

Section 6. RIGHTS-OF-WAY, EASEMENTS AND COVENANTS

A. Rights-of-Way - Introduction

Land necessary for permanent drainage, flood control, erosion control or major arroyos must be dedicated in fee simple to SSCAFCA. SSCAFCA may grant an easement to the City for joint operation and maintenance of drainage facilities and for sole operation and maintenance of quality of life amenities and other City owned infrastructure. SSCAFCA will require sole dedication of drainage right-of-way without a City easement for all high hazard drainage facilities. Easements benefiting SSCAFCA may be considered for temporary access, construction, and unique purposes; temporary use of questionable land areas (that could revert to a land owner) or for uses adjacent and ancillary to those for flood control and drainage management (e.g.: joint recreation or landscaping).

Note: both easements and rights-of-way can be “dedicated” for a use or purpose by statutory enactment (a plat map) or conveyed by a document (deed or grant of easement). A “covenant” is a document, usually separate from a dedication that can be used for guaranteeing continuing action by one of the parties (e.g. required maintenance or insurance coverage on dedicated property). Also, some forms of dedication instruments are subject to the provisions of the Minimum Standards for Surveyors (NMAC 12.8.2.) and may require separate staking, recording of survey documents and limitations or conditions of metes and bounds legal descriptions. The value of all dedicated ROW and granted easements to SSCAFCA must be provided to satisfy federal auditing requirements.

B. Fee Simple ROW

1. Dedication Language (statutory, upon plat creation, acceptance and recordation):

The real estate shown and described in this plat is dedicated with the free consent of and in accordance with the wishes and desires of the undersigned Owner(s) thereof, and the Owner(s) of such real estate do hereby dedicate all drainage rights-of-way which are shown hereon including parcels _____ to the Southern Sandoval County Arroyo Flood Control Authority, a political subdivision of the State of New Mexico in fee simple with warranty covenants, subject to the easements shown or noted hereon, and do hereby grant any and all easements shown or noted on the plat including the right of ingress and egress.

2. Conveyance Language (documentary):

The Owner (or “Grantor”, etc.) hereby grants (or hereby conveys) to Southern Sandoval County Arroyo Flood Control Authority, a political subdivision of the State of New Mexico, the following described property...

Note: documentary conveyances are usually prepared by an attorney or Registered Land Surveyor, for consideration and prior acceptance by SSCAFCA, and then recorded as a deed in fee simple or easement.

C. Easements

Easements for drainage, flood control and erosion control facilities may be acceptable in rare, special occasions as long as a clear written and approved agreement exists with SSCAFCA as to other acceptable uses of the easements and no permanent facilities are constructed within them. The use of an easement may require an accompanying covenant governing the permitted uses and clearly assigning the continuing responsibilities of the parties using said easement. High hazard structures can only be constructed on publicly owned property dedicated or conveyed in fee simple title to SSCAFCA.

1. Grant of Easement to SSCAFCA (include this language on all plats and as separate instrument, if documentary):

The Grantor hereby grants to SSCAFCA, a non-exclusive easement upon, over, under and across _____ (the "Easement Property"). SSCAFCA shall use the Easement Property solely for the access, construction, operation and maintenance of storm water drainage facilities. This easement shall be perpetual in duration; except that if at any time in the future the Easement Property should cease to contain a drainage facility, this easement shall terminate.

Note: A termination shall be effected upon recordation of a Termination of Easement document signed and acknowledged by SSCAFCA and all other easement grantees.

2. Grant of Easement to the City of Rio Rancho (Reference City DPM):

This easement is appurtenant to SSCAFCA's Easement Property referred to above.

The City shall maintain all City owned improvements within the Easement Property including, but not limited to, recreational facilities, open space, grass, landscaped areas, irrigation facilities, fences, City utility lines, retaining/landscape walls, all recreation and public access trails including asphalt bike trails, drop/surface inlets, storm drainage laterals, roads, roadway crossings, including the underlying culverts/structures and all drainage facilities, except those regional drainage facilities hereinabove identified as the responsibility of SSCAFCA.

Note: Easements that are not contiguous to existing platted lot or tract lines may require a legal description prepared by a surveyor and staked, physical corner monuments. A separate "plat", filed in public records as a "Plat of Survey" may also be required.

3. Sample Language

a. Drainage Facilities and/or Detention Areas Maintained by Lot Owner

Areas designated on this plat as “drainage easement” or “detention area” are hereby dedicated by the owners as perpetual easements for the common use and benefit of the lots within the subdivision and for the purpose of permitting the conveyance of storm water runoff and the construction* and maintenance of drainage facilities or storm water detention facilities in accordance with standards prescribed by the City of Rio Rancho and SSCAFCA (City/SSCAFCA). ** No fence, wall, planting, building or other obstruction may be placed or maintained in said easement area without approval of the City/SSCAFCA, and there shall be no alteration of the grades or contours in said easement areas without the approval of the City/SSCAFCA. It shall be the duty of the lot owners of this subdivision to maintain said drainage easements or detention areas and facilities at their cost in accordance with standards prescribed by the City/SSCAFCA. The City/SSCAFCA shall have the right to enter periodically to inspect the facilities. In the event said lot owners should fail to adequately and properly maintain said drainage easements or detention areas and facilities, at any time after fifteen (15) days written notice to said lot owners, the City/SSCAFCA may enter upon said area and perform necessary maintenance. The cost of performing said maintenance shall be assessed and paid by said lot owners proportionately on the basis of lot ownership. In the event that any lot owners fail to pay the cost of said maintenance or any part thereof within thirty (30) days after demand for payment is made by the City/SSCAFCA, the City may file a lien therefore against all lots in the subdivision for which proportionate payment has not been made. The obligations imposed herein shall be binding upon the owners, their heirs, and assigns and shall run with all lots within this subdivision.

The lot owners agree to defend, indemnify, and hold harmless, SSCAFCA, the City, and their officials, agents and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against said parties for or on account of any matter arising from the drainage facility as provided for herein or for the lot owner’s failure to construct, maintain, or modify the drainage facilities specified herein.

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*This assumes owner’s promise to construct will be imposed by a separate agreement.

** [Possible alternative:] Grantor shall construct drainage [detention] facilities in the easement in accordance with standards prescribed by the City/SSCAFCA and plans and specifications approved by the City/SSCAFCA in accordance with the drainage report entitled _____, submitted by _____ on, _____ and approved by the City/SSCAFCA on _____, together with the amendments approved on _____, which report and amendments are on file in the offices of the City and/or SSCAFCA.

b. Dedication of Drainage Easements: Owner Constructs and City/SSCAFCA Maintains

A perpetual easement on the areas designated on this plat as “drainage easements” or “detention areas” are hereby dedicated to the City of Rio Rancho/SSCAFCA for the purpose of permitting the conveyance of storm water runoff and for the purpose of maintaining, operating, removing, and replacing storm water drainage facilities or detention facilities. No fence, wall, planting, building, or other obstruction may be placed or maintained in said easement area and there shall be no alteration of the grades or contours in said dedicated area without the approval of the City/SSCAFCA. No obstructions may be placed in said easement areas which would prevent ingress and egress by maintenance vehicles or which would prevent said vehicles traveling on said drainage way for maintenance purposes.

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*The City/SSCAFCA could require dedication of the drainage or detention areas in fee simple since the City/SSCAFCA here will be responsible for maintenance. The beginning of the first sentence could read: “the areas designated on this plat as ‘drainage or detention areas’ are hereby dedicated to the City of Rio Rancho/SSCAFCA in fee simple for the purpose of _____.” We might then add: “the City/SSCAFCA may use the property herein dedicated for other public purposes.

c. Grant of Drainage Easement Sample Language

This grant of easement is made and executed this _____ day of _____ 20____, by and between _____, hereinafter called the “Grantor” and the City of Rio Rancho, New Mexico, a municipal corporation, hereinafter called the “City” and the Southern Sandoval County Arroyo Flood Control Authority, a political subdivision of the State of New Mexico hereinafter called “SSCAFCA”

1. The Grantor is the owner of the following described real property within the City of Rio Rancho:
2. For good and valuable consideration, the receipt of which is hereby acknowledged, Grantor does hereby grant to the City of Rio Rancho/SSCAFCA a perpetual easement over and across a portion of Grantor’s property for the purpose of permitting the flow, retention, conveyance, and discharge of storm water runoff and for the purpose of constructing and maintaining storm water detention facilities and any appurtenances thereto, such as SWPPP installations or for storm water detention facility.
3. The easement and right-of-way land is more particularly described as follows:

(Note: the possible requirement of a metes and bounds legal description.)

4. Grantor shall construct drainage facilities in the easement in accordance with standards prescribed by the City and plans and specifications approved by the City Engineer/SSCAFCA Executive Engineer.
5. Possible Additional Language: in accordance with standards prescribed by the City/SSCAFCA and plans and specifications approved by the City/SSCAFCA in accordance with the drainage report entitled _____, submitted by _____ on _____, and approved by the City/SSCAFCA on _____ together with the amendments approved on _____, which report and amendments are on file in the office of the City Engineer/SSCAFCA.
6. The easement and any drainage facilities constructed thereon shall be maintained by the Grantor, at Grantor's cost, in accordance with standards prescribed by the City/SSCAFCA. The City/SSCAFCA shall have the right to enter periodically upon the premises to inspect the drainage facilities.
7. In the event that the Grantor should fail to construct the drainage facilities contemplated herein or fail to adequately and properly maintain the easement and any facilities constructed thereon, the City/SSCAFCA or its agents, at any time following fifteen (15) days written notice to the property owner, may enter upon said property to perform the necessary construction or maintenance. The cost of performing such construction or maintenance shall be paid by the owner. In the event the property owner fails to pay the costs of such construction or maintenance within thirty (30) days after written demand for payment is made for the City/SSCAFCA. The City/SSCAFCA may file a lien therefore against the real property described in paragraph 1 above.
8. No fence, wall, planting, building or other obstruction may be placed or maintained in the easement without the written approval of the City/SSCAFCA and there shall be no alteration of the grades or contours in said easement after drainage facilities are constructed without the written approval of the City/SSCAFCA. Any violation of this provision will be promptly corrected upon notice to the property owner from the City/SSCAFCA and if not corrected promptly, the City/SSCAFCA shall have the right to remove or otherwise correct such violation and assess the cost to the property owner as provided in paragraph 6 above.
9. This easement to the City/SSCAFCA is permanent in nature for the uses and purposes set forth herein unless the City/SSCAFCA releases said easement in writing and it is recorded with the County Clerk.
10. The obligations of the Grantor set forth herein shall be binding upon the Grantor and Grantor's, heirs, successors and assigns.
11. The City/SSCAFCA shall not be liable for any damages to the Grantor resulting from its construction, modification, or maintenance of said facilities.

The Grantor agrees to defend, indemnify, and hold harmless, the City/SSCAFCA, its officials, agents and employees from and against any and all claims, actions, suits, or

proceedings of any kind brought against said parties for or on account of any matter arising from the drainage facility provided for herein or the Grantor's failure to construct, maintain, or modify the drainage facility under this covenant specified herein. The Grantor further agrees to maintain general liability insurance on the property easement in an amount not less than \$500,000.

12. The written notices provided for herein shall be sent by first class mail to:

The Grantor may change said address by notice in writing sent by, certified or registered mail, return receipt requested to the City Engineer, 3200 Civic Center Circle, Rio Rancho, New Mexico 87144 and to the Executive Engineer, SSCAFCA 1041 Commercial Street SE, Rio Rancho, New Mexico 87124.

IN WITNESS WHEREOF, the parties have set their hands and seals this _____ day of _____ 20_____.

City of Rio Rancho

GRANTOR

By: _____

Title: _____

SSCAFCA

By: _____

Title: _____

D. Drainage Covenants

Occasionally, a developer of a property will choose to employ a drainage scheme that requires installation and maintenance of drainage features on the developer's property or other properties. In those instances where such drainage features must be perpetually maintained to minimize possible damage to other properties or to public properties, the City may require the developer enter into a covenant assuring maintenance of such facilities. There are four (4) types of covenants which are discussed below.

Covenants are to run with the land. They generally require the owner of the land to maintain features to City/SSCAFCA standards and allow the City's/SSCAFCA's entrance upon the property to inspect drainage features for such maintenance as needed. A typical example of such drainage covenant and instructions for the use of the covenant are presented in the DPM.

The following is a brief description of the four types of drainage covenants the City/SSCAFCA may require the developer to enter into:

1. **Private Facility Drainage Covenant** – for a privately owned, privately maintained facility, which places maintenance and inspection responsibility on the property owner(s). For example, a cutoff wall to protect property adjacent to an unlined arroyo.
2. **Drainage Covenant (no public easement)** – for a privately owned, privately maintained facility whose non-function or failure to perform, will cause damage to others. For example, a large detention pond in a shopping center. The maintenance responsibilities lie with the owner. The City/SSCAFCA, however, have the right to inspect periodically and to enforce proper maintenance.
3. **Agreement and Covenant** – for a privately maintained facility which is within the City's/SSCAFCA's property (right-of-way or easement). The City/SSCAFCA have the right to inspect and to enforce proper maintenance. For example, phased developments that require temporary retention ponds and/or sediment ponds.
4. **Private Facility Drainage Covenant and Reservation of Private Drainage Easement** – for a privately owned, privately maintained facility which places maintenance and inspection responsibility on the property owner(s). For example, a pond used in common by more than one property owner.

5. **Drainage Covenant Sample Language**

This Drainage Covenant, between [state the name of the present real property owner exactly as shown on the real estate document conveying title to the present owner and state the legal status of the owner, for example, “single person,” “husband and wife,” “corporation of the State of X,” “partnership”]
 (“Owner”): _____

[his, her, their, or its] heirs, executors, successors, assigns and transferees, whose address is _____

and the Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA) is entered into as of the date Owner signs this or any Easement benefiting SSSCAFCA to the subject property as attached.

Recital. Owner is the owner of certain real property located at [give general description, for instance, subdivision, lot and block or street address]: _____ in Sandoval County, New Mexico (the “Property”).

Pursuant to City and County ordinances, regulations and other applicable laws, the Owner is required to construct and maintain certain drainage facilities on the Property, and the parties wish to enter into this agreement to establish the obligations and responsibilities of the parties.

Description and Construction of Drainage Facilities. Owner shall construct the following “Drainage Facility” within the Property at Owner’s sole expense in accordance with the standards, plans and specifications approved by SSCAFCA:

The Drainage Facility is more particularly described in the attached Exhibit A.

The Owner shall not permit the Drainage Facility to constitute a hazard to the health or safety of the general public.

Maintenance of Drainage Facility. The Owner shall maintain the Drainage Facility at Owner’s cost in accordance with the approved Drainage Report and plans.

Right of Entry. SSCAFCA/City have the right to enter upon the Property at any time and perform whatever inspection of the Drainage Facility it deems appropriate, without liability to the Owner.

Demand for Removal, Construction or Repair. SSCAFCA/City may send written notice (“Notice”) to the Owner requiring the owner to construct, remove or repair the Drainage Facility within 30 days (“Deadline”) from the receipt of the Notice, as provided in Section 11, and the Owner shall comply promptly with the requirements of the Notice. The Owner shall perform all required work by the Deadline, at Owner’s sole expense.

Failure to Perform by Owner and Emergency Work by SSCAFCA/City. If the Owner fails to comply with the terms of the Notice by the Deadline, or if City/SSCAFCA determines that an emergency condition exists, City/SSCAFCA may perform the work itself. The County, City or SSCAFCA then may assess the Owner for the cost of the work and for any other expenses or damages which result from Owner’s failure to perform. The Owner agrees promptly to pay the amount assessed. If the Owner fails to pay the assessment within thirty (30) days after the party gives the Owner written notice of the amount due, the County or City may impose a lien against Owner’s Property for the total resulting amount plus interest.

Liability for Repair after Notice or as a Result of Emergency. City/SSCAFCA shall not be liable to the Owner for any damages resulting from City/SSCAFCA’s repair, removal or maintenance following notice to the Owner as set forth in this agreement or in an emergency unless the damages are the result of the reckless conduct or gross negligence of City/SSCAFCA.

Indemnification. As a part of the consideration for this grant, subject to the provisions of the New Mexico Tort Claims Act and all other applicable New Mexico laws, City/SSCAFCA agrees to save Owner harmless from any and all liability arising from City/SSCAFCA’s negligent use of the Drainage Facility.

The Owner hereby agrees to hold harmless, indemnify and defend

SSCAFCA, Sandoval County or the City, its officers, agents and employees from and against any and all liability, suits, actions, claims, damages, costs of defense and fees arising out of or resulting from the acts or conduct of the Owner and/or any of Owner's employees, agents, or officers relating in any manner whatsoever to this agreement.

Provided, however, such indemnity shall not extend to liability, claims, damages, losses or expenses, including attorney's fees, arising out of 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 the giving of or the failure to give directions or instructions by the indemnitee, where such giving or failing to give directions or instructions is a primary cause of bodily injury to persons or damage to property.

Cancellation of Agreement and Release of Covenant. This agreement may be cancelled and Owner's covenants released by City/SSCAFCA mailing to the Owner notice of its intention to record a Cancellation and Release with the Sandoval County Clerk. The Cancellation and Release shall be effective thirty (30) days from the date of mailing the notice to the User unless a later date is stated in the notice or in the Cancellation and Release. After the effective date, the County will record the Cancellation and Release with the Sandoval County Clerk.

Assessment. Nothing in this agreement shall be construed to relieve the Owner, his heirs, assignees, transferees and successors from an assessment against Owner's Property for improvements to the Property under a duly authorized and approved Special Assessment District or applicable law. The Parties specifically agree that the value of the (Drainage Facility) will not reduce the amount assessed by the City or County.

Notice. For purposes of giving formal written notice to the Owner, Owner's address is:

Notice may be given to the Owner either in person or by mailing the notice by regular U.S. mail, postage paid. Notice will be considered to have been received by the Owner within six (6) days after the notice is mailed if there is not actual evidence or receipt. The Owner may change Owner's address by giving written notice or change by certified mail, return receipt requested, to SCAFCA and any other parties to this instrument.

Term. This agreement shall continue until cancelled and released by City/SSCAFCA as set forth above.

Binding on Owner's Property. The covenants and obligations of the

Owner set forth herein shall be binding on Owner, and the Grantor's heirs, assigns, transferees and successors and shall constitute covenants running with the Owner's land until released by SSCAFCA.

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.

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

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.

Captions. The captions to the sections or paragraphs of this agreement are for reference and convenience purposes only and shall not affect the meaning or interpretation of any of its provisions.

OWNER:

SSCAFCA:

By: _____

By: _____

Its: _____

Its: _____

Dated: _____

Dated: _____

State of New Mexico)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by [name of person signing]: _____, [Title or capacity, for instance, "President" or "Owner"]: _____ of [name of the entity which owns the Property if other than the individual signing, for instance, the name of the corporation, partnership, or joint venture]: _____.

Notary Public
My commission expires: _____

E. Encroachment Agreements

Occasionally the grading scheme for an approved drainage plan will employ the construction of a retaining wall or other drainage/grading structure outside the periphery of a private property, encroaching into public property. Although such encroachments are discouraged, it is recognized that certain circumstances will require installations of this type. In such event the City/SSCAFCA normally requires an encroachment agreement with the developer. The encroachment agreement, which runs with the land, allows the developer to install some semi-permanent features on public property meeting criteria established in the DPM. The developer is required to assure the City/SSCAFCA that such features will be removed in a timely manner if required by the City/SSCAFCA or, alternatively, that the City/SSCAFCA will be empowered to remove such encroachments, with the cost of such removal charged to the owner of the property. A standard encroachment agreement together with instructions for the preparation of same can be obtained by contacting the City/SSCAFCA.

F. Joint-Use, Shared Maintenance and Common-Area Considerations.

In certain instances, adjacent development may provide for recreation opportunities or special uses of SSCAFCA owned rights-of-way. An example could be an adjacent Planned Unit Development or Condominium project where a regime for maintenance is assured and an opportunity for joint-use of land is presented.

If such opportunities are presented, each use must be considered independently and be secured by binding agreements. Consideration should include:

- Right of access, vehicular movements (large equipment) and inspections.
- Hold-harmless to SSCAFCA (and City or County) for regular maintenance if the joint-party fails to perform, as well as for emergency repairs.
- Removal or rehabilitation of installations (including landscaping) that impede or diminish the effectiveness of any provision of the approved Drainage Management Plan.
- Insurance on the land areas (general liability) in an amount not less than \$500,000 and including SSCAFCA as an additional named insured.
- Rodent and pest control (particularly rip-rap).
- Operation and maintenance of Storm Water Pollution Prevention Plan (SWPPP) devices.
- Potential LOMR, CLOMR and LOMA filings with FEMA for floodplain designations.
- In the event of disputes, with eviction by SSCAFCA should full compliance not occur.
- A drainage covenant (see following).
- SSCFACA shall normally maintain all fences and gates (usually 5-strand wire and locked pipe-rail gates). A separate covenant may be required for this and other items of ongoing maintenance.

1. Drainage Covenants (separate or included in the grant of easement):

A drainage covenant may be used and may be required, in addition to dedicated easements, where joint-use of land is considered and where a granted easement calls for provisions which include responsibilities of the land owner such as on-going maintenance, re-vegetation or rehabilitation after minor storm events. See Section D.

2. Homeowner's Association, Maintenance Association or common-area regime:

In most contemporary developments that have common-areas, an Association is formed binding upon the owners of the common development. In such documents, SSCAFCA would review the instruments concurrent with the development's approvals and recommend provisions to protect its interests in the negotiated agreements. Suggested language to be considered is provided in Section E, following.

3. Suggested language for inclusion in the documents:

Special provisions for Drainage and Floodwater Control. There are planned uses within the Common Areas for purposes of offsite and onsite stormwater conveyance and management, including construction and maintenance of facilities such as channels, drop structures, pedestrian crossings, pipes, culverts, access roads and the like. The land area for these stormwater conveyances include _____. The intent of the Declarant is to convey, by easement or otherwise, surface rights to the land area for these facilities to the Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA) and/or the City of Rio Rancho or Sandoval County.

Within the designated Common Areas SSCAFCA has an implied easement to the extent of the natural floodplain and an actual easement where platted and so designated on those instruments. Until such grant and acceptance of these facilities for permanent maintenance, the Association shall undertake periodic and regular maintenance of the facilities, including, but not limited to reconstruction, landscape replacement, earth removal and replacement, temporary dikes, berms and channels and continuing the level of stormwater protection to _____PROJECT_____ and others downstream. The level of maintenance shall be in accordance with the requirements of SSCAFCA.

The costs of such maintenance, until acceptance by SSCAFCA and/or the County (including the necessary insurance coverage for catastrophic events) shall be borne by the Developer or Association in the same manner and fashion as periodic maintenance of other common areas including provisions for capital improvement.

Vehicular Access. Vehicular access is allowed on the Common Areas by the Declarant, the Association, approved maintenance personnel for utilities, SSCAFCA, the County (and other approved contractors and public entities). Without express, written permission from the Association, no other vehicular access is allowed to any owner or to the public except for vehicles on paved, designated areas or for bicycles on designated routes and to accommodate handicapped citizens. No off-road or all terrain vehicle traffic is permitted.

For box conduits or arch pipes use the inside vertical dimension rather than inside pipe diameter.

Pipe may be placed within the easement to allow for stockpiling of material.

Drainage Rights-of-Way Access

All newly constructed drainage facilities within a public right-of-way must have restricted access control to prevent unauthorized vehicular access with bollards or pipe / steel tube gates.

3. **Multiple Use of Rights-of way and Easements Criteria**

Multiple uses are encouraged for drainage rights-of-way and drainage easements including, but not limited to, utility corridors, wildlife habitat, open space and recreation trails. Where multiple uses are planned by the city, another public agency, or a public utility, the city may require that dedication statements include language which permits said specified multiple uses and Watershed Management Parks amenities in addition to the primary drainage function. Land required to be dedicated for drainage rights-of-way shall include those land areas necessary for drainage control, flood control, erosion control, Watershed Management Park amenities, recreation trails, sanitary sewer corridors and necessary appurtenances. The following is the criteria for the subject encroachment:

Underground utility lines will be allowed in and adjacent to arroyos when appropriately permitted. SSCAFCA values the natural environment and desires to protect and maintain the wildlife and plant habitat along the arroyos. As a result, SSCAFCA is performing planning work to identify selected arroyos to be kept in their natural state. Arroyos such identified shall have no sewer line or other utility development in or adjacent to the arroyo.

SSCAFCA supports the Quality of Life Master Plan for Watershed Park. To accomplish the Master Plan's objective of creating an open space network of joint use improvements, Watershed Park amenities shall be provided as replacement value to the public for the intrusion caused by the utility construction. The types of amenities required shall be determined on a case-by-case basis.

The utility line shall be designed and constructed to reduce the failure potential to the maximum extent practicable. Design, permitting, construction, operation and maintenance of utility lines are the responsibility of the Utility Owner and Operator; including, but not limited to, the construction of drainage improvements necessary to protect the utility and the Watershed Park amenities associated with the utility.

4. **Utilities**

All utilities in an SSCAFCA facility require an easement granted by SSCAFCA for construction, operation and maintenance. The easement shall include the following language:

The Utility Owner (Utility) is responsible for operations and maintenance of all Utility owned facilities. Any damage to any drainage facilities or downstream arroyos as a result of the installation, operation or maintenance of Utility

owned facilities is the responsibility of the Utility Owner, including environmental mitigation of any spills, leaks or blockages of Utility owned facilities.

All designs shall be submitted to and require approval by SSCAFCA Executive Director or their designee.

H. Criteria for Vacating SSCAFCA’s Rights-of-Way/Easements

1. Rights-of-Way/Easements
 - a. Approved by SSCAFCA Board
 - b. Compensation for right-of-way being vacated based on appraisal or land exchange.
 - c. Naturalistic improvements constructed by party requesting the vacation. (O&M costs must be equal or less)
2. Vacated area shall be replatted or identified by recording a statement with the County Clerk identifying the property vacated.

I. Vacation Procedure for Rights-of-Way and Easements

Step 1: Pre-Application Discussion

Discussion of the proposed vacation with the SSCAFCA staff is recommended prior to application filing. The purpose of the discussion is to review City/SSCAFCA policies and procedures applicable to the proposal so that incomplete, inadequate, and inappropriate applications are avoided. City staff may be included in this discussion.

The discussion should:

- review the appropriateness of the request as related to various applicable plans, policies, and ordinances including the Zoning Code and/or Subdivision Ordinance.
- determine all appropriate procedures/information needed to obtain approval.
- determine a preliminary schedule/time frame for approval.
- determine a filing date for the application if appropriate.
- outline preliminary direction from staff based upon the information submitted and discussed.
- prepare a written summary of the requirements/procedures to obtain approval.

SSCAFCA and the applicant will sign a written summary of the meeting. Copies of the written summary are given to the applicant/agent and City/SSCAFCA.

Step 2: Application for a public hearing with SSCAFCA Board of Directors

Submit a letter to the Executive Engineer with all the required information determined at the pre-discussion meeting. The Executive Engineer will advise applicant the date of the public hearing.

Step 3: SSCAFCA Public Hearing

The public hearing gives the general public and area residents the opportunity to discuss and speak for or against the request and to elicit additional information which may have a bearing on the request. The applicant or agent must be present at the hearing to speak on behalf of the request and respond to questions.

Outcome:

A decision by the SSCAFCA Board may be deferred if additional information or additional public notice is deemed necessary.

The SSCAFCA Board decision on the request may be to:

- approve,
- approve with conditions, or
- deny.

The applicant and other interested parties receive a Letter of Notification of the decision along with any conditions imposed. The decision is final.

Step 4: Compliance with Conditions

A normal condition of approval requires SSCAFCA to dispose of all public right-of-way declared surplus through the vacation process. Generally all utility and drainage easements are retained unless otherwise specified in the Board's decision.

The applicant must also prepare and record a replat which incorporates the vacated right-of-way with adjacent property. Under special circumstances other instruments of conveyance, such as a deed, may be appropriate.

Any conditions must be met within the time period established by SSCAFCA. SSCAFCA may grant an extension by written request. However, all conditions must be met within one (1) year from the date of the original decision.