

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "City"), CEDAR INVESTORS, LLC, a New Mexico limited liability company ("Cedar") and PRESBYTERIAN HEALTHCARE SERVICES, a New Mexico nonprofit corporation ("Presbyterian") effective this 11th day of November, 2016. From time-to-time, the City, Cedar, and Presbyterian are herein referred to as a "Party" or collectively to as the "Parties."

RECITALS

WHEREAS, each Party owns certain interests in real property located in Albuquerque, Bernalillo County, New Mexico, to wit:

a. The City owns rights-of-way within Central Avenue, Mulberry Street, Cedar Street, and Copper Avenue; alleys located within Blocks 3, 4, 5, 6 and 21 of the Brownell & Lail's Highland Addition, Albuquerque, New Mexico; and, certain rights-of-way within the Presbyterian Hospital Campus ("City's Property").

b. Cedar owns Blocks 3, 4, 5, 6 and 21 of the Brownell & Lail's Highland Addition, Albuquerque, New Mexico, abutting Central Avenue to the north ("Cedar's Property").

c. Presbyterian owns certain real property within the Presbyterian Hospital Campus, abutting Central Avenue to the south ("Presbyterian's Property").

The above-referenced properties of the Parties are generally depicted in Exhibit "A" hereto; and,

WHEREAS, the City has determined that it is in the best interest of its community members to provide efficient and reliable public transportation along the Central Avenue corridor; and,

WHEREAS, the City intends to construct portions of the Albuquerque Rapid Transit project ("ART") on Central Avenue abutting the Cedar's Property and the Presbyterian's Property as generally depicted in Exhibit "C", and to do so will require coordination and exchange of real estate and other improvements among the Parties; and,

WHEREAS, Cedar and Presbyterian recognize the social and economic benefit of ART and wish to coordinate and exchange certain property and improvements with the City in order to facilitate ART's construction; and,

WHEREAS, Cedar intends to develop Cedar's Property as a mixed-use development; and,

WHEREAS, Presbyterian intends to continue to implement its master plan for the development of the hospital campus on Presbyterian's Property; and,

WHEREAS, in order to achieve the intended development of their respective properties and for the effective implementation of ART, the Parties recognize that collaboration amongst the

Parties is desirable. As such, the Parties voluntarily enter into this Agreement in order to: (1) establish an orderly plan for the Parties' respective development goals; and (2) coordinate the in-kind exchange of interests in real property, improvements and other valuable consideration in order to achieve the above-referenced goals.

NOW THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1 AGREEMENT BETWEEN PARTIES

1.1 Generally Recognized Conditions. Exhibits "A" through "H" are approximations of the Parties' goals and are intended for illustrative purpose only unless otherwise noted herein. The Parties shall at all times adhere to the City of Albuquerque ART Construction Plans titled Central Avenue Albuquerque Rapid Transit Project, COA Project No. 631991, Volume 4, Segment 4, dated September 12, 2016 ("Construction Plans"), as they may be amended from time-to-time. Furthermore, the Parties acknowledge that numerous actions addressed herein are conditioned upon further review and approval by independent bodies within the City of Albuquerque, including, but not limited to, the Design Review Committee, Development Review Board, and Albuquerque City Council.

1.2 City Obligations. The City, at its sole cost and expense, shall perform, or cause to be performed, the following (collectively, the "City Obligations"):

a. Utilize the appraisal report prepared by Gareth N. Burman, MAI, MRICS and Dana Trump of Commercial Appraisal, Inc titled "Six Exchange Parcels" dated August 15th, 2016 ("Appraisal") of Cedar's Property and Presbyterian's Property that is to be dedicated to the City for ART improvements (such property as set forth in Sections 1.3(a) and 1.4(a) hereunder, the "ART ROW Property"), for the determination of the appraised values used in Exhibit "H" as the cost of City's acquisition of right of way from Cedar and Presbyterian

b. Based on the Appraisal, complete an estimation of value of: Spruce Street between Central Avenue and Copper Street; Cedar Street between Central Avenue and Copper; Copper Avenue between Mulberry Street and Cedar Street; Mulberry Street between Central Avenue and Copper Avenue; Cedar Street between Central Avenue and Silver Street; the north intersection traffic diversion island at Cedar Street and Central Avenue; and the alleys bisecting Blocks 3, 4, 5, 6 and 21 specifically, all as described in Exhibit "B". The estimated value will be used as the valuation of these properties ("Vacated Property") as described in Exhibit "H" and Paragraph 2.1 below.

c. Transfer to Cedar by quit claim deed, and subject to easements as required for existing public utility infrastructures, the vacated portion of Spruce Street and the pending vacations of the portions of Cedar Street, Mulberry Street, and Copper Avenue as

described in 1.2(b) above all as located north of Central Avenue, the recaptured right-of-way from the north intersection traffic diversion island, and alleys bisecting Blocks 3, 4, 5, 6 and 21, , (collectively the “Cedar Vacations”), all conditioned upon final plat approval by the City’s Development Review Board and, where necessary, approval by the Albuquerque City Council.

d. The City shall transfer to Presbyterian by quit claim deed, and subject to easements as required for existing public utility infrastructures, the vacated portion of Cedar Street located south of Central Avenue (the “Presbyterian Vacation”), conditioned upon final plat approval by the City’s Development Review Board and, where necessary, approval by the Albuquerque City Council

e. No later than one (1) year after securing federal funds (as evidenced by the City’s delivery of written confirmation from the Federal Transit Administration of the availability of such funds to Cedar and Presbyterian), for the construction of ART:

- i. Remove the traffic signal and all appurtenances thereto currently at Cedar Street and Central Avenue (as generally depicted in the Construction Plans at Sheets 46-48 of 447.
- ii. Reconfigure the north intersection traffic diversion island at Cedar Street and Central Avenue (as generally depicted in the Construction Plans at Sheets 155-156 of 447.
- iii. Install a new traffic signal at Spruce Street and Central Avenue (as generally depicted in the Construction Plans at Sheets 298-300 of 447.
- iv. Construct two east-bound lanes on Central from Oak Street to Spruce Street, with the south lane of the subject two lanes to be a right-turn only lane at Spruce Street, and construct a left-turn only lane at Spruce Street (as generally depicted in the Construction Plans at Sheets 154-157 of 447.
- v. Construct two west-bound lanes from Spruce Street to Mulberry Street (as generally depicted in the Construction Plans at Sheets 155-156 of 447.
- vi. Install a protected left from east-bound Central Avenue to Mulberry Street (as generally depicted in the Construction Plans at Sheets 154-155 of 447.
- vii. Install an acceleration lane east of Spruce Street on Central (as generally depicted in the Construction Plans at Sheets 156-157 of 447 .
- viii. Construct and install 6’ sidewalks in certain locations (as generally depicted in the Construction Plans at Sheets 154-157 of 447.

f. Maintain continuous access to and from the Presbyterian emergency room access point from east and west-bound Central Avenue (as generally depicted in the Construction Plans at Sheet 155 of 447).

g. Subject to certain City approvals, including, but not limited to, review and approval by the City's Design Review Committee, grant to Cedar and/or Presbyterian a Revocable Permit for a proposed skybridge connecting Cedar's Property to Presbyterian's Property, which permit shall require grantee to carry general liability insurance naming the City as an additional insured and payment of an application fee plus an annual permit fee in an amount not to exceed \$1.00 per square foot with both insurance and fees to be paid by licensee at its sole cost and expense).

h. Subject to certain City approvals, including, but not limited to, review and approval by the City's Design Review Committee, grant to Cedar a Revocable Permit for on-street parking areas surrounding Blocks 3, 4, 5, 6, and 21, which permit shall require grantee to carry general liability insurance naming the City as an additional insured and payment of an application fee plus an annual permit fee in an amount not to exceed \$1.00 per square foot of land within the licensed spaces with both insurance and fees to be paid by licensee at its sole cost and expense). Cedar reserves the right to install parking meters and keep the revenue generated.

i. Provide to Cedar and Presbyterian all ART construction plans and specifications for the area of Central Avenue between Oak Street and Sycamore Street—and make reasonable efforts to coordinate the construction of ART with Cedar and Presbyterian.

1.3 Cedar Obligations. Cedar shall perform, or cause to be performed, at its sole cost and expense, the following (collectively, "Cedar Obligations"):

a. Dedicate by plat right-of-way to the City along Blocks 3, 4, 5 and 6 to provide the City the necessary right-of-way along Central Avenue within the ART ROW Property to construct ART improvements and east and west bound lanes along Central Avenue, as generally depicted in Exhibit "D" hereto.

b. Cedar has provided to the City the bids as set forth on Exhibit "I" evidencing the cost of asbestos abatement, demolition and debris removal (generally the "Demolition") of three (3) existing buildings located on Block 4 and two (2) existing buildings located on Block 6 of Cedar's Property (collectively the "Buildings"), as generally depicted in Exhibit "D". Cedar may elect to contract with the contractor of its choice. The amount of the bids set forth in Exhibit "I" shall be used for purposes of valuation in Exhibit "H" and Paragraph 2.1 below.

c. Within three (3) months of this Agreement, conduct the Demolition of the Buildings.

d. With Presbyterian support and City approval, vacate the Vacated Property as shown on Exhibit "D". This vacation is subject to the independent review and approval of the City's Development Review Board and, where necessary, City Council.

e. Within one (1) year of final approval by the City Council of the vacation of the Vacated Property and the Cedar Vacations, replat the City's Property and Cedar's Property in conformance with this Agreement.

f. If necessary, grant temporary construction easements for ART construction pending the completion of the above-referenced obligations.

g. Provide seven (7) parking spaces within Cedar's Property or within the right-of-way acquired by Cedar as designated herein, for public, paid or short-term parking as shown on Exhibit "E" attached hereto and incorporated herein. Cedar reserves the right to move at its sole discretion, at any time and from time to time, all or a portion of the parking spaces to another location with the Cedar Property or acquired right-of way, but shall at all times maintain seven spaces available to the general public. Cedar further reserves the right to designate said parking spaces as metered parking.

h. Dedicate easements necessary to accommodate the six-foot sidewalks illustrated in Exhibit "D".

1.4 Presbyterian Obligations. Presbyterian shall perform, or cause to be performed, at its sole cost and expense, the following (collectively, "Presbyterian Obligations"):

a. Dedicate by plat right-of-way along Central between Cedar Street and Sycamore within the ART ROW Property to the City to construct ART improvements and east and west bound lanes along Central Avenue, as generally depicted on Exhibit "F".

b. Support the City's efforts to close Cedar Street between Central Avenue and Silver Street, through the Presbyterian Hospital Campus, and the removal of the traffic signal, as generally depicted on Exhibit "F".

c. Provide any reasonable and necessary utility easements on vacated Cedar Street south of Central Avenue in conjunction with the vacation of Cedar Street.

d. Within one (1) year of final approval by the City Council of the vacation of the City's Property, replat the City's Property and Presbyterian's Property in conformance with this Agreement.

e. Prior to the removal of the Cedar Street and Central Avenue intersection and the vacation of Cedar Street between Central Avenue and Silver Street, complete construction of Spruce Street, south of Central Avenue to Silver Street, to align with the new intersection, as generally depicted on Exhibit "F".

1.5 Cooperation. The Parties shall work closely and in good faith with one another to fulfill obligations under this Agreement and to achieve construction of ART.

1.6 Permits, Licenses and Approvals. Each Party shall procure, at its sole cost and expense, any permits and licenses required in the performance of its respective obligations and otherwise comply with all applicable laws, ordinances, and governmental regulations. The Parties shall reasonably cooperate with each other in their efforts to obtain the necessary permits, licenses and approvals required for the completion of the obligations.

1.7 City Access to ROW and Cedar and Presbyterian Access. Cedar and Presbyterian shall grant a right-of-entry to the City within the ART ROW Property for the construction of any portion of the ART project as described in 1.2(e) hereto, which right-of-entry shall survive any termination of this Agreement. The City hereby grants to Presbyterian a perpetual license to access, remove existing improvements, construct new improvements, redevelop and otherwise use that area labeled "S" on Exhibit "J" attached hereto.

1.8 Changes to Construction Plans. The Parties agree and understand that the City may need to make changes to the ART project plans as determined by engineering recommendations, funding, and other reasonable factors. Changes that reasonably maintain comparable access to the Presbyterian and Cedar Properties will not constitute a breach of this Agreement.

1.9 Insurance Requirements. Titan, Presbyterian, and each of their respective contractors or consultants shall carry and maintain in force, at each Party's sole cost and expense, insurance coverage in an amount equal to or greater than as set forth in Exhibit "G" attached hereto (the "Insurance Requirements"). All insurance will be written by companies lawfully authorized to do business in the State of New Mexico, having a Rating of A VII or a rating which will be reasonably acceptable to the Parties. If policies for which certificates have previously been furnished to each Party expire during the course of this Agreement, certificates evidencing the renewals of such policies shall immediately be provided to each Party. Further, each Party agrees that it shall keep in effect for a minimum of three (3) years after its completion of all obligations under this Agreement, without any gaps in coverage, the professional liability insurance required herein. Such policy(ies) shall include an express provision providing for a coverage period extending back at least to the date of this Agreement.

The City is self-insured. Upon execution of this Agreement, Titan and Presbyterian shall submit current certificates of insurance, or a letter evidencing self-insurance, to the other Parties. The certificates of insurance shall indicate that the policies are endorsed to each other Party (including the City) as the Certificate Holders and Additional Insureds, as applicable. It is recognized that the City is prohibited by New Mexico law from indemnifying or providing additional insurance coverage to the other Parties. All certificates of insurance shall require that thirty (30) days written notice be given to Certificate Holders before any change, non-renewal and/or cancellation of coverages occurs.

ARTICLE 2
PROJECT COSTS AND EXPENSES; IN-KIND CONTRIBUTIONS

2.1 The value of the ART ROW Property conveyed by Cedar to the City, the cost of the Demolition and the estimated value of the Cedar Vacations conveyed by the City to Cedar are shown on Exhibit "H". The value of the ART ROW Property conveyed by Presbyterian to the City and the estimated value of the Presbyterian vacation are also set forth on Exhibit "H" as calculated in the Appraisal, subject to changes in the square footage. If all City approvals are obtained as provided for herein, it is contemplated that (a) the value of the land conveyed by the City to Cedar will exceed the value of the land conveyed by Cedar to the City and the cost of the Demolition; and (b) the value of the land conveyed by the City to Presbyterian will be less than the value of the land conveyed by Presbyterian to the City.

2.2 Within thirty (30) days after all Cedar vacations and Presbyterian vacation have either been approved or denied by the applicable division of the City, Cedar shall prepare for all Parties' approval, a revised Exhibit "H" setting forth the final Cedar vacations and Presbyterian vacation land approved and to be conveyed by the City to Cedar or Presbyterian, as applicable, and the City shall convey such Vacated Property as provided herein.

2.3 Concurrently with the conveyance of the Cedar vacations and the Presbyterian vacation, payment shall be made between the Parties as follows:

- a. If the value of the Presbyterian vacation is less than the value of the ART ROW Property conveyed by Presbyterian to the City, Presbyterian hereby assigns to Cedar the amount of such difference to be applied in accordance with Section 2.3(d) below.
- b. If the value of the Presbyterian vacation is greater than the value of the ART ROW Property conveyed by Presbyterian to the City, Presbyterian shall pay to the City such difference.
- c. If the value of the Cedar vacations is less than the value of the ART ROW Property conveyed by Cedar to the City plus the cost of demolition, the City shall pay to Cedar such difference.
- d. If the value of the Cedar vacations is greater than the value of the ART ROW Property conveyed by Cedar to the City plus the cost of Demolition, Cedar shall pay the City such difference less any credit pursuant to Section 2.3(a) above.

ARTICLE 3
DEFAULT

3.1 The occurrence of any one or more of the following events shall constitute a default by one of the Parties:

- a. If any of the Parties shall fail to observe, perform, or comply in any material respect with any term, covenant, agreement, or condition of this Agreement.

b. If any petition shall be filed against any of the Parties in any court, whether or not pursuant to any statute of the United States or of any State, in any bankruptcy, reorganization, dissolution, liquidation, composition, extension, arrangement or insolvency proceedings, and such proceedings shall not be dismissed within sixty (60) days after the institution of the same, or if any such petition shall be so filed by any of the Parties;

c. If, in any proceeding, a receiver, trustee, or liquidator be appointed for all or a substantial portion of the property and assets of any of the Parties, and such receiver, trustee or liquidator shall not be discharged within ninety (90) days after such appointment;

3.2 In the event of a default under this Agreement, any non-defaulting Party may give thirty (30) days written notice to the defaulting Party specifying the nature of such default and demand the defaulting Party to cure the same. If the nature of the default is such that it cannot reasonably be expected to be cured within a 30-day period, then such 30-day period shall be extended for such time as is reasonably necessary to cure the default, so long as the defaulting Party commences to cure within the 30-day period and thereafter diligently prosecutes the same. Should the defaulting Party fail to cure the noticed default as set forth hereinabove, the non-defaulting Parties may (i) seek specific performance to cure the default; (ii) terminate this Agreement, in which case, each Party will maintain or receive back title to property it originally owned and replace or reconstruct any modified public infrastructure to its original condition, and the City may initiate any required condemnation actions to obtain property needed for the ART project. In the event of termination, no damages will be owed by or to any Party for actions taken or costs expended to fulfill obligations under this Agreement; or (iii) cure the default and seek reimbursement for reasonable costs of performance (except that City Obligations may not be performed by Cedar or Presbyterian under this provision).

ARTICLE 4 LIABILITY

4.1 Liability. As between the City and the remaining Parties, subject to the immunities and limitations of the New Mexico Tort Claims Act, §41-4-1 *et seq.* NMSA 1978 as amended, the City acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from the negligence or intentional acts, errors, or omissions of the City or its employees or agents arising out of or in connection to this Agreement. The City is a self-insured governmental entity.

4.2 Indemnification. Presbyterian and Cedar shall protect, defend, indemnify and save each other harmless and each of its members, partners, directors, shareholders, officers, employees, agents and contractors against and from any and all claims, demands, damages, liabilities, losses, costs and expenses (including, but not limited to, attorneys' fees), in an amount in excess of any sums paid under any available insurance policy, arising out of or in connection to this Agreement, except to the extent that any such matter arises out of the negligence, willful misconduct, fraud of, or material breach by the Party to be indemnified.

4.3 Waiver of Right of Subrogation. Each Party hereby waives any rights of recovery against any other Party hereto for loss or damage sustained by the waiving Party and covered by

the waiving Party's insurance. Each party's insurance shall include a clause or endorsement permitting the foregoing waiver of subrogation.

4.4 Survival. The provisions of this Article 4 shall survive any termination of this Agreement.

ARTICLE 5 MISCELLANEOUS

5.1 Law Governing. The Parties agree that this Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico. In any litigation between the Parties, the matter shall be decided by a judge sitting without a jury, and accordingly each Party hereby waives its right to a jury trial. Venue shall be fixed in Bernalillo County, New Mexico. The Parties further acknowledge that they have fully and fairly bargained for the terms of this Section 5.1. The provisions of this Section 5.1 shall survive the expiration or earlier termination of this Agreement.

5.2 No Waiver. No failure by the Parties to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

5.3 Attorneys' Fees. If any Party to this Agreement institutes any action or proceeding in court to enforce any provision hereof, for damage by reason of an alleged breach of any provision of this Agreement, for a declaration of such party's rights or obligations hereunder, or for any other judicial remedy, each Party shall be responsible for its own attorneys' fees and litigation expenses.

5.4 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, as the case may be, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

5.5 Notices. Any notice required or permitted to be given hereunder and any approval by a party shall be in writing (except as expressly provided otherwise herein) and shall be (as elected by the party giving such notice or proposing such approval): (i) personally delivered, or (ii) delivered by a nationally recognized overnight courier service, fees prepaid, in each instance addressed as provided below. Except as otherwise specified herein, all notices and other communications shall be deemed to have been duly given on the date of receipt. Any party may change its address for purposes hereof by notice given to the other parties. Notices hereunder shall be directed:

If to the City: City of Albuquerque
One Civic Plaza, 11th Floor
Attn: Robert J. Perry, Chief Administrative Officer
P.O. Box 1293
Albuquerque, NM 87103

With a copy to: Real Property Division Manager
Attn: Don Britt
City of Albuquerque
P.O. Box 1293
Albuquerque, NM 87103

Office of the City Attorney
One Civic Plaza, 4th Floor
Attn: Jessica M. Hernandez
P.O. Box 1293
Albuquerque, NM 87103

If to Cedar: Cedar Investors, LLC
Attn: Kurt Browning
6300 Riverside Plaza NW, Suite 200
Albuquerque, NM 87120
(505) 938-0807
kbrowning@titan-development.com

With a copy to: Cedar Investors, LLC
Attn: Christopher M. Pacheco
6300 Riverside Plaza NW, Suite 200
Albuquerque, NM 87120
(505) 938-0807
cpacheco@titan-development.com

If to Presbyterian: Presbyterian Health Services
Jim Jeppson, Real Estate Manager
PO Box 2666
Albuquerque, NM 87125-6666
(505) 563-6641
ijeppson@phs.org

With a copy to: Jennifer Brown
Legal Services
PO Box 2666
Albuquerque, NM 87125-6666
(505) 923-6502
jbrown20@phs.org

A notice sent in compliance with the provisions of this Section shall be deemed given on the date of receipt or refusal to accept delivery. Notice sent by its counsel on behalf of a party in compliance with these provisions shall have the same force and effect as if given by that party.

5.6 Condemnation and Court Actions. This Agreement is entered partially in lieu of the City initiating a condemnation action to obtain necessary right of way and property for the ART project. The Parties agree that the mutual covenants in this agreement fully compensate Parties for all compensation or damages that would be owed as a result of condemnation. The Parties further acknowledge that there is ongoing litigation between the City and third party entities not related to this Agreement with respect to the ART project. This Agreement is subject to any orders or judgments issued in that litigation, and no Parties to this Agreement will owe the other Parties damages as a result of any such orders or judgments.

5.7 Successors and Assigns. This Agreement shall be binding on the parties hereto and their permitted successors and assigns. Neither party may assign or otherwise transfer its rights, obligations or interests hereunder without the prior written consent of the other party.

5.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof.

5.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

5.10 Amendments. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the Parties hereto.

5.11 Assignment. No Party hereto shall have the right to assign this Agreement or any of its rights hereunder without the prior written consent of the other Parties, and any such assignment in the absence of such written consent shall for all purposes be deemed null and void.

5.12 Captions; Subheadings. The captions to the Articles and the subheadings of this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or any part hereof, nor in any way affect this Agreement or any part hereof.

5.13 No Partnership or Employment Relationship. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or similar relationship between any of the Parties. It is understood and agreed that nothing contained in this Agreement or the performance hereof shall be construed as creating any employment relationship whatsoever between the Parties.

5.14 Further Actions. At any time and from time to time, each Party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the purposes of this Agreement.

[SIGNATURE PAGES IMMEDIATELY FOLLOWING]

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

CITY OF ALBUQUERQUE
A New Mexico municipal corporation

By: _____


Robert J. Perry
Chief Administrative Officer *jratt*

Recommended by:

By: _____

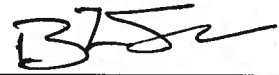

Suzanne G. Lubar, Planning Director

By: _____


Bruce Rizzieri, Transit Director

CEDAR INVESTORS, LLC
A New Mexico limited liability company

By: Urban Partners, LLC
Its Managing Member

By: 

Ben F. Spencer, Manager

PRESBYTERIAN HEALTHCARE SERVICES

A New Mexico nonprofit corporation

By:

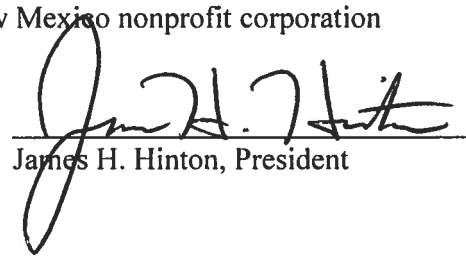




James H. Hinton, President

EXHIBIT "A"
City, Cedar and Presbyterian Properties

AREAS ARE APPROXIMATE AND NOT INTENDED FOR ACTUAL MEASUREMENT

-  CITY PROPERTY
-  CEDAR PROPERTY
-  PRESBYTERIAN PROPERTY

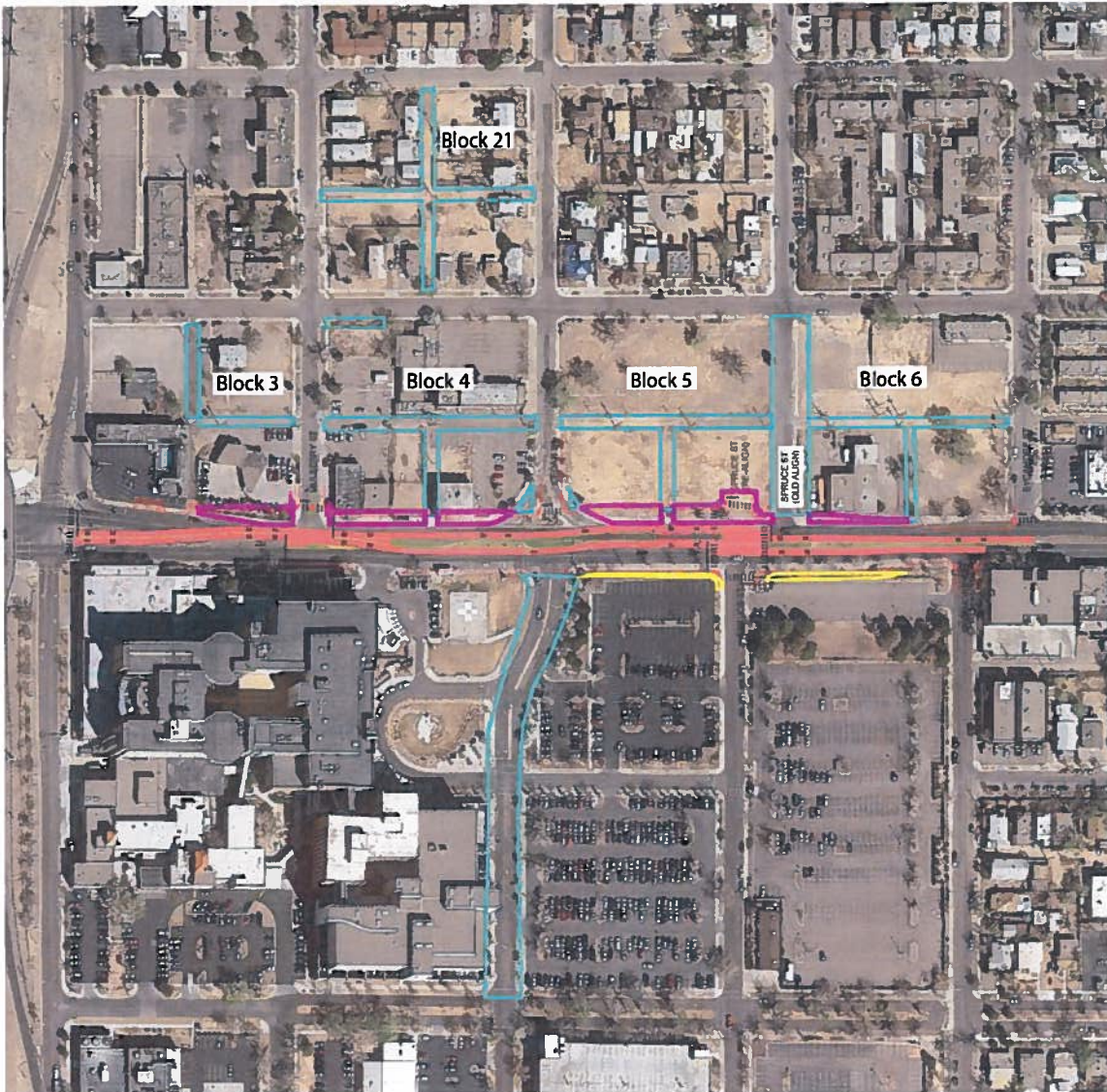




EXHIBIT "B" Vacated Property

-  Appraisal Areas
-  Estimated for Valuation

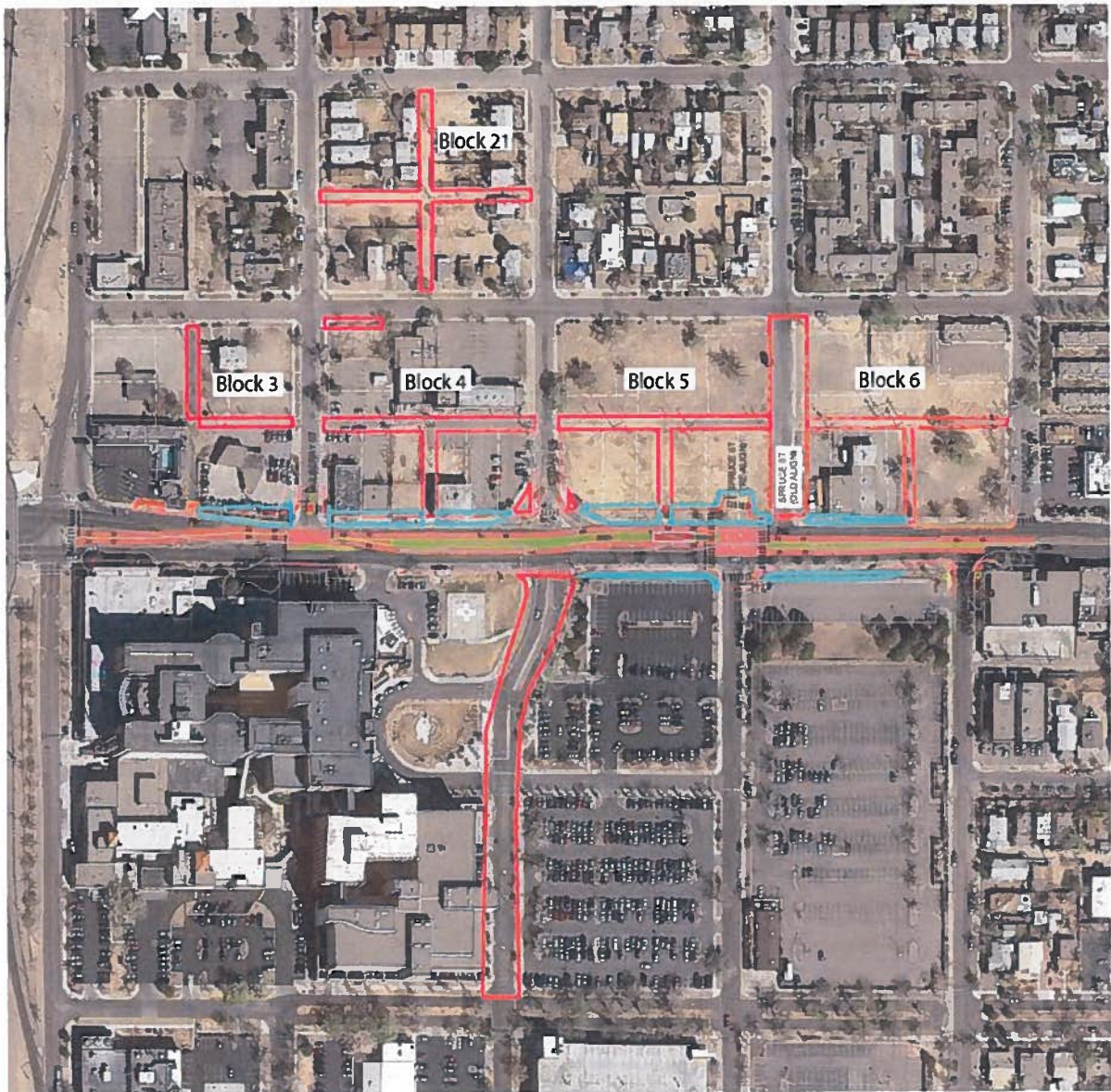


EXHIBIT "C"

City Obligations / ART Construction

Construct and install sidewalks on north and south side of Central per the linework in the below exhibit

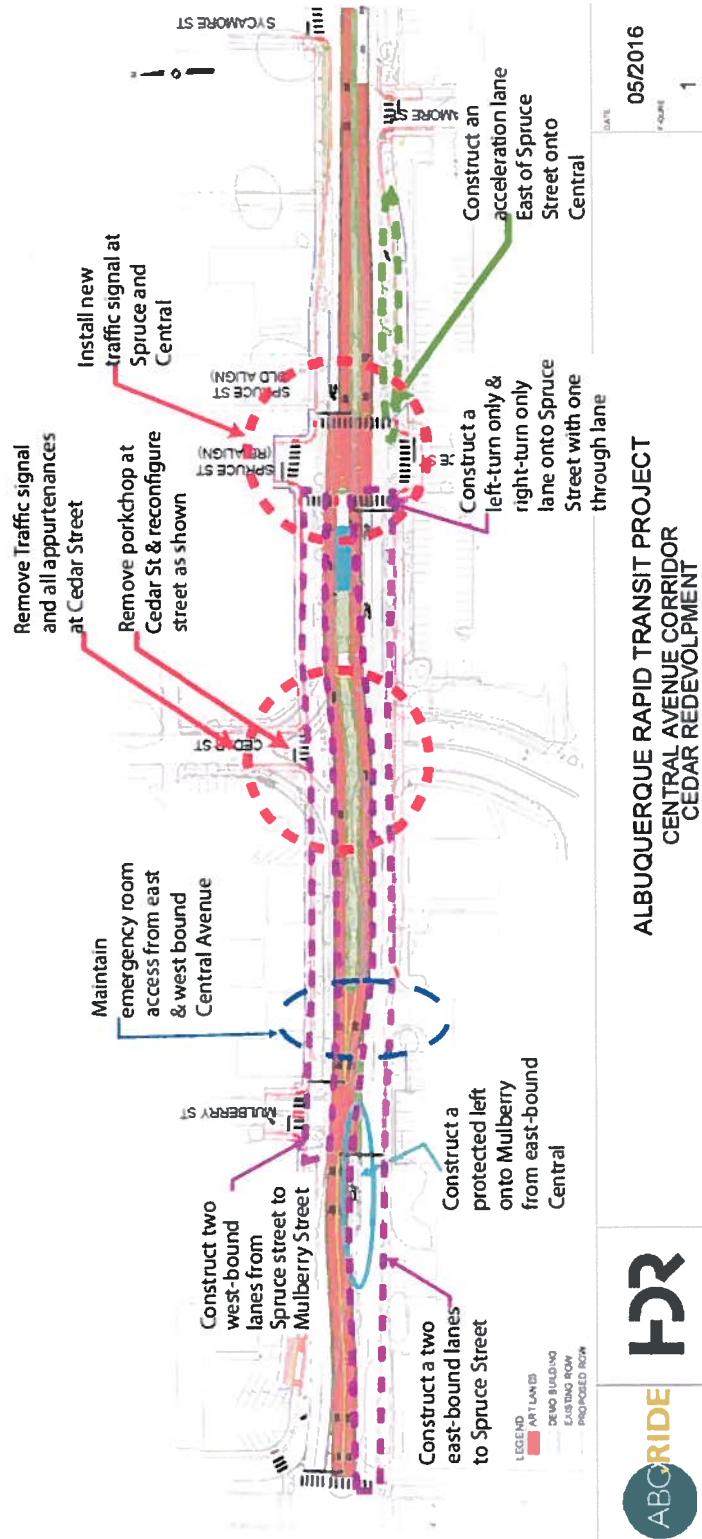


EXHIBIT "D" Cedar Obligations

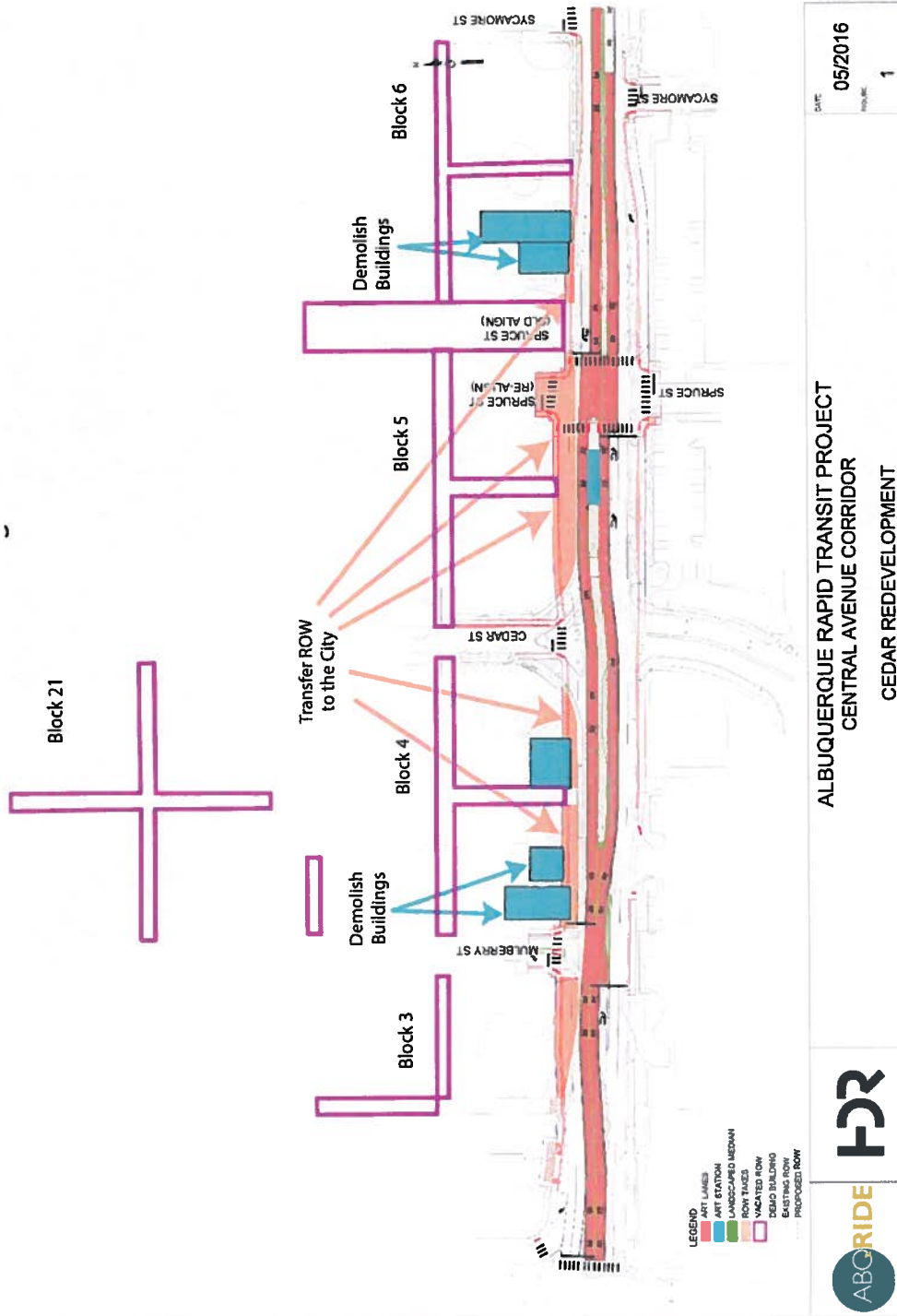


EXHIBIT "E"
Parking Spaces

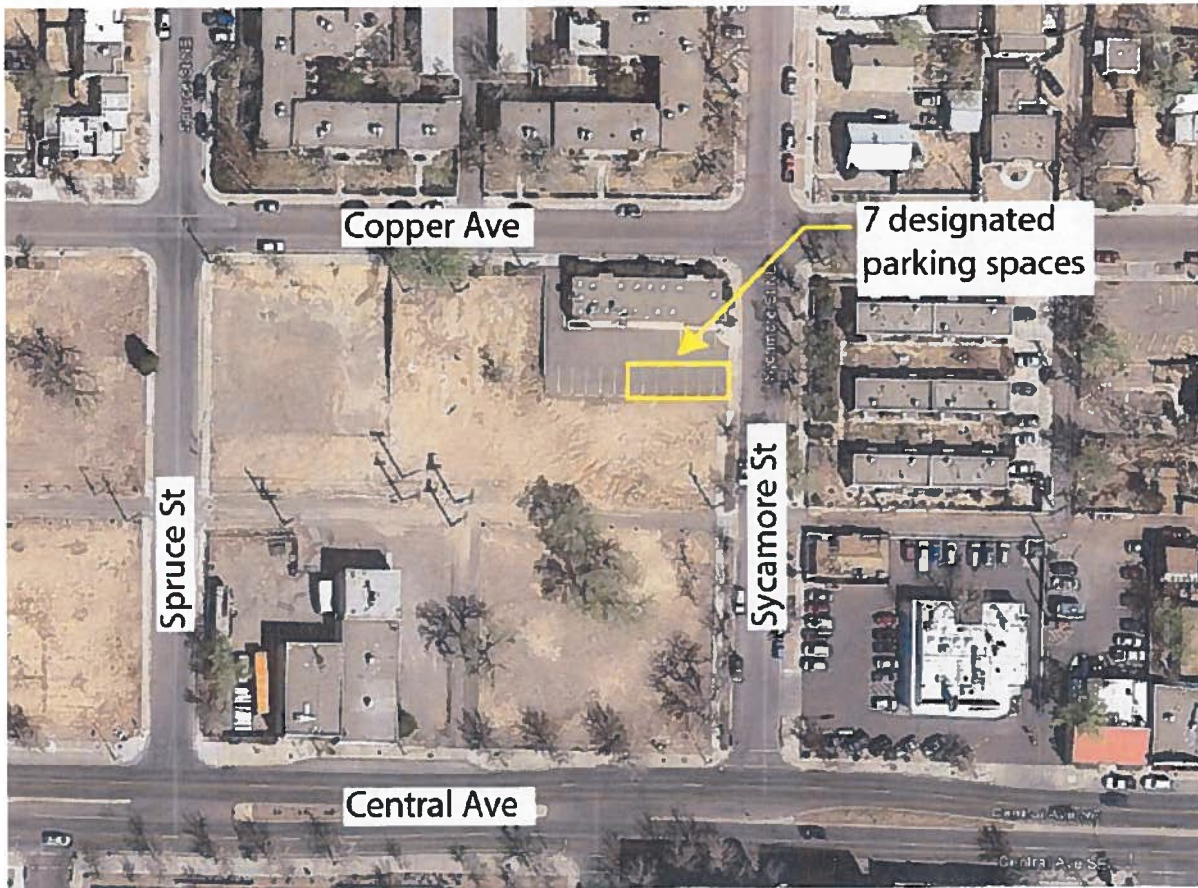


EXHIBIT "F"

Presbyterian Obligations

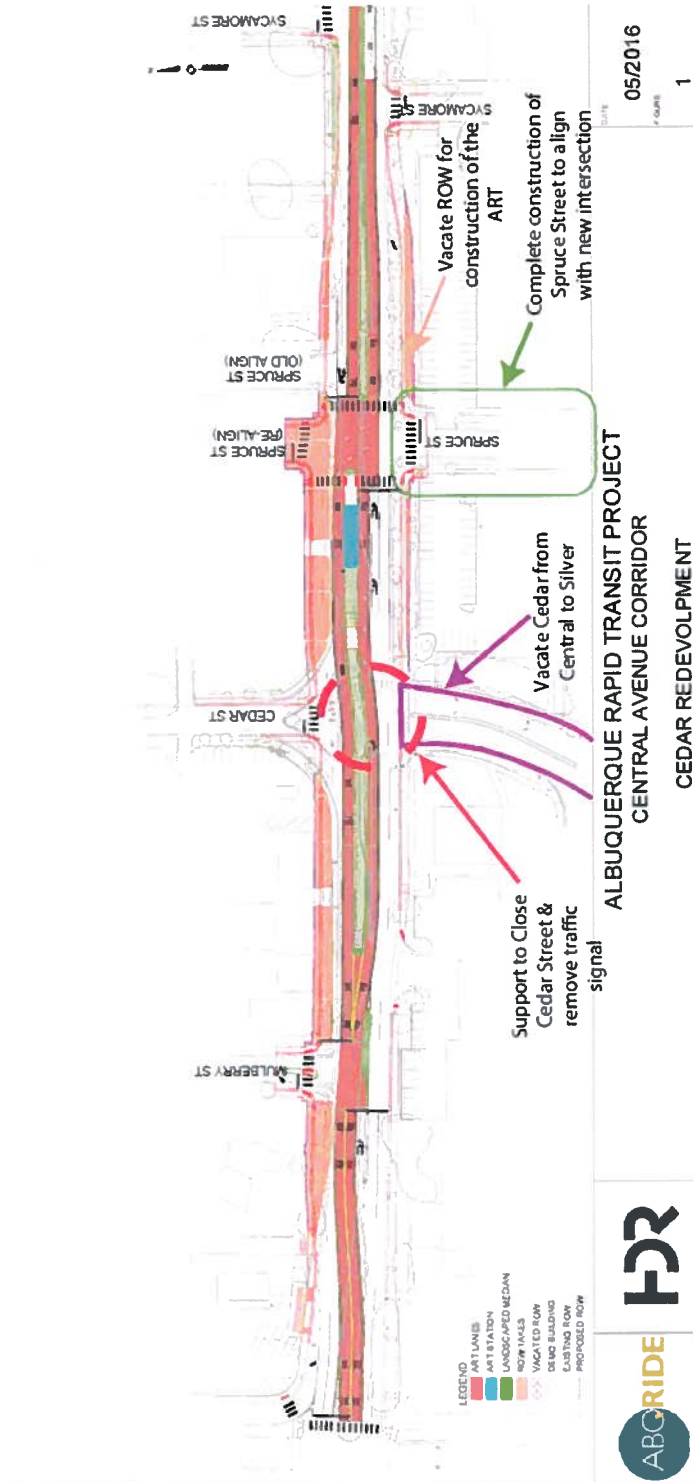


EXHIBIT "G"

Insurance Requirements

<u>Professional Liability for Consultant's Services</u>	
<i>Per Claim</i>	\$1,000,000
<i>Aggregate each "Policy Period"</i>	\$2,000,000
<u>Worker's Compensation</u>	
	STATUTORY
<u>Employer's Liability</u>	
<i>Bodily Injury per accident</i>	\$1,000,000
<i>Bodily Injury by Disease (ea. Employee)</i>	\$1,000,000
<i>Bodily Injury by Disease (policy Limit)</i>	\$1,000,000
<u>General Liability **</u>	
<i>General Aggregate Per Project</i>	\$1,000,000
<i>Contractual Liability; Personal & Advertising Injury</i>	\$2,000,000
<i>(Combined Single Limit)</i>	\$1,000,000
<i>Property Damage, Personal & Bodily Injury</i>	\$1,000,000
<i>(Combined Single Limit)</i>	
<i>Each Occurrence</i>	\$1,000,000
<i>Fire Damage</i>	\$50,000
<i>Medical Expense</i>	\$5,000
<u>Automobile Liability **</u>	
<i>(Including Owned, Non-Owned, and Hired Automobiles)</i>	
<i>Property Damage, Personal & Bodily injury</i>	\$1,000,000
<i>(Combined Single Limit)</i>	

The insurance required by this Section may be maintained through a program of self-insurance. If the Contractor maintains insurance through a program of self-insurance, the requirements of this Section relating to the form of certificates, notices of renewal, cancellation, or change, and naming the City as an additional insured and the waiver of subrogation set forth in Section 4.3 are not applicable.

EXHIBIT "H" **Valuation**

** The amounts and square footage set forth herein are estimates and are intended for illustrative purpose only** The percentage adjustment shall remain unchanged

CEDAR IN-KIND CALCULATION						
Demolition of 5 Buildings by Cedar						
	Size	Base \$/Sf	Base Subtotal	Percentage adjustment	Adjustments for Estimates & Configurations	Cedar
Abatement of 5 Buildings by Cedar						\$ 82,534.38
						\$ 169,067.32
Demo & Abatement total (credit to Cedar)					Demo & Abatement total (credit to Cedar)	\$ 250,601.70
Cedar Investors Right of Way Vacations						
Block 3 alleys ("B&C")	4,672	\$ 16.00	\$ 74,752.00	75%	\$ 56,064.00	\$ (18,688.00)
Block 4 alleys ("E")	7,138	\$ 16.00	\$ 114,208.00	75%	\$ 85,656.00	\$ (28,552.00)
Block 5 alleys ("F")	6,998	\$ 16.00	\$ 111,968.00	75%	\$ 83,976.00	\$ (27,992.00)
Block 6 alleys ("H")	7,319	\$ 16.00	\$ 117,104.00	75%	\$ 87,828.00	\$ (29,276.00)
Block 21 alleys ("A")	9,600	\$ 16.00	\$ 153,600.00	75%	\$ 115,200.00	\$ (38,400.00)
Spruce St RWV ("G")	17,604	\$ 16.00	\$ 281,664.00	75%	\$ 211,248.00	\$ (70,416.00)
Diversion Island at Cedar ("I")	702	\$ 16.00	\$ 11,232.00	75%	\$ 8,424.00	\$ (2,808.00)
Diversion Island at Cedar ("J")	260	\$ 16.00	\$ 4,160.00	75%	\$ 3,120.00	\$ (1,040.00)
Cedar Acquisition total					\$ (217,172.00)	\$
Proposed full section ROW additions at Mulberry, Copper, & Cedar ("D") (See attached exhibit I)	53,201	\$ 16.00	\$ 851,216.00	75%	\$ 638,412.00	\$ (212,804.00)
Total ROW acquisition Cedar	107,494				Total ROW acquisition Cedar	\$ (429,976.00)
COA land acquisition from Cedar						
Block 3 New RW ("K")	337	\$ 16.00	\$ 5,392.00	NA	NA	\$ 5,392
Block 4 New RW ("L&M")	2,869	\$ 16.00	\$ 45,904.00	NA	NA	\$ 45,904
Block 5 New RW ("N&O")	6,799	\$ 16.00	\$ 108,784.00	NA	NA	\$ 108,784
Block 6 New RW ("P")	537	\$ 16.00	\$ 8,592.00	NA	NA	\$ 8,592
COA Total Acquisition (Credit to Cedar)	10,542				COA Total Acquisition (Credit to Cedar)	\$ 168,672
The approximate amount owed by City to Cedar is						
(Negative number indicates amount Cedar owes to city)						\$ (10,702.30)
PRESBYTERIAN IN-KIND CALCULATION						
Presbyterian Hospital, Cedar ST. RWV	42,348	\$ 16.00	\$ 677,568.00	75%	\$ 508,176.00	\$ (169,392)
COA land acquisition from Presbyterian (Credit to Presbyterian)	11,538	\$ 16.00	\$ 184,608.00	NA	NA	\$ 184,608
The approximate amount owed by city to Presbyterian						
(Negative number indicates amount Presbyterian owes to City)						\$ 15,216

EXHIBIT "I"

Abatement & Demolition Bids



June 6, 2016

Brian Patterson, P.E.
Titan Development
Development Project Manager
6300 Riverside Plaza Lane NW, Suite # 200
Albuquerque, New Mexico 87120-2617

RE: Pricing and Scope of Work for the Five Structures North of Central

1101 Central or (200 Mulberry)
1105 Central or (1105, 1107, 1109 Central)
1113 Central or (1115 Central)
1303 Central
1307 Central

Mr. Patterson:

We have been in contact with asbestos remediation contractors for proposal regarding the above referenced properties.

We are including their bids as an enclosure. The three lowest bids are being provided to your organization. The proposal are signed on the last page of each document and reference the scope of work (total estimated quantities) given to each of the contractors during the walk through and project meeting.

The three bidders are Southwest Abatement, Inc. of Albuquerque, NM; GranCor Environmental of Albuquerque, NM; and Keers of Albuquerque, NM.

The current bids are for the gross amount and New Mexico Gross Receipts Tax (NMGRT) should be included in the evaluation of the bids.

DC Environmental will provide weekly project monitoring as representative for the project to assist with specific site location logistics and for final visual and air monitoring clearance of each of the structures. Our proposed costs are included in the table below.



DC Environmental
Consulting and Training Services

The following is a line item evaluation of the bids for each of the properties.

Southwest Abatement, Inc.

Location	Days to Complete	Proposal	NMGRT	Total
1101 Central	54 days to complete	\$143,497.50	\$10,313.88	\$153,811.38
1105 Central				
1113 Central				
1303 / 1307 Central				

GranCor Environmental

Location	Days to Complete	Proposal	NMGRT	Total
1101 Central	41 days to complete	\$164,557.50	\$11,827.57	\$176,385.07
1105 Central				
1113 Central				
1303 / 1307 Central				

Keers Remediation

Location	Days to Complete	Proposal	NMGRT	Total
1101 Central	60 days to complete	\$192,000.00	\$13,800	\$205,800.00
1105 Central	(Possible 30 with 2 crews)			
1113 Central				
1303 / 1307 Central				

DC Environmental Project Oversight and Final Clearance.

Location	Days to Complete	Proposal	NMGRT	Total
1101 Central	54 days to complete	\$9,600.00	\$690.00	\$10,290.00
1105 Central	(Approx 11 wks and 5 clearances)			
1113 Central				
1303 / 1307 Central				

We are recommending Southwest Abatement based on price and experience. \$153,811.58

We are recommend DC Environmental to provide project management/clearances \$10,290.00

Total cost proposal is **\$164,101.58**



AEIH dba DC Environmental
"Promoting Safety in the Workplace"
Remit to: PO Box 9315, ABQ, NM, 87119

Estimate

Date	Estimate #
4/3/2016	423

Name / Address
Titan Development attn: Brian Patterson 6300 Riverside Plz Ln NW # 200 Albuquerque, NM 8712

Project
DCE 16-063 D2 & D4 1303 1307 Central Ave

Description	Qty	Rate	Total
Asbestos Inspection for D2 & D4 1303 Central Avenue NE and 1307 Central Avenue NE (1303/1307 Central - Former Meals on Wheels and Former Histology Microscope Slide Storage - Current Security Storage and Real Estate Storage). Estimate three days to complete inspection, survey verification, sampling and one day report generation following results from laboratory. DC Environmental Tel. 505.869.8000 Facsimile 505.869.9453 If this estimate is acceptable for the asbestos inspection of this property, please sign, date and return via e-mail or facsimile Sign: <u>BSP</u> Date: <u>4-8-16</u> <i>SEE GENERAL TERMS ATTACHED</i>	1	1,000.00	1,000.00
Thank you for your business. Our TIN is 46-3983233 Our CRS #03-279753-00-2 AEIH, Inc dba DCE		Subtotal	\$1,000.00
		Sales Tax (7.1875%)	\$71.88
		Total	\$1,071.88



AEIH dba DC Environmental
"Promoting Safety in the Workplace"
Remit to: PO Box 9315, ABQ, NM, 87119

Estimate

Date	Estimate #
4/3/2016	420

Name / Address
Titan Development attn: Brian Patterson 6300 Riverside Plz Ln NW # 200 Albuquerque, NM 8712

Project
DCE 16-060 B1 1101 Central Ave NE

Description	Qty	Rate	Total
Asbestos Inspection for B1 1101 Central Avenue NE (200 Mulberry Street - Former Ambulance Repair - Current Landscaping storage building). Estimate three days to complete inspection, survey verification, sampling and one day report generation following results from laboratory. DC Environmental Tel. 505.869.8000 Facsimile 505.869.9453 If this estimate is acceptable for the asbestos inspection of this property, please sign, date and return via e-mail or facsimile Sign: <u>B.P.</u> Date: <u>4.9.16</u> SEE GENERAL TERMS ATTACHED	1	900.00	900.00
Thank you for your business. Our TIN is 46-3983233 Our CRS #03-279753-00-2 AEIH, Inc dba DCE		Subtotal	\$900.00
		Sales Tax (7.1875%)	\$64.69
		Total	\$964.69



AEIH dba DC Environmental
 "Promoting Safety in the Workplace"
 Remit to: PO Box 9315, ABQ, NM, 87119

Estimate

Date	Estimate #
4/3/2016	421

Name / Address
Titan Development attn: Brian Patterson 6300 Riverside Plz Ln NW # 200 Albuquerque, NM 8712

Project
DCE 16-061 B2 1105 Central Ave NE ✓

Description	Qty	Rate	Total
<p>Asbestos Inspection for B2 1105 Central Avenue NE (1105, 1107, 1109 Central Ave. - Former Ambulance Technician Quarters - Current HVAC Filter storage building). Estimate three days to complete inspection, survey verification, sampling and one day report generation following results from laboratory.</p> <p>DC Environmental Tel. 505.869.8000 Facsimile 505.869.9453 If this estimate is acceptable for the asbestos inspection of this property, please sign, date and return via e-mail or facsimile</p> <p>Sign: <u>BJS</u> Date: <u>4-8-16</u></p> <p><i>SEE GENERAL TERMS ATTACHED</i></p>	1	900.00	900.00
Thank you for your business. Our TIN is 46-3983233 0101 Our CRS #03-279753-00-2 AEIH, Inc dba DCE		Subtotal	\$900.00
		Sales Tax (7.1875%)	\$64.69
		Total	\$964.69



AEIH dba DC Environmental
"Promoting Safety in the Workplace"
Remit to: PO Box 9315, ABQ, NM, 87119

Estimate

Date	Estimate #
4/3/2016	422

Name / Address
Titan Development attn: Brian Patterson 6300 Riverside Plz Ln NW # 200 Albuquerque, NM 8712

Project
DCE 16-062 B3 1113 Central Ave NE ✓

Description	Qty	Rate	Total
Asbestos Inspection for B3 1113 Central Avenue NE (1115 Central Ave. - Former Safety Department Office - Current Emergency Response Storage). Estimate three days to complete inspection, survey verification, sampling and one day report generation following results from laboratory. DC Environmental Tel. 505.869.8000 Facsimile 505.869.9453 If this estimate is acceptable for the asbestos inspection of this property, please sign, date and return via e-mail or facsimile Sign: <u>BJS</u> Date: <u>4-8-16</u> <u>SEE GENERAL TERMS ATTACHED</u>	1	900.00	900.00
Thank you for your business. Our TIN is 46-3983233 Our CRS #03-279753-00-2 AEIH, Inc dba DCE		Subtotal	\$900.00
		Sales Tax (7.1875%)	\$64.69
		Total	\$964.69



Bradbury Stamm

Construction Since 1923

Bradbury Stamm Construction, Inc.
PO Box 10850 | Albuquerque, NM 87184
7110 2nd Street NW | Albuquerque, NM 87107
P: 505.765.1200 | F: 505.842.5419
bradburystamm.com

September 23, 2016

Titan Development
6300 Riverside Plaza Ln #200
Albuquerque, NM 87120
Attn: Brian Patterson

Subject: Building Demolition and Removal along Central Avenue

Brian,
Per your request we are pleased to provide you with a proposal for the demolition and removal of the following building along and adjacent to Central Avenue. The addresses for these buildings are 1101, 1105, 1113, 1303 and 1307 Central Avenue.

The following are included as part of this proposal:

- Traffic Control
- Mobilization, Supervision, Transportation, Safety Program, Insurance
- Complete demolition and removal of buildings
- Removal of trees and trash
- Construction water
- Hauling and dumping as required
- Job clean up
- Permits as required
- New Mexico Gross Receipts Tax

The following are not included as part of this proposal

- Bond
- Builders Risk Insurance
- Hazardous Materials Remediation
- Disconnection of existing utilities
- Temporary or permanent stabilization
- Asphalt removal
- Anything not specifically listed above

The total cost for the scope of work outlined above is Seventy Seven Thousand Dollars (\$77,000.00).

If you have any questions please feel free to contact me directly.

Thanks,

Tyler Nunn | Senior Project Manager

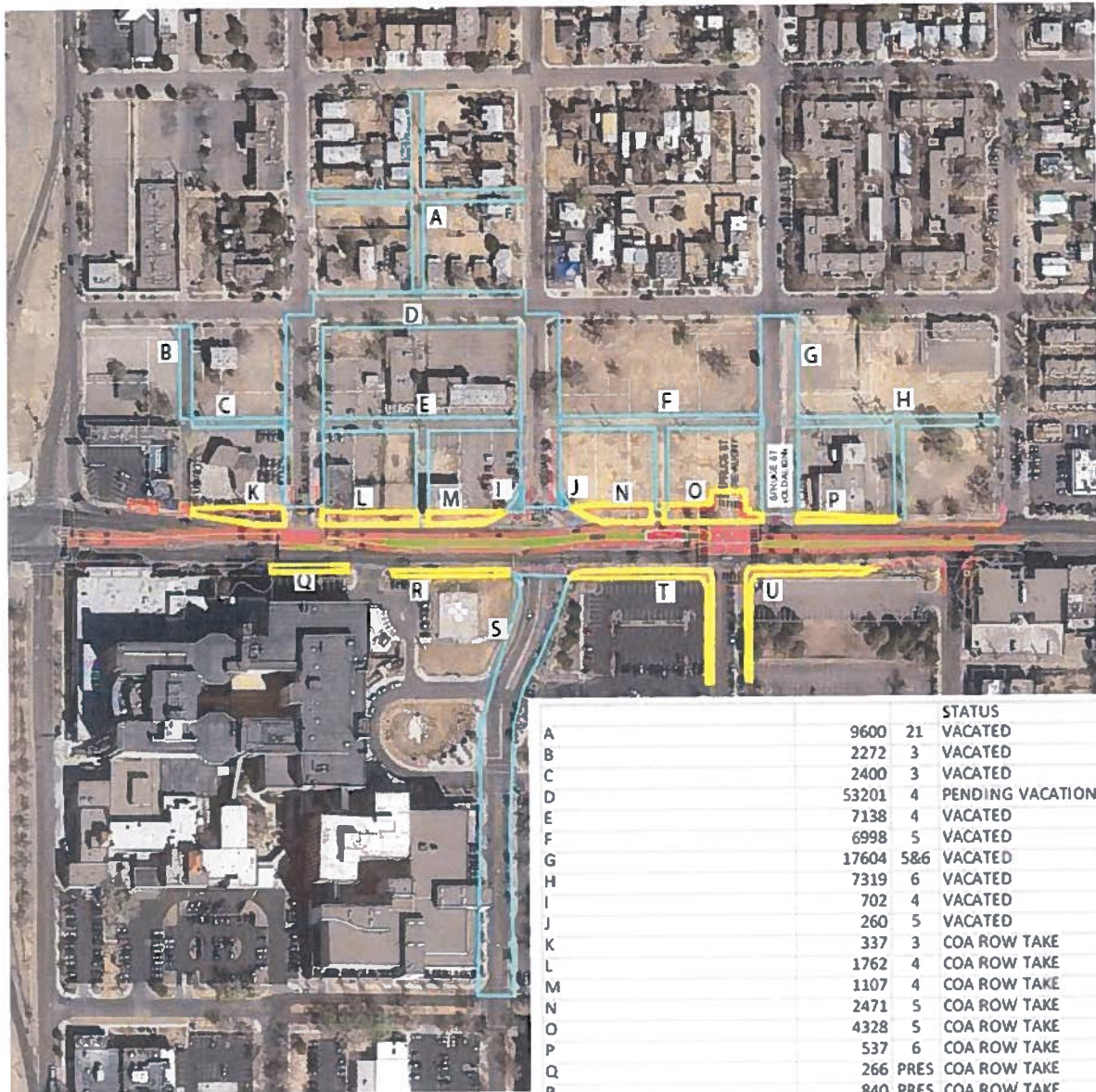
BRADBURY STAMM CONSTRUCTION ...since 1923

Main: 505.765.1200 | Fax: 505.842.5419 | Mobile: 505.681.8529

Nine Decades of Building Success...

EXHIBIT "J" **Areas of Exchange**

Areas are approximate and not intended for actual measurement



			STATUS
A	9600	21	VACATED
B	2272	3	VACATED
C	2400	3	VACATED
D	53201	4	PENDING VACATION
E	7138	4	VACATED
F	6998	5	VACATED
G	17604	5&6	VACATED
H	7319	6	VACATED
I	702	4	VACATED
J	260	5	VACATED
K	337	3	COA ROW TAKE
L	1762	4	COA ROW TAKE
M	1107	4	COA ROW TAKE
N	2471	5	COA ROW TAKE
O	4328	5	COA ROW TAKE
P	537	6	COA ROW TAKE
Q	266	PRES	COA ROW TAKE
R	840	PRES	COA ROW TAKE
S	42348	PRES	VACATED
T	4730	PRES	COA ROW TAKE
U	5702	PRES	COA ROW TAKE
VACATED TOTAL CEDAR		107494	
VACATED TOTAL PRESBYTERIAN		42348	
COA ROW TAKE TOTAL		22080	

**RIGHT OF ENTRY AGREEMENT
CITY OF ALBUQUERQUE AND PRESBYTERIAN HEALTHCARE SERVICES**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (the "City"), and PRESBYTERIAN HEALTHCARE SERVICES, a New Mexico nonprofit corporation ("Owner"), and the Parties hereby agree:

WHEREAS, the City has determined that it is in the best interest of its community members to provide efficient and reliable public transportation along the Central Avenue corridor;

WHEREAS, the City intends to construct portions of the Albuquerque Rapid Transit project ("ART") on Central Avenue abutting Owner's property;

WHEREAS, the City and Owner have concurrently herewith entered into that Development Agreement in order to facilitate ART's construction ("Development Agreement");

WHEREAS, the City and Owner agree that it is in the best interest of both parties to allow the City immediate access and right to enter onto those sections of Owner's property located within the Presbyterian Hospital Campus, abutting Central Avenue to the south as identified on Exhibit "A" ("Presbyterian Property") to begin construction.

NOW THEREFORE, in consideration of the promises and covenants contained herein and hereby acknowledged, the City and Owner agree as follows:

1. Right of Entry. Owner hereby grants to the City and its agents, employees and contractors the temporary right to enter onto the Presbyterian Property for the purpose of constructing new right-of-way sidewalks and any other improvements necessary for the construction of ART.

2. Term. The term of this Right of Entry shall begin immediately upon execution of this agreement ("Effective Date") and automatically terminate upon the transfer of ownership of the Presbyterian Property from Owner to the City.

3. Liens. The City shall not permit to be placed against the Presbyterian Property, or any part thereof, any design professionals, mechanics', materialmen's contractors' or subcontractors' liens with regard to the City's actions thereon.

4. Damages. The City agrees to pay for all damage to third parties from personal injury or property damage that occurs on the Presbyterian Property or any portion thereof caused by the intentional misuse or neglect, by City or City's employees, agents and invitees. The City's liability under this paragraph shall in all cases be subject to, and shall not exceed the statutory dollar limits provided in NMSA (1978) Section 41-4-1 et seq., as it may apply to the City at the time of any occurrence or claim. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

5. Compliance with Laws/Permits. The City shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, the City, at its sole cost and expense, shall obtain or cause to be obtained any and all permits which may be required by any law, regulation or ordinance for any activities the City desires to conduct or have conducted pursuant to this Right of Entry.

6. Inspection. Owner and its representative, employees, agents or independent contractors may enter and inspect the Presbyterian Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify the City's compliance with the terms and conditions of this Right of Entry.

7. Not Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Presbyterian Property to the City.

8. Counterparts. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9. Binding on Heirs. This Agreement with the covenants, terms and conditions, will be binding upon and inured to the benefit of the parties, their successors, heirs, and assigns.

10. Severability. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Owner in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

11. Choice of Law/Venue/Waive Jury Trial. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. In any litigation between City and Owner, the matter shall be decided by a judge sitting without a jury, and accordingly each party hereby waives its right to a jury trial. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section 11. The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement.


12. Headings and Captions. Caption of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

13. No Waiver of Breach. The waiver by either party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver thereof on any subsequent occasion. Neither party shall be deemed to have waived any term, covenant, or condition of this Agreement unless the party has signed a written waiver waiving the term, covenant, or condition.

14. Public Document. The City is a municipal corporation under the laws of the State of New Mexico. The City and Owner acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a "public record" within the meaning of said Act.

IN WITNESS WHEREOF, The Parties hereto have executed this Right of Entry on the date as indicted and written below.

A New Mexico nonprofit company


~~James H. Hinton, President~~
James R. Jeppson, Administrative Director

STATE OF NEW MEXICO)
) ss:
COUNTY OF BERNALILLO)

James R. Jeppson, Administrative Director



Official Seal
Linda C. Vath
Notary Public
State of New Mexico

My Commission Expires: 9/22/18

My Commission Expires: 9/22/18

CITY:

CITY OF ALBUQUERQUE

a New Mexico municipal corporation

By:


Bruce Rizzieri, Director
Transit Department

STATE OF NEW MEXICO)

) ss:

COUNTY OF BERNALILLO)

This instrument was acknowledged before me on January 3, 2017, 2016, by Bruce Rizzieri Director, Transit Department, for the City of Albuquerque, a New Mexico municipal corporation, on behalf of the corporation.


NOTARY PUBLIC

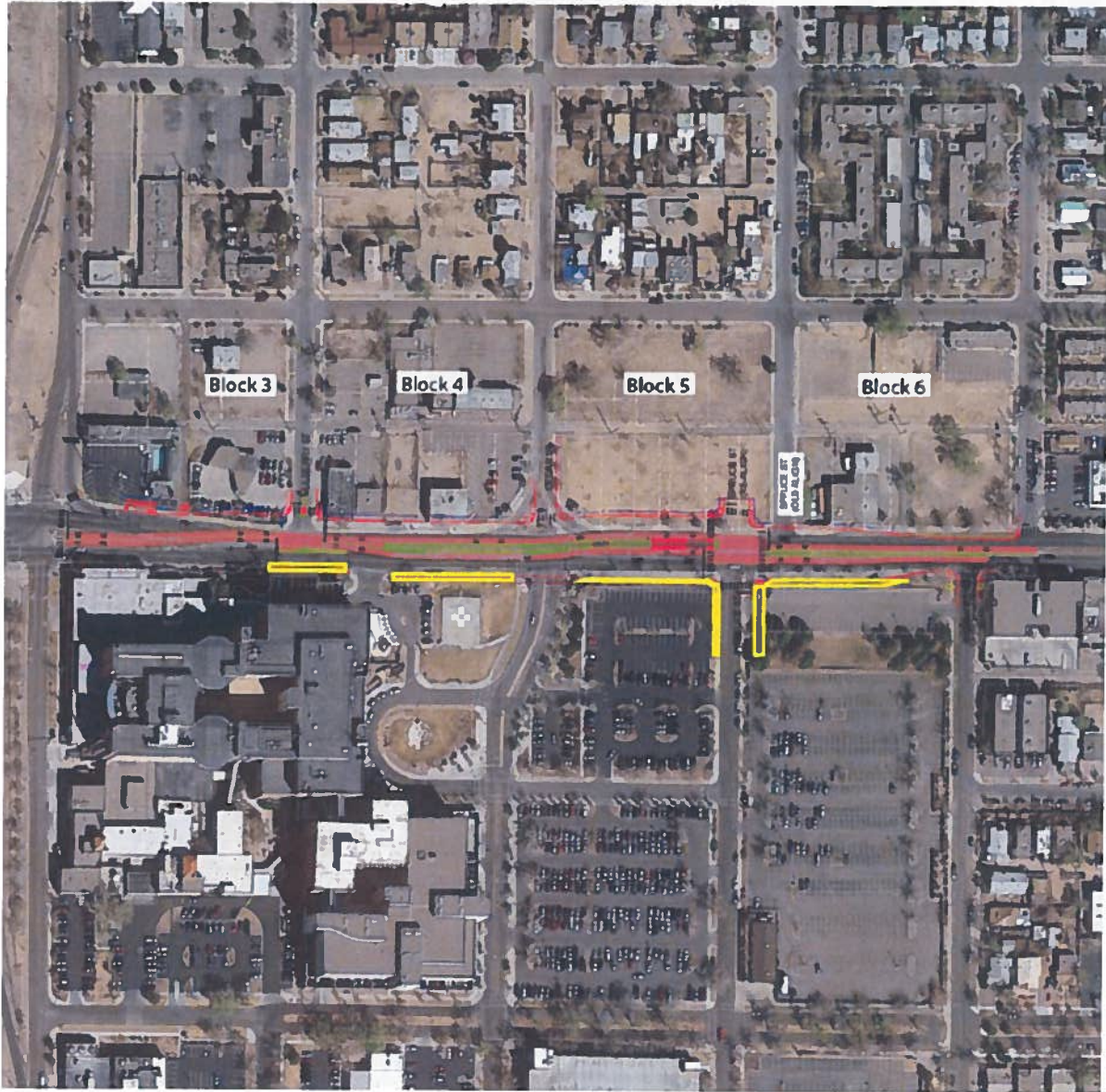
My Commission Expires:

3-27-2017



EXHIBIT "A"

 Areas of "Right of Entry" from Presbyterian Hospital to the City of Albuquerque



**RIGHT OF ENTRY AGREEMENT
CITY OF ALBUQUERQUE AND CEDAR INVESTORS, LLC**

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (the "City"), and CEDAR INVESTORS, LLC, a New Mexico limited liability company ("Owner"), and the Parties hereby agree:

WHEREAS, the City has determined that it is in the best interest of its community members to provide efficient and reliable public transportation along the Central Avenue corridor;

WHEREAS, the City intends to construct portions of the Albuquerque Rapid Transit project ("ART") on Central Avenue abutting Owner's property;

WHEREAS, the City and Owner have concurrently herewith entered into that Development Agreement in order to facilitate ART's construction ("Development Agreement");

WHEREAS, the City and Owner agree that it is in the best interest of both parties to allow the City immediate access and right to enter onto those sections of Owner's property located at Blocks 3, 4, 5 and 6 of the Brownell & Lail's Highland Addition, Albuquerque, New Mexico, abutting Central Avenue to the north as identified on Exhibit "A" ("Cedar Property") to begin construction.

NOW THEREFORE, in consideration of the promises and covenants contained herein and hereby acknowledged, the City and Owner agree as follows:

1. Right of Entry. Owner hereby grants to the City and its agents, employees and contractors the temporary right to enter onto the Cedar Property for the purpose of constructing new right-of-way sidewalks and any other improvements necessary for the construction of ART.

2. Term. The term of this Right of Entry shall begin immediately upon execution of this agreement ("Effective Date") and automatically terminate upon the transfer of ownership of the Cedar Property from Owner to the City.

3. Liens. The City shall not permit to be placed against the Cedar Property, or any part thereof, any design professionals, mechanics', materialmen's contractors' or subcontractors' liens with regard to the City's actions thereon.

4. Damages. The City agrees to pay for all damage to third parties from personal injury or property damage that occurs on the Cedar Property or any portion thereof caused by the intentional misuse or neglect, by City or City's employees, agents and invitees. The City's liability under this paragraph shall in all cases be subject to, and shall not exceed the statutory dollar limits provided in NMSA (1978) Section 41-4-1 et seq., as it may apply to the City at the time of any occurrence or claim. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

5. Compliance with Laws/Permits. The City shall, in all activities undertaken pursuant to this Right of Entry, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, the City, at its sole cost and expense, shall obtain or cause to be obtained any and all permits which may be required by any law, regulation or ordinance for any activities the City desires to conduct or have conducted pursuant to this Right of Entry.

6. Inspection. Owner and its representative, employees, agents or independent contractors may enter and inspect the Cedar Property or any portion thereof or any improvements thereon at any time and from time to time at reasonable times to verify the City's compliance with the terms and conditions of this Right of Entry.

7. Not Real Property Interest. It is expressly understood that this Right of Entry does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Cedar Property to the City.

8. Counterparts. This Right of Entry may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9. Binding on Heirs. This Agreement with the covenants, terms and conditions, will be binding upon and inured to the benefit of the parties, their successors, heirs, and assigns.

10. Severability. In the event any covenant, condition or provision herein is held to be void, voidable, invalid, illegal, or unenforceable by any court of competent jurisdiction, such covenant, condition or provision shall be deemed amended to conform to applicable laws so as to be valid or

enforceable, or, if it cannot be so amended, without material altering the intention of the parties, it shall be stricken. If stricken, all other covenants, conditions and provision of this Agreement shall remain in full force and effect provided that the striking of such covenants, conditions or provisions does not materially prejudice either the City or Owner in its respective rights and obligations contain in the valid covenants, conditions or provisions of this Agreement.

11. Choice of Law/Venue/Waive Jury Trial. This Agreement shall be governed by and construed under and in accordance with the laws of the State of New Mexico. The parties agree that venue for any suit, action, or proceeding arising out of this Agreement shall be in Bernalillo County, New Mexico. The parties irrevocably admit themselves to, and consent to, the jurisdiction of said court. In any litigation between City and Owner, the matter shall be decided by a judge sitting without a jury, and accordingly each party hereby waives its right to a jury trial. The parties further acknowledge that they have fully and fairly bargained for the terms of this Section 11. The provisions of this Section 11 shall survive the expiration or earlier termination of this Agreement.

12. Headings and Captions. Caption of sections and paragraphs are for convenience, not limitation, and are not to be construed as modifying text.

13. No Waiver of Breach. The waiver by either party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver thereof on any subsequent occasion. Neither party shall be deemed to have waived any term, covenant, or condition of this Agreement unless the party has signed a written waiver waiving the term, covenant, or condition.

14. Public Document. The City is a municipal corporation under the laws of the State of New Mexico. The City and Owner acknowledge that this Agreement is subject to the New Mexico Inspection of Public Records Act, §14-2-1 et seq. NMSA 1978 and is a “public record” within the meaning of said Act.

15. Entire Agreement. No subsequent agreement may modify this Right of Entry Agreement unless it is in writing and signed by the parties or their authorized agents. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto.

Page 4 of 6
City and Cedar Investors, LLC
Central/ Brownewell/Lail's Highland Addition ART Right of Entry

By:

Page 5 of 6
City and Cedar Investors, LLC
Central/ Brownewell/Lail's Highland Addition ART Right of Entry