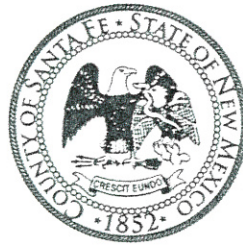


**Henry P. Roybal**  
Commissioner, District 1

**Anna Hansen**  
Commissioner, District 2

**Robert A. Anaya**  
Commissioner, District 3



**Anna T. Hamilton**  
Commissioner, District 4

**Ed Moreno**  
Commissioner, District 5

**Katherine Miller**  
County Manager

**DATE:** *September 24, 2018*

**TO:** *Board of County Commissioners*

**FROM:** *Michael Kelley, Public Works Department Director MK 9/26/18*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting October 9, 2018*

**Approval of PNM Easement Encroachment Agreement for the Santa Fe Rail Trail Segment 5 (Public Works / Colleen Baker)**

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**SUMMARY:**

The purpose of this easement encroachment agreement is to allow the Santa Fe Rail Trail Segment 5 to cross existing PNM utility easements.

**BACKGROUND:**

The Santa Fe Rail Trail is a regional, multi-modal trail that runs along the historic Atchison, Topeka, Santa Fe Railway from the depot in Santa Fe, NM to Lamy, NM. Santa Fe County manages the portion of the trail from I-25 to NM 285.

In April 2017 the New Mexico Department of Transportation (NMDOT) awarded Santa Fe County a Transportation Alternatives Program (TAP) grant to construct the Santa Fe Rail Trail Segment 5 from Avenida Eldorado to Spur Ranch Road. Santa Fe County completed the required project certifications in July 2018 and NMDOT signed the Cooperative Project Agreement in August 2018 authorizing the federal funding for construction of the project. The County plans bid the project for construction this fall and begin construction early next year.

PNM has existing easements for an underground distribution line along Avenida Eldorado and for an overhead transmission line that runs perpendicular to the railroad between Avenida Eldorado and Spur Ranch Rd. PNM requires an easement encroachment agreement in order to allow Santa Fe County to construct the improvements to the trail across these easements. There is no cost for this agreement and the trail construction will not have any impact on the utilities.

**ACTION REQUESTED:**

Approval of PNM Easement Encroachment Agreement for the Santa Fe Rail Trail Segment 5.





A personal commitment  
to New Mexico

Alvarado Square, Albuquerque, New Mexico 87158-2101

## EASEMENT ENCROACHMENT AGREEMENT

This Easement Encroachment Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2018,

by and between (BUYER/BORROWER/OWNER) Santa Fe County

whose address is Santa Fe, New Mexico

(hereinafter called "First Party"), (his) (her) (their) (its) heirs, successors and assigns, and PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico Corporation (hereinafter called "PNM"), and all collectively hereinafter called "Parties."

### WITNESSETH:

WHEREAS, PNM is the Grantee of a certain Easement within the hereinafter described property;

WHEREAS, First Party desires to encroach upon the Easement as more particularly specified hereinafter; and

WHEREAS, PNM has agreed to said encroachment;

NOW THEREFORE, for and in valuable consideration, the receipt of which is hereby acknowledged, PNM does hereby grant First Party the right to encroach upon the Easement only to the extent of, and for the purposes set forth below:

PNM MT NO. 004648 - Agreement No. (SL115kV Line PNM file: 503.61 near SL53)

Encroachment of an eight (8) foot wide crusher fines multi-use trail (Santa Fe Rail Trail Segment 5) along the historic Santa Fe Southern Railway, crossing a 100 foot wide PNM Transmission easement containing the SL115kV Line in Sec. 30, T. 15N., R. 10E, N.M.P.M., and crossing electric distribution facilities, within Avenida Eldorado, in Sec., 18, T. 15N., R. 10E., N.M.P.M., Santa Fe County, New Mexico, said Transmission easement was filed for record in the office of the County Clerk of Santa Fe, County on November 29, 1972, in Plat Book 296, Page 110.

Said encroachment areas are shown on the attached Exhibits "A1", "A-2" and "A-3".

### ENCROACHMENT GUIDELINES FOR ELECTRIC FACILITIES

1. All construction equipment must maintain fifteen (15) feet vertical and horizontal clearance from all wires and structures.
2. No permanent structures or landscaping at mature growth can be more than fourteen (14) feet in height within the Easement.
3. First Party will provide a complete set of development plans to PNM for review and approval. If changes are made as a result of the review process, a final development plan will be provided by First Party to PNM before final approval is granted.
4. When required, First Party shall install a PNM approved barricade for structures affected and incur all costs associated with the barricade installation.
5. First Party shall comply with Occupational Safety and Health Administration (OSHA) clearance requirements for any developments near power lines.
6. Only the encroachments shown on the attached Exhibit "A" have been approved to be within the easement by PNM. First Party shall not modify or add to said encroachments unless first approved by PNM.
7. No grading within 5 feet of PNM pole structures.
8. No fill over 1 foot within the PNM easement.
9. PNM shall have 24/7 vehicle access to facilities.
10. All personnel and equipment must maintain OSHA working clearances from the energized line.
11. No dumpsters are allowed within the PNM the easement.
12. No stockpiling material within the right of way.
13. Only minimal changes to the existing grade.

By granting the aforesaid right to encroach PNM does not waive or relinquish any rights or benefits that it may have, either expressed or implied, under or by reason of the Easement, including, but not limited to, the right to build, rebuild, construct, reconstruct, locate, relocate, change, remove, replace, modify, renew, operate and maintain its electric lines (including underground electric lines) and other electric equipment, fixtures, appurtenances and structures that are now located, or may in the future be located, on, over, beneath, through and across the Easement. First Party, at its sole cost and expense, agrees to remove or relocate its encroachment upon the written request of PNM within 90 days of such written request. First Party appoints PNM as its agent to accomplish said removal or relocation at First Party's expense if First Party fails to remove or relocate such encroachment within such time period.

PNM  
REFERENCE  
NUMBER

① of ⑤



In consideration of PNM granting First Party the right to encroach upon the Easement, First Party agrees to release from liability PNM, its officers, employees and agents from, and subject to the immunities and limitations of the New Mexico Constitution, Art. IX, Sec. 10 and the New Mexico Tort Claims Act (Section 41-4-1 et seq., NMSA 1978, as amended) and agrees to indemnify and hold harmless, PNM its officers, employees and agents from, any and all claims that directly or indirectly arise out of the existence, construction, maintenance, operation, repair, condition, use or presence of the encroachment that is authorized by PNM in this Agreement, upon the Easement, or are caused by, or arise out of, the actions or omissions of First Party, its officers, employees or agents; provided, however, that notwithstanding anything to the contrary in this paragraph, First Party's obligations to release from liability or indemnify PNM, its employees and agents shall not apply to claims for personal injuries or damages to property to the extent such are caused by or result from the negligent actions or omissions of PNM, its officers, employees or agents.

In consideration of PNM permitting First Party to encroach upon the Easement, First Party agrees that PNM shall not be responsible for any damage caused to facilities, equipment, structures or other property of First Party if damaged by reason of PNM's use of Easement.

First Party shall comply with all applicable laws, ordinances, rules and regulations enacted or promulgated by any federal, state or local governmental body having jurisdiction over First Party's encroachment.

The provisions hereof shall inure to the benefit of and bind the heirs, executors, administrators, personal representatives, mortgagees, lessees, tenants, successors and assigns of the Parties hereto; provided, however, that no such heir, executor, administrator, personal representative, mortgagee, lessee, tenant, successor or assign of First Party shall have the right to use, alter or modify the encroachment in a manner which will increase the burden of the encroachment on the Easement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first written above.

FIRST PARTY  
Santa Fe County

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: \_\_\_\_\_

By: \_\_\_\_\_  
Fernando Vigil, Manager, Land Management Department

By: \_\_\_\_\_

PNM USE ONLY

STATE OF NEW MEXICO }  
COUNTY OF BERNALILLO } SS

This instrument was acknowledged before me on \_\_\_\_\_, 20 18.  
By Fernando Vigil, Manager, Land Management Department of the Public Service Company of New Mexico, a New Mexico corporation, on behalf of said corporation.

My commission expires:  
(Seal)

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ }

COUNTY OF \_\_\_\_\_ } SS

This instrument was acknowledged before me on \_\_\_\_\_, 20 \_\_\_\_.

By \_\_\_\_\_

My commission expires:  
(Seal)

\_\_\_\_\_  
Notary Public

ACKNOWLEDGEMENT FOR CORPORATIONS

STATE OF \_\_\_\_\_ }

COUNTY OF \_\_\_\_\_ } SS

This instrument was acknowledged before me on \_\_\_\_\_, 20 \_\_\_\_.

By \_\_\_\_\_  
(Name of Officer) (Title of Officer)

of \_\_\_\_\_  
(Corporation Acknowledgement)

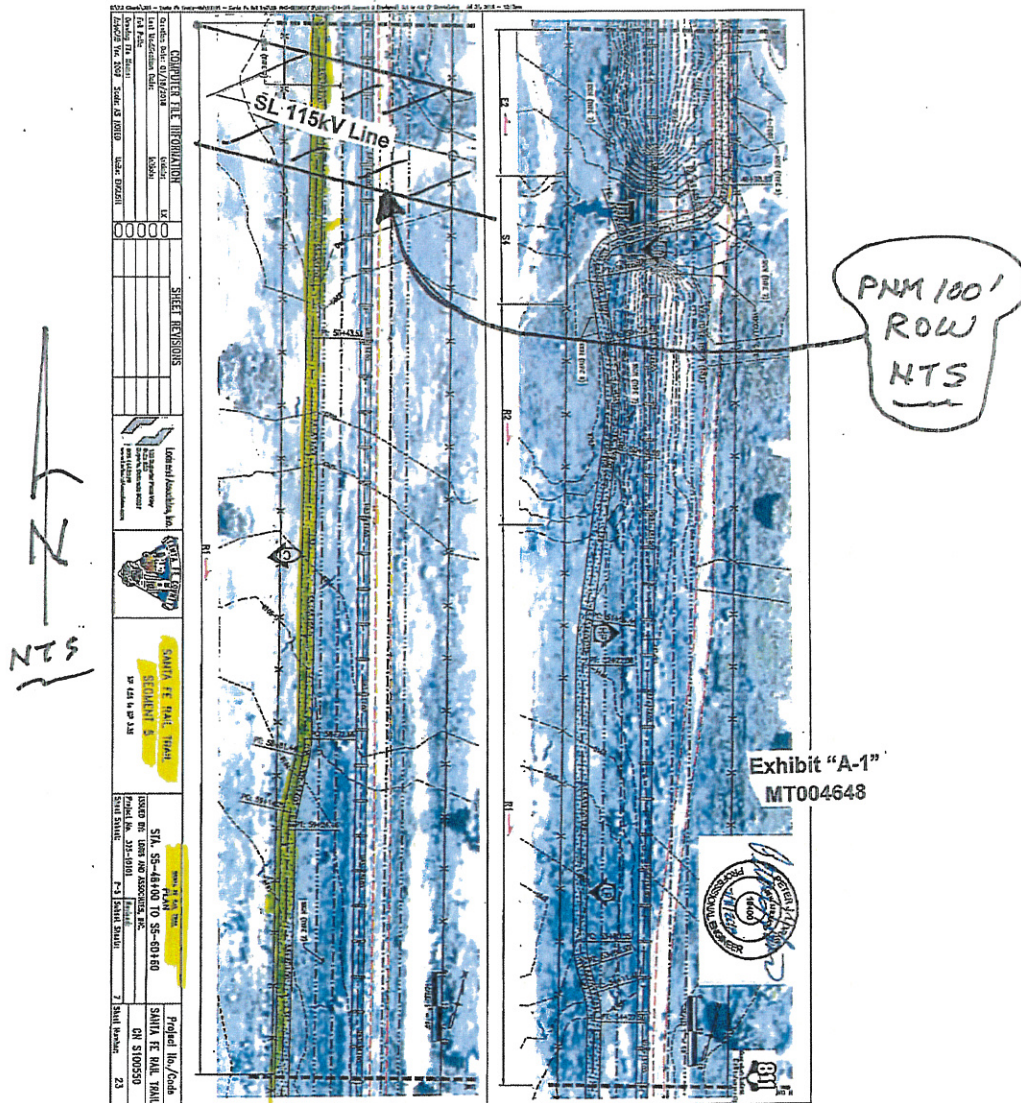
a \_\_\_\_\_ corporation, on behalf of said corporation.  
(State of Incorporation)

Said officer acknowledges s/he is the duly authorized signatory of said corporation.

My commission expires:  
(Seal)

\_\_\_\_\_  
Notary Public

② of ⑤



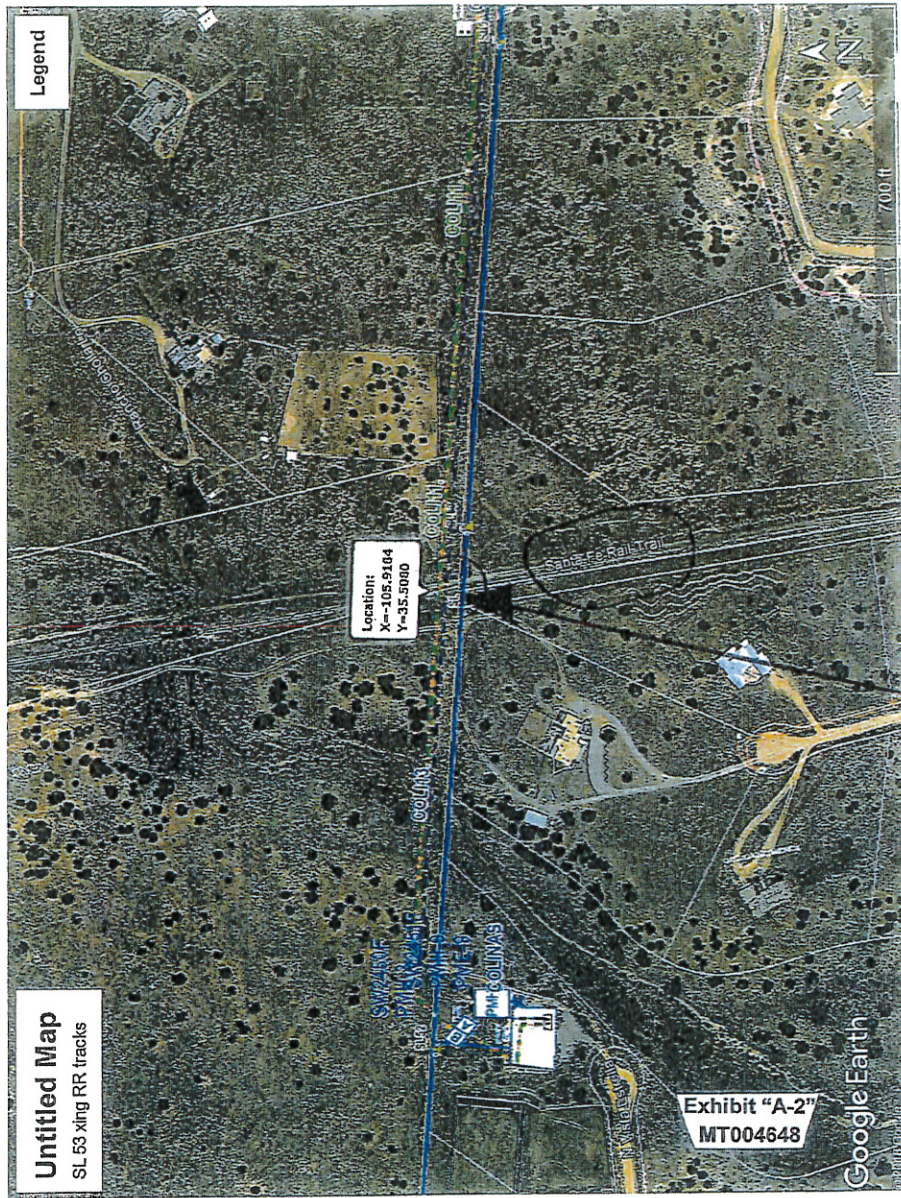
Approved as shown

MT004648

Paul Morgan  
Paul Morgan  
PNM Trans Engr  
12 Sep 2018

⑬ of ⑤





MT004648





MT004648

Approved by  
TOM DOMINGUEZ  
PNM ENGINEERING SUPERVISOR  
ON 9/13/2018  
C7B (5) of (5)







