

Contract # B05265

Vendor # N/A

ITEM # 18-0838



NMDOT RAIL

NEW MEXICO DEPARTMENT OF TRANSPORTATION

AGREEMENT FOR SANTA FE RAILYARD PUBLIC ROADWAY GRADE CROSSING CONSTRUCTION AND MAINTENANCE

THIS AGREEMENT is hereby made this 14th day of August 2018, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (hereinafter "NMDOT") and the **CITY OF SANTA FE** (hereinafter "City");

WITNESSETH:

WHEREAS, the City granted a perpetual, non-exclusive railroad easement to NMDOT on property the City owns within the Santa Fe Railyard in the November 9, 2005 agreement titled "Grant of Easement Santa Fe Railyard from City of Santa Fe to New Mexico Department of Transportation", Item No. 05-0915; and

WHEREAS, the Alcaldesa Street railroad grade crossing, consisting of rail, ties, ballast and other track material ("Track"), and consisting of a concrete crossing surface between the rails and about two feet outside of and parallel to the rails of the Track; Constant Warning automatic LED flasher warning lights and gate arms; crossbuck signs; Emergency Notification System signs; whistle post signs; and other warning signage, markings, or devices at or in advance of the crossing per NMDOT standards and otherwise determined by a crossing diagnostic team, is designated as USDOT Crossing No. 929226G at NMRX Railroad Santa Fe Subdivision Mile Post 22.14, and hereinafter referred to as "Crossing"; and

WHEREAS, the City proposes to modify the Crossing by adding a sidewalk of five (5) feet width on the south side of Alcaldesa Street; and

WHEREAS, the Rio Metro Regional Transit District ("RMRTD") is responsible through agreement with NMDOT for operation of NMDOT's New Mexico Rail Runner Express and maintenance of the NMDOT's railroad right-of-way until such time, if any, that said responsibility is reassigned; and

WHEREAS, the City shall maintain the roadways, pathways, and sidewalks leading to and from the Crossing (but not the tracks, ballasts, crossing arms or other property which is not limited to the sidewalks or pathways themselves); and

WHEREAS, The term "Project" as used in this agreement shall include all work of every kind and character required in connection with the construction or modification of the proposed Crossing; and

WHEREAS, the City and NMDOT desire to express in writing their understanding and agreement with respect to the Project, and pursuant to which the Crossing is to be constructed and maintained; and

WHEREAS, both parties desire to enter into this license agreement in an attempt to cooperate and outline the expectations for constructing a pedestrian pathway across NMDOT's non-exclusive railroad easement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the construction, maintenance and operation of the Project on the following terms and conditions:

1. NMDOT, as owner of the non-exclusive railroad easement, does hereby grant to the City, their successors and assigns, upon and subject to the terms and conditions hereinafter set forth, permission and license to enter upon and use that portion of the railroad easement within the Santa Fe Railyard, as is necessary to have constructed or modified at its sole expense, the Crossing (hereinafter "Premises"), according to the construction plans and details as shown in Exhibits 'A' and 'B', attached thereto, and which reference is hereby made a part hereof, excepting and reserving the rights to be exercised by NMDOT and by any others who have obtained or may obtain permission or authority from NMDOT as set forth in elsewhere this Agreement. The City shall have permission to use and maintain the Crossing as provided by this Agreement. This license and permission is subject to:
 - A. All licenses, leases, easements, restrictions, reservations, conditions, covenants, encumbrances, rights and rights of way, liens and claims of title which may in any manner affect said right-of-way.
 - B. The prior and continuing right of obligation of NMDOT, its partners, agents and contractors, successors and assigns to use in the performance of its public duty as a transportation provider.
 - C. This license and permission is given without warranty of title of any kind, special or general, expressed or implied, and no covenant of warranty of title shall be implied from the use of any word or words herein contained. In case of the eviction of City by anyone owning or claiming title to or any interest in said right of way, NMDOT and its partners, agents and contractors, successors and assigns shall not be liable to City for any damage of any nature whatsoever.
2. The City, utilizing a qualified railroad Contractor who shall be approved by both NMDOT and RMRTD prior to commencing work on the Crossing, shall, at the City's expense, modify the Crossing, and install any necessary safety improvements, according to Exhibits 'A' and 'B'.

3. The City, or City's Contractor, at City's expense, shall construct the approaches to match the Crossing as constructed or modified by the City or City's Contractor as shown on Exhibit 'B'. Furthermore, City or City's contractor will, at City's expense, provide all necessary traffic control devices, such as flasher lights, barricades and delineators as may be necessary for duration of a Project.
4. The City, or City's Contractor, shall perform its work so that it shall not endanger or interfere with the safe and timely operation of trains and maintenance of Premises.
5. The work specified to be done in above paragraph 2 by the City's Contractor on the Project shall be done as soon as practicable, considering availability of materials and manpower, within one year from the executed date of this Agreement, and, in consideration thereof, the City will pay the actual total cost of work.
6. The City or City's Contractor shall, at its expense, maintain the roadway and sidewalk surfaces, approaches, drainage and approach signage and pavement markings up to edge of the Crossing. No work on the Project shall be performed within 25' of the railroad track centerline without a temporary entry work permit ("Permit") from the NMDOT Rail Bureau and railroad flagging protection as provided by RMRTD.
7. NMDOT or its contractor RMRTD, shall maintain that portion of the Crossing lying between the rails of the track and about two feet outside of and parallel to the rails of the Track, and if applicable, the whistle post signs, crossbuck sign assemblies, Emergency Notification System signs, automatic flashing lights and gate arm signals and other signage or warning devices as required at the Crossing. City shall be liable for such expenses, however it is expressly understood and agreed that the City will not assume any additional liability or responsibility by payment of such expenses. The Bateman Act Section 6-6-1 *et seq.* NMSA 1978 shall apply as appropriate.
8. The City agrees to make any and all arrangements that may be necessary to secure the location or relocation of wire lines, pipelines, and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities which may be found necessary to locate or relocate in any manner whatsoever due to the construction of the Project.
9. Except as hereinafter otherwise provided, all work to be done hereunder by City in the construction of the Project will be done pursuant to a contract or contracts to be let by City to a contractor or contractors, and all work performed thereunder within the limits of said railroad easement shall be performed in a good and workmanlike manner and in accordance with plans and specifications approved by NMDOT and only those changes or modifications during construction that affect NMDOT shall also be subject to approval by NMDOT, and that all work performed over, under or adjacent to the tracks shall be done to the satisfaction of NMDOT.
10. NMDOT conveys to the City, no more right, title and interest in any rail corridor than NMDOT holds in such rail corridor at the time of conveyance.

11. In the performance of this Agreement, the City shall use the Premises solely for construction and maintenance of the Crossing and during the construction of the Crossing, the City shall not use the Premises for any other purpose, including but not limited to installation of utilities or storm water drainage infrastructure at a Crossing, for which permission my NMDOT shall not be unreasonably be withheld for any additional use.
12. Any contractor(s) or subcontractor(s) performing work on the Project or Crossing or entering the Premises on behalf of the City shall be deemed contractors and not servants or agents of the City.

COMPENSATION

13. NMDOT waives the railroad crossing application fee sum, if applicable, of Two-Hundred Dollars and NO/100 Cents (\$200.00) and the annual railroad crossing license fee sum of One-Hundred Dollars and NO/100 Cents (\$100.00), for the Crossing, since the applicant is a public entity.

COMPLIANCE WITH LAWS AND SAFETY REQUIREMENTS

14. The City shall observe and comply with any and all applicable laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the Project and the Crossing and the use of the Premises.
15. Prior to entering the Premises, the City shall, and shall cause its contractor to, comply with all applicable safety rules and regulations. Prior to commencing any work on the Premises or within 25' of the centerline of the nearest track, the City shall complete and shall require its contractor(s) to complete the safety-training program as provided by RMRTD in Albuquerque. This training must be completed in advance of the City's entry on the Premises.
16. The City shall make its Contractor responsible for locating utilities prior to any construction activities, including any private, public or railroad-owned utilities and liable for any damages incurred to utilities during the Project. If the City contracts with contractors, the City shall require its contractors to acquire liability insurance.

DEFINITION OF COST AND EXPENSE

17. For the purpose of this License, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF NMDOT TO USE

18. City acknowledges that NMDOT has the obligation to operate and maintain its railroad easement, acting either directly or through other parties who may obtain written permission or authority from NMDOT. City and NMDOT shall work together in good faith to ensure these obligations are met without negatively impacting the City's property or the use

of the Crossing once the Project is complete. Notwithstanding this, City acknowledges that NMDOT excepts and reserves the right across the Crossing, to be exercised by NMDOT, and any other parties who may obtain written permission or authority from NMDOT, to construct, maintain, renew, use, operate, change, or modify any tracks, signals, or other necessary appurtenances upon, over, under or across the Crossing, so long as this does not alter the capacity or character of the railroad.

CITY OPERATIONS

19. Under no conditions shall the City or its contractors, tenants or agents be permitted to conduct any tests, investigations, or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools, or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless the City has obtained prior written approval from NMDOT. The City shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not, at any time, to be a source of danger to or interfere with the existence or use of present or future track, roadbed or property of NMDOT, or the safe operations and activities of NMDOT and RMRTD, its partners, contractors, or assigns. If ordered to cease using the Premises at any time by NMDOT's personnel due to any hazardous condition, the City shall immediately do so.
20. The City or its contractor shall not perform any work within the railroad right-of-way without obtaining a Permit from the NMDOT Rail Bureau. A copy of the Permit shall remain on the work-site at all times and available for inspection by NMDOT or RMRTD at their request.
21. The City shall notify NMDOT's Railroad Representative at least ten (10) business days prior to any construction work related to the Crossing and prior to entering the Premises for any subsequent maintenance thereon.
22. The City shall notify RMRTD and arrange railroad flagging services at least ten (10) business days prior to any construction or subsequent maintenance work related to the Crossing.
23. In performing the work on the Project described herein, the City shall use only public roadways to cross motorized vehicles and mechanized construction equipment from one side of the track to the other, and to prevent motorized vehicles and mechanized construction equipment from becoming unintentionally lodged on the track.
24. Notwithstanding the foregoing right of NMDOT, the parties agree that NMDOT has no duty or obligation to monitor the City's use of the Premises in carrying out the Project to determine the safe nature thereof, it being solely the City's responsibility to ensure that the City's use of the Premises in carrying out the Project is safe. Neither the exercise nor the failure by NMDOT to exercise any rights granted in this paragraph will alter the liability allocation provided by this License.
25. If the City or City's Contractor shall, in the judgment of NMDOT, fail to properly initially construct the Crossing under this Agreement, NMDOT shall inform the City in writing about its judgment for the need for remedial work. If the City does not itself perform the work,

direct the Contractor to perform the work, or close the Crossing such that NMDOT may safely operate the railroad, NMDOT may itself perform the work at the City's expense. Failure on the part of NMDOT to perform the obligations of the City shall not release the City from liability hereunder for loss or damage occasioned thereby,

26. During the construction and any subsequent maintenance performed on the Crossing, the City shall perform such work in a manner as to preclude damage to the property of NMDOT and RMRTD and preclude interference with the operation of the railroad.
27. If, at any time during the term of this License, NMDOT shall desire the use of the rail corridor in such a manner as would, in NMDOT's reasonable opinion, be interfered with by the Crossing, NMDOT and the City shall work together in good faith to agree on the changes that are necessary to the Crossing.
28. Upon termination of this License, the parties may agree to the removal of the Crossing. If this occurs, City shall, at its sole cost and expense:
 - A. Remove the Crossing and all appurtenances thereto at the NMDOT's sole discretion;
 - B. Report and restore any damage to the Premises at the Crossing arising from, growing out of, or connected with the City's use of the Premises; and
 - C. Remedy any unsafe conditions on the Premises at the Crossing created or aggravated by the City.
29. The City's on-site supervisor or its contractor shall retain/maintain a fully-executed copy of this License at all times while performing work on the Premises as part of a Project.

LIABILITY

30. No party shall be responsible for liability incurred as a result of any other party's acts or omissions in connection with the Agreement. Any liability incurred by either the City or NMDOT in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, and Section 41-4-1 et seq., as amended.
31. All personal property, including but not limited to, fixtures, equipment, or related materials upon the Premises will be at the risk of the City only.

INSURANCE

32. The City shall, at their sole cost and expense, require its contractor or contractors to procure and maintain during the construction or modification of the Crossing and Project, the following insurance coverage:
 - A. Commercial General Liability Insurance: This insurance shall contain broad form contractual liability coverage with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$6,000,000, and shall name NMDOT, RMRTD and Santa Fe Southern Railway ("SFS") as additional insured.

1. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
 - a. Bodily Injury and Property Damage
 - b. Personal Injury and Advertising Injury
 - c. Fire legal liability
 - d. Products and completed operations
 2. This policy shall also contain the following endorsement, which shall be indicated on the certificate of insurance:
 - a. The employee and workers compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
 - b. The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
 - c. Any exclusion related to the explosion, collapse and underground hazards shall be removed.
 3. No other endorsements limiting coverage may be included in the policy.
- B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but limited to the following:
1. Bodily injury and property damage
 2. Any and all vehicles owned, used or hired
- C. Workers Compensation and Employers Liability Insurance: This insurance shall include coverage for, but not limited to:
1. City's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 2. Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee

The City, or its contractor, at its sole cost and expense, shall procure and maintain during the construction or any subsequent maintenance of the Crossing, the following insurance coverage:

- D. Railroad Protective Liability Insurance: During the initial installation and/or construction of the Crossing and the Project, the City's contractor(s) and/or subcontractor(s) shall obtain insurance, which shall name NMDOT, RMRTD, and SFS as additional insured, with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate.

1. The construction of the Project shall be completed within one (1) year of the Effective Date to this Agreement that authorizes said Project.
 2. If further maintenance of the Crossing is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required.
 3. The policy shall be issued on a standard ISO form CG 00 35 10 93 or equivalent and include the following:
 - a. Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - b. Endorsed to include the Limited Seepage and Pollution Endorsement.
 - c. Endorsed to include the Evacuation Expense Coverage Endorsement.
 4. The original policy must be available to the NMDOT prior to performing any work or services under this Agreement.
 5. No other endorsements restricting coverage may be added.
- E. Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.
33. The insurance policies of the City or its Contractor, through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by NMDOT. The certificate of insurance must reflect that the above wording is included in evidenced policies.
 34. All policy(ies) required above (excluding Workers Compensation and, if applicable, Rail Protective) shall include a severability of interest endorsement and shall name NMDOT, RMRTD, and SFS as an additional insured(s) with respect to work performed under this agreement.
 - A. Severability of interest and naming NMDOT, RMRTD, and SFS as additional insured shall be indicated on the certificate of insurance.
 35. Prior to commencing the work on the Project, City or its Contractor, shall furnish, to NMDOT, an acceptable certificate of insurance which shall include an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments.
 36. The policy shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify NMDOT, in writing, at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance.

37. In the event of a claim or lawsuit involving NMDOT arising out of this agreement, City will make available any required policy covering such claim or lawsuit.
38. Any insurance policy shall be written by a reputable insurance company acceptable to NMDOT or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
39. Not more frequently than once every five (5) years, NMDOT may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
40. If any portion of the operation is to be subcontracted by the City, the City shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming NMDOT, RMRTD, and SFS as an additional insured and shall require that the subcontractor shall release, defend, and indemnify NMDOT, RMRTD, and SFS.
41. Failure of the City or its contractor(s) to provide evidence of insurance, as required by this section, shall entitle, but not require, NMDOT to terminate this License authorizing the Project immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of the City's obligations hereunder.
42. The City may be self-insure for the liability that may arise from the performance of this Agreement; however, the City shall require its Contractor to insure for the liability to be covered by Railroad Protect Liability insurance.
43. Damages recoverable by NMDOT shall not be limited by the amount of the required insurance coverage.

For purposes of this section, NMDOT shall mean "New Mexico Department of Transportation" and the subsidiaries, agents, successors, assigns and affiliates of each.

ENVIRONMENTAL

44. The City and NMDOT shall strictly comply with all federal, state and local environmental laws and regulations in their respective use of the Premises, including but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation act, CERCLA (collectively referred to as the "Environmental Laws").
45. Neither the City nor NMDOT shall maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by applicable Environmental Laws on the Premises. The City shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
46. The City shall give NMDOT immediate notice to NMDOT's Risk Management Bureau and NMDOT Rail Bureau of any release of hazardous substances on or from the Premises,

violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to the City's use of the Premises.

47. The City shall use the best efforts to promptly respond to any release on or from the Premises with respect to the City's use of the Premises.
48. The City shall also give NMDOT immediate notice of all measures undertaken on behalf of the City to investigate, remediate, respond to or otherwise cure such release or violation with respect to the City's use of the Premises.
49. In the Event NMDOT has notice from the City or otherwise of a release or violation of Environmental Laws arising in any way with respect to the City's use of the Premises which occurred or may occur during the term of the License, NMDOT may require the City, at the City's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or NMDOT's easement.
50. The City shall promptly report to NMDOT in writing any conditions or activities upon the Premises known to the City which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or damage to property arising out of such conditions or activities; provided however, that the City's reporting to NMDOT shall not relieve the City of any obligation whatsoever imposed on it by this License.
51. The City shall promptly respond to NMDOT's request for information regarding said conditions or activities.
52. NMDOT shall give the City immediate notice of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to NMDOT's use of the Premises.
53. NMDOT shall use the best efforts to promptly respond to any release on or from the Premises with respect to NMDOT's use of the Premises.
54. NMDOT shall also give the City immediate notice of all measures undertaken on behalf of NMDOT to investigate, remediate, respond to or otherwise cure such release or violation with respect to NMDOT's use of the Premises.
55. In the Event the City has notice from NMDOT or otherwise of a release or violation of Environmental Laws arising in any way with respect to NMDOT's use of the Premises which occurred or may occur during the term of the License, the City may require NMDOT, at NMDOT's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or NMDOT's easement.
56. NMDOT shall promptly report to the City in writing any conditions or activities upon the Premises known to NMDOT which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or

damage to property arising out of such conditions or activities; provided however, that NMDOT's reporting to the City shall not relieve NMDOT of any obligation whatsoever imposed on it by this License.

57. NMDOT shall promptly respond to the City's request for information regarding said conditions or activities.

ALTERATIONS

58. In the performance of this Agreement, the City may not have any activities on the Premises or permanently affix anything to the Premises without NMDOT's prior written consent, which shall not be unreasonably withheld.

DEFAULT

59. NMDOT and City shall work in good faith to resolve any default that may be made in any of the covenants or agreements of the City contained in this document, or in any assignment or transfer of this License by operation of law. If default shall not be resolved by such efforts, NMDOT may, at its option, terminate this License by serving five (5) business days' notice in writing upon the City.
60. Any waiver by NMDOT of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect NMDOT's ability to enforce any Section of this License. The remedy set forth in this Section shall be in addition to, and not in limitation of, any other remedies that NMDOT may have at law or in equity.

TERMINATION

61. This License may be terminated by either party at any time, by serving thirty (30) calendar days written notice of termination to the other party. In the event of termination, the parties may agree that the Crossing will be removed at the City's sole cost and expense. If the City fails to remove the Crossing all liabilities and obligations of the City hereunder shall continue in effect until the Crossing is removed.

ASSIGNMENT

62. Neither the City, nor the heirs, legal representatives, successor, nor assigns of the City, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent and approval of NMDOT, which may be withheld in NMDOT's sole discretion.
63. City acknowledges that NMDOT is granting City certain privileges due to City's ownership of the underlying land and the railroad infrastructure. In the event that the City transfers all or substantially all of its interest in either or both of these, whether by sale, lease, assignment or otherwise, the City shall require the transferee as a condition of said transfer to assume all the rights and obligations of the City hereunder, and shall provide that the transferee, upon the written request of NMDOT, shall execute a new crossing agreement

upon the same terms and conditions as this agreement or as otherwise agreed upon by such parties.

NOTICES

64. Any notices required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) calendar days advance written notice of such change in address.

If to NMDOT:

New Mexico Department of Transportation, Modal Programs
Attn: Cabinet Secretary, Tom Church
PO Box 1149
Santa Fe, NM 87504

With copies of Notice sent to:

Attn: Rail Facilities Manager SB-4 2nd Floor
New Mexico Department of Transportation
PO Box 1149
Santa Fe, NM 87504

and

Attn: General Counsel
New Mexico Department of Transportation
PO Box 1149
Santa Fe, NM 87504

If to City:

City of Santa Fe, Public Works
Attn: Public Works Railyard Project Administrator, Bob Siqueiros
500 Market Station, Suite 200
Santa Fe, NM 87501

With copies of Notice sent to:

Attn: City Attorney
PO Box 909
200 Lincoln Avenue
Santa Fe, New Mexico 87504

and

Attn: Richard Czoski, Executive Director
Santa Fe Railyard Community Corporation
322 Read Street
Santa Fe, New Mexico 87504

SURVIVAL

65. Neither termination nor expiration will release either party from any liability or obligation under this License, whether or indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or if later, the date when the Crossing and improvements are removed.

APPLICABLE LAW

66. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of New Mexico without regard to conflicts of law provisions.

SEVERABILITY

67. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

INTEGRATION

68. This License is the full and complete agreement between NMDOT and the City with respect to all matters relating to the City's use of the Crossing, and supersedes any and all other agreements between the parties hereto relating to the City's use of the Crossing as described herein. However, nothing herein is intended to terminate any surviving obligation of the City and of NMDOT.

MISCELLANEOUS

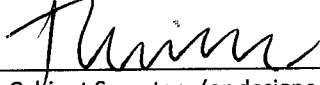
69. The parties agree that the insurance and liability provisions of this License are not intended to violate, and shall not be construed by the parties to violate, NMSA 1978, Section 56-7-1, as amended.

[SIGNATURES ON FOLLOWING PAGE]

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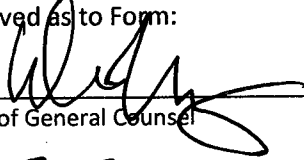
IN WITNESS WHEREOF, this License has been duly executed, in four originals, by the parties hereto as of the day and year first above written.

NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)

By: 
Tom Church, Cabinet Secretary (or designee)

Date: 8/14/18, 2018

Approved as to Form:

By:  WILLIAM MOYERS
Office of General Counsel

Date: 8-7-18, 2018

THE CITY OF SANTA FE (LICENSEE)

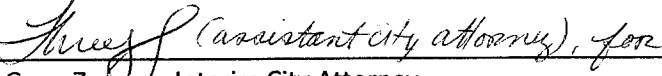
By: 

Printed Name: Alan M. Webber

Title: Mayor

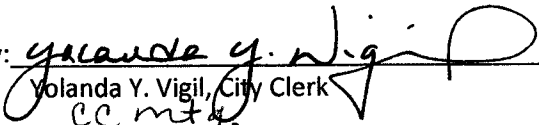
Date: 8/1/18, 2018

Approved as to Form:

By:  (Assistant City Attorney), for
Geno Zamora, Interim City Attorney



Date: _____, 2018

Attest:

By: 
Yolanda Y. Vigil, City Clerk
cc mtg

Date: July 25, 2018, 2018

Approved:

By:  MARY MCCOY
Finance Director 

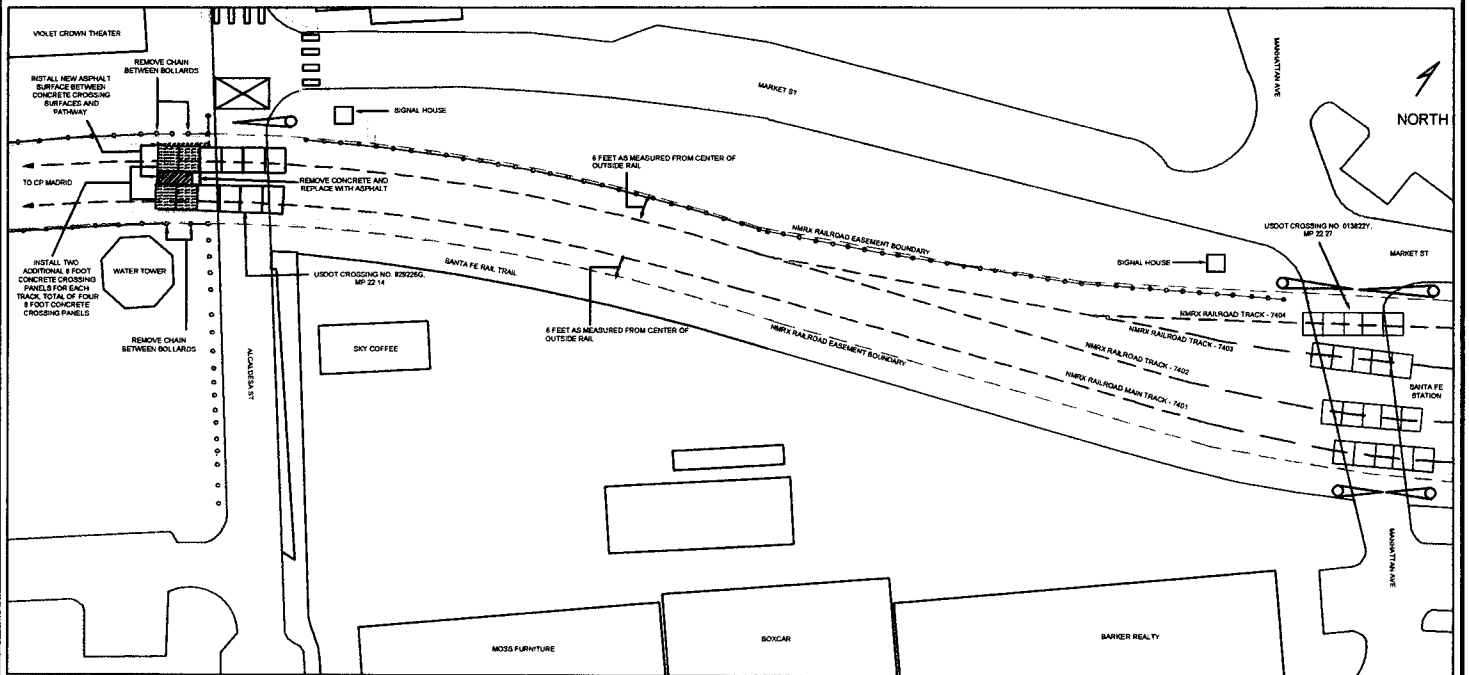
Date: 7/31/18, 2018

EXHIBIT "A"

ATTACHED TO THE CONTRACT BETWEEN NEW MEXICO DEPARTMENT OF TRANSPORTATION AND CITY OF SANTA FE

DESCRIPTION:

PROPOSED SIDEWALK ALONG THE SOUTH SIDE OF
ALCALDESA STREET AT USDOT CROSSING # 929226G, MP
22.14.



LEGEND

--- NMRX RAILROAD TRACK CENTERLINE
--- NMRX RAILROAD EASEMENT BOUNDARY
(6 FEET FROM CENTER OF OUTSIDE RAIL)
--- ROADWAY AND SIDEWALK EDGE
--- TACTILE SURFACE AREA

CONCRETE BLOCK TO BE REMOVED AND
REPLACED WITH ASPHALT
NEW ASPHALT SURFACE
NEW 8 FOOT CONCRETE CROSSING
SURFACE

NO GRAPHIC SCALE

AT STATION OF SANTA FE
COUNTY OF SANTA FE

STATE OF NEW MEXICO

NO.	DESCRIPTION	DATE	BY
REVISIONS			
NEW MEXICO DEPARTMENT OF TRANSPORTATION TRANSIT & RAIL GRADE CROSSING IMPROVEMENT ALCALDESA STREET NMRX RAILROAD SANTA FE SUBDIVISION			

PLOT DATE: 4/18/18 - AG DRAWING PATH: ASPEN\EXHIBIT A\

SHEET NO. 1 OF 1

Proposed Alcaldesa Crossing Expansion

