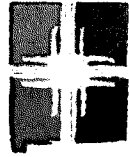


ITEM # 19-0236



NMDOT RAIL

Contract # B05314

Vendor # N/A

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**  
**PUBLIC MULTI-USE PATHWAY RAILROAD GRADE CROSSING**  
**CONSTRUCTION AND MAINTENANCE AGREEMENT**

THIS AGREEMENT is hereby made this 15<sup>th</sup> day of April 2019, by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION (hereinafter "NMDOT") and the CITY OF SANTA FE (hereinafter "City") (collectively "the Parties");

**WITNESSETH:**

**WHEREAS**, the City and the Santa Fe Southern Railway, Inc. ("SFSRR") entered into a Rail Trail Agreement ("RTA") on or about March 10, 1999 in which SFSRR as Grantor granted to City as Grantee a non-exclusive, perpetual easement for the creation of a ten foot (10') to twenty foot (20') wide continuous pedestrian and bicycle trail on SFSRR property in Santa Fe from the southern Right-of-Way boundary of Interstate 25 at approximately Station 712 + 00 northward to St. Michaels Drive; and

**WHEREAS**, pursuant to the RTA all covenants and provisions of the RTA, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the heirs, successors, assigns, tenants and personal representatives of the parties to the RTA; and

**WHEREAS**, on or about February 10, 2005, NMDOT as successor to SFSRR, and the City executed Amendment One to Rail Trail Agreement which re-affirmed the terms of the RTA but provided a new description of the subject property to reflect that it runs from the southern Right-of-Way boundary of Interstate 25 at approximately Station 712 + 00 northward to the southern boundary of the Santa Fe Railyard at St. Francis Drive, approximately Milepost 17.39; and

**WHEREAS**, by entering into the present agreement the Parties do not intend to abrogate or modify any of the rights or obligations created by the Rail Trail Agreement or Amendment One to the RTA; and

**WHEREAS**, the existing paved rail trail between Second Street and Alta Vista Street is located on the western side of the NMDOT's NMRX railroad Main Track; and

**WHEREAS**, the City, in consultation with NMDOT, proposes to construct the final section of the rail trail along the eastern side of NMDOT's NMRX Main Track from Alta Vista Street north along Pen Road; and

**WHEREAS**, the existing sidewalk on the south side of Alta Vista Street, which is part of USDOT Crossing No. 013817C but is physically separated from Alta Vista Street at the crossing, has been identified by NMDOT and City as the location for connecting the rail trail on the western side of the NMRX Main Track to the proposed rail trail extension on the eastern side of the Main Track (hereinafter the "Crossing"). The

Crossing will be contained in a rectangular area of the railroad right of way extending from the eastern boundary of the railroad right of way to the existing Rail Trail on the western side of the railroad tracks, centered on the midpoint of the existing sidewalk panel, and measuring approximately 20' by 65' as shown in Exhibit A (hereinafter the "Premises"), and includes a crossing surface, track components, and sufficient width to enable designation of the sidewalk as a pathway crossing without reconstruction of the crossing surface; and

**WHEREAS**, the City proposes to utilize this existing sidewalk as a multi-use transportation pathway ("Pathway") within NMDOT railroad right-of-way, consisting of a 10 foot wide asphalt surface and requiring an at-grade pathway to connect to the crossing of NMDOT's NMRX railroad Main Track, pursuant to the Rail Trail Agreement between NMDOT and the City dated February 10, 2005; and

**WHEREAS**, the Crossing, when completed, will consist 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, will be designated as USDOT Crossing No. 967786R at NMRX Railroad Santa Fe Subdivision Mile Post 21.21; 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 Pathway leading to and from the Crossing; and

**WHEREAS**, absolutely no motorized vehicles shall be allowed to use the Crossing; 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 of the proposed Pathway Crossing, as shown on the attached Exhibit 'A' (site drawing); and

**WHEREAS**, funding for the procurement and installation of additional safety equipment (lights and gates) that will be sited within the Premises at the Crossing using FHWA Section 130 funds has been included in the Santa Fe MPO Transportation Improvement Program (TIP), is available, and will be utilized to cover the costs of the procurement and installation of such equipment; and

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

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

1. NMDOT, as owner of the railroad and its right-of-way, subject to the perpetual easement granted to the City in the RTA and re-affirmed by the Parties in Amendment One to the RTA, 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 the Premises as is necessary to have constructed at its sole expense, the Crossing as provided by the construction plans and details as shown in Exhibit

'A' attached hereto, 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. After the construction of the Crossing, 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 is responsible for the cost of safety improvements to be implemented by RMRTD at the Crossing, to include installing Constant Warning automatic LED flasher lights and gate arms at the Crossing and other safety improvements. NMDOT and the City agree that Section 130 funds for hazard elimination at grade crossings, apportioned to New Mexico by the Federal Highway Administration and administered by NMDOT, shall pay for these safety improvements. The City hereby fulfills its responsibilities for the cost and safety improvements by signing this agreement. NMDOT shall enter into an agreement with RMRTD to install these improvements.
  3. City, or City's Contractor, at City's expense, shall construct the Pathway approaches to match the Crossing as constructed by the RMRTD. 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 Project.
  4. 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 RMRTD 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 Pathway surface, approaches, drainage and approach signage and pavement markings up to edge of the Crossing. No work shall be performed by the City or City's contractor within railroad right of way without first obtaining a temporary entry work permit ("Permit") from the NMDOT Rail Bureau.
  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, 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 upon receipt of an RMRTD invoice, however it is expressly understood and agreed that the City will not assume any additional liability or responsibility by payment of such expenses.

8. The Bateman Act, NMSA 1978 Section 6-6-1 et seq. shall apply as appropriate.
9. 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 said Project.
10. Except as hereinafter otherwise provided, all work to be done hereunder by City in the construction of said 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 right-of-way 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 of NMDOT shall be done to the satisfaction of NMDOT.
11. The City shall not disturb any improvements of NMDOT or NMDOT's existing lessees, licensees, permittees, or other easement beneficiaries, if any, or interfere with the use of such improvements.
12. The City acknowledges that one or more other parties, including, but not limited to various Native American Tribal entities, may have, or may claim to have, ownership right(s) in certain segments(s) of certain of NMDOT's rail corridors and may claim that the City must obtain rights from it (or them) in order to occupy, or access, the Premises and that, in some cases, such claims may be valid.
13. The City further acknowledges that the City's rights to enter into a License on any NMDOT rail corridor, and its rights under any License of any NMDOT rail corridor, are subject and subordinate to all outstanding and/or future rights and encumbrances on NMDOT's rail corridor (including liens, security interests, and mortgages), and any and all easements, other leases, licenses, permits or agreements which now or in the future relate to NMDOT's rail corridor, except NMDOT in the future shall not place any encumbrance upon any NMDOT rail corridor then subject to a License to the City or enter into any easement, lease, license, permit or agreement, which would materially disrupt the City's ability to exercise rights under this License or to utilize the Crossing and Premises covered by such License.
14. The City acknowledges that its ability to exercise rights under this License or to utilize such Crossing would not be materially disrupted if either the Crossing is relocated to another location within the applicable NMDOT rail corridor in accordance with the terms of the License, or could be relocated elsewhere in the rail corridor in accordance with the RTA.

15. 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.
16. The City shall use the Premises solely for construction and maintenance of said Crossing and the City shall not use the premises for any other purpose.
17. The City shall not use or store hazardous substances as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
18. In case of the eviction of the City by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by NMDOT of the affected rail corridor, NMDOT shall not be liable to refund, to the City, any compensation paid hereunder.
19. Any contractor(s) or subcontractor(s) performing work on the Project or the Crossing or entering the Premises on behalf of the City shall be deemed contractors and not servants or agents of the City.

#### **COMPENSATION**

20. NMDOT waives the railroad crossing application fee sum 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) since the applicant is a public entity.

#### **COMPLIANCE WITH LAWS AND SAFETY REQUIREMENTS**

21. The City shall observe and comply with any and all 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.
22. 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, 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.
23. The City shall make its Contractor responsible for locating utilities prior to any construction activities, including any private, public or railroad-owned utilities, and shall be liable for any damages incurred to utilities. If the City contracts with contractors, the City shall require its contractors to acquire liability insurance.

## **DEFINITION OF COST AND EXPENSE**

24. 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**

25. NMDOT excepts and reserves the right, to be exercised by NMDOT, and any other parties who may obtain written permission or authority from NMDOT, to:
- A. maintain, renew, use, operate, change, modify and relocate any existing power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises; or
  - B. construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or
  - C. Use the Premises in any manner as the NMDOT in its sole discretion deems appropriate, provided NMDOT uses all commercially reasonable efforts to avoid material interference with the use of the Premises by the City for the purpose specified herein.

## **CITY OPERATIONS**

26. 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.
27. 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.

28. 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.
29. 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 to occur within 25 feet to either side of the centerline of any track.
30. 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.
31. 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 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.
32. If the City or City's Contractor shall, in the judgment of NMDOT, fail to perform properly its obligations under this Agreement, NMDOT may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad, and in such event the City agrees to pay, the cost so incurred by NMDOT. 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.
33. 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.
34. If, at any time during the term of this License, NMDOT shall desire the use of its rail corridor in such a manner as would, in NMDOT's reasonable opinion, be interfered with by the Crossing, these changes shall be accomplished in a manner consistent with Article 9(a) of the RTA.
35. Upon termination of this License, the 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 arising from, growing out of, or connected with the City's use of the Premises;
  - C. Remedy any unsafe conditions on the Premises created or aggravated by the City;

D. Leave the Premises in the condition which existed as of the Effective Date-of this License.

36. The City's on-site supervisor or its contractor shall retain/maintain a fully-executed copy of this License at all times while on the Premises as part of a Project.

### **LIABILITY**

37. 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.

38. All personal property, including but not limited to, fixtures, equipment, or related materials upon the premise will be at the risk of the City only.

### **INSURANCE**

39. The City shall, at their sole cost and expense, require its contractor or contractors to procure and maintain during the construction 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 within 25 feet from the railroad track, 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 \$2,000,000 per occurrence and \$6,000,000 in the aggregate.
1. The construction of the Crossing and Project shall be completed one (1) year of the Effective Date of this Agreement.
  2. If further maintenance of the Crossing within 25 feet of track 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.

3. The original policy must be available to the NMDOT prior to performing any work or services under this Agreement.

4. 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.

40. The City agrees to waive its right of recovery against NMDOT, RMRTD, and SFS for all claims and suits against NMDOT for any acts, errors or omissions caused by a third party who causes damage to any City property or improvement who is not under the custody and control of NMDOT. The City further waives its right of recovery, and its insurers also waive their right of subrogation against NMDOT for loss of its owned or leased property or property under its care, custody, or control.

41. 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.

42. 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.

43. Prior to commencing the work, 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.

44. 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.

45. 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.

46. 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.

47. 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.
48. 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.
49. Failure of the City or its contractor(s) to provide evidence, as required by this section, shall entitle, but not require, NMDOT to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of the City's obligations hereunder.
50. The City may self-insure for the liability that may arise from the performance of this Agreement; however, the City may not self-insure for the liability to be covered by Railroad Protect Liability insurance.
51. 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**

52. The City shall strictly comply with all federal, state and local environmental laws and regulations in its 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").
53. The City shall not 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.
54. 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.
55. 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.
56. 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.
57. 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 Crossing 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 right of way.

58. 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.
59. The City shall promptly respond to NMDOT's request for information regarding said conditions or activities.
60. For all bores greater than 26-inch diameter and at a depth of less than 10.0 feet below base of rail, a soil investigation will need to be performed by the City and reviewed by NMDOT prior to construction. This study is to determine if any environmental contamination is present near the location of the bore. NMDOT may select a new location for the City's use, or may require the City to furnish for NMDOT's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once NMDOT has approved any such remedial plan in writing, the City shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

#### **ALTERATIONS**

61. The City may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without NMDOT's prior written consent.

#### **DEFAULT**

62. 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.
63. 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**

64. 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 Crossing will be removed and Premises will be restored to its condition as of the Effective Date, at the City's sole cost and expense. If the City fails to surrender to NMDOT the Premises, upon any termination of this License, all liabilities and obligations of the City hereunder shall continue in effect until the Premises are surrendered.

#### **ASSIGNMENT**

65. 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.

**NOTICES**

66. 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:**

Attention: Rail Facilities Manager

PO Box 1149  
1120 Cerrillos Road  
Building SB-4, 2<sup>nd</sup> Floor  
Santa Fe, NM 87504

**If to Licensee:**

City of Santa Fe, Public Works Department

Attention: Regina Wheeler, Public Works Director

and

Sarah Anderson, P.E.  
Engineer Supervisor—Roadway and Drainage  
City of Santa Fe  
500 Market Street, Suite 200  
Santa Fe, NM 87501

With Copies of Notice sent to:

Attention: City Attorney  
P.O. Box 909  
200 Lincoln Avenue  
Santa Fe, New Mexico 87504

**SURVIVAL**

67. Neither termination nor expiration will release either party from any liability or obligation under this License 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 and the Premises are restored to its condition as of the Effective Date.

**APPLICABLE LAW**

68. 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**

69. 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**

70. 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 Premises, and supersedes any and all other agreements between the parties hereto relating to the City's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of the City.

**MISCELLANEOUS**

71. 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.

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)

By: MRS M  
Cabinet Secretary or designee

Date: 4/12/, 2019

Approved as to Form:

By: Kenneth B. Davis, General Counsel  
Office of General Counsel

Date: April 3, 2019

THE CITY OF SANTA FE (LICENSEE)

By: Alan Webber

Printed Name: Alan Webber

Title: Mayor Date: 3/29/19

Approved as to Form:

By: [Signature]

Date: March 29, 2019

Attest:

By: Yocanda Y. Sigil

Date: 3-29-, 2019

cc mtg. 3/27/2019





**EXHIBIT 'A' (SITE DRAWING)**



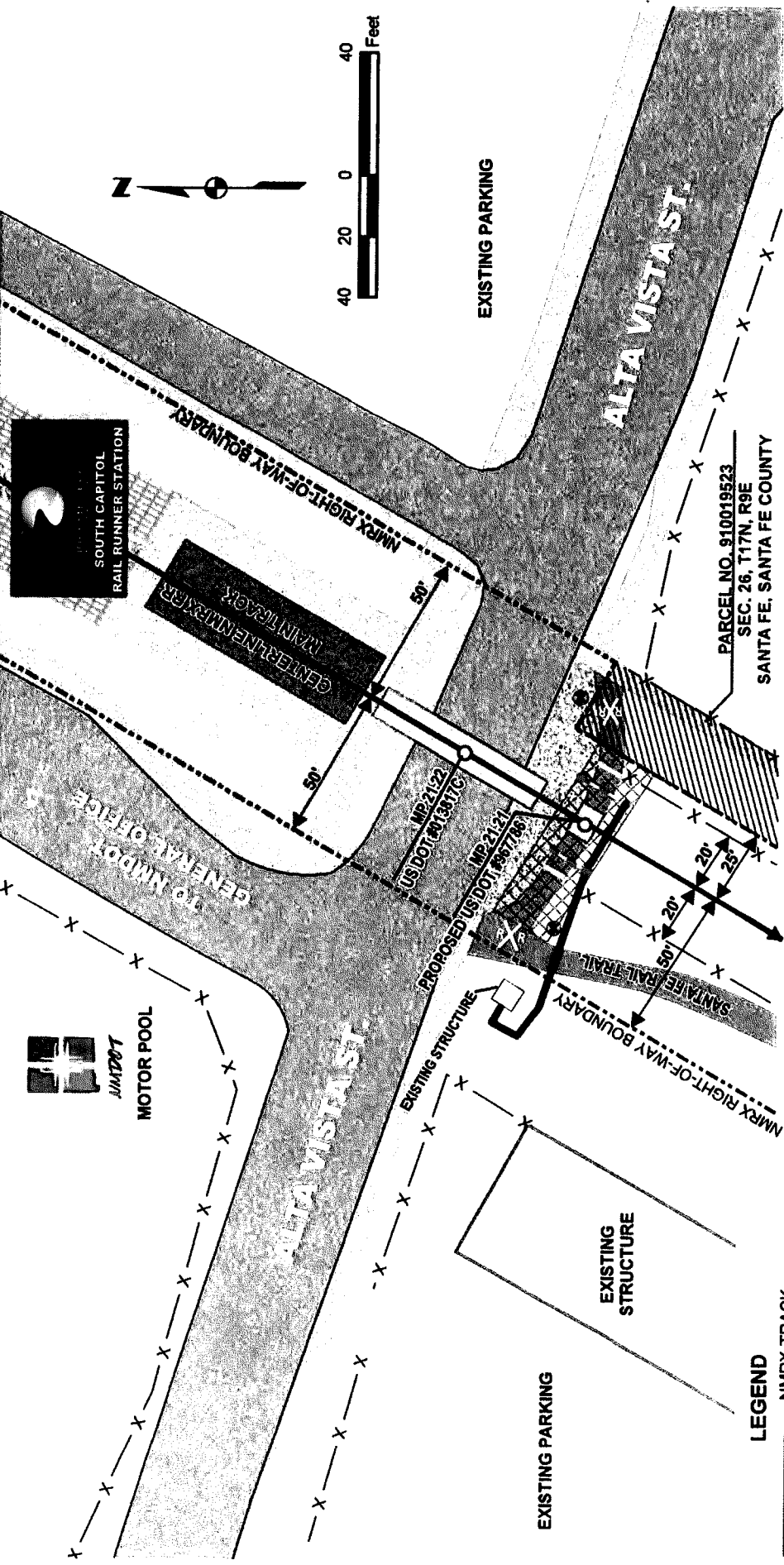
# EXHIBIT "A"

ATTACHED TO THE CONTRACT BETWEEN  
**NEW MEXICO DEPARTMENT OF TRANSPORTATION**  
 AND  
**THE CITY OF SANTA FE**  
 COVERING PUBLIC PATHWAY GRADE CROSSING

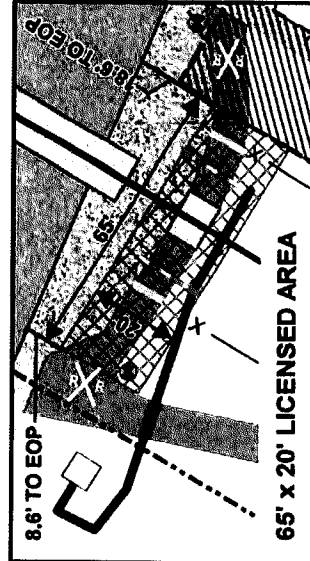
A PROPOSED PUBLIC MULTI-USE TRAIL AT GRADE  
 CROSSING LOCATED AT NMRX MAIN TRACK MP 21.21  
 EQUIPPED WITH L.E.D. FLASHER LIGHTS AND GATE  
 ARMS WITH CONSTANT WARNING TRAIN DETECTION  
 DESIGNATED AS USDOT CROSSING USDOT #967786

TO NMDOT  
 GENERAL OFFICE

TO SANTA FE



- LEGEND**
- NMRX TRACK
  - - - NMRX RIGHT-OF-WAY BOUNDARY
  - ROADWAY EDGE
  - PROPOSED UNDERGROUND SIGNAL CONDUIT
  - X — EXISTING FENCE
  - X — INSTALL L.E.D FLASHER LIGHTS AND GATE ARMS
  - ▨ LICENSED AREA
  - ▨ FORMER RAILROAD RIGHT-OF-WAY (SOLD) PARCEL (SEE AS NOTED)
- NEAR STATION OF SANTA FE  
 COUNTY OF SANTA FE**



REVISIONS		DATE	BY
NO.	DESCRIPTION		

NEW MEXICO DEPARTMENT  
 OF TRANSPORTATION  
 TRANSIT & RAIL

NMRX RAILROAD  
 COSF RAIL TRAIL ALTA VISTA

