



Meeting Date: May 20, 2015

Staff Contact: Kristopher Cadena, Acting Principal Engineer, Utility Development

TITLE: R-15-13 - Development Agreement for The Trails Unit 2 Development

ACTION: Immediate Action

SUMMARY:

The Trails Unit 2 Development is located in the southwest quadrant of the intersection of Woodmont Ave. and Universe Blvd. within the City Limits. The project consists of 58 individual building lots.

The property lies within Pressure Zone 4W in the Corrales Trunk.

Water and wastewater service is contingent on the Developer constructing internal distribution and collector lines that tie to the existing infrastructure proximate to the property. The Developer will also be responsible for the removal and abandonment of an existing wastewater lift station as well as abandoning the corresponding force main. A new wastewater interceptor will be constructed as a replacement for the lift station.

The new wastewater interceptor is considered a Master Plan facility, and as such, the costs associated with the construction of the interceptor and the abandonment of both the existing lift station and force main will be eligible for reimbursement. This reimbursement will be on a pro-rated basis and will be assessed against future development in the surrounding areas.

All services sold within the Trails Unit 2 Development will be subject to current Utility Expansion and Water Supply Charges.

FISCAL IMPACT:

The execution of this Development Agreement will not have a fiscal impact on the Water Authority.

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY**

BILL NO. R-15-13

1 RESOLUTION

2 AUTHORIZING AN AGREEMENT WITH RCS-TRAILS TRACT 8, LLC.

3 WHEREAS, RCS is the developer and owner of approximately 9.45 acres of land
4 located on the southwest corner of Woodmont Ave and Universe Blvd; and

5 WHEREAS, the planned development is for 58 residential lots; and

6 WHEREAS, the property which is located outside the service area of the Water
7 Authority will require a development agreement for the extension and/or connection of
8 water and sewer lines to the Water Authority’s water and sewer system; and

9 WHEREAS, the Water Authority’s Water and Wastewater System Expansion
10 Ordinance requires that new service developed outside the Water Authority’s service
11 area will incur no net expense to the Water Authority and be subject to provisions of
12 relevant updated planning documents as approved by the City and/or County; and

13 BE IT RESOLVED BY THE WATER AUTHORITY:

14 Section 1. RCS will obtain all permits, assurances, and approvals from the
15 Water Authority and the City of Albuquerque development/design review process.
16 Construction of water and/or sewer lines shall be in conformance with the plans
17 approved by the Water Authority and all applicable plans, specifications, requirements,
18 and standards of the Water Authority.

19 Section 2. The expansion of the System shall incur no net expense to the Water
20 Authority.

21 Section 3. RCS will be responsible for close coordination of the project with the
22 Water Authority during the design and construction phases, including the review of the
23 design details during the design process, and the approval of specifications and
24 contract documents.

25 Section 4. The Executive Director is authorized to enter into the agreement with
26 RCS for the provision of water and sewer service.

DEVELOPMENT AGREEMENT
The Trails Unit 2 Subdivision

Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision, (“Water Authority”) and **RCS - Trails Tract 8, LLC**, a New Mexico limited liability company, (“RCS”) (together, “Parties”), agree as follows:

1. Recitals

- A.** RCS, is the developer and owner of certain real property located at The Trails Unit 2 (collectively, the “Property”) consisting of approximately 56 individual residential building lots. The area of the development is more particularly described and as shown on **Exhibit A** attached hereto and incorporated herein by reference. The Property is located in the old New Mexico Utilities, Inc. (“NMUI”) service area and is located outside the Water Authority’s currently adopted Water Service Area.
- B.** The Legal Description of the Property is Tract 8 Bulk Land Plat of The Trails Unit 2 (Being a Replat of Tracts G & J The Trails and Unplatted Deed Parcels) Containing 9.45 AC.
- C.** The Property is located in Pressure Zone 4W within the Corrales Trunk.
- D.** The Parties desire to agree upon terms and conditions pursuant to which the Authority will provide water and sanitary sewer service to the Property. RCS desires to construct, or cause to be constructed extensions of public water lines (“line extensions”) including all appurtenances and extension of existing sanitary sewer infrastructure under all relevant plans, specifications, requirements, and standards of the Water Authority. The Availability Statement for the Property reflecting the line extensions and other matters referred to in this Agreement is attached hereto as **Exhibit B** and incorporated herein by reference and made a term of this Agreement.
- E.** The expansion of the existing water distribution system to the Property will require additional arsenic treatment and water storage capacity within the Pressure Zone 4W distribution system. As such, the Property will be assessed a Facility Fee that reflects their proportional costs of the required additional system capacities.
- F.** The water line extensions referenced in this Agreement are not considered Master Plan waterlines by the Water Authority. As such, reimbursement of construction costs associated with this waterline extension will not be available through water UEC (defined below in Section 3.B) reimbursements.

- G. The sanitary sewer line extension in Universe Blvd. that is associated with the decommissioning and removal of the existing sanitary sewer lift station, as referenced in this Agreement is considered to be Master Plan line by the Water Authority. As such, the construction costs associated with this sanitary sewer line, including rock trenching, will be eligible for reimbursement through Water Authority administered pro-rata assessment to other properties that will be served by this new line. This pro-rata reimbursement will also apply to the costs associated with the abandonment in place of the existing force main in Universe Ave. as well as the abandonment of the existing lift station. This pro-rata assessment is further defined in Section 4. The costs incurred by the Property for the construction of the Master Plan line will be eligible for UEC reimbursement up to 16.1% of the total cost as determined in Section 4.

2. Design and Construction of the Waterlines and Sanitary Sewer Line

- A. RCS will cause definitive designs and plans of the line extensions and sanitary sewer extensions to be produced which will include estimates of all costs and expenses. RCS will not connect the extension lines to the existing water and sanitary sewer lines within the City of Albuquerque (“City”) public right-of-way until the Water Authority has approved the line extensions. RCS will convey, at no expense to the Water Authority, all necessary easements to the Water Authority at locations reasonably acceptable to RCS, free and clear of all liens, claims, and encumbrances for the construction, operation, and maintenance of the line extension. RCS will obtain all necessary permits, assurances, and approvals from the Water Authority and City, and RCS will deliver a copy of such conveyances, permits, assurances, and approvals to the Water Authority prior to the start of construction, which will be handled through the City work order process.
- B. RCS will complete, or cause to be completed, construction of the line extensions, approved by the City of Albuquerque Design Review Committee and the Water Authority, and in conformance with all applicable plans, specifications, and standards of the City and the Water Authority.
- C. RCS will be responsible for close coordination of the project with the Water Authority during the design and construction phases, including review of the design details during the design process, and the approval of specifications and contract documents. The Water Authority will review and approve in a timely manner the design plans for construction and estimated cost, to ensure the designs meet Water Authority standards and follow the guidance provided in the City’s Development Process Manual (“DPM”) and/or applicable Water Authority Design Manuals.

- D.** To the extent relevant and applicable and to the extent there is no conflict with the terms of this Agreement, the usual procedures and documentation, including the Procedure “B”, as defined in the Subdivision Ordinance and the DPM of the City, will be followed and used for the line extensions and sanitary sewer modifications.
- E.** RCS will, at no cost to the Water Authority, decommission, dismantle, and remove the existing sanitary sewer lift station located on the south east quadrant of Property (**Exhibit C**). The decommissioning of this facility will be under the direction of the Water Authority. The dismantling of this facility may also include the salvaging of lift station components as directed by the Water Authority.
- F.** RCS will, at no cost to the Water Authority, abandon in place and lean fill the existing sanitary sewer force main associated with the lift station along City right-of-way. The limits of this work are to be approved by the City of Albuquerque Design Review Committee and the Water Authority, and in conformance with all applicable plans, specifications, and standards of the City and the Water Authority.

3. Service

- A.** RCS shall comply with the Water Authority’s Water and Sewer System Expansion Ordinance, as amended from time to time. Connection for water service shall require concurrent sewer service connection to the Water Authority’s wastewater system.
- B.** RCS or its successor shall pay Utility Expansion Charges (UEC) and the Water Supply Charges (WSCs) at the rates that are imposed at the time of a service connection, as provided in the Water Authority’s Water and Sewer Rate Ordinance, as amended from time to time.
- C.** RCS shall pay a Facility Fee to the Water Authority in the amount of \$45,826. This fee reflects the proportional costs associated with the design and construction of supplemental arsenic treatment and distribution water storage in the Northwest Service Area which provides potable water service to the Property. No utility services will be sold to the Property until the Facility Fee is paid in whole. As the expansion of system capacity is classified as Master Plan Facility Improvements, this Facility Fee is reimbursable by the Water UEC’s collected as services are established for the 56 residential lots within the Property. The UEC reimbursements will total no more than the Facility Fee amount. Reimbursement will be on a Fiscal Year basis. The Reimbursement request must be initiated by RCS or its successor.

D. Pursuant to Water Authority Resolution No. R-05-13, RCS agrees that it shall incorporate water conservation guidelines that will seek to achieve water usage of no more than seventy-five (75) gallons per capita per day.

- 4. Pro-Rata.** Pro-rata will be assessed against the undeveloped parcels adjacent to and on the west side of Universe Blvd. These parcels are defined as:

Parcel #1: Part of Tract 4 within the SE1/4 NW1/4 NE1/4 OF T11N R2E SEC 16 Containing 5.0 AC; UPC No: 100906439345110111

Parcel #2: Tract 2 Bulk Land plat of The Trails Unit 2 (Being a Replat of Tracts G & J The Trails and Unplatted Deed Parcels Containing 10.4 AC; UPC No: 100906444647910105

Parcel #3: Tract 3 Bulk Land Plat of The Trails Unit 2 (Being a Replat of Tracts G & J The Trails and Unplatted Deed Parcels) Containing 10.5 AC; UPC No: 100906450248510106

Parcel #4: Tract A Plat of Tracts A, B and C Cantata at The Trails Unit 2 (Being a Replat of Tract OS-4 The Trails Unit 2 & Tract ATAOS at The Trails Unit 2) Containing 3.2 AC; UPC No: 100906445841110201

Parcel #5: n/a Fully Developed

Parcel #6: Tract B Plat of Tracts A, B & C Ancient Mesa Containing 20.0 AC; UPC No: 100906448915440104

This pro-rata will be used to offset the proportional cost of construction of the new wastewater pipe line, in Universe Blvd. (**Exhibit D**). A proportion of the costs associated with the abandonment of the existing lift station and force main in Universe Blvd. will also be eligible for pro-rata reimbursement. These proportional costs will be based on the overall acreage of the contributory parcels as shown in the following **Table 1**.

Table 1: Proportional Pro-Rata Assessment

Parcel No.	Acreage	Proportional Pro-Rata Cost of Wastewater Line Construction
1	5	8.5%
2	10.4	17.8%
3	10.5	17.9%
4	3.2	5.5%
5	n/a	n/a
Site	9.4	16.1%
6	20.0	34.2%
Totals =	58.5	100.0%

This pro-rata assessment will be charged to these properties as part of the overall utility expansion process when and as they move through the City of Albuquerque and Water Authority development review process. The pro-rata will be administered as per the current Albuquerque Bernalillo County Water Utility Authority Water and Wastewater System Expansion Ordinance.

- 5. Termination.** If construction of the waterline extensions and sanitary sewer extensions by RCS has not been completed and accepted by the Water Authority within seven years of the effective date of this Agreement, this Agreement shall automatically terminate, and the Water Authority and RCS shall have no further rights, obligations, or liabilities with respect to this Agreement, unless otherwise agreed in writing.
- 6. Water for Construction.** During the construction of the waterline extensions and sanitary sewer line extensions, water for construction may be obtained from a hydrant designated by the Water Authority as set forth on **Exhibit E** attached hereto and incorporated herein by reference. If economically feasible, the Contractor is encouraged to utilize alternative methods for dust abatement and control including compost from the Water Authority.
- 7. Indemnification.** RCS will defend, indemnify and hold harmless the Water Authority and its officials, agents, and employees on demand from any claims, actions, suits, or other proceedings arising from the acts or omissions of RCS, its agents, representatives, contractors, or subcontractors, or arising from the failure of RCS, its agents, representatives, contractors, or subcontractors to perform any act or duty required of RCS in this Agreement. The indemnification by RCS will not extend to the negligent acts of the Water Authority.
- 8. Representations and Warranties of RCS.** RCS represents and warrants that:
 - A.** RCS is a validly existing limited liability company under the laws of the State of New Mexico.

- B. RCS has all the requisite power and authority to enter into this Agreement and bind RCS under the terms of the Agreement; and
- C. The undersigned officer of RCS is fully authorized to execute this Agreement on behalf of RCS.

9. **Notices.** Any notice to be given under this Agreement will be in writing and will be deemed to have been given when deposited with the United States Postal Service, postage prepaid and addressed as follows:

If to the Water Authority:

Mark S. Sanchez
Executive Director
Albuquerque Bernalillo County
Water Utility Authority
One Civic Plaza, Room 5012
Albuquerque, New Mexico 87102

If to RCS:

RCS, LLC
Attn: Brian Paul
Vice President of Homebuilding Division
371 Centennial parkway, Suite 200
Louisville, Colorado 80027

10. **Assignment.** This Agreement will not be assigned without the prior written consent of the Water Authority and RCS.

11. **Miscellaneous.** This Agreement will be governed by and interpreted in accordance with the laws of the State of New Mexico. The headings used in this Agreement are for convenience only and shall be disregarded in interpreting the substantive provisions of the Agreement. This Agreement binds and benefits the Water Authority and their successors, assigns, and transferees and RCS and their successors, assigns and transferees. Time is of the essence of each term of this Agreement. If any provision of this Agreement is determined by a court of competent jurisdiction to be void, invalid, illegal, or unenforceable, that portion will be severed from this Agreement and the remaining parts will remain in full force as though the invalid, illegal, or unenforceable portion had never been a part of this Agreement.

12. **Integration; Interpretation.** This Agreement contains or expressly incorporates by reference the entire agreement of the parties with respect to the matters contemplated by this Agreement and supersedes all prior negotiations. This Agreement may only be modified in writing executed by both parties.

13. Approval. This Agreement is subject to the approval of the Board of Directors of the Water Authority and will not become effective until approved by the Water Authority.

14. Effective Date. The effective date of this Agreement is the date last entered below.

In Witness Whereof, the parties hereto have executed this Agreement on the dates entered below.

**Albuquerque Bernalillo County
Water Utility Authority**

RCS, LLC

By: _____
Mark S. Sanchez
Executive Director

By: _____
Brian Paul
Vice President of Homebuilding
Division

Date: _____

Date: _____

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on _____, 20__ by Brian Paul, Vice President of Homebuilding Division of RCS, LLC, a New Mexico Limited Liability Company, on behalf of said Company.

Notary Public

My Commission Expires:

STATE OF NEW MEXICO)

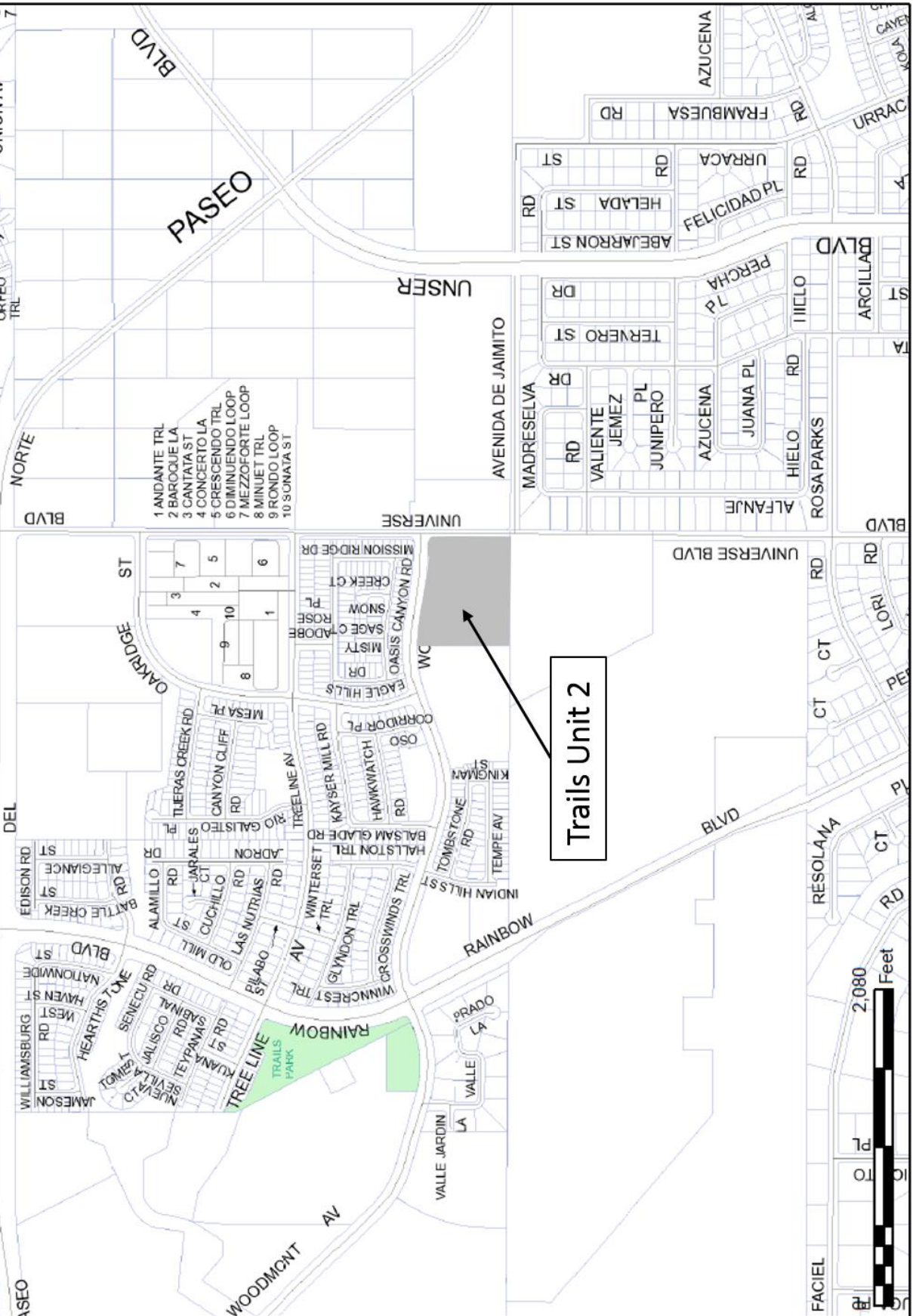
COUNTY OF BERNALILLO) ss
)

This instrument was acknowledged before me on _____, 20__ by Mark S. Sanchez, Executive Director of the Albuquerque Bernalillo County Water Utility Authority, a New Mexico political subdivision.

Notary Public

My Commission Expires:

Exhibit A: Trails Unit 2 Location Map



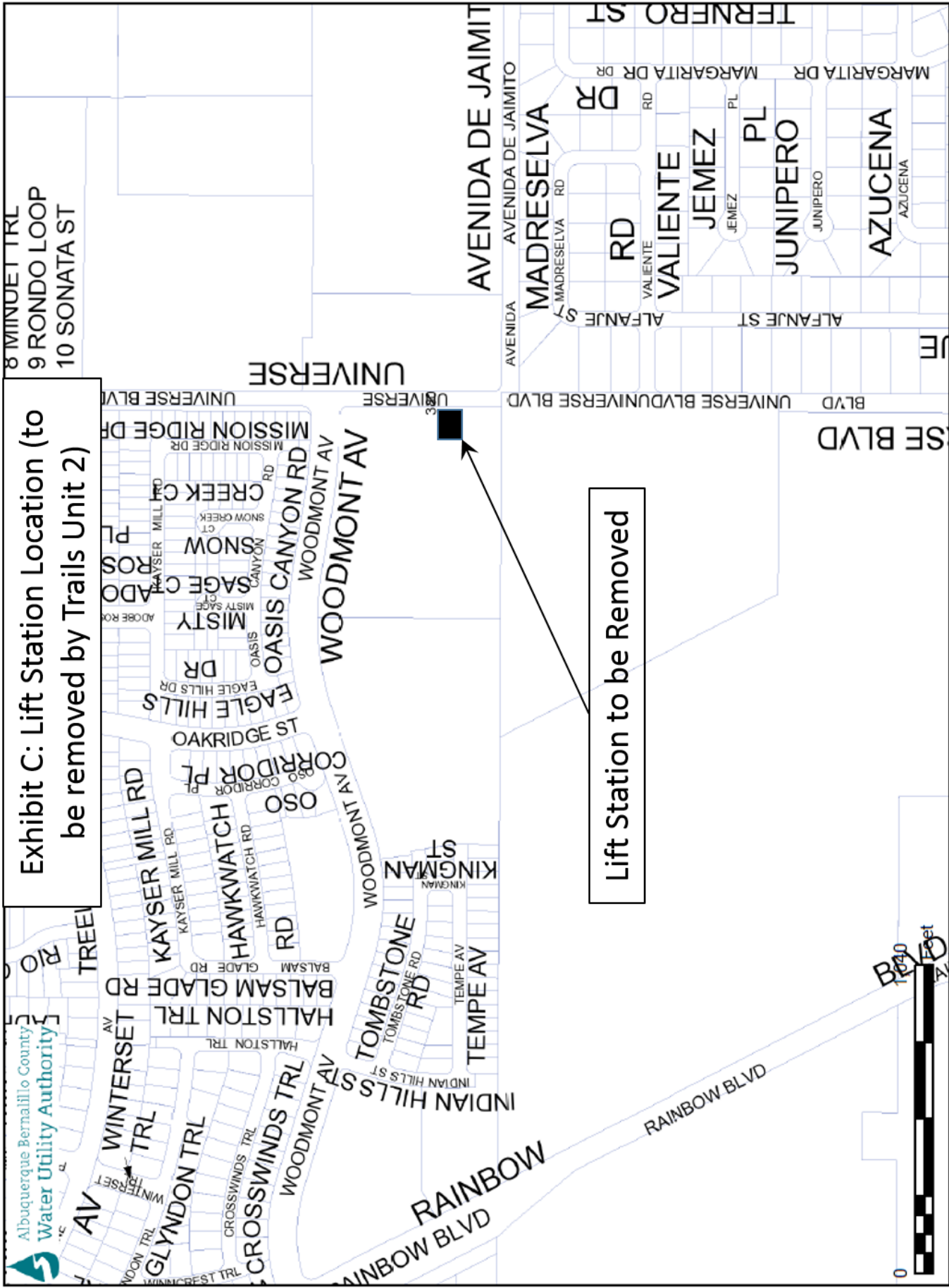


Exhibit C: Lift Station Location (to be removed by Trails Unit 2)

Lift Station to be Removed



Exhibit D: Pro-Rata Assessment Parcels



