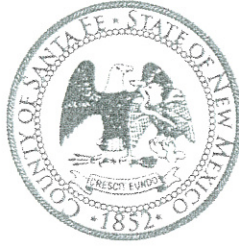


Henry P. Roybal
Commissioner, District 1

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

MEMORANDUM

DATE: 10/31/2018

TO: *Board of County Commissioners*

VIA: *Katherine Miller, County Manager*

FROM: *Michael K. Kelley, Public Works Department - Director* MK 10/31/18

ITEM AND ISSUE: *BCC Meeting November 13, 2018*

Approval of a License Agreement Between County and the New Mexico Department of Transportation Authorizing Construction of Drainage Improvements on County Road 55A; (Public Works/Terry Lease)

SUMMARY:

The Public Works Department is requesting approval of a license agreement between the County and the New Mexico Department of Transportation ("NMDOT") authorizing construction of drainage improvements on CR 55A (aka General Goodwin Road).

BACKGROUND:

County Road 55A has been experiencing drainage and erosion problems for many years and the Santa Fe County Board of County Commissioners ("Board") authorized capital funding to construct the necessary drainage improvements ("Project"). The County hired an engineering firm to design the necessary improvements and that design identified areas within the existing NMDOT right-of-way that will be affected by the Project.

ACTION REQUESTED:

Approval of the subject license agreement.

**NMDOT RAILROAD RIGHT-OF-WAY
DRAINAGE LICENSE**

THIS LICENSE ("License"), is made and entered into this ____ day of _____, 2018 ("Effective Date"), by and between THE NEW MEXICO DEPARTMENT OF TRANSPORTATION ("NMDOT") and SANTA FE COUNTY, a political subdivision of the State of New Mexico ("Licensee").

WHEREAS, Licensee desires to construct improvements to County Road 55A (General Goodwin Road); and

WHEREAS, County Road 55A right-of-way is adjacent to and shares its boundary with the north boundary of NMDOT-owned NMRX railroad right-of-way ("NMRX ROW"); and

WHEREAS, Rio Metro Regional Transit District ("RMRTD") maintains the NMRX railroad under an agreement with NMDOT; and

WHEREAS, Licensee desires to use a portion of the NMRX ROW for drainage purposes for County Road 55A; and

WHEREAS, NMDOT has approved of the drainage plan proposed by the Licensee, marked as Exhibit "B", PLANS & SPECIFICATIONS, attached hereto and made a part hereof;

WHEREAS, Licensee and NMDOT desire to express in writing their understanding and agreement with regard to the drainage improvements Licensee will construct and maintain.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree to the following:

GENERAL

1. (a) NMDOT hereby grants Licensee a non-exclusive license, subject to all existing rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to use a portion of NMRX ROW, as approved by NMDOT, for the purpose and use of a drainage swale area serving County Road 55A consisting of an area 13 feet in width by 3,140 feet in length, more or less, comprising a total of 40,820 square feet, more or less, commencing at milepost 848.92 and terminating at milepost 849.52 of the Albuquerque Subdivision, near the village of Los Cerrillos, Santa Fe County, New Mexico (hereafter "Premises").

(b) The Premises shall be confined to the limits and dimensions as shown in Exhibit "A," attached hereto and made a part hereof and shall conform to the design and specifications as shown in Exhibit "B."

(c) Licensee shall construct a new fence line within and along the southern boundary of the Premises as a separation between it and the NMRX ROW main track. Said fence shall be, at a minimum, a four-strand barbed wire fence with a minimum clearance of two feet from the edge of the railroad overhead code line posts, and shall

tie back into the existing fence on and along the north NMRX ROW boundary line at each end of the Premises.

2. Licensee agrees that all improvements placed within the NMRX ROW by Licensee after the Effective Date of this License, shall become the property of NMDOT, unless the NMDOT requires the drainage improvements be removed by Licensee upon termination or modification of this agreement.
3. Licensee agrees, at its cost, to construct and to maintain, at a level as determined by NMDOT, all such improvements placed upon the Premises by the Licensee; and to keep the Premises and all improvements thereon free from rubbish and in a neat, safe, and good condition and repair, to the reasonable satisfaction of NMDOT.
4. Licensee shall be responsible for the cost of any contributory damage to railroad infrastructure - including but not limited to track, roadbed, signals, or culverts - determined by NMDOT to be directly caused by Licensee's drainage improvements; Licensee shall also be responsible for additional drainage improvements needed to protect NMDOT's railroad infrastructure, in the event NMDOT determines that its railroad infrastructure has become threatened or endangered by erosion or other similar causes as a direct result of the presence of Licensee's drainage-way and improvements.
5. The Premises and improvements thereon shall not be used for any other purpose other than those connected with the purpose of the drainage improvements contemplated by this License.
6.
 - (a) Licensee shall be the primary monitor of the drainage improvements to the Premises. Licensee shall have the obligation to keep the Premises clear of unauthorized vehicles. No additional improvements beyond those granted exclusively in this license are allowed upon the Premises unless specifically approved by NMDOT, such approval shall not be unreasonably withheld, conditioned or delayed.
 - (b) This License does not convey a perpetual right to use the Premises.
 - (c) Licensee shall perform regular maintenance as necessary to the drainage improvements installed by Licensee to maintain consistent and proper drainage; Licensee shall be solely liable for the costs of such maintenance.
 - (d) Licensee acknowledges that the NMDOT has the right to revoke this License at any time, for any reason. In such event, the NMDOT assumes responsibility for storm water flows from the County Road 55A right-of-way at the property line between the parties and the Licensee is not entitled to any relocation costs or reimbursement for alternate drainage easements.
7. Licensee shall not disturb any improvements of NMDOT or NMDOT's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of any such improvements, except as allowed by the design and specifications shown in Exhibit B.
8. Licensee acknowledges that one or more other parties may have, or may claim to have, ownership rights in certain segments of certain of NMDOT's rail corridors, and may claim that Licensee also 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. Licensee acknowledges that NMDOT's ownership interest in many of its rail corridors is a determinable fee, a railroad right of way or a rail service easement, which shall terminate when NMDOT either:

- (a) Ceases to use those rail corridors for railroad purposes; or
- (b) Uses such rail corridors for purposes found to be inconsistent with use of the corridors for railroad purposes.

In such circumstances, NMDOT's right to license any such rail corridor, or its rights under any license of any such rail corridor, may be subject to termination as of the date the circumstances set forth in either (a) or (b) above, first arise (unless Licensee improves the quality of title to the Premises by obtaining a patent or deed from the federal government, if appropriate, or acquiring additional property interests from third parties). Licensee also acknowledges that NMDOT's ownership rights may terminate for other reasons, such as termination of franchise rights, and that certain segments of NMDOT's rail corridors consist only of trackage rights licensed to NMDOT, enabling NMDOT to provide rail service, or shared ownership with other railroads, and that NMDOT may not have rights to include those segments in any license to Licensee. Licensee further acknowledges that Licensee's rights to enter into this License, and its rights under this License to use the rail corridor, are subject and subordinate to all outstanding 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 relate to NMDOT's rail corridor, except NMDOT in the future shall not place or cause to be placed any encumbrance upon NMDOT's rail corridor or enter into any easement, lease, license, permit or agreement, which would materially disrupt Licensee's ability to exercise rights under this License or to utilize Licensee's Facilities covered by this License.

9. Licensee shall use the Premises solely for the purpose of drainage, the construction and maintenance of drainage improvements approved by NMDOT. Licensee shall not use the Premises for any other purpose and said Premises shall remain strictly for private commercial use. Licensee shall not construct or place any fence, structure or building on the Premises without prior written consent of the NMDOT, and such consent not to be unreasonably withheld, conditioned or delayed. Licensee 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 (as defined herein), on the Premises.
10. In case of the eviction of Licensee 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 Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, if any.
11. Any contractors or subcontractors performing work on the Premises or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

12. This License shall commence on the Effective Date of this License and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

This License may be renewed or extended by the written agreement of NMDOT and Licensee.

COMPENSATION

13. (a) In consideration for grant of this License, Licensee shall pay NMDOT, prior to the Effective Date, a one-time license fee of \$10.00.

Licensee shall be responsible for all costs and expenses incurred in connection with Licensee's use of the Premises.

COMPLIANCE WITH LAWS AND RAILROAD REQUIREMENTS

14. (a) Licensee 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 use of the Premises.

(b) Prior to entering Premises to perform construction or maintenance work on the Premises, Licensee or its contractor shall be issued a NMDOT Railroad Property Temporary Access/Occupancy Work Permit by the NMDOT Rail Bureau. Licensee or its contractor shall retain a copy of this work permit on the job site at all times when performing construction activities on the Premises.

(c) Prior to performing construction or maintenance work to the Premises, Licensee shall or shall cause its contractor to comply with all NMDOT's applicable safety rules and regulations. Prior to commencing any work on Premises, Licensee shall complete or require its contractor to complete the railroad safety training program provided by Rio Metro Regional Transit District (RMRTD). This training must be completed no more than one year in advance of Licensee's entry on the Premises.

(d) Prior to performing construction or maintenance work on the Premises, Licensee or its contractor shall provide NMDOT with proof of insurance as required by the terms of this License. Costs shall be borne by Licensee or its contractor.

(e) Prior to performing construction or maintenance work on the Premises, Licensee or its contractor shall notify NMDOT's Rail Facilities Manager at (505) 629-2830 of its intent to perform such work. Contractor and its subcontractors must plan, schedule, coordinate and conduct all work so as to not to cause delay or disruption to trains or other railroad operations or activities.

(f) Prior to performing construction or maintenance work to the Premises within fifty (50) feet from the centerline of Track, Licensee shall, or cause its contractor to arrange railroad flagging protection through RMRTD with a minimum of ten (10) business days' notice.

DEFINITION OF COST AND EXPENSE

15. For the purpose of this License, "cost" or "costs" "expense" or "expenses" include, but are 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

16. Provided NMDOT, or any third party, employs all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 1 above; NMDOT accepts and reserves the right, to be exercised by NMDOT and any other parties who may obtain written permission or authority from NMDOT:
- (a) To maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) To construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises;
 - (c) To use the Premises in any manner as NMDOT in its sole discretion deems appropriate; provided such use does not interfere with Licensee's use of the Premises;
 - (d) To terminate this License as provided herein below.

LICENSEE'S OPERATIONS

17. (a) Licensee shall notify the RMRTD Safety Officer at (505) 414-1308 and NMDOT Rail Facilities Manager (505) 629-2830 prior to commencement of constructing improvements or any subsequent maintenance thereon. In the event of an emergency situation, Licensee shall immediately notify the above representatives of the nature of the emergency. NMDOT shall reasonably allow access for emergency work and may verbally authorize entry upon the Premises.
- (b) During construction or maintenance of Licensee's drainage improvements to the Premises, Licensee shall use only authorized railroad crossings to cross from one side of NMDOT's tracks to the other.
18. (a) Except for emergency work authorized, Licensee shall not 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 Licensee has obtained prior written approval from NMDOT. Licensee 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 interference with the existence or use of present or future tracks, roadbed or property of NMDOT, or the safe operation and activities of NMDOT. If ordered to cease using the Premises at any time by NMDOT's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of NMDOT, the Parties agree that NMDOT has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by NMDOT to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- (b) Licensee shall, at its sole cost and expense and subject to the supervision of NMDOT's railroad representative, locate, construct and maintain Licensee's operations and use of the Premises in such a manner and of such material that it will not at any time be a source of danger to or interference with the present or future tracks, roadbed

and property of NMDOT, or the safe operation of its railroad. Further, the operations of the Licensee shall be limited and maintained at the existing or current level of activity as of the Effective Date of this License and shall not be expanded by the installation of additional improvements or facilities except as provided in the design and specification as shown in Exhibit B. If ordered at any time to halt construction or maintenance of the operations by NMDOT's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of NMDOT, the Parties agree that NMDOT has no duty or obligation to observe or inspect, or to halt work on, the Premises. Neither the exercise nor the failure by NMDOT to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the reasonable judgment of NMDOT, fail to perform properly its obligations under this Section, NMDOT shall inform the Licensee in writing of its judgment for the need of remedial work. If the Licensee does not perform the work itself or direct its contractor to perform the work, NMDOT may perform the work at Licensee's expense. Failure on the part of NMDOT to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby. If NMDOT performs the remedial work at Licensee's expense, failure on the part of the Licensee to perform such work shall not be considered a default of this License, subject to NMDOT receiving payment in full from Licensee compensating NMDOT for performance of the work.

19. During the use of the Premises and any subsequent maintenance performed on the Premises, Licensee shall perform such work in a manner to preclude damage to the property of NMDOT, and preclude interference with the operation of its railroad.
20. If at any time during the term of this License, and any authorized renewals or extensions thereof, 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 Licensee's use of the Premises, Licensee shall, at its sole expense, within (30) days, or within (15) days when deemed an emergency by NMDOT in its reasonable discretion, after receiving written notice from NMDOT to such effect, make such changes in the use or the Premises as in the sole reasonable discretion of NMDOT may be necessary to avoid interference with the proposed use of NMDOT's rail corridor by NMDOT, including, without limitation, the relocation of the Licensee's operations or the complete removal of Licensee's operations and the cancellation of this License.
21. Upon termination of this License, Licensee shall at its sole cost and expense:
 - (a) Remove all material installed on the Premises unless otherwise directed by NMDOT, and all improvements or appurtenances thereto at NMDOT's reasonable discretion;
 - (b) Report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (c) Remedy any unsafe conditions on the Premises created or aggravated by Licensee;
 - (d) Leave the Premises in a reasonably similar condition as that other existing railroad right of way as if no storage operations had been undertaken on the Premises.

LIABILITY

23. As between the parties, each party acknowledges or represents that it will be responsible, to the extent of its negligence, for liability arising from personal injury or damage to persons or property, including death, occasioned by its officials, member, employees, agents or invitees. The liability of both NMDOT and Licensee shall be subject in all cases to the immunities and limitations of the Tort Claims Act, Section 41-4-1 et seq. NMSA 1978, and any amendments thereto.

PERSONAL PROPERTY WAIVER

24. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, EXCEPT FOR THE NEGLIGENCE OF ANY INDEMNITEE.

INSURANCE

25. If Licensee is self-insured for the purposes of general and automobile liability coverage during the life of this License, Licensee shall provide NMDOT with a letter describing Licensee's self-insurance coverage subject to NMDOT approval.

Licensee Contractors and Subcontractors: Required Insurance

(a) Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence for bodily injury and property damage and an aggregate limit of at least \$6,000,000, and shall name NMDOT, Rio Metro Regional Transit District and its operating and maintenance contractor (RMRTD) and BNSF Railway as additional insured. Coverage must include, but not be limited to, the following:

- Bodily injury and property damage
- Personal injury and advertising injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within fifty (50) feet of railroad property.
- Any exclusion related to the explosion or collapse of any underground hazards shall be removed.

(b) Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 each accident, and include coverage for, but not limited to, the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

(c) Worker's Compensation and Employer's Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee'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 in any event.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, and \$500,000 by disease each employee.

Licensee shall require its contractor or subcontractor to obtain the following insurance in part (d) only during terms of construction or heavy maintenance under, over or within 25 feet horizontally from the nearest in-service track, and shall not be able to self-insure:

(d) Railroad Protective Liability Insurance. If any construction is requested by Licensee and authorized by NMDOT then Licensee shall require its contractor to provide this Railroad Protective Liability Insurance. This insurance shall name NMDOT, Rio Metro Regional Transit District and its operating and maintenance contractor (RMRTD) and BNSF Railway as named insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction. THE CONSTRUCTION WORK SHALL BE COMPLETED WITHIN THE TIME SPECIFIED IN THE AUTHORIZATION. If further maintenance of the authorized construction is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to NMDOT prior to performing any work or services under this License.

(e) Other Requirements:

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.

Except for negligence or willful acts of NMDOT to the extent allowed by the New Mexico Tort Claims Act, Licensee agrees to waive its right of recovery against NMDOT for all claims and suits against NMDOT. In addition, Licensee shall cause its contractors, during periods of construction or maintenance, through policy endorsement, to waive their right of subrogation against NMDOT for all claims and suits. The contractors' certificates of insurance must reflect waiver of subrogation endorsement.

Licensee's contractor insurance policies 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, with exception of Worker's Compensation and Employers Liability Insurance, for which such an endorsement is not available. The certificate of insurance must reflect that the above wording is included in evidenced policies.

All policy(ies) required above (excluding Worker's Compensation, Employer's Liability, and, if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name NMDOT, Rio Metro Regional Transit District and their operating and maintenance contractor (Collectively, RMRTD), and BNSF as additional insured with respect to work performed under this License. Severability of interest and naming NMDOT, RMRTD, and SFS and as additional insured(s) shall be indicated on the certificate of insurance.

Prior to commencing with the use of the Premises, Licensee shall require its contractor to provide NMDOT an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Provided NMDOT provides Licensee with an email address for receipt of such notices, the policy(ies) shall contain a provision stating that the insurance company(ies) issuing such policy(ies) or their authorized representative(s) shall endeavor to notify NMDOT in writing at least thirty (30) days prior to any cancellation, non-renewal, substitution or material adverse alteration, except that ten (10) day notice for nonpayment of premium shall apply. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving NMDOT arising out of this agreement, Licensee will make available any required policy covering such claim or lawsuit.

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 Premises is located.

Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated loss expense shall be in addition to all policy limits for the coverages referenced above.

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.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverage as set forth herein, naming NMDOT as an additional insured, and shall require that the subcontractor shall release, defend and indemnify NMDOT to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify NMDOT herein.

Failure to provide the insurance evidenced as required by this Section 25 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 Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including liability under the indemnity provisions of this License.

ENVIRONMENTAL

25. (a) Licensee 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, and CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.
- (b) Licensee shall give NMDOT immediate notice to NMDOT's representative at NMDOT 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 Licensee's use of the Premises. Licensee shall use all commercially reasonable efforts to promptly respond to any release on or from the Premises. Licensee also shall give NMDOT immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event NMDOT has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to Licensee's use of the Premises which occurred or may occur during the Initial Term of this License, and any authorized renewals or extensions thereof, NMDOT may require Licensee, at Licensee'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.
- (d) Licensee shall promptly report to NMDOT in writing any conditions or activities upon the Premises known to Licensee 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 property arising out of such conditions or activities; provided, however, that Licensee's reporting to NMDOT shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to NMDOT's request for information regarding said conditions or activities.

ALTERATIONS

26. Except as otherwise provided herein, Licensee 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 which consent may be exercised in the sole discretion of the NMDOT and accepted by the Licensee as final.

NO WARRANTIES

27. NMDOT'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY NMDOT OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITATION OR FITNESS FOR A PARTICULAR PURPOSE.

TITLE WARRANTY

28. NMDOT DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

DEFAULT

29. (a) A default shall be deemed to have occurred under this License if a Party breaches a material provision of this License and such breach remains uncured ten (10) days after receipt of written notice from the non-breaching Party specifying such breach; provided, however, that if the breach cannot reasonably be cured within ten (10) days, a default shall not occur as long as the breaching Party has commenced the cure within such ten (10) day period and thereafter diligently pursues such cure to completion.
- (b) 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 25 shall be in addition to, and not in limitation of, any other remedies NMDOT may have at law or in equity.

LIENS AND CHARGES

30. Licensee shall promptly pay and discharge any and all liens arising out of use of or operations on, the Premises, suffered or permitted to be done by Licensee on the Premises. NMDOT is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of NMDOT to take any such action shall not relieve Licensee of any obligation or liability under this Section or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the operations by any governmental or quasi-governmental body or any Taxes levied or assessed against NMDOT or the Premises that are attributable to the operations.

TERMINATION

31. This License may be terminated by NMDOT for any reason by delivery of a written notice 30 Days prior to the intended date of termination. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

32. If Licensee fails to surrender to NMDOT the Premises upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

33. Neither Licensee, legal representatives, or successors shall assign or transfer this License or any interest herein, without the prior written consent of NMDOT.

NOTICES

34. Any notice 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 (a) placed in the United States mail, certified, return receipt requested, or (b) 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) days advance written notice of such change in address.

If to NMDOT: New Mexico Department of Transportation
Rail Facilities Manager, Transit & Rail Division
PO Box 1149
Santa Fe, NM 87504-1149

If to Licensee: County of Santa Fe
County Manager
102 Grant Avenue
Santa Fe, NM 87501-2061

With a copy to: County of Santa Fe
Real Property Specialist
PO Box 276
Santa Fe, NM 87504-0276

SURVIVAL

35. 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 operations and improvements are removed and the Premises is restored to its condition as of the Effective Date.

RECORDATION

36. It is understood and agreed that this License shall **not** be placed on public record by recording with the Santa Fe County Clerk, except as part of the minutes and record for any public meeting at which this License is discussed.

APPLICABLE LAW

37. 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

38. 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

39. This License is the full and complete agreement between NMDOT and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the Parties hereto relating to Licensee's use of the Premises as described herein; provided, however, that nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold NMDOT harmless in any prior written agreement between the Parties.

MISCELLANEOUS

40. In the event Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
41. The waiver by NMDOT of the breach of any provision herein by Licensee shall in no way impair the right of NMDOT to enforce that provision for any subsequent breach thereof.
42. The Parties agree that the indemnification 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.
43. NMDOT reserves no control whatsoever over the employment, discharge, compensation of or services rendered by Licensee's employees or contractors. It is the intention of the Parties that Licensee shall be and remain an independent contractor and nothing herein shall be construed as inconsistent with that status or as creating or implying any partnership or joint venture between NMDOT and Licensee.
44. Each Party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this License.
45. This License may be amended or modified only by a written instrument executed by both Parties.
46. Headings of Articles and Sections are intended as information only and shall not be construed with the substance of the Article or Section they caption.

47. In construction of this License, words used in the singular shall include the plural and the plural shall include the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
48. This License is executed by the Parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulation.
49. This License may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The Parties may exchange facsimile signatures to indicate execution of this License, provided that original signature pages are promptly exchanged thereafter by overnight courier service.

SIGNATURE PAGE TO FOLLOW

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

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)

Tom Church, Cabinet Secretary (or Designee)

Date: _____, 2018

Approved as to Form:

Attorney, Office of General Counsel

Date: _____, 2018

BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY (Licensee)

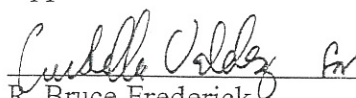
By: _____
Anna Hansen, Chair
Board of County Commissioners of Santa Fe County

ATTESTATION:

Geraldine Salazar
Santa Fe County Clerk

Date: _____

Approved as to form:



R. Bruce Frederick
Santa Fe County Attorney

Date: 10/31/18

Finance Department:



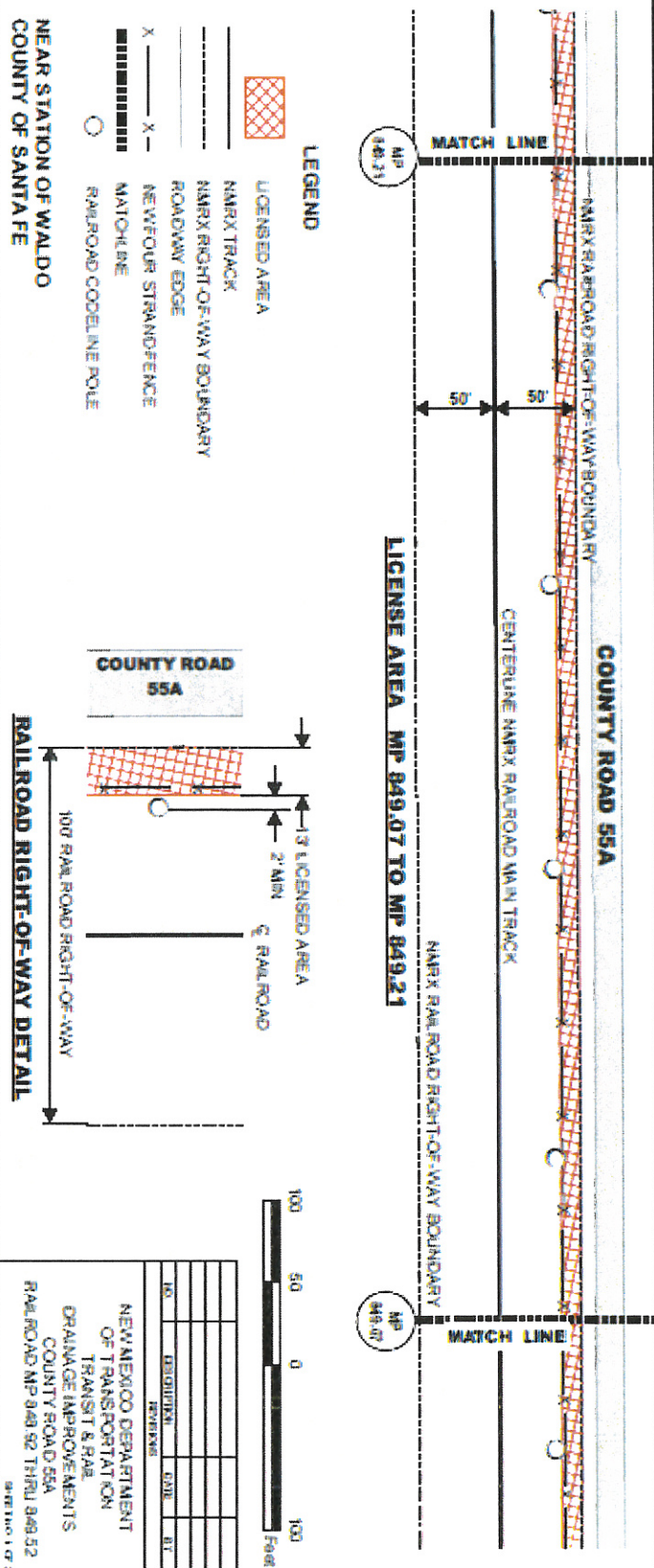
Stephanie Schardin Clarke
Santa Fe County Finance Director

Date: 10/31/18

EXHIBIT "A"
LICENSED AREA

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

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

[illegible]

NEW MEXICO DEPARTMENT
OF TRANSPORTATION
TRANSIT & RAIL
DRAINAGE IMPROVEMENTS
COUNTY ROAD 55A
RAILROAD MP 949.52 TIRLU 949.52
BARTHOLOMEW

A DRAINAGE SWALE SERVING COUNTY ROAD 55A, CONSISTING OF AN AREA 13 FEET IN WIDTH BY 1.40 FEET IN LENGTH, MORE OR LESS, COMPRISING A TOTAL OF 820 SQUARE FEET, MORE OR LESS, COMMENCING AT NINE+POST 949.62 AND TERMINATING AT NINE+POST 949.62 OF THE ALBUQUERQUE SUBDIVISION, NEAR THE VILLAGE OF LOS CERRILLOS, SANTA FE COUNTY, NEW MEXICO.

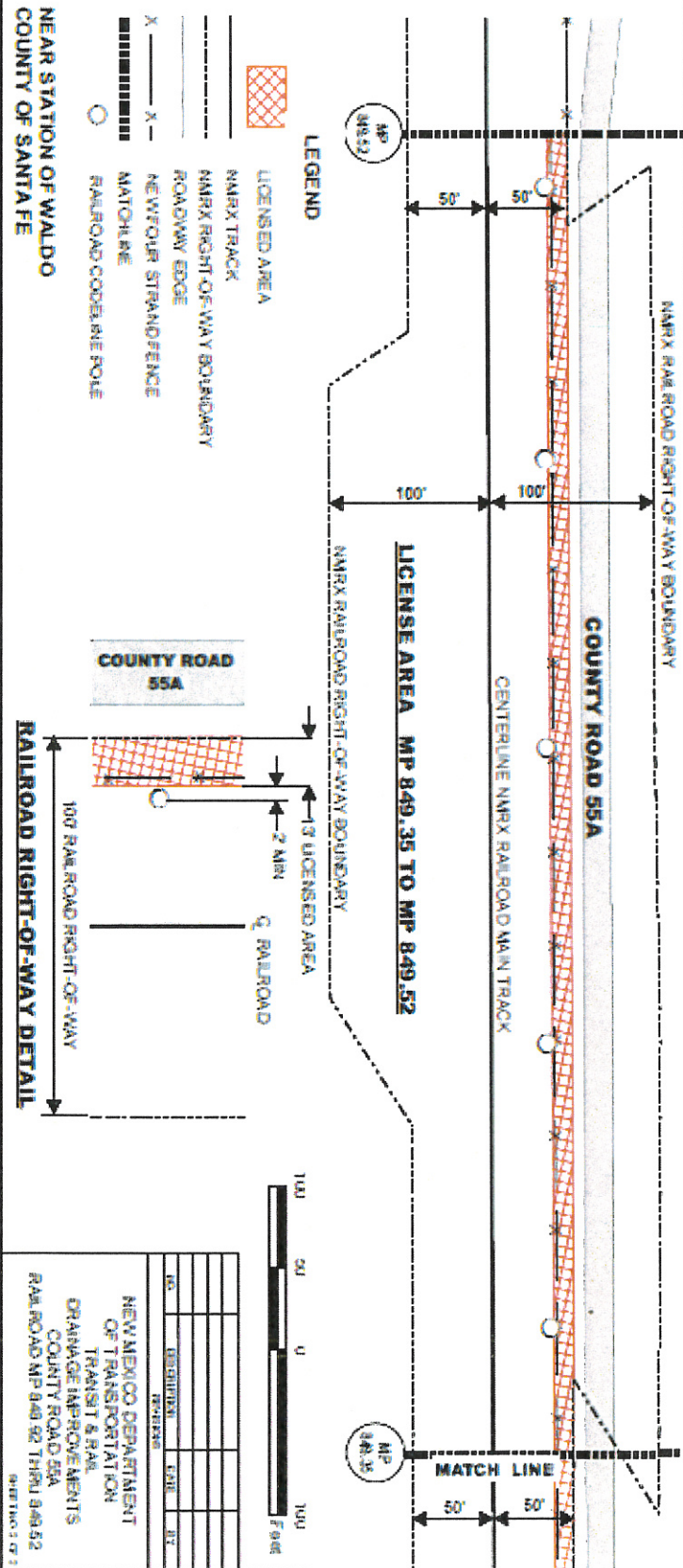
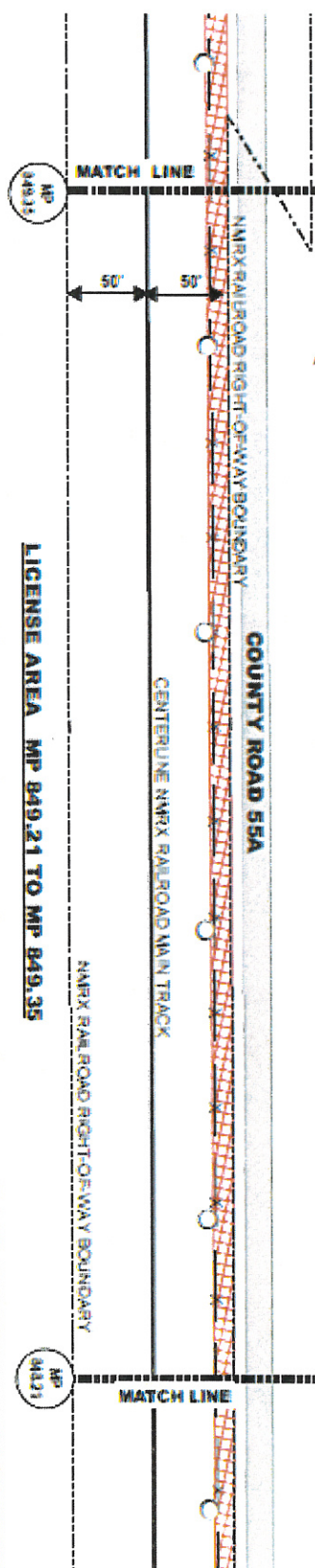


EXHIBIT "B"
PLANS & SPECIFICATIONS

ATTACHED TO CONTRACT BETWEEN

NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
SANTA FE COUNTY

