

NMDOT LICENSE FOR PARKING

THIS LICENSE ("License"), made and entered into this 10th day of November, 2009 ("Effective Date"), by and between THE NEW MEXICO DEPARTMENT OF TRANSPORTATION ("Licensor"), a public agency of the State of New Mexico, having an office at 604 W. San Mateo or PO Box 1149, Santa Fe, New Mexico and THE COUNTY OF SANTA FE, a political subdivision of the State of New Mexico, located at 102 Grant Ave, Santa Fe, N.M. (Licensee) The signatories hereto shall be referred to individually as a "Party" and collectively as the "Parties."

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

GENERAL

1. Licensor 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 the "Premises" exclusively for the construction and maintenance of a public parking lot for use in connection with the Santa Fe County Rail Trail. The Premises are described by a legal description and plat which are attached as Exhibit "A", which is incorporated into this License.

Licensor hereby grants ingress and egress to and from the Premises on a non-exclusive basis. However, the Licensor shall have the right, to be exercised at any time, to designate the location or route to be used for such purpose. For the purpose of this License, said ingress and egress route, whether specifically defined or not, is included under the term "Premises."

Licensee agrees that all improvements listed on Exhibit "B" are owned by Licensor and all improvements placed upon the Premises after the Effective Date of this License shall be the property of the Licensor at termination of this License unless the Licensor agrees that they may be removed, and Exhibit "B" shall be supplemented by those improvements.

Licensee agrees, at its cost, to keep the Premises and all improvements thereon, free from rubbish and in a neat, safe, and good condition and repair, to the satisfaction of Licensor. The Premises and improvements thereon shall not be used for displaying signs and notices other than those connected with the business of the Licensor contemplated by this License. Such notices and signs shall be neat and properly maintained.

Licensor 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 in strict accordance with the terms and conditions contained herein for the purposes allowed and no other.

Special Provisions:

- (a) All parking spaces established on the Premises shall be clearly marked and clearly displayed. Parking spaces shall be designed so that no parked car, one or more, shall be closer than twenty-five (25) feet from the center line of the rail road tracks. Licensee shall be the sole monitor of the parking area with Licensor having no obligation to keep the parking area clear of unauthorized vehicles. No fencing or improvements except for parking control shall be constructed in the parking area except those specifically approved by Licensor.
- (b) This License does not convey a permanent right to Licensee to the use of the Premises, including any ingress or egress, but authorization to Licensee to use the Premises during one or more fixed terms, pursuant to this License Agreement, which authorization(s) may be renewed or cancelled by Licensor as provided for in this License Agreement.
- (c) Licensee shall perform regular maintenance as necessary for proper drainage at its sole cost.
- (d) Maintenance of the ingress/egress access road from Rabbit Road shall be the sole cost of the Licensee. If proper maintenance is not performed by Licensee, Licensor, after 30 days notice to Licensee, may correct any deferred maintenance and bill Licensee for all expenses incurred. Non-payment or non-performance of the maintenances shall be grounds for default and cancellation of this License.
- (e) Licensee acknowledges that the State of New Mexico and Licensor have the right to revoke this License and use the Premises as a commuter rail corridor in any manner. In either such case, Licensor shall not be subject to any liability for payment of relocation or removal of improvements, relocation expenses, or other expenses of any kind incurred by Licensee in vacating the Premises. Licensee further acknowledges that Licensor has made no commitment to extend this License or expand or enlarge size of the Premises available for Licensee's use.
- (f) Unless and except as approved by Licensor, Licensee shall not conduct any activities or operations of any kind within fifteen (15) feet of the centerline of the railroad tracks.

2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of any improvements installed thereunder.
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Licensee acknowledges that Licensor'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 Licensor 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, Licensor'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 Licensor's ownership rights may terminate for other reasons, such as termination of franchise rights, and that certain segments of Licensor's rail corridors consist only of trackage rights licensed to Licensor, enabling Licensor to provide rail service, or shared ownership with other railroads, and that Licensor 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 Licensor's rail corridor (including liens, security interests, and mortgages), and any and all easements, other leases, licenses, permits or agreements which now relate to Licensor's rail corridor, except Licensor in the future shall not place or cause to be placed any encumbrance upon Licensor'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.

3. Licensee shall use the Premises solely for a parking lot in connection with the Santa Fe County Rail Trail. Licensee shall not use the Premises for any other purpose. Except as may be approved by Licensor, Licensee shall not construct or place any fence, structure or building on the Premises without prior written approval of the Licensor and in no event less than fifteen (15) feet from the center line of the rail tracks. 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.

4. 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 Licensor of the affected rail corridor, Licensor shall not be liable to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance.
5. 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

6. (a) This License shall commence on the date this License is executed by all parties, hereinafter "Effective Date", and shall continue for a period of Fifteen (15) years there from until October ____, 2024.

(b) Following the initial term of the License, Licensee shall have the right to seek one or more extensions of this License on the same terms and conditions herein from Licensor, except as may be otherwise agreed to by the Parties. Granting of such extension(s) shall be at the discretion of the Licensor.

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of **\$350.00** during the initial term of this License. Payment for any subsequent term(s) shall be negotiated between the parties.

(b) Licensee shall be responsible for all costs and expenses, if any, arising from Licensee's use of the Premises, including but not limited to, the furnishing of Licensor's flagmen and any vehicle rental costs incurred. The cost of flagging services, if necessary, shall be borne by Licensee. The estimated cost for one (1) flagger is \$1,000.00 for an eight (8) hour basic day with time and-one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes overhead costs, vacation allowance, paid holidays, railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by Licensor or its contractor hereunder will be used to calculate the actual costs of flagging pursuant to this Section.

COMPLIANCE WITH LAWS

8. (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 the Premises, Licensee shall and shall cause its contractor to comply with all of Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety-training program at the following Internet Website "<http://www.contractororientation.com>". This training must be completed no more than one (1) year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

9. 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 LICENSOR TO USE

10. The Licensor shall use all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above; however, Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- (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; or
- (c) to use the Premises in any manner as Licensor 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.

NOTIFICATION INVOLVING LICENSEE'S DAY-TO- DAY OPERATIONS AND EMERGENCY SITUATIONS

11. (a) In the case of matters that may arise involving day-to-day operations, or emergency situations, Licensee shall notify Licensor's railroad representative at Southern Railway, Inc., representative Carol Raymond [Email: Carol@sfsr.com ; Ph: 505-989-8600, ext. 27] at least five (5) business days prior to any authorized construction work, if any, and prior to entering the Premises for any subsequent maintenance thereon. In the event of an emergency situation, Licensee shall immediately notify the above representative of the nature of the emergency and the actions needed to address the emergency. Licensor shall reasonably allow access for emergency work and may verbally authorize entry upon the Premises.
- (b) In using the Premises described in Section 3 above, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
12. (a) Except for emergency work authorized under Section 11(a) above, 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 Licensor. 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 Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the Parties agree that Licensor 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 Licensor 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 Licensor'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 Licensor, or the safe operation of its railroad. Further, the operations of the Licensee shall not be expanded by the installation of additional improvements or facilities, except those that may have been approved by Licensor on the effective date of this License Agreement or thereafter. If ordered at any time to halt construction or maintenance of the operations by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the Parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Premises. Neither the exercise nor the failure by Licensor 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 judgment of Licensor, fail to perform properly its obligations under this Section, Licensor may, at its option, itself perform such work as it deems necessary for the safe operation of its railroad. In such event, Licensee agrees to pay, within thirty (30) days after an itemized invoice shall have been rendered therefore, the cost so incurred by Licensor, but failure on the part of Licensor to perform the obligations of Licensee shall not release Licensee from liability hereunder for loss or damage occasioned thereby.

13. Licensee shall, at its sole cost and expense, keep the premises free of all combustible materials
14. 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 Licensor, and preclude interference with the operation of its railroad.
15. If at any time during the term of this License, and any authorized renewals or extensions thereof, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor'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 Licensor in its reasonable discretion) after receiving written notice from Licensor to such effect, make such changes in the use or the Premises as in the sole reasonable discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor by Licensor, including, without limitation, the relocation of the Licensee's operations or the cancellation of this License.
16. Licensee shall not conduct any boring work on or about any portion of the Premises without prior written permission of the Licensor. In the event boring is authorized, Licensor will provide Licensee any information that Licensor has in its possession concerning the existence and approximate location of Licensor's and any third party's underground utilities and

pipelines at or near the vicinity of the Premises. Prior to conducting any such boring work, Licensee will review all such material. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions, and Licensee's operations will be subject at all times to the liability provisions herein.

17. Upon termination of this License, Licensee shall, at its sole cost and expense:
 - (a) remove any improvements placed on the Premises by Licensee and restore the Premises to its original condition prior to the Licensee's use of the Premises, at the discretion of the Licensor; and
 - (b) remedy any unsafe conditions on the Premises created or aggravated by Licensee.

LIABILITY

18. Licensee is a political subdivision of the State subject to the New Mexico Tort Claims Act. As such, Licensor and Licensee shall each remain solely liable for any act or omission of their respective officers, employees, agents, or contractors, subject to any otherwise available defense or limitation of liability. Nothing in this License Agreement is intended to be a waiver of any constitutional, statutory, or common-law sovereign immunity. Any liabilities of the Licensor or Licensee are subject to the terms of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq.*

PERSONAL PROPERTY WAIVER

19. 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 THE LICENSOR WILL NOT BE LIABLE FOR ANY DAMAGE THERETO.

INSURANCE REQUIRED FOR ANY CONSTRUCTION ACTIVITIES

20. During any construction activities on the Premises, Licensee shall require its contractors to provide the following insurance coverage:
 - (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 \$2,000,000. Coverage must include, but not be limited to, the following:
 - (i) Bodily injury and property damage.

- (ii) Personal injury and advertising injury.
- (iii) Fire legal liability.
- (iv) Products and completed operations.

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

- (i) The employee and worker's compensation related exclusions in the above policy shall not apply with respect to claims related to railroad employees.
- (ii) 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.
- (iii) Any exclusions 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:

- (i) Bodily injury and property damage.
- (ii) 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:

- (i) Contractor'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.

(d) **Railroad Protective Liability Insurance.** If any construction is requested by Licensee and authorized by Licensor then Licensee shall require its contractor to provide Railroad Protective Liability Insurance. This insurance shall name Licensor, Licensee and Santa Fe Southern Railway, Inc., as the 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 Licensor prior to performing any work or services under this License.
- Licensee shall also provide the same Railroad Protective Liability Insurance protecting Santa Fe Southern Railway, Inc., as an authorized operator on the rail line involved.

Other Insurance Requirements to be Met by Licensee's Contractor During Construction:

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 Licensor or Licensee to the extent allowed by the New Mexico Tort Claims Act, Licensee shall require its contractor to waive its right of recovery against Licensor and Licensee for all claims and suits against Licensor or Licensee. In addition, the contractor's insurers, through policy endorsement, shall waive their right of subrogation against Licensor and Licensee for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. The Licensee's contractor shall further waive its right of recovery, and its insurers also waive their right of subrogation against Licensor and Licensee for loss of its owned or leased property or property under its care, custody, or control.

The contractor's 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 Licensor or Licensee. 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 Licensor, Licensee and Santa Fe Southern, with respect to work performed under this License. Severability of interest and naming Licensor, Licensee and Santa Fe Southern as additional insured(s) shall be indicated on the certificate of insurance.

Prior to commencing construction activities on the Premises, Licensee shall require its contractor to furnish to Licensor and to Licensee an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. 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 Licensor and Licensee 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 Licensor and/or Licensee arising out of this agreement, Licensee shall require that its contractor will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor 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 Facilities are located.

Licensee shall require its contractor to represent that this License has been thoroughly reviewed by the contractor's insurance agent(s)/broker(s), who have been instructed by the contractor 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.

During construction activities, Licensee's contractor is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee's contractor in lieu of insurance. Any and all NMDOT liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Licensee's contractor's insurance will be covered as if Licensee's contractor elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

If any portion of the operation is to be subcontracted by Licensee's contractor, Licensee shall require that its contractor require the subcontractor to provide and maintain insurance coverages as set forth herein, naming Licensor and Licensee as additional insureds, and shall require that the subcontractor shall release, defend and indemnify Licensor and Licensee.

Failure to provide the insurance evidenced as required by this Section 23 shall entitle, but not require, Licensor 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's contractor shall not be deemed to release or diminish the liability of Licensee under the provisions of Section 18 of this License.

For purposes of this section, Licensor shall mean "New Mexico Department of Transportation," and its subsidiaries, agents, successors, assigns and affiliates.

ENVIRONMENTAL

21. (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 oil or hazardous substances, as defined by Environmental Laws, on or about the Premises.
- (b) Licensee shall give Licensor immediate notice to Licensor'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 Licensor 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 Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Facilities which occurred or may occur during the Initial Term of this License, and any authorized renewals or extensions thereof, Licensor 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 Licensor's right-of-way.
- (d) Licensee shall promptly report to Licensor 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 Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

22. 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 Licensor's prior written consent which consent may be exercised in the sole discretion of the Licensor and accepted by the Licensee as final.

NO WARRANTIES

23. LICENSOR'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 LICENSOR 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

24. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF.

DEFAULT

25. (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 Licensor 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 Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 28 shall be in addition to, and not in limitation of, any other remedies Licensor may have at law or in equity.

LIENS AND CHARGES

26. 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. Licensor 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 Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 29 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 Licensor or the Premises that are attributable to the operations.

TERMINATION

27. This License may be terminated by Licensor 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.
28. If Licensee fails to surrender to Licensor 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

29. Neither Licensee, nor the heirs, legal representatives, successors, or assigns of Licensee, nor any subsequent assignee, shall assign or transfer this License or any interest herein, without the prior written consent of Licensor.

NOTICES

30. 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, (b) deposited into the custody of a nationally recognized overnight delivery service, or (c) transmitted via electronic mail with a requested delivery receipt for the message, 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 Licensor: Lawrence Barreras, Divisions Director
Office of Programs and Infrastructure
New Mexico Department of Transportation
PO Box 1149, Santa Fe, NM 87504,

Lawrence.barreras@state.nm.us

With a copy to: Deputy Secretary of Programs and Infrastructure
New Mexico Department of Transportation
PO Box 1149, Santa Fe, NM 87504,
max.valerio@state.nm.us, 505-827-5270

If to Licensee: Roman Abeyta, Santa Fe County Manager
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-1985
[rabeyta@co.santa-fe.nm.us](mailto:rabayta@co.santa-fe.nm.us)
505-986-6200

With a copy to: Allison Moore, Project Manager
SF County Open Space and Trails
P.O. Box 276
Santa Fe, NM 87504-1985
amoore@co.santa-fe.nm.us
505-992-9852

and

Stephen C. Ross, Santa Fe County Attorney
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-1985
sross@co.santa-fe.nm.us

SURVIVAL

31. Neither termination nor expiration will release either Party from any liability or obligation under this License, whether of indemnity or otherwise, 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

32. It is understood and agreed that this License shall not be placed on public record.

APPLICABLE LAW

33. 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

34. 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

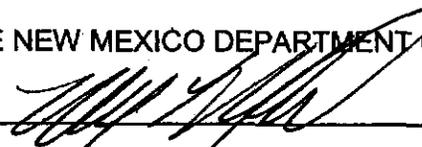
35. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the Parties hereto relating to Licensee's use of the Premises as described herein; provided, however,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

MISCELLANEOUS

36. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
37. Licensor 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 Licensor and Licensee.
38. This License may be amended or modified only by a written instrument executed by both Parties.
39. 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.
40. In construction of this License, words used in the singular shall include the plural and the plural the singular, and "or" is used in the inclusive sense, in all cases where such meanings would be appropriate.
41. This License is executed by the Parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulation.
42. 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.

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 (Licensor)

By: 
Deputy Secretary, Programs and Infrastructure

Approved as to Form:


Greg W. Perry 10/20/09
NMDOT Office of General Counsel

THE COUNTY OF SANTA FE

By: RA  (Licensee)
Santa Fe County Manager

By: Roman Abeyta

Title: _____

Approved as to Form:

J. [Signature]
Attorney

EXHIBIT "A"

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

EXHIBIT A

**LEGAL DESCRIPTION
OPEN SPACE AND TRAILS LICENSE AGREEMENT PARCEL
RABBIT ROAD/RR TRACKS**

A CERTAIN TRACT OF LAND, BEING AN OPEN SPACE AND TRAILS LICENSE AGREEMENT PARCEL, LYING WITHIN SE QUARTER OF SECTION 10, T-16-N, R -9-E, N.M.P.M., WITHIN NMDOT RAILROAD R.O.W., FORMALLY SANTA FE SOUTHERN RAILWAY, COUNTY OF SANTA FE, NEW MEXICO AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS,

BEGINNING AT THE NORTHEAST CORNER OF THE EASEMENT, MARKED BY A NMDOT T-RAIL, STATION 282+19, ALSO BEING THE NORTHWEST CORNER OF TRACT 2, LOT 2, FROM WHENCE A NMDOT T-RAIL BEARS N19°08'31"E, 105.61 FEET, THENCE FROM SAID POINT AND PLACE OF BEGINNING,

228.59 FEET ALONG A CURVE TO THE LEFT, HAVING A DELTA OF 27°41'33", A RADIUS OF 472.96 FEET, THE CHORD WHICH BEARS S01°57'07"W, 226.38 FEET TO A CAPPED REBAR "13054" SET, THENCE

S78°06'20"W, 85.00 FEET TO A CAPPED REBAR SET, BEING 15 FEET FROM THE CENTERLINE OF THE EXISTING RR TRACKS, THENCE

247.21 FEET ALONG A CURVE TO THE RIGHT, HAVING A DELTA OF 25°23'06", A RADIUS OF 557.96 FEET, THE CHORD WHICH BEARS N00°47'53"W, 226.38 FEET TO A CAPPED REBAR "13054" SET, BEING 15 FEET FROM THE CENTERLINE OF THE EXISTING RR TRACKS, THENCE

S89°04'55"E, 87.48 FEET TO THE SAID POINT AND PLACE OF BEGINNING

CONTAINING 0.46 ACRES OR 20220 SQ. FT.

ALL AS SHOWN ON A PLAT OF SURVEY BY JEFFERY LUDWIG, N.M.L.S.13054 AND TITLED, "SURVEY PLAT OF A LICENSE AGREEMENT PARCEL PREPARED FOR THE NEW MEXICO DEPARTMENT OF TRANSPORTATION AND SANTA FE COUNTY AND FILED FOR RECORD IN THE OFFICE OF THE SANTA FE COUNTY CLERK IN PLAT BOOK 707, PAGE 023 AS DOCUMENT No. 156782.9

EXHIBIT A

7040023

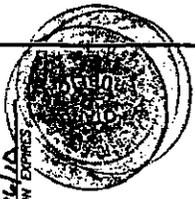
CONSENT AFFIDAVIT

KNOW ALL PERSONS BY THESE PRESENTS:

THAT THE UNDERSIGNED OWNER AND PROPRIETOR HAS REVIEWED THIS PLAT AND HAS PREPARED TO SHOW THE CREATION OF AN OPEN SPACE AND TRAILS LICENSE AGREEMENT PARCEL, ALL AS SHOWN HEREON, LYING WITHIN THE COUNTY OF SANTA FE, NEW MEXICO, ALL THAT APPEARS ON THIS PLAT IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF THE UNDERSIGNED OWNER AND PROPRIETOR. THESE LANDS LIE WITHIN SANTA FE, NEW MEXICO, PLANNING JURISDICTION OF THE OPEN SPACE AND TRAILS LICENSE AGREEMENT PARCEL AS SHOWN HEREON IS TO BE THE RESPONSIBILITY OF THE COUNTY OF SANTA FE.

Dr. O. Guillermo Soto
 NEW MEXICO DEPARTMENT OF TRANSPORTATION
 Santa Fe, New Mexico
 STATE OF NEW MEXICO
 COUNTY OF SANTA FE
 ON THIS 14th DAY OF June, 2009 THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY THE PERSON(S) WHOSE NAME(S) APPEAR ABOVE.

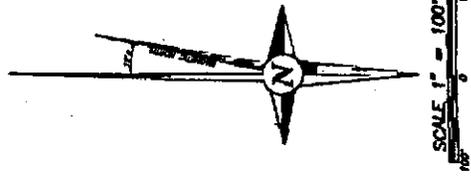
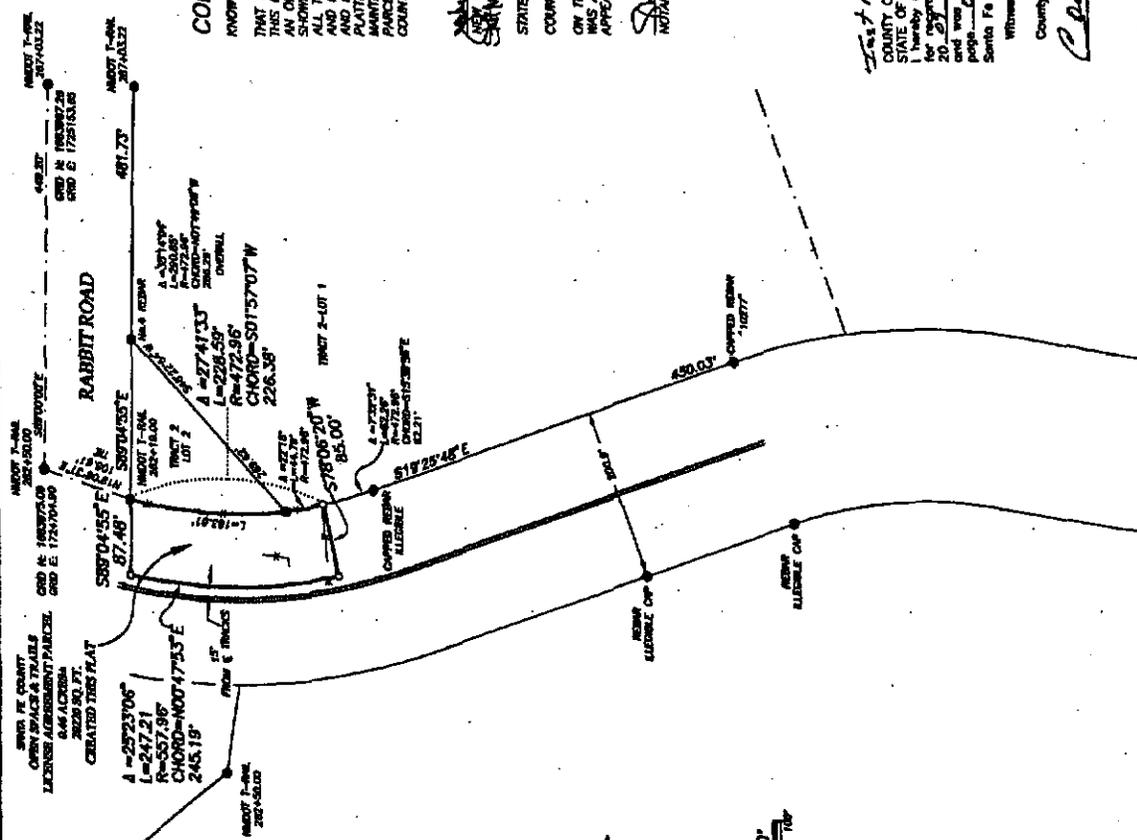
Dr. O. Guillermo Soto
 NOTARY PUBLIC
 COMMISSION EXPIRES 3/31/10
 DATE



Isabel Soto
 COUNTY OF SANTA FE
 STATE OF NEW MEXICO
 I hereby certify that the instrument was filed in my office on the 14th day of June, 2009 at 2:20 p.m. and was duly recorded in book 207 of the records of Santa Fe County.
 Witness my hand and Seal of Office
 Notary Public, Santa Fe County, N.M.
Isabel Soto
 Deputy

INDEXING INFORMATION FOR COUNTY CLERK

SECTION (4)	PREPARED FOR	SCALE
10	NMDDOT	1" = 100'
TOWNSHIP	NEW MEXICO DEPARTMENT OF TRANSPORTATION	DATE
1-18-N	SANTA FE COUNTY	06/15/09
RANGE	LYING WITHIN THE	DRAWN BY
R-9-E	NMDDOT	JUDY
SANTA FE	RAILROAD RIGHT-OF-WAY	CHECKED BY
GRANT	FORMALLY SANTA FE RAILROAD RAILWAY	JUDY
N.M.P.M.	COUNTY OF SANTA FE, NEW MEXICO	PROJECT No.
		57009-002510



LEGEND/DEED-PLAT REFERENCES

- 1) REFERENCE A PLAT OF SURVEY TITLED "LOT SPLIT & LOT LINE ADJUSTMENT FOR BERRYMAN, KENNETH WASSER, EDWARD A. & BERRYMAN, LINDA LEE" DATED 07/22/83 BY RICHARD A. BERRYMAN, N.M.L.S. NO. 10277 AND FILED FOR RECORD IN THE OFFICE OF THE SANTA FE COUNTY CLERK IN PLAT BOOK 264 PAGE 49
- 2) REFERENCE A QUILCLAIM DEED FROM SANTA FE SOUTHERN RAILWAY INC. TO STATE OF NEW MEXICO DEPARTMENT OF TRANSPORTATION FILED FOR RECORD IN THE OFFICE OF THE SANTA FE COUNTY CLERK AS INST. NO. 1361971
- 3) REFERENCE A.T. & S.F. RAILROAD TRACK MAPS FOR THIS AREA

- MONUMENT FOUND AND USED AS NOTED
- CHIPPED REBAR "1.3004" SET
- COMPUTED POINT
- U.S.C.L.O. BRASS CHP
- ▲ CONTROL MONUMENT

NOTES:

BASES OF BEARINGS IS GEODETIC AZIMUTH BASED ON GPS OBSERVATIONS. ANY MONUMENTED LINE NOTED HEREON MAY BE UTILIZED AS A LOCAL BASIS OF BEARINGS.
 BEARINGS ARE NM STATE PLANE CENTRAL ZONE - NAD83 DISTANCES ARE REFERRED TO GRID MSL
 COMBINED SCALE FACTOR 0.99999828
 EXTERIOR RAILROAD RIGHT-OF-WAY BASED ON A.T. & S.F. TRACK MAPS, EXISTING MONUMENTATION AND LOCATION OF RR TRACK

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THIS SURVEY PLAT SHOWING THE CREATION OF AN OPEN SPACE AND TRAILS LICENSE AGREEMENT PARCEL AND THE FIELD SURVEY ON WHICH IT IS BASED WAS MADE AND THAT THE DATA SHOWN HEREON ARE TRUE AND CORRECT TO THE BEST OF MY BELIEF. I AM A LICENSED SURVEYOR AND THAT THIS SURVEY MEETS OR EXCEEDS THE STANDARD REQUIREMENTS OF THE STANDARDS OR PRACTICES OF THE PROFESSION OF SURVEYING IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS. FIELD WORK COMPLETED IN 04/09.

Jeffery L. Ludwig
 JEFFERY L. LUDWIG N.M.L.S. 13084
 DATE 06-05-09



CORNERSTONE
 LAND SURVEYING
 JEFFERY L. LUDWIG
 N.M.L.S. No. 13084
 505-690-7010 CELL
 505-471-5477 OFFICE
 P.O. BOX 8348
 SANTA FE, NEW MEXICO
 87504

