33" E, A DISTANCE OF 49.10 FEET TO THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, S 53°12'30" W, A DISTANCE OF 620.33 FEET TO THE MOST SOUTHERLY POINT OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS14271";

**(CONTINUED ON SHEET 2)**

## Surveyor's Certificate

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. — Date
N.M.R.P.S. No. 14271

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

THENCE, 195.43 FEET ALONG A CURVE TO THE LEFT, NON-TANGENT FROM PREVIOUS COURSE, HAVING RADIUS OF 373.97 FEET, A DELTA OF 29°56'30", AND A CHORD BEARING N 64°33'20" W, A DISTANCE OF 193.21 FEET, TO A POINT OF TANGENCY, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271"

THENCE, N 79°31'35" W, A DISTANCE OF 100.89 FEET, TO THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A 1/2" REBAR WITH CAP "LS 14733", ALSO BEING THE SOUTHWESTERLY CORNER OF TRACT D;

THENCE, N 67°33'45" E, A DISTANCE OF 28.20 FEET, TO A POINT OF CURVATURE MARKED WITH A BENT BATHEY MARKER;

THENCE, 301.78 FEET ALONG A CURVE TO THE LEFT, HAVING RADIUS OF 1028.00, A DELTA OF 16°49'11", AND A CHORD BEARING N 59°09'10" E, A DISTANCE OF 300.70 FEET TO AN ANGLE POINT MARKED WITH A 1/2" REBAR WITH CAP ILLEGIBLE;

THENCE, N 39°15'25" W, A DISTANCE OF 56.00 FEET, TO A POINT MARKED WITH A PK NAIL WITH CAP "LS 14271";

THENCE, 511.66 FEET ALONG A CURVE, NON-TANGENT FROM PREVIOUS COURSE, HAVING A RADIUS OF 972.00, A DELTA OF 30°09'37", AND A CHORD BEARING N 35°39'46" E, A DISTANCE OF 505.77 FEET, TO THE POINT OF BEGINNING, CONTAINING 5.0000 ACRES (217,800 SQ. FT.), MORE OR LESS.

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT D OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L1 | N 79°31'35" W (N 79°32'38" W) | 100.89' (100.89') |
| L2 | N 67°33'45" E | 28.20' |
| L3 | N 39°15'25" W (N 39°14'50" W) | 56.00' (56.00') |
| L5 | S 49°36'33" E (S 49°36'08" E) | 49.10' |

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C1 | 129.62' | 972.00' (972.00') | 7°38'27" | 129.53' | N 16°45'44" E |
| C3 | 195.43' (195.43') | 373.97' (373.97') | 29°56'30" | 193.21' | N 64°33'20" W |
| C4 | 301.78' (296.02') | 1028.00' (1028.00') | 16°49'11" | 300.70' | N 59°09'10" E |
| C5 | 511.66' | 972.00' (972.00') | 30°09'37" | 505.77' | N 35°39'46" E |
| C6 | 44.78' (44.78') | 25.00' (25.00') | 102°37'42" | 39.03' | N 38°22'20" W |

## Easement Notes

[3] EXISTING 10' P.U.E. (8/17/06, BK A122, PG 4038)
EASEMENT RIGHTS QUIT CLAIMED BY PNM (7/9/07, BK DOC 2007098243)
EASEMENT RIGHTS QUIT CLAIMED BY QWEST (4/2/08, BK DOC 2008037353)
EASEMENT RIGHTS QUIT CLAIMED BY COMCAST (4/8/08, BK DOC 2008039465)

[4] EXISTING 50' PUBLIC WATER, DRAINAGE, SANITARY SEWER, ACCESS AND MAINTENANCE EASEMENT (1/7/04, 2004C-7)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

[8] EXISTING 56' PUBLIC DRAINAGE, PUBLIC WATER, PUBLIC SEWER, PUBLIC ACCESS AND PUBLIC MAINTENANCE EASEMENT (1/7/04, 2004C-7)

[9] EXISTING 32' PUBLIC STORM DRAINAGE EASEMENT (8/17/2006, A122-3862)

## Legend

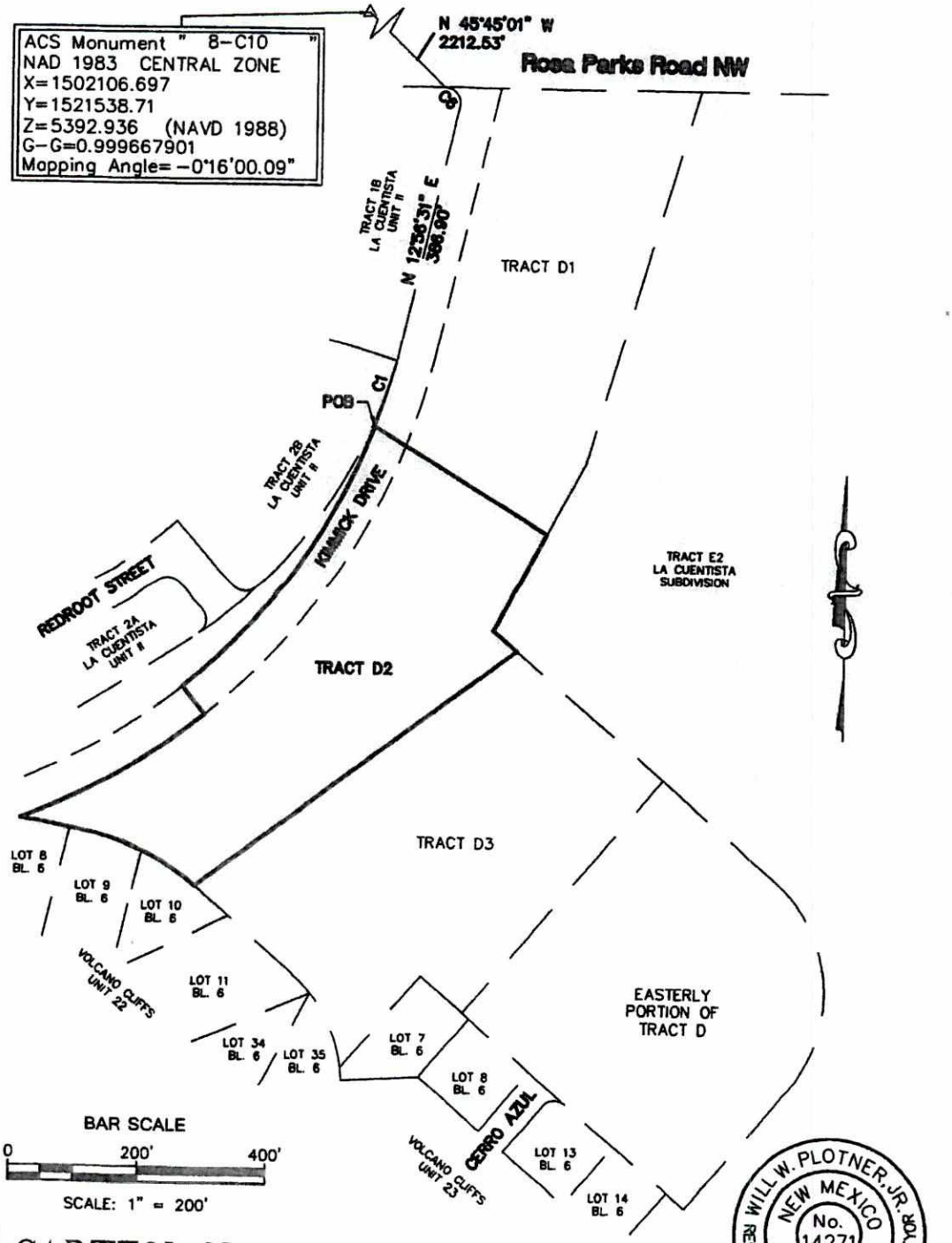
| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (1/7/2004, 2004C-7) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244


1103378

# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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WILL W. PLOTNER, JR.
NEW MEXICO
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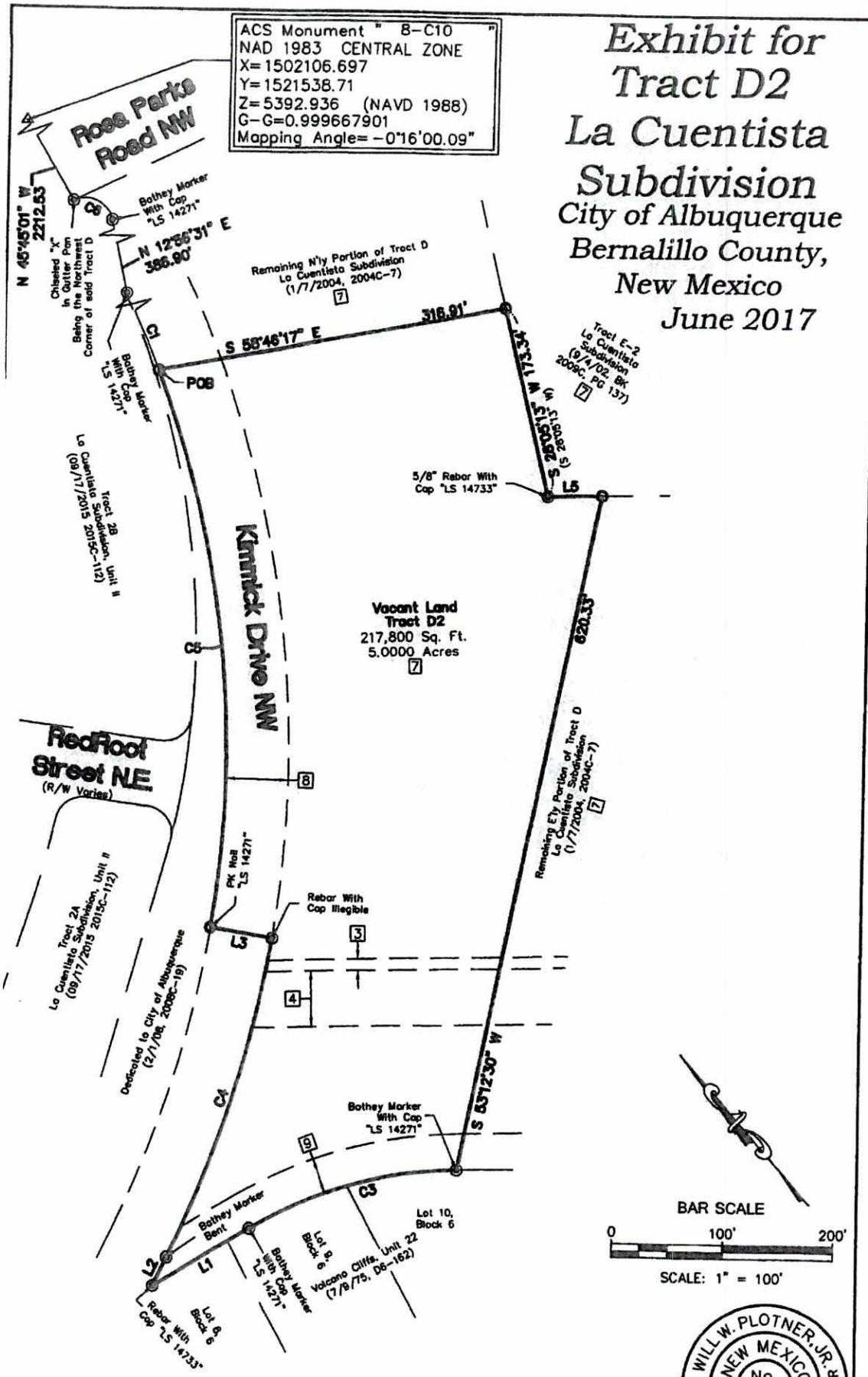


# Exhibit for Tract D2 La Cuentista Subdivision

City of Albuquerque
Bernalillo County,
New Mexico
June 2017


CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244


WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR



110337B

# Exhibit for
# Tract D3
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A EASTERLY PORTION OF TRACT "D", OF TRACTS "A" THROUGH "E", BULK LAND PLAT OF LA CUENTISTA SUBDIVISION (THE "BULK PLAT") WITHIN SECTIONS 14, 15, 22 AND 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, CITY OF ALBUQUERQUE, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON SAID PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 9, 2003 IN PLAT BOOK 2003C, PAGE 368 AND RE-RECORDED ON JANUARY 7, 2004, IN BOOK 2004C, PAGE 7, HEREIN DESCRIBED TRACT KNOWN AS TRACT D3.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT "8-C10" THE FOLLOWING FIVE COURSES:

N 49°36'33" W, A DISTANCE OF 49.10 FEET TO A POINT MARKED WITH A 5/8" REBAR WITH CAP "LS 14733";

N 28°05'13" E, A DISTANCE OF 298.96 FEET TO A POINT MARKED WITH A 5/8" REBAR WITH CAP "LS 14733";

N 16°28'51" E, A DISTANCE OF 607.89 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS NW, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", ALSO BEING THE NORTHEAST CORNER OF SAID TRACT D;

COINCIDING WITH THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS NW, N 89°40'42" W, A DISTANCE OF 402.81 FEET, TO A POINT MARKED WITH A CHISELED "X" IN GUTTER PAN, ALSO BEING THE NORTHWEST CORNER OF SAID TRACT D;

N 45°45'01" W, A DISTANCE OF 2212.53 FEET;

THENCE, FROM SAID POINT OF BEGINNING, S 49°36'33" E, A DISTANCE OF 305.01 FEET TO THE MOST EASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";,

THENCE, S 40°24'02" W, A DISTANCE OF 475.32 FEET TO THE MOST SOUTHERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 49°35'38" W, A DISTANCE OF 86.36 FEET TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, S 40°23'43" W, A DISTANCE OF 188.86 FEET TO A POINT ON A CURVE, MARKED WITH A 1/2" REBAR WITH CAP "LS 7430";

**(CONTINUED ON SHEET 2)**

## Surveyor's Certificate

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner Jr. N.M.R.P.S. No. 14271 — Date 6/28/17

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract D3
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

THENCE, 168.68 FEET ALONG A CURVE TO THE LEFT, NON-TANGENT FROM THE PREVIOUS COURSE, HAVING A RADIUS OF 229.96, A DELTA OF 42°01'40", AND A CHORD BEARING N 28°34'15" W, A DISTANCE OF 164.92 FEET, MARKED WITH A 5/8" REBAR;

THENCE, N 49°35'05" W, A DISTANCE OF 202.23 FEET TO THE MOST WESTERLY POINT OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 53°12'30" E, A DISTANCE OF 620.33 FEET TO THE POINT OF BEGINNING, CONTAINING 5.0000 ACRES (217,780 SQ. FT.), MORE OR LESS.

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT D OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

## Easement Notes

[3] EXISTING 10' P.U.E. (8/17/06, BK A122, PG 4038)
EASEMENT RIGHTS QUIT CLAIMED BY PNM (7/9/07, BK DOC 2007098243)
EASEMENT RIGHTS QUIT CLAIMED BY QWEST (4/2/08, BK DOC 2008037353)
EASEMENT RIGHTS QUIT CLAIMED BY COMCAST (4/8/08, BK DOC 2008039465)

[4] EXISTING 50' PUBLIC WATER, DRAINAGE, SANITARY SEWER, ACCESS AND MAINTENANCE EASEMENT (1/7/04, 2004C-7)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

[9] EXISTING 32' PUBLIC STORM DRAINAGE EASEMENT (8/17/2006, A122-3862)

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (1/7/2004, 2004C-7) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
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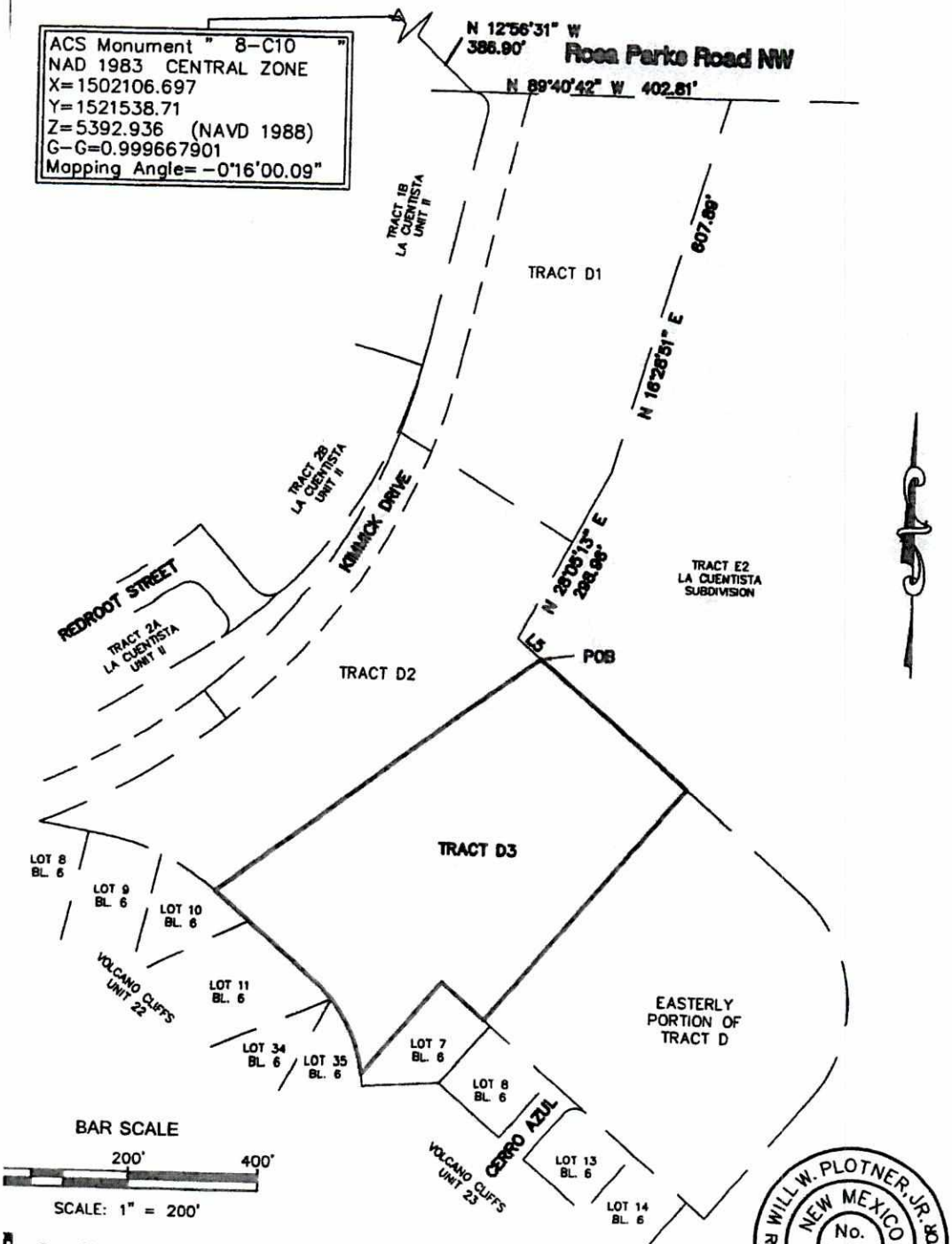
WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract D3
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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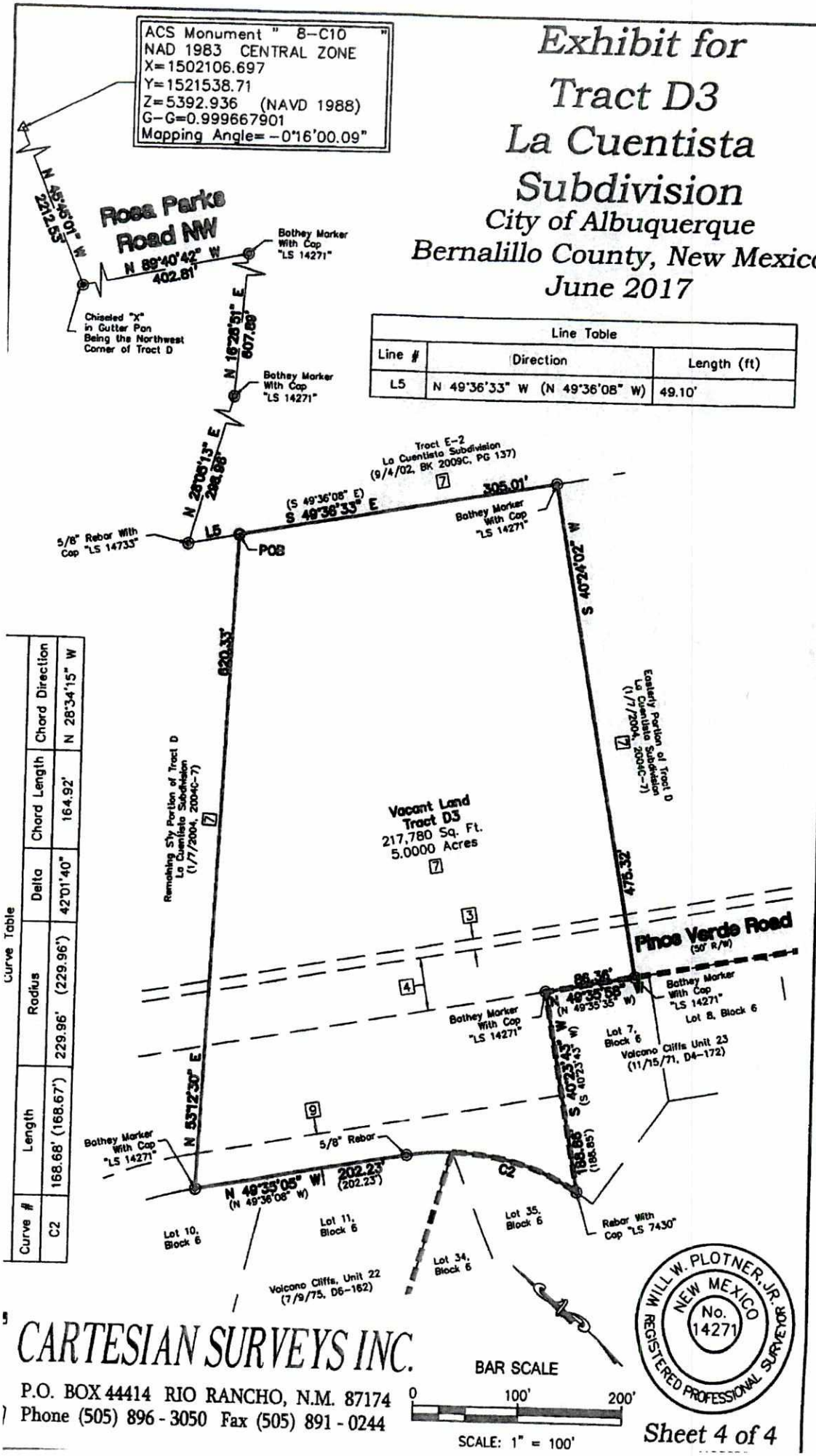
WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for Tract D3 La Cuentista Subdivision

City of Albuquerque
Bernalillo County, New Mexico
June 2017




Line Table

| Line # | Direction | Length (ft) |
|---|---|---|
| L5 | N 49°36'33" W (N 49°36'08" W) | 49.10' |

Curve Table

| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
|---|---|---|---|---|---|
| C2 | 168.68' (168.67') | 229.96' (229.96') | 42°01'40" | 164.92' | N 28°34'15" W |

BAR SCALE
0 100' 200'
SCALE: 1" = 100'


CARTESIAN SURVEYS INC.
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WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-A
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A NORTHERLY PORTION OF TRACT LETTERED "E-1", OF LA CUENTISTA SUBDIVISION, (A REPLAT OF TRACT E OF THE CORRECTION PLAT OF THE BULK LAND PLAT OF LA CUENTISTA SUBDIVISION), WITHIN SECTIONS 14 & 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, N.M.P.M., CITY OF ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO, ON SEPTEMBER 4, 2009, IN PLAT BOOK 2009C, PAGE 137, AS DOC. NO. 2009100835, HEREIN DESCRIBED TRACT KNOWN AS TRACT E-1-A.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT, BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A PK NAIL WITH CAP "LS 14271", ALSO BEING THE NORTHWEST CORNER OF SAID TRACT E-1, WHENCE A TIE TO ACS MONUMENT "8-C10", BEARING N 53°30'18" W, A DISTANCE OF 2600.61 FEET;

THENCE, FROM SAID POINT OF BEGINNING, COINCIDING WITH SAID SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, THE FOLLOWING TWO COURSES:

S 89°40'42" E, A DISTANCE OF 1186.49 FEET TO A POINT ON A CURVE, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

14.25 ALONG A CURVE TO THE RIGHT, NON-TANGENT FROM PREVIOUS COURSE, HAVING A RADIUS OF 975.27', A DELTA OF 00°50'14", AND A CHORD BEARING N 16°41'24" W, A DISTANCE OF 14.25 FEET TO AN ANGLE POINT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

**(CONTINUED ON SHEET TWO)**

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015 AND IN MARCH 2017.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT E-1 OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

## Surveyor's Certificate

I, WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE STATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

Will Plotner Jr. — Date
N.M.R.P.S. No. 14271

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract E-1-A
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

THENCE, N 89°25'33" E, A DISTANCE OF 240.16 FEET TO THE NORTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BRASS CAP "T11N/R2E S-AP-PNM", ALSO BEING THE NORTHEAST CORNER OF SAID TRACT E-1;

THENCE, S 15°26'04" E, A DISTANCE OF 107.94 FEET TO A POINT MARKED WITH A 1/2" REBAR;

THENCE, 129.50 FEET ALONG A CURVE TO THE LEFT NON-TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 49.99 FEET, A DELTA OF 148°25'37", AND A CHORD BEARING S 09°02'29", A DISTANCE OF 96.21 FEET, TO THE SOUTHEAST CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, LEAVING SAID RIGHT OF WAY OF AN UNNAMED CUL-DE-SAC, AND TRAVERSING SAID TRACT E-1, S 88°02'15" W, A DISTANCE OF 1449.80 FEET TO THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT LOCATED ON THE WEST LINE OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 04°09'56" W, A DISTANCE OF 239.95 FEET TO THE POINT OF BEGINNING, CONTAINING 7.0003 ACRES (304,933 SQ. FT.), MORE OR LESS.

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C1 | 14.25' (14.25') | 975.27' (975.27') | 0°50'14" | 14.25' | N 16°41'24" W |
| C2 | 129.50' | 49.99' (49.99') | 148°25'37" | 96.21' | S 09°02'29" E |
| C3 | 19.30' | 49.99' (49.99') | 22°07'12" | 19.18' | N 85°41'07" E |
| C4 | 148.80' (165.37') | 49.99' (49.99') | 170°32'49" | 99.64' | S 20°06'05" E |

## Easement Notes

[5] EXISTING 20' P.U.E. (6/29/07, DOC 2007095913)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

[8] EXISTING 7' UTILITY EASEMENT (11/15/71, D4-173)

[9] EXISTING 5' UTILITY EASEMENT (11/15/71, D4-173)

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.
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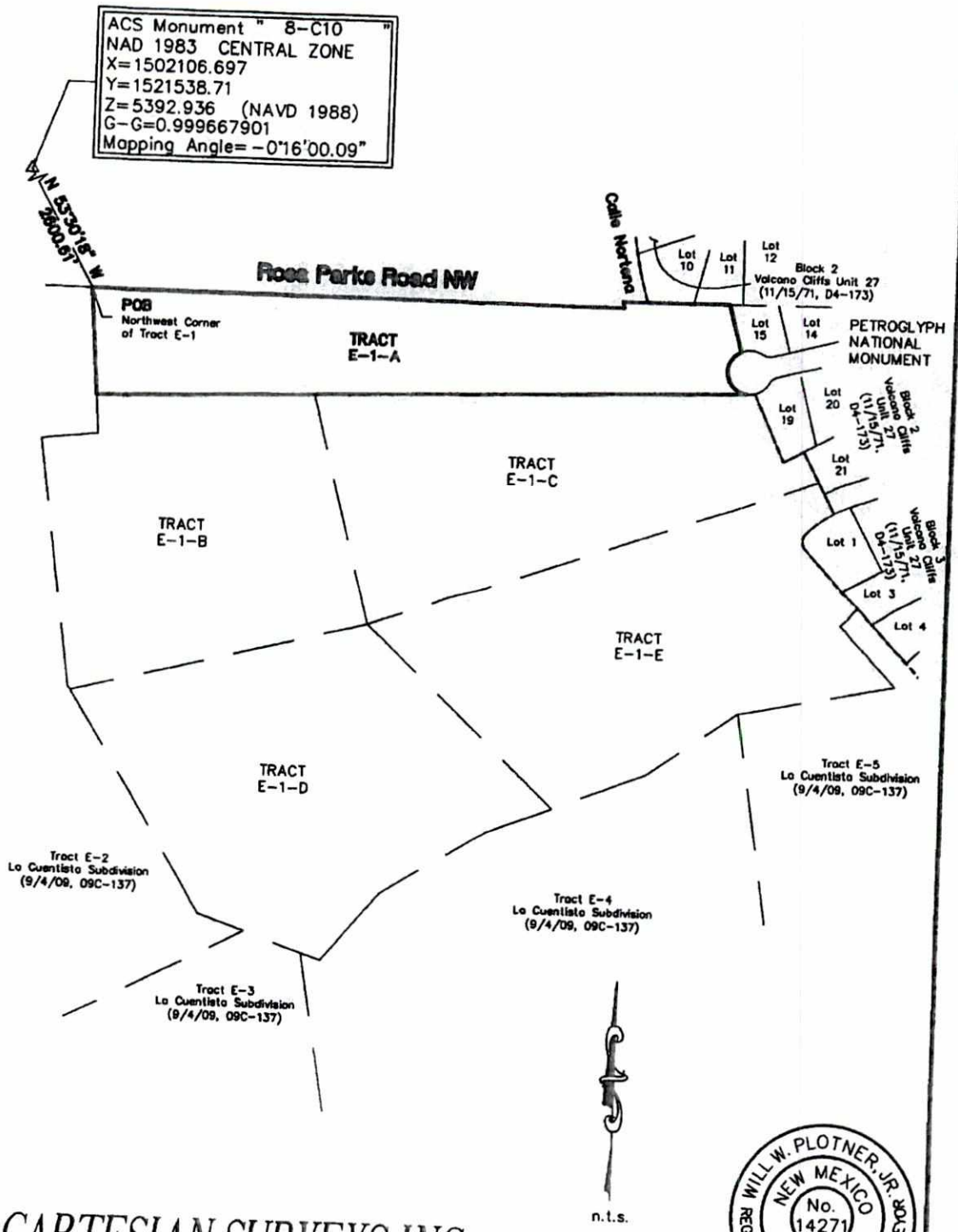
# Exhibit for
# Tract E-1-A
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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WILL W. PLOTNER, JR.
NEW MEXICO
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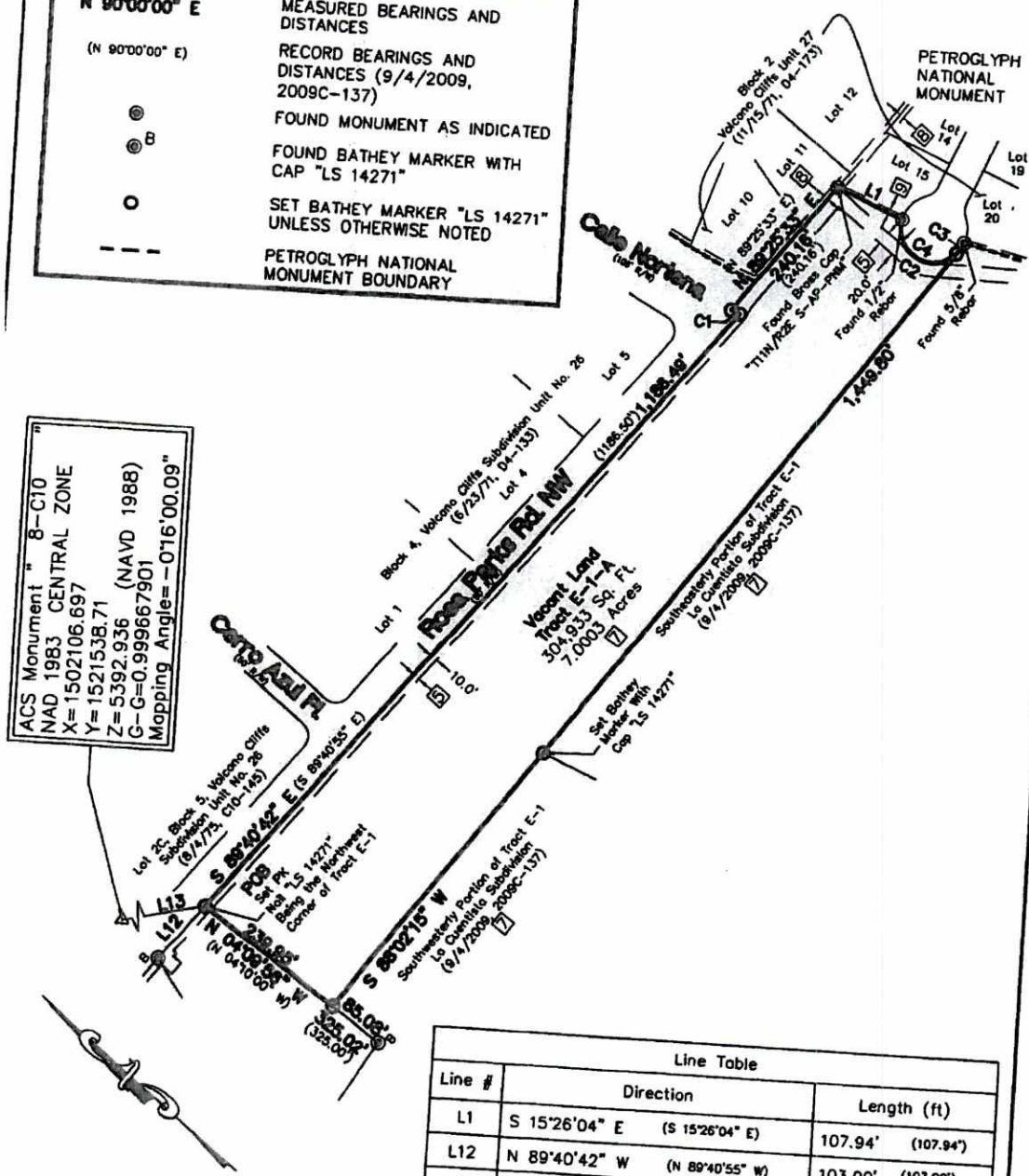
REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-A
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/4/2009, 2009C-137) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ◉ B | FOUND BATHEY MARKER WITH CAP "LS 14271" |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |




| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L1 | S 15°26'04" E (S 15°26'04" E) | 107.94' (107.94') |
| L12 | N 89°40'42" W (N 89°40'55" W) | 103.00' (103.00') |
| L13 | N 53°30'18" W | 2600.61' |

BAR SCALE

200' 400'

SCALE: 1" = 200'


CARTESIAN SURVEYS INC.

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WILL W. PLOTNER JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

EXHIBIT I

# CITY OF ALBUQUERQUE

**Planning Department**
**Real Property Division**
**David S. Campbell, Planning Director**
**600 2nd Street NW – 3rd Floor**
**Albuquerque, NM 87102**

Timothy M. Keller, Mayor

**NOTICE OF EXERCISE OF OPTION**
**(Option #1 Parcel E-1-D)**

March 14, 2018

Elk Haven, LLC and Frances Pavich, LLC
21 Vista Ville Circle
Lamy, NM 87540

RE: Exercise Option for Parcel E-1-D, La Cuentista, containing 10.2526 acres at $1,179,049.00

Dear Stan and Frances;

Pursuant to the terms and conditions of the Real Estate Sales Agreement dated July 19, 2017, the City hereby gives notice that the City wishes to exercise the option to purchase Parcel E-1-D, containing 10.2528 +/- acres, and Seller shall convey at closing the fee simple title to the City of Parcel D-2 containing 5+/- acres of donation land.

Per the attached Real Estate Sales Agreement, the City shall purchase Parcel E-1-D for One Million One Hundred seventy nine Thousand and forty nine Dollars ($1,179,049.00). Upon the City's notification of its intent to exercise the option, the Seller shall cooperate in closing of the sale and, unless otherwise agreed, the City intends to close within sixty (60) days of this Notice of Exercise of Option.

Sincerely,

City of Albuquerque

Sarita Nair, Chief Administrative Officer — Date: 4/19/18

RECOMMEND:

David J. Simon, Director
Parks and Recreation Department — Date: 3/22/18

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

# REAL ESTATE PURCHASE AGREEMENT

Real Estate Purchase Agreement ("Agreement") made and entered into by and between the City of Albuquerque, a New Mexico municipal corporation ("Buyer"), and Elk Haven, LLC, A New Mexico limited liability company ("Seller").

WHEREAS, the Buyer has identified and designated certain La Cuentista land along the escarpment on the west mesa for acquisition by the City of Albuquerque for use as permanent Open Space; and,

WHEREAS, Seller is the owner of a portion of what is commonly known as Tract D and Tract E-1 of La Cuentista Subdivision and being more specifically identified on Exhibit A; and,

WHEREAS, the City and Seller entered into a purchase agreement with option to purchase additional parcels on Tract E-1-D; and

WHEREAS, the City has given written notice that City will be exercising its option to purchase parcel Tract E-1-D; and,

WHEREAS, Seller and City, in the Real Estate Purchase Agreement with Option to Purchase, agreed to this form of agreement to purchase options.

NOW, THEREFORE, mutual consideration, and on the terms set forth herein, the Buyer and Seller agree as follows:

## I. PURCHASE AGREEMENT

**1. Sale.**

Subject to the terms and conditions of this Agreement, the Seller shall sell and the Buyer shall purchase from Seller a tract of land consisting of 10.2526 acres, more or less, of what is presently known as Tract E-1-D of La Cuentista and what is identified as Tract E-1-D on the attached Exhibit A, said property being located in Bernalillo County, New Mexico ("Property").

**2. Purchase Price.**

The per acre purchase price of the Property, due and payable by Buyer to Seller at Closing, is One Hundred Fifteen Thousand and no/100 Dollars ($115,000.00) and the total

purchase price ("Purchase Price") of the Property is One Million One Hundred Seventy Nine Thousand and Forty Nine and no/100 Dollars ($1,179,049.00) plus or minus the prorations payable by the Buyer to the Seller at the closing of the Sale.

**3. Donation.**

Simultaneously with the Closing of the Purchase of the Property, Seller shall convey title to the Buyer a tract of land consisting of five (5.0) acre more or less and identified as Tract D-2 on the attached Exhibit A (the "Donation"). The grant to the Buyer shall be a gift conveyed/granted for no consideration.

## II. SURVEY, TITLE COMMITMENT AND TITLE POLICIES

**1. Title Insurance.**

A. Title Insurance for Property: At least thirty (30) days prior to the closing of the Sale, the Seller, at the sole expense of Seller, shall deliver to the Buyer a commitment ("Title Commitment") for a policy of title insurance covering the Property issued by Stewart Title of Albuquerque, LLC, ("Title Company") with offices at 6759 Academy, NE, Albuquerque, NM 87109, together with legible copies of documents shown on Schedule B of the Title Commitment as exceptions. In the Title Commitment, the Title Company or its underwriter will agree to issue to the Buyer, upon the recording of a special warranty deed conveying title of the Property from the Seller to the Buyer, an ALTA owner's policy of title insurance ("Title Policy") in the amount of the Purchase Price and insuring the title of the Buyer in the Property free and clear of all liens, encumbrances, taxes and other exceptions, subject only to the Permitted Exceptions (defined below). Within five (5) days after the date that the New Plat (defined below) is recorded, Seller, at the expense of the Seller, will deliver to the City, an updated Title Commitment covering the Property issued by the Title Company, together with any Title Document not delivered with the original Title Commitment.

B. Title Insurance for Donation: At least thirty (30) days prior to the closing of the Sale, the Seller, at the sole expense of Buyer, shall deliver to the Buyer a Title Commitment for a policy of title insurance covering the Donation issued by the Title Company together with legible copies of documents shown on Schedule B of the Title Commitment as exceptions. In the Title Commitment, the Title Company or its underwriter will agree to issue to the Buyer, upon the recording of a special warranty deed conveying title of the Donation from the Seller to the Buyer, an ALTA owner's policy of title insurance ("Title Policy") in the amount of the market value price of $115,000.00 per acre and insuring the title of the Buyer in the Donation free and clear of all liens, encumbrances, taxes and other exceptions, subject only to the Permitted Exceptions (defined below). Within five (5) days after the date that the New Plat (defined below) is recorded, Seller, at the expense of the Buyer, will deliver to the City, an updated Title Commitment covering the Property issued by the Title Company, together with any Title Document not delivered with the original Title Commitment.

**2. Survey.**

The Seller, at the expense of the Seller, shall obtain a survey of the Property and the Donations (the "Survey") prepared in accordance with the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (effective February 23, 2016), and shall include Table A optional items 1 – 6(a), 8, 11, 13, 16-19 and 20. If Seller has provided a new bulk land plat and survey for the property at the time of the original purchase Parcel E-1-E, as shown on the attached Exhibit A, City, at City's sole option and expense, may obtain a survey of the Property and the Donations (the "Survey") prepared in accordance with the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (effective February 23, 2016), and shall include Table A optional items 1 – 6(a), 8, 11, 13, 16-19 and 20. The Surveys will (i) state that the Survey is prepared for the Buyer, the Seller, the Title Company and the underwriter of the Title Company; (ii) contain a written metes and bounds legal description of the Property in narrative form; (iii) be certified by a New Mexico licensed surveyor ("Surveyor") as of a date no more than sixty (60) days before the date of the closing of the Sale; (iv) be in form and content acceptable to the Buyer ; (v) be sufficient to delete all survey exceptions from and to satisfy all requirements for issuance of the Title Policy; (vi) contain a certification by the Surveyor of the exact area of the Property in square feet or acres; and (vii) show, without limitation, the exact location of all existing or proposed streets, easements, encroachments, protrusions, overlaps, overhangs, utilities, set-backs and restrictions affecting the Property.

**3. Notice of Objections to Surveys or Title Commitment.**

Within ten (10) days after receipt by the Buyer of the Survey or Title Commitment (the "Objection Period"), the Buyer will give written notice to the Seller of any objections the Buyer may have to any matter shown on the Survey or in the Title Commitment ("Objections") that has affected the Survey and/or Title after the purchase of Parcel E-1-E. If the Buyer fails to object to any matter shown on the Survey or fails to object to the condition of title to the Property as shown in the Title Commitment within the ten (10) day period, the Buyer shall be deemed to have waived such matters or conditions. The Seller may attempt to cure, eliminate or modify any or all Objections to the satisfaction of the Buyer, but shall have no obligation to do so. Seller will give notice to the Buyer five (5) days after the expiration of the Objections Period (the "Cure Period") as to whether or not Seller will satisfy or attempt to satisfy any of the Buyer's Objections. If the Seller is unable to or does not satisfy the Objections upon the expiration of the Cure Period, the Buyer shall have the following options, one of which shall be exercised by written notice given to Seller within five (5) days after the expiration of the Cure Period: (i) the Buyer may agree to an additional period of time in which the Seller may continue to attempt to satisfy the Objections; (ii) the Buyer may waive the Objection and accept title to the Property subject to any unsatisfied Objections, in which event the unsatisfied Objections will be deemed to be waived for all purposes and constitute Permitted Exceptions; or (iii) the Buyer may terminate this Agreement, in which event, the Seller and the Buyer will have no further rights, obligations or liabilities to one another under this Agreement. If the Buyer does not deliver written notice to the Seller five (5) days after the expiration of the Cure Period electing one of the above options, this Agreement will

automatically terminate, and the Seller and the Buyer will have no further rights, obligations or liabilities between the Seller and the Buyer as provided in this Agreement. If the Seller does not satisfy the Objections, then the rights available to the Buyer, as provided in this paragraph, are the sole rights and remedies of the Buyer to the exclusion of all other rights and remedies existing in law or equity.

**4. Permitted Exceptions.**

The Schedule B Standard Exceptions set forth in 13 NMAC 14.5, Section 9 and all matters shown on the Initial Title Commitment, the Updated Title Commitment and the Survey which the Buyer approves or is deemed to have approved pursuant to this paragraph, and any liens or encumbrances caused or created by the Buyer or the Buyer's employees, agents or contractors, will constitute "Permitted Exceptions" for purposes of this Agreement and the Deed.

**5. Warranty Deed.**

The Seller shall convey title to the Property to the Buyer by statutory form special warranty deed subject only to the Permitted Exceptions. The description of the Property to be contained in the special warranty deed shall conform to the description of the Property contained in the Survey, except that if a subdivision plat is required to close the Sale, the description of the Property in the special warranty deed shall conform to the description of the Property in the recorded subdivision plat.

## III. ENVIRONMENTAL INSPECTION

**1. Definitions.**

As used in this Agreement, the following terms shall have the following definitions:

A. "Environmental Condition" means any condition regarding the presence of Hazardous Materials located on, in, under or originating from the property or located within the improvements thereon with respect to air, soil, surface water or groundwater which require response under any Environmental Requirements in effect at the time of their application.

B. "Environmental Requirements" means all applicable federal, state and local governmental agency environmental statutes, ordinances, rules, notices, regulations, standards, permits orders and any other governmental requirements relating, by way of example and not limitation, to the following: (i) the spill, leaked, discharge, emission or release of any Hazardous Material, to the air, surface water, ground water or soil; (ii) the storage, treatment, disposal or handling of any Hazardous Materials and (iii) the construction, operation, maintenance, repair or closing of aboveground or underground storage tanks or impoundments containing Hazardous Materials.

C. "Hazardous Materials" means substances defined as such pursuant to the

Comprehensive Environmental Response Compensation and Liability Act, as amended; or as hazardous waste, as that term is defined under the Resource Conservation Recovery Act; PCB's; petroleum hydrocarbons; and substances so defined pursuant to requirements prevailing and applicable on the Effective Date as established by the State of New Mexico.

D. "Other Materials" means any materials or substances which do not come within the definition of Hazardous Materials, including, but not limited to, ACM, radon or other radioactive substances, lead-based paint, nonhazardous wastes or any toxic or polluting substances.

E. "Documents" means all documents, photographs, maps, data, notes, reports, chromatograms, in digital form, print, videotape or other media used to transmit information regarding the environmental condition of any aspect of the property, including, but not limited to the Phase I Report, the Phase II Report, if any, and the Cleanup Plan, if any.

**2. Buyer Inspections.**

The Buyer had the right to conduct any and all investigations Buyer desired to fully examine the environmental characteristics of the Property ("Due Diligence") including, but not limited to, the examination of any improvements located thereon and the evaluation of the Environmental Condition of the Property for the presence of any Hazardous Materials or Other Materials located on, in, under or originating from the Property during the period of time ("Due Diligence Period") prior to the Buyer's purchase of Lot E-1-E and then Buyer had the responsibility to protect the Option properties to insure no trash, junk or hazardous materials were disposed of on the property remaining under option until the exercising of the option.

**3. Notice of Violation.**

If the Seller has received or receives notice of a violation of any Environmental Requirement with respect to the Property prior to the date of the Closing, then prior to the Closing, the Seller shall give to the Buyer a letter from the governmental entity charged with the enforcement of the applicable Environmental Requirement stating that the matter has currently been resolved to the satisfaction of that governmental entity, or other equivalent language.

## IV. WARRANTIES AND REPRESENTATIONS

**1. Seller's Warranties.**

The Seller warrants and represents that:

A. The Seller has good, indefeasible and marketable title to the Property.

B. There are no leases or other use, occupancy or possession agreements in effect pertaining to the Property, except those lease agreements by and between the Seller and Buyer, which will be in effect at the time of or survive the closing of the Sale.

C. The Property is in compliance with all applicable laws, ordinances, rules and regulations affecting the Property and the use and occupancy of the Property.

D. The Property has free access to and from a public street, road, alley or other right-of-way.

E. This Agreement and the documents provided for or contemplated by this Agreement will not violate, be in conflict with, result in the breach of or constitute a default under any agreement, mortgage, indenture, deed of trust, lien, order, judgment or instrument to which the Seller is a party or by which the Seller is bound or affected.

F. There are no unpaid bills or claims in connection with construction or repair work on the Property.

G. Except for the potential threat by the City of Albuquerque to condemn the Property, Seller has received no written notice of any actions, suits, proceedings or investigations pending or threatened against the Seller or relating to the Property in any court or before any governmental department or agency which would in any material respect affect the validity of this Agreement, or the obligations or the ability of the Seller to perform under this Agreement, including the execution, acknowledgment and delivery of the documents provided for or contemplated by this Agreement and the Seller does not know of any basis for any such action, suit, proceeding or investigation.

H. There has not been and are not and will not be, at the closing of the Property and the Donation, any Hazardous Materials or Other Materials located on or released on or from the Property and the Property is not and will not, at the closing of the Sale, be in violation of any federal, state or local law, ordinance or regulation relating to Hazardous Materials, Other Materials industrial hygiene or the environmental conditions on, under or about the Property, including, but not limited to, soil and ground water conditions, and there are no circumstances which will give rise to any litigation, proceedings, investigations, citations or notices of violations or of responsibility resulting from the use, generation, manufacture, release, storage or disposition of, on, under or about the Property or the transport to or from the Property of any Hazardous Materials or Other Materials. In addition to the definition of Hazardous Materials contained in Section III herein, the term "Hazardous Materials" includes, but is not limited to, petroleum products and substances defined as hazardous substances, hazardous materials or toxic substances in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601 et seq; the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801 et seq; the Resources Conservation and Recovery Act, 42 U.S.C., Section 6901 et seq; and those substances defined as hazardous waste or as hazardous substances under the laws of

New Mexico or in the regulations adopted in publications promulgated pursuant to the laws.

I. If the Property is subject to a mortgage, real estate contract, or deed of trust, the Seller is not in default and has not received notice of default under or breach of the mortgage, real estate contract or deed of trust or of the documents evidencing the indebtedness or other obligations secured by the mortgage, real estate contract or deed of trust.

J. If Seller is a corporation, partnership, or other legal entity, Seller warrants that it is duly formed and validly existing under the laws of its domicile, is in good standing with and authorized to do business in the State of New Mexico, and has all requisite authorization and documentation to enter into and close this transaction, and the named corporate officer, partner or agent who executed, acknowledged and delivered this contract, for and on behalf of the Seller, is and was, at all material times, the duly authorized corporate officer, member, partner or agent of the Seller.

**2. Real Estate Sales Commissions.**

A. The Seller represents and warrants to the Buyer that no broker, agent, finder or salesman has been involved in the origination, negotiation or consummation of this Agreement and no fee, commission or similar payment is due to any broker, agent, finder or salesman as a result of the origination, negotiation or consummation of this Agreement.

B. The Seller shall defend, indemnify and hold the Buyer harmless from and against any and all loss, cost or expense (including attorneys' fees and expenses) resulting from any claim for any fee, commission or similar payment by any broker, agent, finder or salesman as a result of any action of the Seller related to the origination, negotiation or consummation of this Agreement.

**3. Survival of Warranties.**

The warranties and representations of the Seller are a material inducement for the Buyer to purchase the Property. The execution and delivery of the general warranty deed by the Seller shall constitute a confirmation and further representation and warranty by the Seller to the Buyer, as of the date of the warranty deed, as to the matters specified in this Agreement and shall survive the closing of the Sale and shall not be merged into the execution and delivery of the warranty deed or any other document executed and delivered subsequently to the execution and delivery of this Agreement.

## V. CLOSING

**1. Closing of Sale.**

Within ten (10) days after acceptance of title of the Property, the Buyer will give the Seller notice of a proposed time and date of closing of the Sale ("Closing"). The Closing will be at

the office of the Title Company, either (i) at the time and on the date stated in the notice, or (ii) at such other time, date and place as the Seller and the Buyer may agree in writing. At the Closing, the Seller, the Buyer and the Title Company will perform the following duties:

A. The Seller's Duties. At or prior to Closing, Seller will deliver or cause to be delivered each of the following items:

(i) The Deed, suitable for recording, conveying title to the Property and the Donation to Buyer, subject to the Permitted Exceptions;

(ii) Any reasonable and customary certificates and affidavits that may be required in the normal course by Title Company, in form and substance reasonably satisfactory to Sellers, duly executed by Sellers;

(iii) A Non-foreign Certification of Entity Transferor from Sellers or other evidence satisfying the requirements of Section 1445 of the Internal Revenue Code

Seller shall also execute any document reasonably required by the Title Company in order to delete any standard exceptions from the Title Policy at Buyer's request and expense.

B. Buyer's Duties. The Buyer shall pay to the Title Company, as escrow agent, the Purchase Price, plus or minus the prorations and any closing costs to be paid by the Buyer. The Buyer's payment shall be made by check of the Buyer or such other method of payment as may be required by the Title Company to make an immediate payment at the Closing of the Purchase Price due to the Seller as provided in this Agreement, or by such other method of payment as the Seller and the Buyer may agree in writing.

C. Title Company's Duties. At or promptly after the Closing, unless otherwise instructed by the Seller and the Buyer , the Title Company will:

(i) record the warranty deeds in the records of Bernalillo County, New Mexico, and deliver the recorded warranty deed to the Buyer;

(ii) issue and deliver the Title Policy to the Buyer as provided in the Title Commitment, except for any matters which have been eliminated or modified as provided in this Agreement; and

(iii) disburse to the Seller the balance of the Purchase Price due to the Seller and make all other disbursements as provided in the escrow closing statements to be prepared by the Title Company and signed by the Seller and the Buyer at the Closing, including, but not limited to, any disbursements and payments necessary to discharge any obligations which are liens upon the Property, including, but not limited to, liens arising from

judgments, taxes or debts secured by deed of trust or mortgage.

**2. Possession.**

The Buyer shall have the right to possession of the Property and the Donation as of the Closing and the Seller shall put the Buyer in possession of the Property and the Donation as of the Closing.

**3. Failure to Close.**

If the Seller fails to close the Sale for any reason, except as provided in this Agreement, and if the Buyer has fully performed or tendered performance of all the obligations of the Buyer as provided in this Agreement, then, the Buyer shall have the right to either terminate this Agreement or to bring an action for damages and/or for specific performance. If the Buyer fails to close the Sale, for any reason, except as provided in this Agreement, and if the Seller has fully performed or tendered performance of all of the obligations of the Seller as provided in this Agreement, then the Seller shall have the right to either terminate this Agreement or to bring an action for damages and/or for specific performance. If this Agreement is terminated by either party as provided in this paragraph, the Buyer and the Seller shall have no further rights, obligations or liabilities as between the Buyer and the Seller as provided in this Agreement.

**4. Prorations; Closing Costs.**

A. Ad valorem taxes and standby or similar charges for utility services for the year in which the Sale is closed, and rents or other income from the Property and Donation, if any, will be prorated to the date of Closing between the Buyer and the Seller. If the current figures cannot be obtained, the proration shall be based upon the figures for the last assessment period.

B. If the Property is within an improvement district created pursuant to Sections 3-33-1 through 3-33-34, NMSA 1978 as amended or replaced:

(i) The Seller shall, by the Closing, pay all assessments levied against the Property if the improvements for which the assessment has been levied have been constructed; and

(ii) The assessments levied against the Property shall be prorated between the Seller and the Buyer as of the Closing if the improvements for which the assessment has been levied have not been constructed.

C. The Seller shall pay all charges which are imposed on the Property for public utility facilities that were constructed prior to the effective date of this Agreement whether the obligation to pay the prorata charges arises before or subsequent to the Closing.

D. As closing costs, the Seller and the Buyer will each pay one-half of any

escrow charges and expenses charged by the Title Company. The Seller and the Buyer will each pay their respective attorneys' fees. The Seller shall pay all costs of the Cleanup Plan, if applicable. The Buyer shall pay the filing fee for recording the warranty deeds. The Seller shall pay all costs of the Survey, Title Commitment and the Title Policy, including the premiums for deletion of Exceptions 1 through 4 from the Title Policy.

## VI. MISCELLANEOUS.

**1. Waiver of Default.**

No failure by the Buyer to insist upon the strict performance of any term, condition, or covenant of this Agreement or to exercise any right or remedy available on the breach thereof will constitute a waiver of any breach or of any term, condition, or covenant. No obligation of this Agreement that the Seller is required to perform and no breach thereof, will be waived, altered, or modified, except by written instrument executed by the Buyer. No exercise or failure to exercise any right or power of the Seller or of the Buyer as provided in this Agreement will be considered to exhaust that right or power.

**2. Time Is Of The Essence.**

Time is of the Essence in the performance of this Agreement.

**3. Notices.**

All notices, requests, demands and other communications given under this Agreement will be in writing, and, unless otherwise specified in this Agreement, will be deemed to have been given if delivered in person, or on receipt, if mailed by certified or registered mail, postage pre-paid, and addressed to the Seller or to the Buyer at the following addresses, unless either the Seller or the Buyer changes the Seller's or the Buyer's address by giving written notice of the change to the other. The addresses for notices are:

A. Notice to the Sellers:

Elk Haven, LLC
21 Vista Valle Circle
Lamy, NM 87540

Frances Pavich, LLC.
21 Vista Valle Circle
Lamy, NM 87540

B. Notice to the City:

City of Albuquerque
Planning Department
P. O. Box 1293
Albuquerque, New Mexico 87103
Attn: Real Property Division Manager

**4. Exhibits.**

All certificates, documents, exhibits, attachments, riders, and addenda, if any, referred to in this Agreement, including but not limited to the exhibits referred to in this Agreement, are hereby incorporated into this Agreement by reference and are made a part hereof as though set forth in full in this Agreement to the extent they are consistent with the terms and conditions of this Agreement.

**5. Further Action.**

At any time and from time to time, each party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

**6. Severability/Invalidity.**

In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the Buyer or Seller in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

**7. Modification and Governing Laws.**

This Agreement may be modified only in writing and is governed by the laws of the State of New Mexico. Both Seller and the Buyer agree to the exclusive jurisdiction of the courts of the State of New Mexico for all purposes regarding this Agreement and further agree and consent that venue of any action brought hereunder shall be exclusively in the County of Bernalillo.

**8. Force Majeure.**

If performance of part or any portion of this Agreement is made impossible by any prevention, delay, or stoppage caused by strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor or materials or reasonable substitutes for those items; government actions; civil commotions, fire; flood or other casualty; or other causes beyond the reasonable control of the Party obligated to perform, performance by that Party for a period equal to the period of that prevention, delay, or stoppage is excused.

**9. Approval of the Buyer; Binding Effect.**

This Agreement is subject to approval and signature by the Chief Administrative Officer of the Buyer. Upon execution of this Agreement by the Chief Administrative Officer, the covenants, terms and conditions of this Agreement will be binding on and inure to the benefit of the Buyer and of the Seller and of their respective heirs, devisees, personal representatives, successors and assigns.

**10. Effective Date.**

The effective date of this Agreement shall be the date of approval by the Chief Administrative Officer of the Buyer.

**11. Final Dates.**

If the final date of any deadline falls upon a Saturday, Sunday, or holiday recognized by the U.S. Postal Service, then in such event the time of such deadline shall be extended to the next day that is not a Saturday, Sunday, or holiday recognized by the U. S. Postal Service. Whenever the word "days" is used herein, it shall be considered to mean "calendar days" and not "business days" unless an express statement to the contrary is made.

**12. Limitations on Liability.**

Neither party has any liability with respect to the obligations under this contract or otherwise for incidental, consequential, special, indirect, exemplary or punitive damages even if it has been advised of the possibility of such damages.

**13. Representation.**

Each party hereto acknowledges that it has been represented, or has had ample opportunity to obtain representation of counsel, with respect to this contract. Accordingly, each party hereto represents to the other that is has read and understood the terms of this Agreement, and the consequences of executing this Agreement, and that except as expressly set forth herein, no representations have been made by either party to induce the other party to execute this Contract.

**14. Multiple Counterparts.**

The Agreement may be signed in multiple counterparts or with detachable signature pages, but in either, or both, circumstances shall constitute one instrument, binding upon all parties thereto as if all parties signed the same document. If so executed, each such counterpart of this Agreement is to be deemed an original for all purposes and all such counterparts will collectively constitute one agreement, but in the making of proof of this Agreement, it will not be necessary to produce or account for more than one such counterpart.

**15. Headings and Captions.**

Captions of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

**16. Interpretation.**

Whenever the context hereof will so require, the singular will include the plural, the male gender will include the female gender and the neuter and vice versa. The terms "include", "includes", "including" and similar terms will be construed to mean "without limitation". All references to Sections, subsections, Exhibits and Articles will be deemed references to Sections, subsections, and Articles of this Agreement and to Exhibits, which are attached hereto and made a part hereof for all purposes.

**17. Entire Agreement.**

This Agreement, including the attached Exhibits, constitutes the full and final agreement of the parties and incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this contract, and all such conditions, understandings and agreements have been merged into this written Agreement. All prior negotiations and agreements are merged into this agreement. No prior condition, agreement, or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement. No subsequent agreement may modify this Real Estate Sales Agreement unless it is in writing and signed by the parties or their authorized agents. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

**IN WITNESS WHEREOF**, THE PARTIES HERETO HAVE SIGNED THIS AGREEMENT AS OF THE DATE indicated by each signature, and the Agreement is effective upon the signature of the City's Chief Administrative Officer or his authorized designee.

**[SIGNATURE PAGES IMMEDIATELY FOLLOWING]**

**BUYER:**
**CITY OF ALBUQUERQUE:**

By: _____
Sarita Nair
Chief Administrative Officer

Date of Approval:
4/19/18

**RECOMMENDED:**

_____
David J. Simon
Director Parks and Recreation

Date of Recommendation:
3/22/18

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

**This instrument was acknowledged** before me on this 19 day of April, 2018, by Sarita Nair, Chief Administrative Officer for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.

OFFICIAL SEAL
Michelle Lucero
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 3/29/21

_____
Notary Public

My Commission Expires:
3/29/21

**SELLER:**
**ELK HAVEN, LLC, A New Mexico Limited Liability Company**

By: _____ Date: 4/23/2018

Its: _____

**STATE OF** New Mexico
**COUNTY OF** Bernalillo ).ss

**This instrument was acknowledged** before me on this 23 day of April, 2018 by Stanley L. Diamond, the owner on behalf of Elk Haven, LLC, A New Mexico Limited Liability Company.

_____
Notary Public

My Commission Expires:

June 5, 2021

**EXHIBIT A**

# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

SOUTHWESTERLY PORTION OF TRACT LETTERED "E-1", OF LA CUENTISTA SUBDIVISION, (A EPLAT OF TRACT E OF THE CORRECTION PLAT OF THE BULK LAND PLAT OF LA CUENTISTA UBDIVISION), WITHIN SECTIONS 14 & 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, N.M.P.M., CITY F ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, AS THE SAME IS SHOWN AND ESIGNATED ON THE PLAT THEREOF, FILED IN THE OFFICE OF THE COUNTY CLERK OF ERNALILLO COUNTY, NEW MEXICO, ON SEPTEMBER 4, 2009, IN PLAT BOOK 2009C, PAGE 137, S DOC. NO. 2009100835, HEREIN DESCRIBED TRACT KNOWN AS TRACT E-1-D.

EING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

EGINNING AT THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, BEING A POINT N THE WESTERLY BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH AP "LS 14271", WHENCE A TIE TO ACS MONUMENT "8-C10", THE FOLLOWING FIVE COURSES:

OINCIDING WITH SAID WESTERLY BOUNDARY OF SAID TRACT E-1, N 31°46'56" W, A DISTANCE F 10.83 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

07°53'56" W, A DISTANCE OF 555.04 FEET TO A POINT MARKED WITH A BATHEY MARKER ITH CAP "LS 14271";

82°56'04" E, A DISTANCE OF 125.01 FEET TO A POINT MARKED WITH A BATHEY MARKER TH CAP "LS 14271";

04°09'56" W, A DISTANCE OF 325.02 FEET TO THE NORTHWEST CORNER OF SAID TRACT E-1, EING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A K NAIL WITH CAP "LS 14271";

53°30'18" W, A DISTANCE OF 2600.61 FEET;

IENCE, FROM SAID POINT OF BEGINNING AND TRAVERSING SAID TRACT E-1, THE FOLLOWING VO COURSES:

75°33'10" E, A DISTANCE OF 677.32 FEET TO THE MOST NORTHERLY CORNER OF THE HEREIN ESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

46°54'59" E, A DISTANCE OF 580.98 FEET TO A POINT ON THE SOUTHERLY BOUNDARY OF AID TRACE E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

IENCE, COINCIDING WITH SOUTHERLY BOUNDARY OF SAID TRACT E-1, THE FOLLOWING FOUR OURSES:

68°26'24" W, A DISTANCE OF 155.53 FEET, TO A POINT MARKED WITH A 1/2" REBAR WITH AP "LS 15268";

**ONTINUED ON SHEET 2)**

## Surveyor's Certificate

WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE ATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND RRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 6/28/17

l Plotner Jr. Date
M.R.P.S. No. 14271

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.

P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

S 58°08'57" W, A DISTANCE OF 273.00 FEET, TO A POINT MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

S 40°09'37" W, A DISTANCE OF 195.33 FEET, TO A POINT MARKED WITH A 1/2" REBAR WITH CAP "LS 15268", ALSO BEING THE MOST SOUTHERLY CORNER OF SAID TRACT E-1;

N 71°27'56" W, A DISTANCE OF 292.02 FEET, TO A POINT ON THE EASTERLY BOUNDARY OF SAID TRACT E-1, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

THENCE, N 31°46'56" W, A DISTANCE OF 571.21 FEET, TO THE POINT OF BEGINNING, CONTAINING 10.2526 ACRES (446,605 SQ. FT.), MORE OR LESS.

## Notes

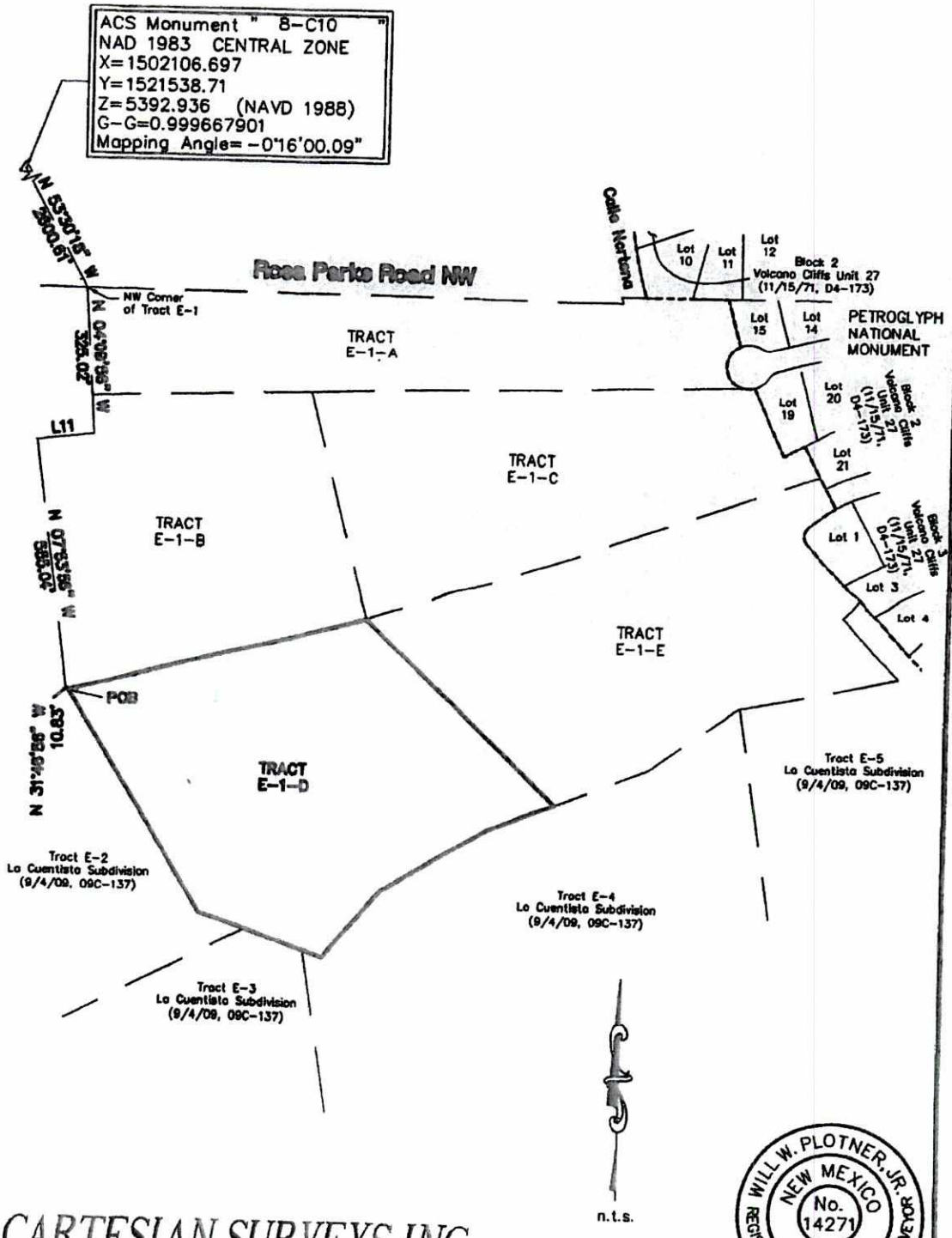
1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015 AND IN MARCH 2017.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT E-1 OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L10 | S 40°09'37" W (S 40°10'00" W) | 195.33' (195.33') |
| L11 | N 82°56'04" E (N 82°56'00" E) | 125.01' (125.00') |
| L13 | N 53°30'18" W | 2600.61' |

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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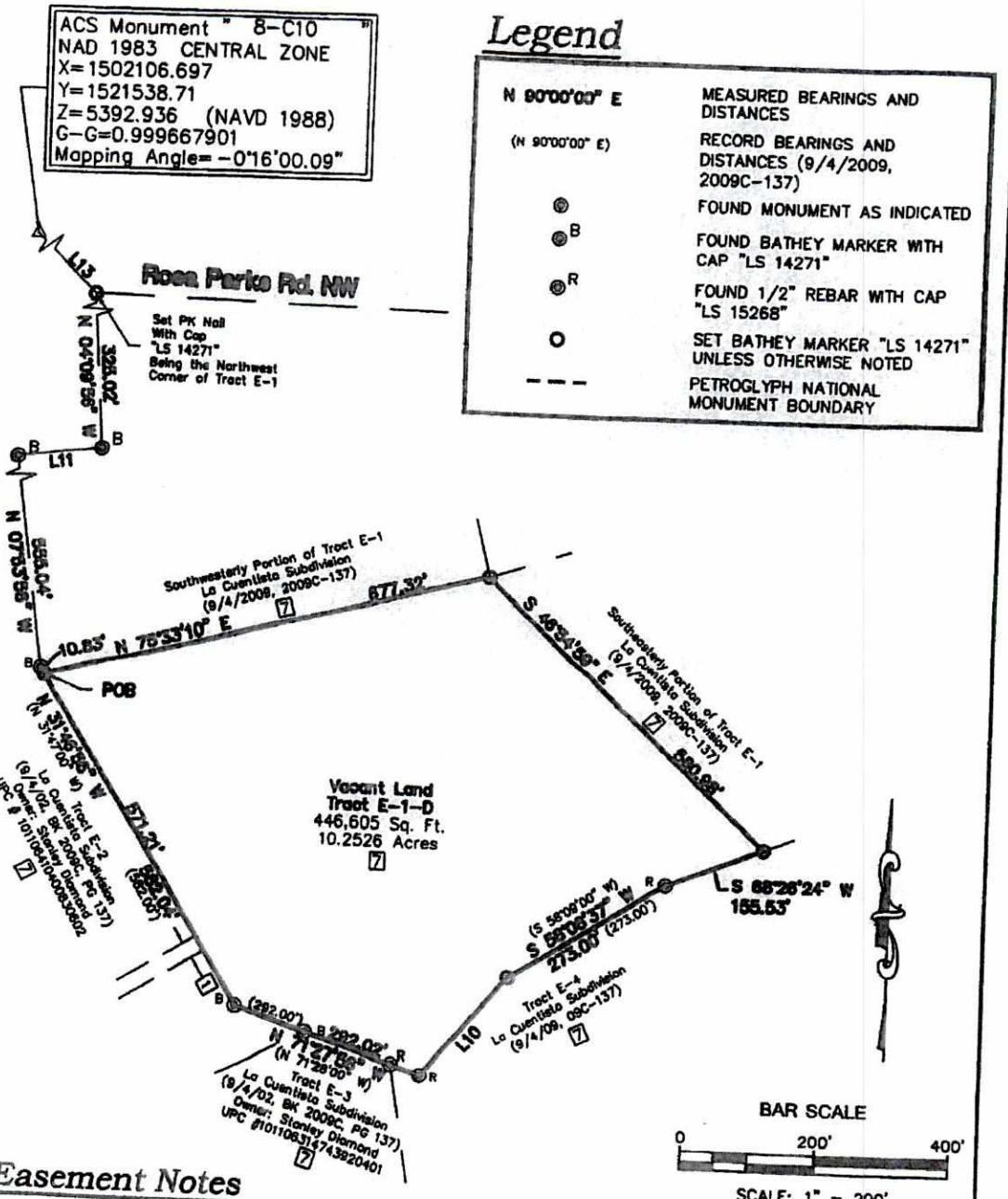
# Exhibit for
# Tract E-1-D
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

ACS Monument " 8-C10 "
NAD 1983 CENTRAL ZONE
X=1502106.697
Y=1521538.71
Z=5392.936 (NAVD 1988)
G-G=0.999667901
Mapping Angle= -0°16'00.09"

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (9/4/2009, 2009C-137) |
| ⊙ | FOUND MONUMENT AS INDICATED |
| ⊙B | FOUND BATHEY MARKER WITH CAP "LS 14271" |
| ⊙R | FOUND 1/2" REBAR WITH CAP "LS 15268" |
| O | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |
| - - - | PETROGLYPH NATIONAL MONUMENT BOUNDARY |




BAR SCALE
0 200' 400'
SCALE: 1" = 200'

## Easement Notes

EXISTING 25' PUBLIC STORM DRAINAGE EASEMENT (9/4/09, BK 09C, PG 137)

EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR


CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
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# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description

A SOUTHWESTERLY PORTION OF TRACT "D", OF TRACTS "A" THROUGH "E", BULK LAND PLAT OF LA CUENTISTA SUBDIVISION (THE "BULK PLAT") WITHIN SECTIONS 14, 15, 22 AND 23, TOWNSHIP 11 NORTH, RANGE 2 EAST, CITY OF ALBUQUERQUE, NEW MEXICO, AS THE SAME IS SHOWN AND DESIGNATED ON SAID PLAT FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK OF BERNALILLO COUNTY, NEW MEXICO ON DECEMBER 9, 2003 IN PLAT BOOK 2003C, PAGE 368 AND RE-RECORDED ON JANUARY 7, 2004, IN BOOK 2004C, PAGE 7, HEREIN DESCRIBED TRACT KNOWN AS TRACT D2.

BEING DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY POINT OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271", WHENCE A TIE TO ACS MONUMENT THE FOLLOWING FOUR COURSES:

29.62 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 972.00, A DELTA OF 07°38'27", AND A CHORD BEARING N 16°45'44" E, A DISTANCE OF 129.53 FEET TO A POINT OF TANGENCY, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

N 12°56'31" E, A DISTANCE OF 386.90 FEET TO A POINT OF CURVATURE, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

4.78 FEET ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 25.00, A DELTA OF 02°37'42", AND A CHORD BEARING N 38°22'20" W, A DISTANCE OF 39.03 FEET, BEING A POINT ON THE SOUTHERLY RIGHT OF WAY OF ROSA PARKS ROAD NW, MARKED WITH A HISELED "X" IN GUTTER PAN, BEING THE NORTHWEST CORNER OF TRACT D;

45°45'01" W, A DISTANCE OF 2212.53 FEET;

HENCE, FROM THE POINT OF BEGINNING, S 58°46'17" E, A DISTANCE OF 316.91 FEET TO THE ORTHEASTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER ITH CAP "LS 14271";

HENCE, S 28°05'13" W, A DISTANCE OF 173.34 FEET, TO A POINT MARKED WITH A 1/2" EBAR WITH CAP "LS 14733";

HENCE, S 49°36'33" E, A DISTANCE OF 49.10 FEET TO THE MOST EASTERLY CORNER OF THE EREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271";

IENCE, S 53°12'30" W, A DISTANCE OF 620.33 FEET TO THE MOST SOUTHERLY POINT OF THE EREIN DESCRIBED TRACT, MARKED WITH A BATHEY MARKER WITH CAP "LS14271";

**ONTINUED ON SHEET 2)**

## urveyor's Certificate

WILL PLOTNER JR., A REGISTERED PROFESSIONAL LAND SURVEYOR UNDER THE LAWS OF THE ATE OF NEW MEXICO, DO HEREBY CERTIFY THAT THE EXHIBIT SHOWN HEREON IS TRUE AND RRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Will Plotner 10/28/17

Plotner Jr. Date
I.R.P.S. No. 14271

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

CARTESIAN SURVEYS INC.
P.O. BOX 44414 RIO RANCHO, N.M. 87174
Phone (505) 896 - 3050 Fax (505) 891 - 0244

# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

## Legal Description (CONTINUED FROM SHEET 1)

THENCE, 195.43 FEET ALONG A CURVE TO THE LEFT, NON-TANGENT FROM PREVIOUS COURSE, HAVING RADIUS OF 373.97 FEET, A DELTA OF 29°56'30", AND A CHORD BEARING N 64°33'20" W, A DISTANCE OF 193.21 FEET, TO A POINT OF TANGENCY, MARKED WITH A BATHEY MARKER WITH CAP "LS 14271"

THENCE, N 79°31'35" W, A DISTANCE OF 100.89 FEET, TO THE MOST WESTERLY CORNER OF THE HEREIN DESCRIBED TRACT, MARKED WITH A 1/2" REBAR WITH CAP "LS 14733", ALSO BEING THE SOUTHWESTERLY CORNER OF TRACT D;

THENCE, N 67°33'45" E, A DISTANCE OF 28.20 FEET, TO A POINT OF CURVATURE MARKED WITH A BENT BATHEY MARKER;

THENCE, 301.78 FEET ALONG A CURVE TO THE LEFT, HAVING RADIUS OF 1028.00, A DELTA OF 16°49'11", AND A CHORD BEARING N 59°09'10" E, A DISTANCE OF 300.70 FEET TO AN ANGLE POINT MARKED WITH A 1/2" REBAR WITH CAP ILLEGIBLE;

THENCE, N 39°15'25" W, A DISTANCE OF 56.00 FEET, TO A POINT MARKED WITH A PK NAIL WITH CAP "LS 14271";

THENCE, 511.66 FEET ALONG A CURVE, NON-TANGENT FROM PREVIOUS COURSE, HAVING A RADIUS OF 972.00, A DELTA OF 30°09'37", AND A CHORD BEARING N 35°39'46" E, A DISTANCE OF 505.77 FEET, TO THE POINT OF BEGINNING, CONTAINING 5.0000 ACRES (217,800 SQ. FT.), MORE OR LESS.

## Notes

1. FIELD SURVEY PERFORMED IN SEPTEMBER 2015.
2. ALL DISTANCES ARE GROUND DISTANCES: U.S. SURVEY FOOT.
3. THE BASIS OF BEARINGS REFERENCES NM STATE PLANE COORDINATES (NAD 83-GRID).
4. THE PURPOSE OF THIS LEGAL DESCRIPTION IS FOR THE CITY OF ALBUQUERQUE TO ACQUIRE THE ENTIRE TRACT D OVER TIME. UPON COMPLETION OF THE CONVEYANCE OF THESE PORTIONS OF THE TRACTS, THE TRACTS THEMSELVES WILL BE WHOLE AND THE PORTIONS THEREOF SHALL BE NULL AND VOID. IF, FOR ANY REASONS, NOT ALL THE PORTIONS ARE CONVEYED, THE SELLERS AND BUYERS MUST PROCESS A SUBDIVISION PLAT THROUGH THE CITY OF ALBUQUERQUE DRB PROCESS IN ORDER FOR THE PORTIONS OF THESE TRACTS TO BE RECOGNIZED BY THE CITY, COUNTY AND STATE.

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# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017

| Line Table | | |
|---|---|---|
| Line # | Direction | Length (ft) |
| L1 | N 79°31'35" W (N 79°32'38" W) | 100.89' (100.89') |
| L2 | N 67°33'45" E | 28.20' |
| L3 | N 39°15'25" W (N 39°14'50" W) | 56.00' (56.00') |
| L5 | S 49°36'33" E (S 49°36'08" E) | 49.10' |

| Curve Table | | | | | |
|---|---|---|---|---|---|
| Curve # | Length | Radius | Delta | Chord Length | Chord Direction |
| C1 | 129.62' | 972.00' (972.00') | 7°38'27" | 129.53' | N 16°45'44" E |
| C3 | 195.43' (195.43') | 373.97' (373.97') | 29°56'30" | 193.21' | N 64°33'20" W |
| C4 | 301.78' (296.02') | 1028.00' (1028.00') | 16°49'11" | 300.70' | N 59°09'10" E |
| C5 | 511.66' | 972.00' (972.00') | 30°09'37" | 505.77' | N 35°39'46" E |
| C6 | 44.78' (44.78') | 25.00' (25.00') | 102°37'42" | 39.03' | N 38°22'20" W |

## Easement Notes

[3] EXISTING 10' P.U.E. (8/17/06, BK A122, PG 4038)
EASEMENT RIGHTS QUIT CLAIMED BY PNM (7/9/07, BK DOC 2007098243)
EASEMENT RIGHTS QUIT CLAIMED BY QWEST (4/2/08, BK DOC 2008037353)
EASEMENT RIGHTS QUIT CLAIMED BY COMCAST (4/8/08, BK DOC 2008039465)

[4] EXISTING 50' PUBLIC WATER, DRAINAGE, SANITARY SEWER, ACCESS AND MAINTENANCE EASEMENT (1/7/04, 2004C-7)

[7] EXISTING PUBLIC BLANKET CROSS LOT DRAINAGE EASEMENT (1/7/04, 2004C-7)

[8] EXISTING 56' PUBLIC DRAINAGE, PUBLIC WATER, PUBLIC SEWER, PUBLIC ACCESS AND PUBLIC MAINTENANCE EASEMENT (1/7/04, 2004C-7)

[9] EXISTING 32' PUBLIC STORM DRAINAGE EASEMENT (8/17/2006, A122-3862)

## Legend

| | |
|---|---|
| N 90°00'00" E | MEASURED BEARINGS AND DISTANCES |
| (N 90°00'00" E) | RECORD BEARINGS AND DISTANCES (1/7/2004, 2004C-7) |
| ◉ | FOUND MONUMENT AS INDICATED |
| ○ | SET BATHEY MARKER "LS 14271" UNLESS OTHERWISE NOTED |

WILL W. PLOTNER, JR. NEW MEXICO No. 14271 REGISTERED PROFESSIONAL SURVEYOR

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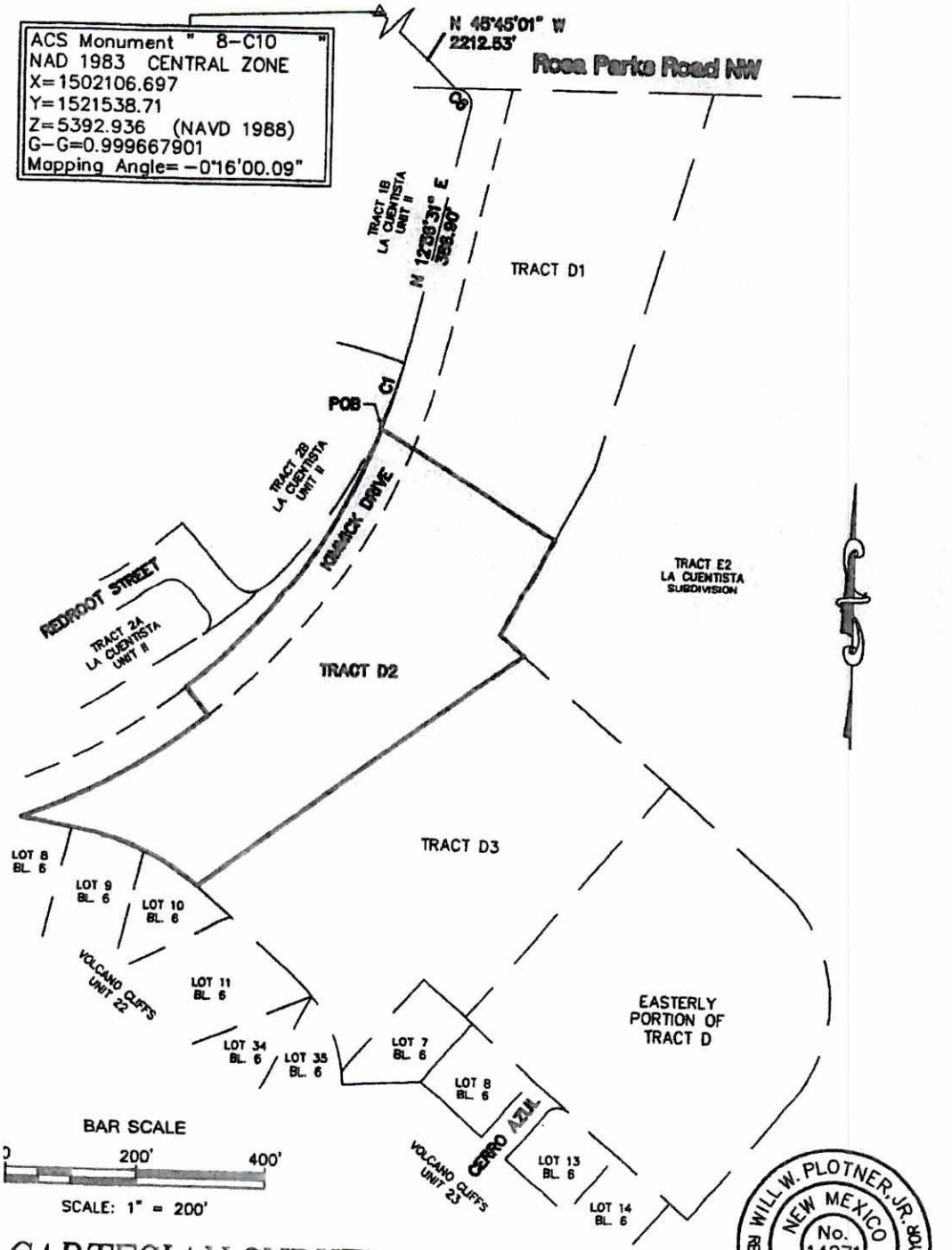
# Exhibit for
# Tract D2
# La Cuentista Subdivision
## City of Albuquerque
## Bernalillo County, New Mexico
## June 2017





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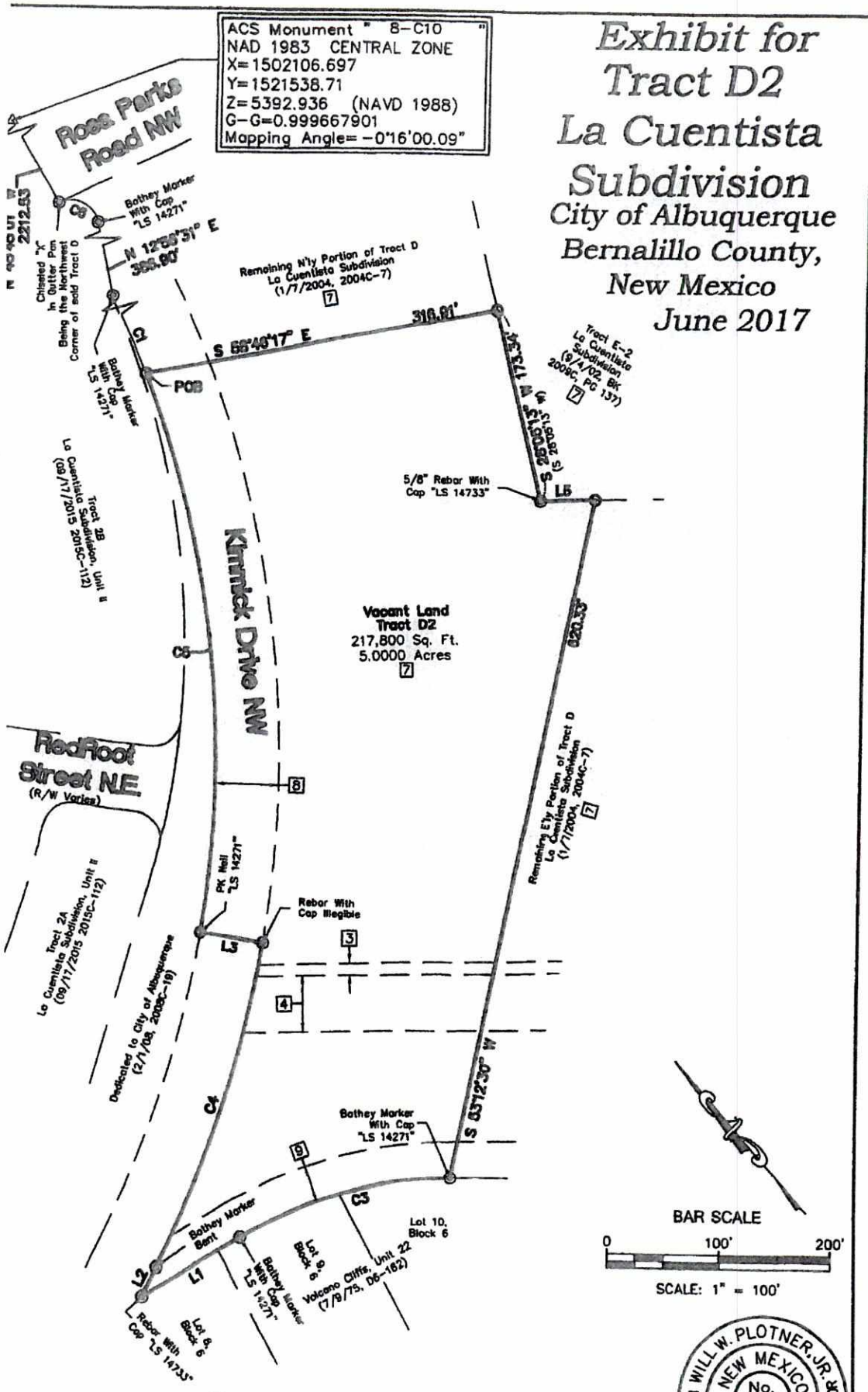
WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR

# Exhibit for Tract D2 La Cuentista Subdivision

City of Albuquerque
Bernalillo County,
New Mexico
June 2017





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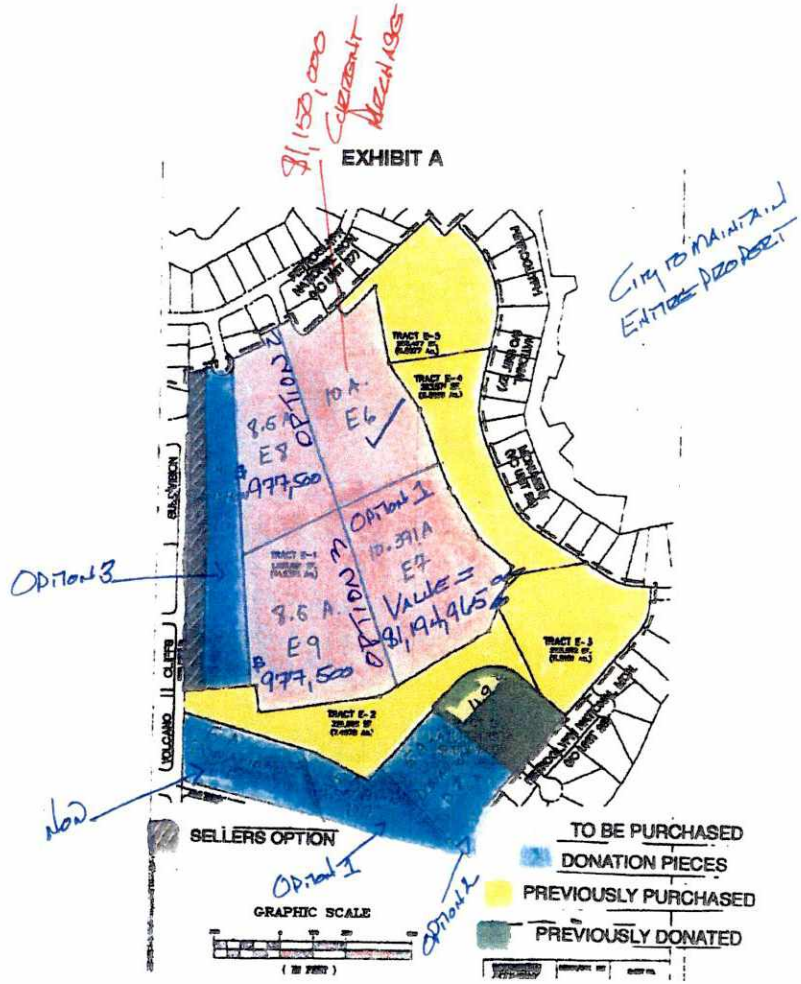
WILL W. PLOTNER, JR.
NEW MEXICO
No. 14271
REGISTERED PROFESSIONAL SURVEYOR

← 2

EXHIBIT A




Purchase Agreement
La Cuentista lot E6, Option for E7-E9, Donation D6-10; 13.055
Elk Haven LLC, Frances Pavich LLC



EXHIBIT I

EXHIBIT J

EXHIBIT J

# CITY OF ALBUQUERQUE

Mayor Timothy M. Keller

Planning Department
David S. Campbell, Director

March 19, 2019

Hunt & Davis, P.C. Attorneys at Law
Catherine F. Davis
2632 Mesilla, NE
Albuquerque, NM 87110

Dear Ms. Davis,

Thank you for your letter dated February 1, 2019, on behalf of your clients SLG, LLC and Paul Allen Homes, Inc., requesting reimbursement from the City of Albuquerque for all or part of the amount of excess open space impact fee credits from revenue generated by impact fees paid by new development for system improvements in the city wide service area.

Since the requirements for reimbursement of excess credits, as defined in the City's Impact Fee Ordinance "Ordinance" have not been met, your request for reimbursement of excess open space credits will be denied for the following reason:

- Per Section 14-14-19(J)(7)(c) of the Ordinance, the city shall not be obligated to provide reimbursements for excess credits in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.

By Ordinance under Section 14-19-20 Administrative Appeals, should you disagree with this decision, you must submit a notice of appeal and payment of a nonrefundable processing fee to the impact fees administrator or designee within 30 days following the date of this letter. Appeals shall be considered by the Environmental Planning Commission in accordance with the rules and regulations of that administrative body.

If you have any questions, please feel free to contact me.

Sincerely,

Tony Loyd

Tony Loyd
Impact Fee Administrator
City of Albuquerque
Planning Department
(505) 924-3934
tloyd@cabq.gov

PO Box 1293
Albuquerque
NM 87103
www.cabq.gov

EXHIBIT K

EXHIBIT K



# EXHIBIT D
# CERTIFICATE OF EXCESS CREDITS

COPY

**CITY OF ALBUQUERQUE**

Paul Allen Homes, Inc.
Name (Credit Holder)

P.O. Box 57060
Address

| Albuquerque | New Mexico | 87187 | ( 505 ) 899-6768 |
|---|---|---|---|
| City | State | Zip | Telephone |

**~~Park, Recreation, Trails and~~ Open Space Facilities**

| OS-CW-01 | City Wide | Calabacillas Arroyo | Open Space | $311,000.00 |
|---|---|---|---|---|
| Account Number | Service Area | CCIP Project | Category of Improvements | Amount |

Tract N Saltillo Unit I Open Space Conveyance
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

Date (The year in which the excess credits may be applied) 2014

**Public Safety Facilities**

| | | | | |
|---|---|---|---|---|
| Account Number | Service Area | CCIP Project | Category of Improvements | Amount |

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

Date (The year in which the excess credits may be applied) _____

**Roadway Facilities**

| | | | | |
|---|---|---|---|---|
| Account Number | Service Area | CCIP Project | Category of Improvements | Amount |

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

Date (The year in which the excess credits may be applied) _____

COPY

**Drainage Facilities**

_____/_____/_____/_____/_____

Account Number Service Area CCIP Project Category of Improvements Amount

_____

Description of the Component Capital Improvement Plan Project for which the credit may be applied.

Date (The year in which the credits may be applied) _____

**APPROVED**

Paul Allen Homes Inc. _____ 7/28/14

Credit Holder Signature Date

**APPROVED**

TONY LOYD _____ 7-28-14

Impact Fees Administrator Signature Date

**Notes:**

1. These excess credits shall expire if not used or redeemed within fifteen (15) years of the approval date of this certificate.
2. These excess credits shall be freely assignable provided the credit holder provides prior written notice to the City. Failure to provide prior written notice to the City shall result in forfeiture of the excess credits.
3. Excess credits shall only be applied to offset impact fees for the same category of improvement and for projects within the same service area for which the credit was granted.
4. Application for reimbursement of excess credits must be made at least ninety (90) days prior to expiration of the excess credits. Failure to apply for reimbursement within ninety (90) days prior to expiration shall constitute a waiver of the credit holder's right to reimbursement.

COPY

# DEVELOPMENT AGREEMENT FOR IMPACT FEE CREDITS
CITY OF ALBUQUERQUE

THIS AGREEMENT is made this 2nd day of June, 2014, by and between the City of Albuquerque ("City"), whose address is P.O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103 and Paul Allen Homes, Inc. a New Mexico Corporation, whose address is P.O. Box 57060, Albuquerque, New Mexico 87187 and whose telephone number is (505) 899-6768 in Albuquerque, New Mexico and SLG Holdings, LLC a New Mexico Limited Liability Company, whose address is P.O. Box 1443, Corrales, New Mexico 87048 and whose telephone number is (505) 338-1438 in Albuquerque, New Mexico (collectively the "Developer"), and is entered into as of the date of final execution of this Agreement.

## RECITALS

WHEREAS, the Developer has constructed a residential subdivision known as Saltillo Unit I.

WHEREAS, within the Saltillo Unit I Subdivision, the Developer has set aside open space known as a tract of land being within the Town of Alameda Grant, projected Section 3, Township 11 North, Range 2 East, New Mexico Principal Meridian, City of Albuquerque, Bernalillo County, New Mexico being TRACT N, UNIT ONE, SALTILLO as the same is shown and designated on said plat filed for record in the office of the County Clerk of Bernalillo County, New Mexico, on June 1, 2006 in Book 2006C, Page 170.

WHEREAS, the Developer intends to convey Tract N to the City in exchange for open space credits.

WHEREAS, the City has enacted an Impact Fee Ordinance (F/S O-12-38) under which the Developer may receive impact fee credits for the conveyance of open space, as listed in the Component Capital Improvement Plan (CCIP), against the impact fee that would otherwise be due.

WHEREAS, the City acknowledges that Tract N is listed in the CCIP and therefore is willing to grant open space impact fee credits pursuant to F/S O-12-38.

## AGREEMENT

NOW THEREFORE, the City and Developer agree:

1. Property Conveyance. The Developer shall convey Tract N to the City free of all existing liens, claims, encumbrances or property taxes. The Developer shall pay all closing costs of the conveyance. The Developer shall convey the real property by Warranty Deed in a form substantially similar to that of Exhibit A.

2. Credits. The City agrees to grant open space impact fee credits to the Developer in exchange for the conveyance of Tract N located within the Saltillo Unit I Subdivision. Impact fee credits shall be granted pursuant to the following terms and conditions:

   A. Credits shall only be granted for the fair market value of Tract N, as demonstrated in the appraisal report titled "Appraisal Report, 22.6104 Acre Portion of the Calabacillas Arroyo, N/o McMahon Blvd., E/o Universe Blvd., NW, Albuquerque, New Mexico 87114" by Shipman/Foley & Associates, Inc., dated October 15, 2013 and as approved by the City's Real Property Division;

   B. Credits shall only be granted for Tract N based on the Phase I Environmental Assessment titled "Revised All Appropriate Inquiry Phase I Environmental Site Assessment" by X8e Vinyard, dated April 24, 2014 and any related environmental remediation as required by the City's Real Property Division and Open Space Division;

   C. The City and Developer agree that the value of the open space impact fee credits will be $622,000.00 based on the accepted appraisal report, accepted phase I environmental assessment, and supporting documentation. The open space impact fee credits shall be credited in the amount of $311,000 to Paul Allen Homes, Inc. and $311,000 to SLG Holdings LLC, for their use subject to the terms and conditions contained herein;

   D. Credits shall first be applied against the Open Space Land and Facilities impact fees imposed on Saltillo Unit I City Project No. 773481 and City DRB No. 1003257 and subsequently against undetermined projects within the allowable service area as excess credits;

   E. If the value of the credits exceeds the amount of Open Space Land and Facilities impact fee otherwise due, the excess credits shall become the property of the Developer subject to the following conditions of disposition:

i) Excess credits shall only be applied to offset the impact fee for the same category of improvement and for projects within the same service area for which the credit was granted;

ii) Excess credits shall not be used to offset the impact fee for other categories of improvements other than Open Space Land and Facilities improvements;

iii) Excess credits shall be freely assignable by the Developer subject to prior written notice to the City. Failure to provide prior written notice to the City may result in forfeiture of the excess credits;

iv) The Developer may request reimbursement of excess credits from the City; however, the City shall not be obligated to reimburse excess credits to the Developer;

v) Excess credits shall not accrue interest and shall not be considered public money or constitute a liability of the City for any purpose whatsoever;

vi) Excess credits shall expire if not used or redeemed within fifteen (15) years after issuance.

F. The credits shall be granted and become effective per this Agreement.

G. Any dispute arising from the determination of impact fee credits under this Agreement shall be appealed to the City's Impact Fee Administrator.

3. Assignment. This Agreement shall not be assigned without the prior written consent of both the City and the Developer. The City's and Developer's approval will not be withheld unreasonably. If so assigned, this Agreement shall extend to and be binding upon the successors and assigns of the parties hereto.

4. Notice. For purposes of giving formal written notice, including notice of change of address, the Developer's and the City's addresses are as stated in the first paragraph of this Agreement. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been received within three (3) days after the notice is mailed if there is no actual evidence of receipt.

5. 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.

6. Changes to Agreement. Changes to this Agreement are not binding unless made in writing, signed by both parties.

7. 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.

8. 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.

9. Form Not Changed. Developer agrees that changes to this form are not binding unless initialed by the Developer and signed by the City's Legal Department on this form.

10. Authority to Execute. If the Developer signing below is not the Owner of the Developer's Property, the City may require the Developer to provide the City with satisfactory proof of Developer's authority to execute this Agreement.

11. Counterparts. This Agreement may be executed in counterparts. This agreement is executed on the date stated in the first paragraph of this Agreement.

12. Recitals. The recitals are a material part of this Agreement and are incorporated herein for all purposes.

DEVELOPER(S):

Paul Allen Homes, Inc.

By: _____
Name: Rex P. Wilson
Title: President
Dated: 6/6/14
Paul Allen Homes, Inc.

SLG Holdings, LLC

By: _____
Name: Tammy Thornton
Title: Managing Member
Dated: 6/5/14
SLG Holdings, LLC

CITY OF ALBUQUERQUE:

_____
City Impact Fee Administrator
Dated: 7-15-14

Approved as to form:

_____ Blake Whitcomb, Assistant City Attorney

CITY'S ACKNOWLEDGMENT

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 15th day of July 2014 by Tony Loyd, as Impact Fee Administrator for the City of Albuquerque.

My Commission Expires:

OFFICIAL SEAL
Rosalie Castillo
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 10/6/2015

Notary Public

DEVELOPER'S ACKNOWLEDGMENTS

STATE OF NEW MEXICO )
) ss
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on this 4th day of June 2014 by Mr. Rex P. Wilson, as President of Paul Allen Homes, Inc., a New Mexico corporation.

My Commission Expires: May 23, 2015

Sherri L. Repichowski
Notary Public

OFFICIAL SEAL
SHERRI REPICHOWSKI
Notary Public
State of New Mexico
My Commission Expires May 23, 2015

STATE OF NEW MEXICO )
Sandoval ) ss
COUNTY OF ~~BERNALILLO~~ )

This instrument was acknowledged before me on this 5th day of June 2014 by Mrs. Tammy Thornton, as Managing Member of SLG Holdings, LLC, a New Mexico Limited Liability Company.

My Commission Expires:
9.18.2014

Linda R. Lee
Notary Public

OFFICIAL SEAL
Linda R. Lee
Notary Public
State of New Mexico
My Commission Expires 9.18.2014

APPELLANT INFORMATION

City of Albuquerque

# DEVELOPMENT REVIEW APPLICATION

Effective 5/17/18

***Please check the appropriate box and refer to supplemental forms for submittal requirements. All fees must be paid at the time of application.***

| | | |
|---|---|---|
| **Administrative Decisions** | ☐ Historic Certificate of Appropriateness – Major *(Form L)* | ☐ Wireless Telecommunications Facility Waiver *(Form W2)* |
| ☐ Archaeological Certificate *(Form P3)* | ☐ Historic Design Standards and Guidelines *(Form L)* | **Policy Decisions** |
| ☐ Historic Certificate of Appropriateness – Minor *(Form L)* | ☐ Master Development Plan *(Form P1)* | ☐ Adoption or Amendment of Comprehensive Plan or Facility Plan *(Form Z)* |
| ☐ Alternative Signage Plan *(Form P3)* | ☐ Site Plan – EPC including any Variances – EPC *(Form P1)* | ☐ Adoption or Amendment of Historic Designation *(Form L)* |
| ☐ WTF Approval *(Form W1)* | ☐ Site Plan – DRB *(Form P2)* | ☐ Amendment of IDO Text *(Form Z)* |
| ☐ Minor Amendment to Site Plan *(Form P3)* | ☐ Subdivision of Land – Minor *(Form S2)* | ☐ Annexation of Land *(Form Z)* |
| **Decisions Requiring a Public Meeting or Hearing** | ☐ Subdivision of Land – Major *(Form S1)* | ☐ Amendment to Zoning Map – EPC *(Form Z)* |
| ☐ Conditional Use Approval *(Form ZHE)* | ☐ Vacation of Easement or Right-of-way *(Form V)* | ☐ Amendment to Zoning Map – Council *(Form Z)* |
| ☐ Demolition Outside of HPO *(Form L)* | ☐ Variance – DRB *(Form V)* | **Appeals** |
| ☐ Expansion of Nonconforming Use or Structure *(Form ZHE)* | ☐ Variance – ZHE *(Form ZHE)* | ☑ Decision by EPC, LC, DRB, ZHE, or City Staff *(Form A)* |

**APPLICATION INFORMATION**

| | | |
|---|---|---|
| Applicant: Paul Allen Homes / Rex Wilson | | Phone: 505-450-2395 |
| Address: 4619 Inspiration DR SE | | Email: |
| City: ABQ | State: NM | Zip: 87108 |
| Professional/Agent (if any): Blake Whitcomb - Hunt + Davis PC | | Phone: 505-881-3191 |
| Address: 2032 Mesilla St NE | | Email: blake@huntdavis.com |
| City: ABQ | State: NM | Zip: 87110 |
| Proprietary Interest in Site: | List all owners: | |

**BRIEF DESCRIPTION OF REQUEST**

Appeal of Denial of Reimbursement Request (see attached)

**SITE INFORMATION (Accuracy of the existing legal description is crucial! Attach a separate sheet if necessary.)**

| | | |
|---|---|---|
| Lot or Tract No.: | Block: | Unit: |
| Subdivision/Addition: | MRGCD Map No.: | UPC Code: |
| Zone Atlas Page(s): | Existing Zoning: | Proposed Zoning: |
| # of Existing Lots: | # of Proposed Lots: | Total Area of Site (acres): |

**LOCATION OF PROPERTY BY STREETS**

| | | |
|---|---|---|
| Site Address/Street: | Between: | and: |

**CASE HISTORY (List any current or prior project and case number(s) that may be relevant to your request.)**

| | |
|---|---|
| **Signature:** Blake Whitcomb | **Date:** 3-27-19 |
| **Printed Name:** Blake Whitcomb | ☐ Applicant or ☑ Agent |

**FOR OFFICIAL USE ONLY**

| Case Numbers | Action | Fees |
|---|---|---|
| VA-2019-00107 | Appeal | $130.00 |
| | | |
| | | |
| Meeting/Hearing Date: | | Fee Total: $130.00 |
| Staff Signature: | Date: 3-29-19 | Project # PR-2019-002263 |

## FORM A: Appeals

***Complete applications for appeals will only be accepted within 15 consecutive days, excluding holidays, after the decision being appealed was made.***

***A single PDF file of the complete application including all plans and documents being submitted must be emailed to PLNDRS@cabq.gov prior to making a submittal. Zipped files or those over 9 MB cannot be delivered via email, in which case the PDF must be provided on a CD.***

- ☐ **APPEAL OF A DECISION OF CITY PLANNING STAFF (HISTORIC PRESERVATION PLANNER) ON A HISTORIC CERTIFICATE OF APPROPRIATENESS – MINOR TO THE LANDMARKS COMMISSION (LC)**
- ☑ **APPEAL OF A DECISION OF CITY PLANNING STAFF ON AN IMPACT FEE ASSESSMENT TO THE ENVIRONMENTAL PLANNING COMMISSION (EPC)** * (See Below)
- ☐ **APPEAL TO CITY COUNCIL THROUGH THE LAND USE HEARING OFFICER (LUHO)**

__ Interpreter Needed for Hearing? ____ if yes, indicate language: _____

__ Project number of the case being appealed, if applicable: _____

__ Application number of the case being appealed, if applicable: _____

__ Type of decision being appealed: _____

__ Reason for the appeal identifying the section of the IDO, other City regulation, or condition attached to a decision that has not been interpreted or applied correctly, and further addressing the criteria in IDO Section 14-16-6-4(U)(4)

__ Appellant's basis of standing in accordance with IDO Section 14-16-6-4(U)(2)

__ Letter of authorization from the appellant if appeal is submitted by an agent

__ Copy of the Official Notice of Decision regarding the matter being appealed

* Appeal of Denial of Impact Fee Credit Reimbursement

| ***I, the applicant or agent, acknowledge that if any required information is not submitted with this application, the application will not be scheduled for a public meeting or hearing, if required, or otherwise processed until it is complete.*** | |
|---|---|
| **Signature:** Blake Whitcomb | **Date:** 3-27-19 |
| **Printed Name:** Blake Whitcomb | ☐ Applicant or ☑ Agent |
| **FOR OFFICIAL USE ONLY** | |
| Project Number: PR-2019-002263 | Case Numbers: VA-2019-00107 |
| Staff Signature: | |
| Date: 3-29-19 | |

Effective 5/17/18

PAUL ALLEN
Green Built Homes

March 27, 2019

City of Albuquerque
Planning Department

**Delivered by Hand with Notice of Appeal**

To whom it may concern:

Please be advised that Paul Allen Homes, Inc., and Rex Wilson authorize Hunt & Davis P.C. to act as their representative regarding an Appeal of the City's denial of their Request for Reimbursement of Excess Credits, and any related matters.

Very truly yours,

Paul Allen Homes, Inc.

by Rex Wilson both as President and individually

PO Box 57060, Albuquerque, NM 87187, 505-899-6768 Fax;505-899-6771

HUNT & DAVIS, P.C.
ATTORNEYS AT LAW

**CATHERINE F. DAVIS**
(cathy@huntdavislaw.com)

**BLAKE WHITCOMB**
(blake@huntdavislaw.com)

2632 Mesilla, N.E.
Albuquerque, New Mexico 87110

Telephone: (505) 881-3191

**Please refer to: 6173.017**

March 29, 2019

Delivered by email to tloyd@cabq.gov and by hand with Notices of Appeal

Tony Loyd
Impact Fee Administrator
City of Albuquerque
PO Box 1293
Albuquerque, NM 87103

**RE: APPEALS OF IMPACT FEE CREDIT REIMBURSEMENT REQUEST DENIALS**

Dear Administrator Loyd:

Please consider this correspondence as part of the Notices of Appeal ("Notices") that are being submitted concurrently herewith pursuant to § 14-19-20 of the City of Albuquerque's (the "City") Impact Fee Ordinance (herein the "Ordinance")—which Notices are being submitted by this firm on behalf of SLG Holdings, LLC ("SLG"); Paul Allen Homes, Inc. ("Paul Allen"); and, Rex Wilson ("Wilson") (collectively from time-to-time the "Appellants"). Appellants reserve the right to supplement this statement prior to any hearing as more information becomes available to them pursuant to the requests herein.

On September 28, 2018, SLG submitted to you a Request for Reimbursement of Excess Credits for Open Space Facilities in the amount of $157,167.60, which excess credits were issued in conjunction with certain improvements to the Callabacillas Arroyo (the "SLG Request" attached hereto as Exhibit A). Similarly, on November 9, 2018, Paul Allen and Wilson submitted to you a Request for Reimbursement of Excess Credits for Open Space Facilities in the amount of $268,345.00, which excess credits were also issued in conjunction with certain improvements to the Callabacillas Arroyo (the "Paul Allen Request" attached hereto as Exhibit B). At the time Appellants submitted the above requests, they were informed that there were sufficient unencumbered funds in the City's Open Space impact fee accounts to satisfy those requests. Subsequently, the City twice requested that Appellants submit W-9s for the purpose of processing the above reimbursements, which documents and amendments thereto were twice submitted on December 14, 2018, and January 29, 2019. On February 1, 2019, this firm delivered to you letters by email inquiring as to the status of the promised reimbursements and

demanding that the City expeditiously fulfill its responsibilities (the "February 1st Letters" attached hereto as Exhibit C-1 & C-2). It is my understanding that the City's Open Space impact fee accounts remained unencumbered as of February 1, 2019. On March 19, 2019, this firm received your email thanking us for February 1st Letter and denying the reimbursement requests by Appellants (the "March 19th Letter" attached hereto as Exhibit D). The only explanation provided in the March 19th Letter for the denial was a reference to § 14-19-19(J)(7)(c) of the Ordinance, flatly stating that the City was not responsible for the requested reimbursement as there is "no unencumbered account balance in the city's impact fee account for the appropriate service category and service area." No further explanation of how the referenced funds had suddenly become encumbered was provided in that letter. Thus, after six months of waiting by Appellants, it appears the City has decided to attempt to retroactively encumber its Open Space impact fee accounts solely for the purpose of denying my clients' requests, taking funds rightfully belonging to them.

As Appellants have not yet been provided an opportunity for discovery in this case, undersigned counsel must make certain assumptions in this correspondence based on both a general interpretation of the impact fee process and rumors. Under the City's Development Process Manual ("DPM"), the Impact Fee Administrator is "authorized to interpret and enforce all provisions of these Rules and the appropriate Impact Fee Ordinance of the City of Albuquerque and to carry out the general administration of all impact fees enacted by the City of Albuquerque." I am aware that the Albuquerque City Council relatively recently passed legislation amending the Ordinance so that any project on the Component Capital Improvement Plan ("CCIP") would "encumber" funds under § 14-19-19 (*see* O-2017-023). I also understand that you—as Impact Fee Administrator—have continued to interpret the Ordinance as requiring funds to be dedicated to a specific project on a specific timeline in order to be considered "encumbered" when processing requests for reimbursement of excess impact fee credits that were issued prior to the above amendment. In fact, I believe numerous such reimbursement requests have been processed and approved since the passage of the above referenced amendment to the Ordinance, all of which approvals used the older interpretation of "encumbered." I also know that you had determined that there were no encumbrances upon Open Space funds in the Impact Fee accounts as late as February of 2019. Given both your express authority to interpret the Ordinance and the administrative gloss created through your consistent history of using the above described interpretation of "encumbered" when evaluating requests for reimbursement of credits issued prior to the City Council's amendment, the City cannot simply change course and confiscate funds rightfully belonging to Appellants because it deems such a course of action more advantageous to the City.

As above noted, the March 19, 2019, Letter provided no discussion or other rationale regarding your decision to deny Appellants' request and, instead, simply quoted a questionably-applicable section of the Ordinance. Such a notice does not provide Appellants with a practical understanding of the reason for their denial and deprives them of their due process rights by forcing them to guess as to the bases for their appeal. Accordingly, I respectfully request that you provide a more detailed explanation of the bases for your denial so that Appellants may supplement this letter prior to any hearing on this matter to address that reasoning. Furthermore, I also request that the City make available:

- The records of the decisions that the City purports "encumber" the funds requested for reimbursement, including the monthly funding and budget sheets for the past nine (9) months;

- The CCIP lists adopted in the past six (6) years, any minutes regarding those documents' adoption, and the corresponding legislative record; and,

- The files relating to all impact fee credit reimbursement requests submitted to the City since January 1, 2017

I will send an IPRA request for the above documents along with this correspondence.

I anticipate that this matter will be heard at the May 9, 2019, Environmental Planning Commission hearing and, thus, my deadline for submittal of materials for "full consideration by staff" is April 29th. Accordingly, please provide your complete rationale and the above documents no later than April 15th so that my clients have an adequate opportunity to supplement this correspondence. Please feel free to contact me by email or telephone with any questions.

Very truly yours,

HUNT & DAVIS, P.C.

Blake Whitcomb
BW:bw

## EXHIBIT I
## REQUEST FOR REIMBURSEMENT OF EXCESS CREDITS

CITY OF ALBUQUERQUE

The below signed excess credit holder herby requests reimbursement of excess credits in the amounts indicated. The below signed hereby certifies that the requested amounts for reimbursement is current and correct.

SLG LLC / [signature] / 9-28-13
Name (Credit Holder) Signature Date

PO BOX 1443
Address

CORRALES / N. MEX. / 87048 / 505-338-1438
City State Zip Telephone

**Park, Recreation, Trails and Open Space Facilities**

05-CW-02 / CITY WIDE / CALABACILLAS ARROYO / OPEN SPACE /
Account Number Service Area CCIP Project Category of Improvements

$157,167.60 /
Amount

CALABACILLAS ARROYO - Land Dedication &

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

2014
Date (The year in which the excess credits may be applied)

**Public Safety Facilities**

_____ / _____ / _____ / _____ /
Account Number Service Area CCIP Project Category of Improvements

_____ /
Amount

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)

**Roadway Facilities**

_____ / _____ / _____ / _____ /
Account Number Service Area CCIP Project Category of Improvements

_____ /
Amount

EXHIBIT A

_____

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)

**Drainage Facilities**

_____/_____/_____/_____/_____/_____

Account Number Service Area CCIP Project Category of Improvements Amount

_____

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)

Approved:

| | | |
|---|---|---|
| _____/ | _____/ | _____ |
| Impact Fees Administrator | Signature | Date |

Note: The Impact Fees Administrator shall not be obligated to provide reimbursement in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.

## EXHIBIT I
## REQUEST FOR REIMBURSEMENT OF EXCESS CREDITS

CITY OF ALBUQUERQUE

The below signed excess credit holder herby requests reimbursement of excess credits in the amounts indicated. The below signed hereby certifies that the requested amounts for reimbursement is current and correct.

PAUL ALLEN HOMES / REX WILSON / 11/9/18
Name (Credit Holder) Signature Date

4619 INSPIRATION DR. S.E.
Address

ALBUQUERQUE / NM. / 87108 / 505-450-2395
City State Zip Telephone

**Park, Recreation, Trails and Open Space Facilities**

OS-CW-1 / CITY WIDE / CALABACILLAS APPROVED / OPEN SPACE /
Account Number Service Area CCIP Project Category of Improvements

Amount
LAND DEDICATION $ 268,345.00

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.
LAND DEDICATION 2014
Date (The year in which the excess credits may be applied)

**Public Safety Facilities**

_____ / _____ / _____ / _____ /
Account Number Service Area CCIP Project Category of Improvements

_____ /
Amount

_____

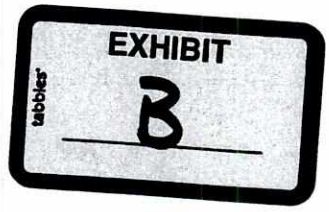
Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____
Date (The year in which the excess credits may be applied)

**Roadway Facilities**

_____ / _____ / _____ / _____ /
Account Number Service Area CCIP Project Category of Improvements

_____ /
Amount



_____

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)

**Drainage Facilities**

_____/_____/_____/_____/_____/

Account Number Service Area CCIP Project Category of Improvements Amount

_____

_____

Description of the Component Capital Improvement Plan Project for which the excess credit may be applied.

_____

Date (The year in which the excess credits may be applied)

Approved:

_____/_____/_____

Impact Fees Administrator Signature Date

Note: The Impact Fees Administrator shall not be obligated to provide reimbursement in the event there is no unencumbered account balance in the City's impact fee account for the applicable service category and service area.

HUNT & DAVIS, P.C.
ATTORNEYS AT LAW

**CATHERINE F. DAVIS**
(cathy@huntdavislaw.com)

**BLAKE WHITCOMB**
(blake@huntdavislaw.com)

2632 Mesilla, N.E.
Albuquerque, New Mexico 87110

Telephone: (505) 881-3191

**Please refer to: 6173.002**

February 1, 2019

Via email (TLoyd@cabq.gov)

Tony Loyd
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

**RE: Request for Reimbursement of Excess Credits for SLG, LLC**

Dear Mr. Loyd:

I represent SLG, LLC. On September 28, 2018, my client submitted a request for Reimbursement of Excess Credits in the amount of $157,167.60 relating to the Calabacillas Arroyo CCIP Project. At the time my client submitted its application, there were sufficient unencumbered funds in the City's open space impact fee account. I have attached a copy of that request. Per your request, on December 14, 2018, you were sent a W-9 so that the payment could be processed. Thereafter, you informed my client that the City was requiring that a modified W-9 be executed. On January 29, 2019, my client sent you the modified W-9. I have enclosed a copy of the W-9 sent to you. To date, my client has not received the reimbursement of the excess credits of $157,167.60.

Demand is made upon the City to expeditiously reimburse my client for excess credits in the amount of $157,167.60. Please advise when the reimbursement will occur. Thank you for your prompt attention to this matter.

Sincerely yours,

HUNT & DAVIS, P.C.

Catherine F. Davis

Catherine F. Davis
c: Kevin Morrow (kmorrow@cabq.gov)

EXHIBIT
tabbies
C-1

ONE ALBUQUERQUE

# Request for Supplier Information

Substitute Form **W9**

Department of Finance and Administrative Services

## SECTION 1: CONTACT INFORMATION AND TAXPAYER IDENTIFICATION NUMBER

**NAME** (as shown on your income tax return). Name is required on this line; do not leave this line blank.
SLG Holdings, LLC

**BUSINESS NAME/ disregarded entity name, if different from above.**

| PRIMARY ADDRESS (number, street, and apt or suite no) | REMITTANCE ADDRESS (number, street, and apt or suite no) |
|---|---|
| P.O. Box 1443 | P.O. Box 1443 |
| **CITY, STATE, and ZIP CODE** | **REMITTANCE CITY, STATE, and ZIP CODE** |
| Corrales, NM 87048 | Corrales, NM 87048 |
| **PHONE** | **EMAIL ADDRESS** |
| (505) 338-1438 | |

**SOCIAL SECURITY NUMBER** ☐☐☐-☐☐-☐☐☐☐ **OR** **EMPLOYER IDENTIFICATION NUMBER** 26-3861535 **New Mexico CRS TAX ID (if applicable)** 03-152323-00-4

**TAX CLASSIFICATION** (check only one)

- ☐ INDIVIDUAL/SOLE PROPRIETOR or single-member LLC
- ☐ C CORPORATION
- ☐ S CORPORATION
- ☐ PARTNERSHIP
- ☐ TRUST/ESTATE
- ☑ LIMITED LIABILITY COMPANY– Enter the tax classification (C=C Corporation, S=S Corporation, P=Partnership) → P

Note: For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single- member owner.

- ☐ 501(C)3/NON-PROFIT ORGANIZATION
- ☐ OTHER (SEE INSRUCTIONS)

**EXEMPTIONS** (codes apply to certain entities, not individuals; see instructions)

EXEMPT PAYEE CODE (if any) _____

EXEMPTION FROM FATCA REPORTING CODE (if any) _____

## SECTION 2: CERTIFICATION

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined in the instructions); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

The Internal Revenue Service does not require your consent to any provision on this document other than the certifications required to avoid backup withholding.

| SIGNATURE of U.S. person | DATE 1-29-19 |
|---|---|
| PRINT NAME Scott Grady | TITLE Member |

## SECTION 3: BUSINESS DEMOGRAPHICS (PLEASE CHECK ALL THAT APPLY)

- ☐ **Local Business** - Maintains its principal office and place of business within the Greater Albuquerque Metropolitan Area (City of Albuquerque or Bernalillo County) and ownership resides 51% here.
- ☑ **Doing Business Locally** - *Does not maintain its principal office here*, but maintains a storefront in the Greater Albuquerque Area and employs one or more Albuquerque residents.
- ☐ **Woman Owned Business** - at least 51% owned and controlled by one or more women, in the case of a publicly-owned business, at least 51% of the stock of which is owned by one or more women.
- ☐ **MBE** - Minority Business Enterprise Owned (at least 51% owned and controlled by one or more racial/ethnic minorities or, in the case of a publicly-owned business, at least 51% of the stock of which is owned by one or more minorities).
- ☐ **None of the Categories Apply**
- ☐ **Not a local business**

If your business is minority owned, please specify the race/ethnicity of minority owner(s). Check all that apply:

- ☐ American Indian or Alaska Native
- ☐ Asian
- ☐ Black or African American
- ☐ Hispanic
- ☐ Native Hawaiian or Other Pacific Islander
- ☐ Two or more races
- ☐ White

**PURCHASE ORDERS (COMPLETE ONLY IF YOU ACCEPT POs)**

| INVOICE SUBMISSION | Provide a "Remit to" Email Address: | PO (Contact Information, Full Name and Position) |
|---|---|---|
| ☐ Electronic – Transcepta | | |
| ☐ Electronic - Email | Provide an "Order From" Email Address: | |

Please return completed document to: City of Albuquerque Division, PO Box 1293, Albuquerque, NM 87103

HUNT & DAVIS, P.C.
ATTORNEYS AT LAW

**CATHERINE F. DAVIS**
(cathy@huntdavislaw.com)

**BLAKE WHITCOMB**
(blake@huntdavislaw.com)

2632 Mesilla, N.E.
Albuquerque, New Mexico 87110

Telephone: (505) 881-3191

**Please refer to: 6173.002**

February 1, 2019

Via email (TLoyd@cabq.gov)

Tony Loyd
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

**RE: Request for Reimbursement of Excess Credits for Paul Allen Homes, Inc./ Rex Wilson**

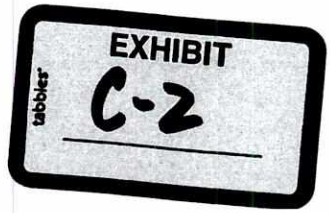
Dear Mr. Loyd:

I represent Paul Allen Homes, Inc. and Rex Wilson. On November 9, 2018, my client submitted a request for Reimbursement of Excess Credits in the amount of $268,345.00 relating to the Calabacillas Arroyo CCIP Project. At the time my client submitted its application, there were sufficient unencumbered funds in the City's open space impact fee account. I have attached a copy of that request. Per your request, on December 14, 2018, you were sent a W-9 so that the payment could be processed. On January 24, 2019, you informed my client that the City was requiring that a modified W-9 be executed. On January 25, 2019, my client sent you the modified W-9, a copy of which is enclosed. To date, my client has not received the reimbursement of the excess credits of $268,345.00.

Demand is made upon the City to expeditiously reimburse my client for excess credits in the amount of $268,345.00. The payment should be made to Rex Wilson. Please advise when the reimbursement will occur. Thank you for your prompt attention to this matter.

Sincerely yours,

HUNT & DAVIS, P.C.
Catherine F. Davis
Catherine F. Davis
c: Kevin Morrow (kmorrow@cabq.gov)



ONE ALBUQUERQUE

# Request for Supplier Information

Substitute Form **W9**

Department of Finance and Administrative Services

## SECTION 1: CONTACT INFORMATION AND TAXPAYER IDENTIFICATION NUMBER

**NAME** (as shown on your income tax return). Name is required on this line; do not leave this line blank.
Rex P. Wilson

**BUSINESS NAME/ disregarded entity name, if different from above.**

| **PRIMARY ADDRESS** (number, street, and apt or suite no) | **REMITTANCE ADDRESS** (number, street, and apt or suite no) |
|---|---|
| 4619 Inspiration Dr. S.E. | 4619 Inspiration Dr. S.E. |
| **CITY, STATE, and ZIP CODE** | **REMITTANCE CITY, STATE, and ZIP CODE** |
| Albuq., NM 87108 | Albuq., NM 87108 |
| **PHONE** | **EMAIL ADDRESS** |
| 505-450-2395 | rwr2d2@aol.com |

**SOCIAL SECURITY NUMBER** OR **EMPLOYER IDENTIFICATION NUMBER** **New Mexico CRS TAX ID (If applicable)**

5 8 5 - 6 4 - 4 5 9 5 ☐☐-☐☐☐☐☐☐☐ ☐☐-☐☐☐☐☐☐☐-☐☐-☐

**TAX CLASSIFICATION** (check only one)

- [X] INDIVIDUAL/SOLE PROPRIETOR or single-member LLC
- [ ] C CORPORATION
- [ ] S CORPORATION
- [ ] PARTNERSHIP
- [ ] TRUST/ESTATE
- [ ] LIMITED LIABILITY COMPANY– Enter the tax classification (C=C Corporation, S=S Corporation, P=Partnership) ____

Note: For a single-member LLC that is disregarded, do not check LLC; check the appropriate box in the line above for the tax classification of the single- member owner.

- [ ] 501(C)3/NON-PROFIT ORGANIZATION
- [ ] OTHER (SEE INSRUCTIONS)

**EXEMPTIONS** (codes apply to certain entities, not individuals; see instructions)

EXEMPT PAYEE CODE (If any) ____

EXEMPTION FROM FATCA REPORTING CODE (If any) ____

## SECTION 2: CERTIFICATION

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined in the instructions); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

**The Internal Revenue Service does not require your consent to any provision on this document other than the certifications required to avoid backup withholding.**

| **SIGNATURE of U.S. person** R P Wilson | **DATE** 1/25/19 |
|---|---|
| **PRINT NAME** Rex P. Wilson | **TITLE** |

## SECTION 3: BUSINESS DEMOGRAPHICS (PLEASE CHECK ALL THAT APPLY)

- [X] **Local Business** - Maintains its principal office and place of business within the Greater Albuquerque Metropolitan Area (City of Albuquerque or Bernalillo County) and ownership resides 51% here.
- [ ] **Doing Business Locally** - *Does not maintain its principal office here*, but maintains a storefront in the Greater Albuquerque Area and employs one or more Albuquerque residents.
- [ ] **Woman Owned Business** - at least 51% owned and controlled by one or more women, in the case of a publicly-owned business, at least 51% of the stock of which is owned by one or more women.
- [ ] **MBE** - Minority Business Enterprise Owned (at least 51% owned and controlled by one or more racial/ethnic minorities or, in the case of a publicly-owned business, at least 51% of the stock of which is owned by one or more minorities).
- [ ] **None of the Categories Apply**
- [ ] **Not a local business**

If your business is minority owned, please specify the race/ethnicity of minority owner(s). Check all that apply:

- [ ] American Indian or Alaska Native
- [ ] Asian
- [ ] Black or African American
- [ ] Hispanic
- [ ] Native Hawaiian or Other Pacific Islander
- [ ] Two or more races
- [ ] White

**PURCHASE ORDERS (COMPLETE ONLY IF YOU ACCEPT POs)**

| **INVOICE SUBMISSION** | | Provide a "Remit to" Email Address: | **PO (Contact Information, Full Name and Position)** |
|---|---|---|---|
| ☐Electronic – Transcepta | ☐ | | |
| ☐Electronic - Email | ☐ | Provide an "Order From" Email Address: | |

Please return completed document to: City of Albuquerque Division, PO Box 1293, Albuquerque, NM 87103

# CITY OF ALBUQUERQUE

Mayor Timothy M. Keller

Planning Department
David S. Campbell, Director

March 19, 2019

Hunt & Davis, P.C. Attorneys at Law
Catherine F. Davis
2632 Mesilla, NE
Albuquerque, NM 87110

Dear Ms. Davis,

Thank you for your letter dated February 1, 2019, on behalf of your clients SLG, LLC and Paul Allen Homes, Inc., requesting reimbursement from the City of Albuquerque for all or part of the amount of excess open space impact fee credits from revenue generated by impact fees paid by new development for system improvements in the city wide service area.

PO Box 1293

Albuquerque

NM 87103

www.cabq.gov

Since the requirements for reimbursement of excess credits, as defined in the City's Impact Fee Ordinance "Ordinance" have not been met, your request for reimbursement of excess open space credits will be denied for the following reason:

- Per Section 14-14-19(J)(7)(c) of the Ordinance, the city shall not be obligated to provide reimbursements for excess credits in the event there is no unencumbered account balance in the city's impact fee account for the appropriate service category and service area.

By Ordinance under Section 14-19-20 Administrative Appeals, should you disagree with this decision, you must submit a notice of appeal and payment of a nonrefundable processing fee to the impact fees administrator or designee within 30 days following the date of this letter. Appeals shall be considered by the Environmental Planning Commission in accordance with the rules and regulations of that administrative body.

If you have any questions, please feel free to contact me.

Sincerely,

Tony Loyd

Tony Loyd
Impact Fee Administrator
City of Albuquerque
Planning Department
(505) 924-3934
tloyd@cabq.gov

Albuquerque

EXHIBIT
tabbies
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