

MEMORANDUM OF UNDERSTANDING
AMONG
THE CITY OF ALBUQUERQUE
AND
THE NEW MEXICO STATE HISTORIC PRESERVATION DIVISION
AND
THE DEPARTMENT OF CULTURAL AFFAIRS
REGARDING
ADAPTIVE USE AND HISTORIC PRESERVATION
AT
THE ALBUQUERQUE RAIL YARDS

This Memorandum of Understanding is entered into this 12th day of September, 2018, by and among the City of Albuquerque and the New Mexico State Historic Preservation Division (HPD), a division of the Department of Cultural Affairs, in connection with the adaptive redevelopment of the Albuquerque Rail Yards – which have been unoccupied and neglected and, over the years, have suffered severe damage from natural and human causes, including the demolition of some of its most significant features – with reference to the following facts:

RECITALS

- A. WHEREAS, the Atchison, Topeka and Santa Fe Railway Locomotive Shops (Rail Yards) is listed as an historic district in the National Register of Historic Places (NRHP) and the Rail Yards is listed on the New Mexico State Register of Cultural Properties (SRCP);
- B. WHEREAS, the City of Albuquerque (City) owns the Rail Yards;
- C. WHEREAS, the City will adaptively redevelop the Rail Yards,;
- D. WHEREAS, the redevelopment of the Rail Yards is an undertaking which aims, amongst other objectives, to retain the historic character of the Rail Yards and present the Rail Yards to the public;
- E. WHEREAS, the City, as a political subdivision of the State of New Mexico, is responsible for the execution of appropriate planning to preserve, protect, and minimize harm to the historic and archaeological properties under its care and administration pursuant to the following acts, regulations and ordinances: the Cultural Properties Act, NMSA 1978, § 18-6-1 to -17, as amended; NMAC Title 4, Chapter 10, parts 4, 7, 8, 10, 11, 14-17; the

Cultural Properties Preservation Act NMSA 1978, §§ 18-6A-1 to -6,; NMAC Title 4, Chapter 10, part 13; the Prehistoric and Historic Sites Preservation Act, NMSA 1978, §§ 18-8-1 to-8, as amended; NMAC Title 4, Chapter 10, part 12; and the New Mexico District and Landmark Act, NMSA 1978 §§ 3-22-1 to -6;

- F. WHEREAS, the City advances preservation of historic structures and archaeological sites through the Landmarks and Urban Conservation Ordinance ('74 Code § 7-5-3)(Ord. 22-1978; Am. Ord. 4-1985; Am Ord. 51-1991) and the Albuquerque Archaeological Ordinance (14-16-3-20);
- G. WHEREAS, the State Historic Preservation Division (HPD) is a division of the New Mexico Office of Cultural Affairs, and its Division Director, the State Historic Preservation Officer (SHPO) are charged with preserving and protecting the prehistoric, historic, and cultural heritage of New Mexico for the benefit of present and future generations under both state and federal statutes and regulations: the Cultural Properties Act, NMSA 1978, §§ 18-6-1 to -17, as amended; NMAC Title 4, Chapter 10, parts 3-11, 14-18; the Cultural Properties Preservation Act, NMSA 1978, §§ 18-6A-1 to -6,; NMAC Title 4, Chapter 10, part 13, and the Prehistoric and Historic Sites Preservation Act; NMSA 1978, §§ 18-8-1 -8; NMAC Title 4, Chapter 10, part 12; and the National Historic Preservation Act, (NHPA), 54 U.S.C. § 470 et seq., as amended, and associated regulations, 36 CFR Part 800;
- H. WHEREAS, the City invited public participation in creation of a master plan for the redevelopment of the Rail Yards by holding a series of community meetings and outreach efforts conducted between August 2012 – June 2014 and, as a result, has adopted the Albuquerque Rail Yards Master Development Plan adopted June 2014 (Master Plan) (Attachment A to this agreement) for the redevelopment of the Rail Yards;
- I. WHEREAS, it is anticipated that the City and/or other private parties may seek federal funding from the Department of Housing and Urban Development (HUD) and/or other federal agencies for the Rail Yards redevelopment, or may be required to seek federal approvals or permits that may constitute undertakings as defined by the NHPA and 36 CFR 800.16(y), and, in that case, the undertakings must comply with Section 106 of the NHPA by developing a Programmatic Agreement (PA) based on this MOU;
- J. WHEREAS, under 24 CFR Part 58, the City will assume Section 106 responsibilities for HUD funding, and HUD is responsible for monitoring and providing technical assistance to the City for such compliance with Section 106;
- K. WHEREAS the City's Metropolitan Redevelopment Agency (MRA, hereinafter) is a municipal agency within the City of Albuquerque's governmental structure, and the MRA is the City's designee for purposes related to the negotiation and implementation of this MOU, and the MRA is bound by this this Memorandum of Understanding (MOU or agreement, hereinafter)..

- L. WHEREAS, the City and its previous Rail Yards developer who has been terminated by the City had consulted at meetings on 2/7/13, 4/15/13, 5/16/13, 6/14/13 and 7/9/13 with SHPO concerning the above referenced preservation statutes and regulations and Master Plan, and the City and its previous developer, serving as an agent designee of the City, had implemented an MOU with HPD dated January 1, 2016, that was identical in substance to this MOU;
- M. WHEREAS, this MOU supersedes and replaces the MOU between the City and its previous developer, Samitaur, dated January 1, 2016, concerning the adaptive redevelopment of the Albuquerque Rail Yards;
- N. WHEREAS, the City and MRA need to phase the redevelopment of the Rail Yards in order to responsibly meet the City's fiscal obligations to the citizens of Albuquerque; and
- O. WHEREAS, the parties agree that adaptive use is a well acknowledged and accepted preservation tool that may also have adverse effects, which should be minimized or prevented through professional input and taking into account the fact that such a project must be economically viable to ensure its sustainability.

NOW, THEREFORE, the City, MRA, and HPD agree on an approach to minimize adverse effects to the historic properties in the Rail Yards during their redevelopment, including the following stipulations.

STIPULATIONS

I. Definitions

The following definitions apply throughout this document:

- a. "Adaptive Use" means new function(s) given to existing property, not being the original one.
- b. "Adverse Effect" means any modifications to a registered cultural property that may cause changes in the character, use, or characteristics that made the property eligible for listing as a registered cultural property. Adverse Effects include any alteration of the registered cultural property's physical characteristics including relevant features of its immediate environment which may diminish the integrity of the property's location, design, setting, materials, workmanship or association.
- c. "Area of Potential Effect" (APE) means the area within the boundary represented in the nomination for the Rail Yards to the National Register of Historic Places ("NRHP Boundary").
- d. "Contributing Building" means those buildings determined to be contributing to the historic significance of the Rail Yards as listed in the National Register of Historic Places

Registration Form for the “Atchison, Topeka, & Santa Fe Railway Shops, Other name: Albuquerque Rail Yards”.

- e. “Master Plan” means the “Albuquerque Rail Yards Master Development Plan” that was adopted by the City of Albuquerque on June 16, 2014 and approved as Resolution R-2014-054 on July 3, 2014, as amended with SHPO consultation.
- f. “Undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal or state agency or political subdivision of the State, including those carried out by or on behalf of a federal or state agency or political subdivision of the State, those carried out with federal assistance, those requiring a federal permit, license or approval; and those subject to state or local regulation or administered pursuant to a delegation or approval by a federal agency.

II. Qualifications

The State, City, and MRA shall ensure that all architectural design and archaeological investigations of the Rail Yards are conducted under the supervision of personnel meeting standards established by the City and who meet the Secretary of Interior’s professional qualifications standards found at 36 CFR Part 61, Appendix A.

III. Pre-Development Identification of Historic Properties in the Area of Potential Effect

In order to establish baseline information, the City surveyed all buildings in the APE for the Rail Yards using the Historic & Cultural Properties Inventory (HCPI) forms established by HPD.

IV. Preservation of, and Resolution of Adverse Effects to, Historic Properties in the APE

The parties agree that development of the Rail Yards pursuant to the Master Plan will comply with the Secretary of Interior’s Standards for the Treatment of Historic Properties and is subject to the following specific requirements:

a. Buildings/Culturally Significant Structures and Tracks

1. Adverse Effects should be avoided, as much as possible, via professional planning with preservationists’ input and monitoring, maintenance, compatible use, reversible actions and management.
2. The City shall preserve, alter, and/or adaptively use the structures listed in Section 6.4.2 of the Master Plan and establish a “Maintenance and Monitoring Program” for them in accordance with this Agreement.
3. The structures listed in Section 6.4.3 of the Master Plan may be, but are not required to be, removed. The removal of these structures does not adversely affect the integrity and understanding of the Rail Yards or the way the Rail Yards functioned as a Rail Yards.

4. The structures listed in Section 6.4.4 of the Master Plan may be interpretively reconstructed as described in that section.
5. The APE may be subdivided into parcels and improved with infill development as depicted in Section 6 of the Master Plan and, in particular, Figure 5 and Tableau 1. The interior of existing buildings may be altered by, among other things, horizontal and vertical partitions for the benefit of public visitors and private occupants.
6. Infill development as allowed in the Master Plan shall not exceed the allowable floor area ratio (FAR) indicated on Figure 5 of the Master Plan and shall adhere to the design guidelines in Section 7 of the Master Plan (Design Guidelines).
7. Tracks shall be incorporated into the design of the Rail Yards redevelopment per Section 6.4.2 of the Master Plan.
8. The City will adhere to the Design Guidelines.
9. The designs for all proposed work, both new construction and alterations to existing buildings will be submitted to HPD and HPD shall have 30 days to provide its review and comment. In the absence of a response from HPD within such 30 days, a design will be deemed approved by HPD.
10. If HPD finds the proposed demolitions (other than those described in Section 6.4.3 of the Master Plan), designs for new construction, and/or alterations to existing buildings do not conform with the Secretary of the Interior's Standards, the City shall consult with HPD within 10 days regarding measures to avoid, minimize, or mitigate the resulting Adverse Effect(s).
11. If the City and HPD are unable to agree on measures to mitigate Adverse Effects, the City shall follow the procedures outlined in Stipulation VII for dispute resolution.

b. Recording as Mitigation of Adverse Effects

1. Prior to demolishing any Contributing Building, the City will document the building to "level 3 documentation" standards as established by the Historic American Building Survey/Historic American Engineering Records (HABS/HAER). The City will ensure that such work is carried out, or at least supervised, by a preservation professional in the relevant field. In relation to the Machine Shop, the Transfer Table, and the Boiler Shop described in the Master Plan, however, level 3 documentation shall not be sufficient to mitigate Adverse Effects as required by law should the City ever propose to demolish these buildings in the future.
2. The City shall submit copies of all records of level 3 documentation to the Center for Southwest Research at Zimmerman Library, University of New Mexico and to HPD. In the event the Zimmerman Library is unable to accept the records, they shall be deposited with the State Archives of New Mexico or an alternate local, publicly accessible archival repository acceptable to HPD.
3. Creative mitigation to interpret the Rail Yards for the benefit of the general public could include, but is not limited to, pamphlets and web-based digital and

video materials, interpretative educational materials, and public outreach events.

V. Identification of Archaeological Sites in the APE

- a. The Master Plan provides that the APE will be subdivided into parcels and redeveloped in phases. Prior to developing any parcel in the APE, the City shall comply with the Cultural Properties Act and City Ordinance 14-16-3-20 entitled "Albuquerque Archaeological Ordinance," as appropriate. The City may phase the archaeological studies in the APE and shall complete them prior to any ground disturbance associated with the redevelopment of each parcel per the Master Development Plan. The City shall not condition redevelopment of parcels upon the completion of archaeological studies of other parcels. Notwithstanding the foregoing, the City may consult with SHPO per the Cultural Properties Act with regard to any ground disturbance associated with minor improvements prior to completion of the archaeological studies. For reasons of human health and safety, areas under environmental remediation for toxic waste contamination shall not require archaeological testing.
- b. To identify archaeological sites that may be present in the APE, the City will conduct an archaeological survey of the APE to identify surface-visible archaeological sites and will conduct systematic test excavations to identify areas within the APE with the potential for significant subsurface archaeological deposits and areas that do not, or are unlikely, to contain significant archaeological deposits. The City will prepare a testing plan and incorporate mechanical excavation, supplemented by hand excavation, if needed. The testing plan will take into account areas likely to be disturbed during development of the APE as indicated in the Master Plan and areas most likely to contain buried deposits as indicated by a review of existing archival and archaeological records such as Sanborn Maps from the period of significance, information in the NRHP nomination, and information in the New Mexico Cultural Resource Information System. The purpose of the testing phase is to determine areas that will require preparation of a treatment plan and data recovery and areas within the APE that will not require additional archaeological study. The treatment plan will include recommendations for post-testing or post-treatment archaeological monitoring, if needed.
- c. The City Archaeologist and SHPO shall have 30 days to review and comment on the testing plan. In absence of a response within 30 days, the City may implement the testing plan.
- d. Upon completion of the test excavations, the City will provide SHPO and its Archaeologist a report of the findings. The City Archaeologist and SHPO shall have 30 days to review the report. If the report identifies significant archaeological resources, the City shall prepare a treatment plan prior to developing the affected parcel(s). The City Archaeologist and SHPO shall have 30 days to review and comment on the treatment plan and the treatment plan report. In absence of a response within 30 days,

the treatment plan may be implemented or the report accepted. The City Archaeologist and SHPO shall have 10 days to review the revised treatment plan.

- e. Should any previously unknown archaeological sites be discovered during development of a parcel already studied pursuant to subsection (a), (b), and (c) above, the City shall halt further disturbance of the archaeological site and take steps to study the archaeological site. Upon discovery of such a site, the City shall immediately inform the City Archaeologist and the SHPO. MRA, and/or any relevant City contractors, the City, City Archaeologist and SHPO shall consult within 48 hours of the notice and determine whether any actions beyond recording of the discovered materials are warranted under law.
- f. If human remains are exposed, they are subject to the unmarked burial provisions of the Cultural Properties Act, NMSA 1978, 18-6-11.2, and the implementing regulation, 4.10.11 NMAC, Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico. If human remains are found, the City shall ensure that all disturbance is halted, the remains are protected and the Albuquerque Police Department, the City, City Archaeologist and SHPO are notified immediately. If the remains can be left in place without further disturbance, the City will leave them in place. The City will complete a Laboratory of Anthropology site record and document the location of the remains. If they cannot be left in place without further disturbance, the City will remove them in the manner provided by law, including section 18-6-11.2 of the Cultural Properties Act as it applies to unmarked human burials, and related regulations.

VI. Tribal Consultation

- a. The City shall consult with Native American tribal governments as part of the implementation of the Master Plan. As soon as it completes the archaeological testing described in V(a), (b) and (c), the City shall provide copies of the written report(s) to the appropriate tribes. The City shall invite the tribes to identify any concerns that they have based on those reports and shall afford the tribes a period of 30 days to provide comment to the City and to the SHPO.
- b. Consultation with Native American tribes is required whenever federal funding under Section 106, as amended, occurs.
- c. If *in situ* undisturbed evidence of historic tribal activities is discovered during archaeological testing, the City shall make every reasonable attempt to protect it and interpret it on site (taking into consideration the advice of the archaeological authorities).

VII. Dispute Resolution

Should the parties disagree concerning the interpretation or implementation of any provision of this Agreement, the parties shall negotiate in good faith for 30 days concerning the dispute after one party notifies the other of the dispute in writing.

Negotiating in good faith shall include mediation of the dispute if requested by one of the parties and if the mediation can take place without undue delay. The mediation shall be before a mediator agreed upon by the parties. The cost of the mediator shall be paid by the City. If the parties reach impasse after negotiating in good faith, the City shall appeal to the Cultural Properties Review Committee with a statement of the dispute as provided in NMAC 4.10.7.14, and, if requested, a special session of the Cultural Properties Review Committee shall be conducted within 30 days of the submission of the appeal.

VIII. Amendment

Any signatory to this agreement may request that it be amended, whereupon the signatories shall consult to attempt to reach agreement on the proposed amendment. No amendment shall be effective unless signed by all parties hereto.

IX. Term and Termination

1. Term. This Agreement shall remain in force and effect so long as the Master Plan remains in force and effect, unless this Agreement is earlier terminated pursuant to the following Section IX(2).
2. Termination. Either party may terminate this Agreement for cause if efforts to resolve a dispute over a material breach are not successful as described in Section VII. Dispute Resolution. In order to terminate for cause, the non-breaching party shall notify the alleged breaching party of the breach in writing and document unsuccessful dispute resolution. The alleged breaching party shall have 30 days to amend the breach. If the breach is not fixed, the Agreement shall terminate.

X. Periodic Review

Within two years after execution of this agreement, or no later than September 2020 and every three years thereafter the City shall convene a meeting with the SHPO to review the progress of the Rail Yards redevelopment and compliance with this agreement.

XI. Supersedure by Programmatic Agreement

If at any time a federal agency funds, assists, authorizes, approves, or otherwise proposes an action that meets the definition of an undertaking pursuant to the NHPA and 36 CFR 800.16(y) for the Rail Yards redevelopment or a component thereof during the life of this agreement, the City will provide a copy of this MOU to the federal agency. A Programmatic Agreement with the Secretary of the Interior, if any, shall supersede this Agreement to the extent that such an agreement pertains to matters covered in this Agreement.

Execution and implementation of this Agreement and the implementation of its terms evidences that the City and SHPO agree on a process through which the SHPO may comment on the Adverse Effects of the redevelopment of the Rail Yards on historic and archaeological properties as defined

herein, and that the City has agreed on a process to take into account the potential Adverse Effects of the undertaking on these historic and archaeological properties.

New Mexico State Historic Preservation Officer

By:  Date 9/5/18
Jeffrey Pappas, SHPO

Department of Cultural Affairs

By:  Date 9/11/18
Secretary Veronica N. Gonzales, Cabinet Secretary

APPROVED AS TO FORM:

 Date 9/11/18
Jennifer Salazar, DCA General Counsel

City of Albuquerque

By: _____ Date _____
David Campbell, Planning Director
Planning Department

By: _____ Date _____
Karen Iverson, MRA Manager

APPROVED AS TO FORM:

Estaban A. Aguilar, Jr., City Attorney

Date _____

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New Mexico State Historic Preservation Officer

By: _____ Date _____
Jeffrey Pappas, SHPO

Department of Cultural Affairs

By: _____ Date _____
Secretary Veronica N. Gonzales, Cabinet Secretary

APPROVED AS TO FORM:

Jennifer Salazar, DCA General Counsel

City of Albuquerque


By:  _____
David Campbell, Planning Director
Planning Department

Date 9/4/18

By:  _____
Karen Iverson, MRA Manager

Date 8/31/18

APPROVED AS TO FORM:

 _____
Estaban A. Aguilar, Jr., City Attorney

Date 9-11-18

List of Attachments

Attachment A – Albuquerque Rail Yards Master Development Plan

<https://www.cabq.gov/council/projects/completed-projects/2014/albuquerque-rail-yards-redevelopment#Final%20Adopted%20Plan>