

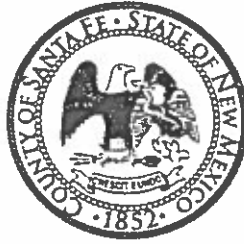
VIII. Matters From County Attorney

A. Executive Session

Henry P. Roybal
Commissioner, District 1

Miguel M. Chavez
Commissioner, District 2

Robert A. Anaya
Commissioner, District 3



Kathy Holian
Commissioner, District 4

Liz Stefanics
Commissioner, District 5

Katherine Miller
County Manager

MEMORANDUM

DATE: *May 24, 2016*

TO: *Board of County Commissioners*

FROM: *Tony T. Flores, Deputy County Manager*

ITEM AND ISSUE: Settlement Agreement between James. R. and Phebe Brecher Regarding Action to Condemn Sewer Line Easement in *Santa Fe County v. Brechers*, D-101-CV-2015-02629

BACKGROUND AND DISCUSSION

The Jacob D. Martinez Public Housing Site ("Jacobo Site") has had sewer issues for many years because it is currently connected to the mainline on Rufina Street, which is uphill from the Site and requires constant pumping. The Housing Authority proposed to resolve this issue through a new connection to the mainline on Lopez Lane, which is downhill from the Jacobo Site. This required the County to obtain an easement from the landowners James and Phebe Brecher. After negotiations failed, the County filed a condemnation action against the Brechers. Under the attached Settlement Agreement, which resolves the litigation, the Brechers have agreed to grant the County a 20-foot wide sewer line easement for the appraised value of \$6,600.00. The County will subsequently assign the easement to the City of Santa Fe for operation and maintenance.

ACTION REQUESTED:

Execute the attached Settlement Agreement in duplicate.

Attachments:

- (1) Settlement Agreement

SETTLEMENT AGREEMENT

James R. and Phebe Brecher, husband and wife (collectively, "Brechers") and the Board of County Commissioners ("Board") of Santa Fe County ("County") enter into this Settlement Agreement ("Agreement"), which shall be effective as of the last signature date below.

Recitals

A. Brechers own that certain property located at 3382 Lopez Lane, Santa Fe, New Mexico, which is described with particularity in that Warranty Deed filed in the property records of Santa Fe County at book 1407, page 552 (the "Property").

B. The County owns the Jacob D. Martinez Public Housing Site located at 52 Camino de Jacobo in Santa Fe, New Mexico (the "Public Housing Property"), which is located a short distance to the North of the Property.

C. The County seeks to acquire a perpetual 20-foot wide easement ("Easement") across the Property to construct, install, operate, maintain, repair and replace an underground sanitary sewer line. The motivating purpose of the Easement is the need for a sewer line to connect the Public Housing Property's sewer line to the City of Santa Fe's main line located along Lopez Lane.

D. The County intends to dedicate the Easement and sewer line to the City of Santa Fe ("City") for public use.

E. Based on that certain Appraisal Report prepared by Kris A. Kapke and dated May 18, 2015 ("Kapke Appraisal"), the fair market value of the Easement is six thousand six hundred dollars (\$6,600.00).

F. On December 11, 2015, the Board of County Commissioners ("Board") filed a Petition for Condemnation of Easement Pursuant to the New Mexico Eminent Domain Code and Request for Immediate Possession ("Petition"), naming the Brechers as Defendants, being First Judicial District, County of Santa Fe, Cause No. D-101-CV-2015-02629.

G. On March 1, 2016, representatives of the County met with Mr. Brecher and the Brechers' attorney, Mack With of Jurgens & With, P.A., to discuss possible settlement of the parties' dispute.

H. The County and the Brechers desire to settle their dispute through an amicable purchase and sale of the Easement.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

The block contains two handwritten signatures. The signature on the left is a large, stylized cursive mark, possibly representing 'JB' or a similar monogram. The signature on the right is a smaller, more compact cursive mark, possibly representing 'JB' or a similar monogram.

1. The forgoing Recitals are incorporated into and made a part of this Agreement by this reference.

2. On the Closing Date, the Brechers shall grant the County the Easement, which shall be perpetual, twenty feet in width, and for the purpose of constructing, installing, operating, maintaining, repairing and replacing an underground public sanitary sewer line to serve the Public Housing Property and other property as may be determined by the City. The legal description of the Easement shall be substantially as follows:

Commencing at the Point of Beginning, being a calculated point marking the Southeast corner of Lot 9, as shown on plat of survey entitled, "DEL SOL UNIT ONE," prepared by Morris A. Apodaca, N.M.R.L.S. No. 5300, dated May 1976 and filed September 14, 1978, as Instrument No. 426883, Book 66, Page 23, in the records of Santa Fe County, New Mexico; from whence the city of Santa Fe Survey Control Marker SFC 1155 bears North 66°47'52" East, a distance of 3,486.74 feet.

Thence, from said Point of Beginning South 77°38'00" West, a distance of 125.52 feet to a point being the Southwest corner of said easement and Southwest corner of Lot 9;

Thence North 12°27'00" West, a distance of 20.00 feet to a point being the Northwest corner of said easement;

Thence North 77°38'00" East, a distance of 125.59 feet to a point being the Northeast corner of said easement;

Thence South 12°15'05" East, a distance of 20.00 feet to a point being the Southeast corner of said easement and the Point of Beginning.

Containing 0.058 Ac. (2,511 sq. ft.), more or less.

3. The Easement purchase price shall be six thousand six hundred dollars (\$6,600.00), which amount the County shall deliver to the Brechers on the Closing Date.

4. The Grant of Easement shall be substantially in the form attached hereto and incorporated herein by this reference as Exhibit A. On or after the Closing Date, the Brechers agree to promptly execute upon request such other documents, including a plat of easement or an amendment of the Grant of Easement, as reasonably may be required by the City or County to evidence, record, correct, or dedicate the Easement; provided, however that under no circumstances shall Brechers be required to sign any document, including any plat of easement, providing for the granting or relocation of any other easements, public or private, including but not limited to the granting of any new or relocated storm sewer or drainage easements.

5. The County shall prepare at its expense all documents necessary to grant, survey, record and dedicate the Easement. The Brechers shall bear their own attorney's fees but shall not otherwise bear any transaction or closing costs.

6. CLOSING DATE AND LOCATION: The Closing Date shall be a mutually agreed upon date not more than sixty (60) days after the Board executes this Agreement. The

SETTLEMENT AGREEMENT

Page 2 of 4



Closing Location shall be the Offices of the County Attorney, located at 102 Grant Avenue, Santa Fe, New Mexico, unless otherwise agreed to by the parties.

7. Within thirty (30) days after the date of the Grant of Easement is executed by the Brechers and recorded by the County, the County shall in consideration of this Agreement withdraw the Petition, request leave of the Court to withdraw the Petition, or otherwise request the Court to dismiss the Petition. The Brechers shall execute such documents and pleadings as may be necessary to effectuate such withdrawal or dismissal.

8. This Agreement shall bind and inure to the benefit of the parties successors, heirs and assigns.

9. This Agreement constitutes the entire agreement between the parties concerning the Easement. All prior agreements, if any, whether written or oral, are integrated into and merged with this Agreement. Duplicate originals of this Agreement shall be executed by the parties.

**BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

By: _____
Miguel M. Chavez, Chair

Date: _____

ATTEST:

Geraldine Salazar, Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

Gregory S. Shaffer, Santa Fe County Attorney

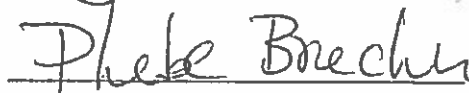
Date: _____

JAMES R. BRECHER



Date: 04/28/16

PHEBE BRECHER



Date: 4-28-16

[ACKNOWLEDGEMENT ON NEXT PAGE]

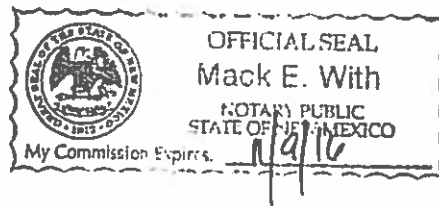
ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
) ss
COUNTY OF SANTA FE)

This instrument was acknowledged before me on this 20th day of April
2016, James R. Brecher and Phebe Brecher.

Mack E. With
Notary Public

My commission expires: 11/2/16



SEWER LINE EASEMENT AGREEMENT

This Sewer Line Easement Agreement (the "Agreement"), effective on the last date written below, is between **James R. and Phebe Brecher** (collectively, "Grantor"), husband and wife, and **Santa Fe County**, a political subdivision of the State of New Mexico ("Grantee").

RECITALS

A. Grantor is the fee simple owner of real property located in Santa Fe, New Mexico, described in that certain Warranty Deed filed in the property records of Santa Fe County in book 1407, page 552, and more particularly described in Exhibit A hereto (the "Property").

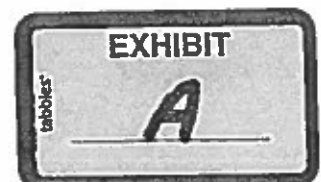
B. Grantee requires a permanent 20-foot wide easement across the Property to construct, install, operate, maintain, replace, and repair a sanitary sewer line to serve Grantee's Jacob D. Martinez Public Housing Site.

C. Grantee intends to assign the sewer line and easement to the City of Santa Fe.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor and Grantee agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, a permanent, non-exclusive easement (the "Sewer Line Easement") over, under, in, along, across and upon the Property, consisting of the 20-foot wide area ("Easement Area") described on the attached and incorporated Exhibit B (easement plat) and Exhibit C (easement legal description), solely for the purposes of constructing, installing, maintaining, operating, repairing, replacing and using a sanitary sewer line ("Authorized Uses").
2. Reservation by Grantor/Non-Exclusive Use. All right, title and interest in and to the Easement Area under this Agreement that can be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor; *provided*, however, that Grantor shall not erect or maintain any buildings which may cause damage to the utility improvements or interfere with Grantee's right to carry out the Authorized Uses under this Agreement; and *provided further* that Grantor shall not landscape or beautify the Easement Area in any way that would unreasonably or materially increase Grantee's costs of carrying out the Authorized Uses or of restoring the Easement Area after doing so. Notwithstanding the foregoing, after the completion of the installation of the sewer line within the Easement Area, Grantor may install asphalt and concrete curb and gutter along and over the northerly 5' of the Easement Area (i.e. along and over that portion of the Easement Area outside of the existing 15' wide drainage easement.)
3. Compliance with Law. Grantee shall construct, operate, and maintain the utility improvements in a workmanlike manner and in compliance with applicable federal, state, and local laws.



4. Restoration. If the surface of the Easement Area or other areas of the Property is disturbed by Grantee during construction or in carrying the Authorized Uses, the disturbed area shall be restored to the condition in which it existed at the commencement of such activities.

5. General Provisions.

5.1 Covenants Running with the Land. The parties to this Agreement acknowledge and agree that the Sewer Line Easement is intended to, and does, constitute a covenant that runs with the land and that shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns.

5.2 Assignment. This Agreement and the Sewer Line Easement granted hereunder are assignable at Grantee's discretion.

5.3 Further Cooperation. The parties agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this Agreement.

5.4 Cancellation of Prior Agreement. This Agreement shall supersede and replace all prior written or oral agreements concerning the Project or Utility Easement, if any.

5.5 No Third-Party Beneficiaries. The parties do not intend by this Agreement to benefit any person who is not a party to this Agreement.

IN WITNESS of this, the undersigned have executed this Agreement as of the last date written below.

GRANTOR:

By: _____
James R. Brecher

Date: _____

By: _____
Phebe Brecher

Date: _____

SANTA FE COUNTY

By: _____
Miguel M. Chavez, Chair

Date: _____

ATTEST:

Geraldine Salazar
Santa Fe County Clerk

Date: _____

APPROVED AS TO FORM:

Gregory S. Shaffer
Santa Fe County Attorney

Date: _____

ACKNOWLEDGEMENT OF GRANTOR

State of New Mexico

County of Santa Fe

This instrument was acknowledged before me on _____ (date) by **James R. and Phebe Brecher.**

Signature of Notarial Officer

My commission expires: _____

EXHIBIT "A"

A portion of SHC No. 600 Tr. 1 and SIK No. 1244 Tr. 1 in Section 6, T. 16 N., R. 9 E., N.M.P.M., Santa Fe County, New Mexico, being more particularly described as follows, to wit:

Beginning at the most southerly corner of the parcel herein described from whence the Section corner common to Sections 5, 6, 7 and 8, T. 16 N., R. 9 E., N.M.P.M., bears S. 12 deg. 13' E., 507.00 feet, and thence S. 29 deg. 49' E., 214.61 feet distant; thence from said point and place of beginning, S. 77 deg. 30' W., 125.52 feet; thence N. 12 deg. 27' W., 173.10 feet; thence N. 77 deg. 30' E., 126.22 feet; and thence S. 12 deg. 13' E., 173.10 feet, to the point and place of beginning. Being and intended to be all of "LOT 9" as shown on plat of survey entitled, "DEL SOL UNIT ONE," prepared by Morris A. Apodaca, H.M.N.L.S. No. 5300, dated May 1976 and filed for record September 14, 1978 at 8:33 A.M. as Document No. 426,883, appearing in Plat Book 66 at Page 23, records of Santa Fe County, New Mexico.

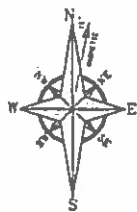
7/18/89
JBB

EASEMENT EXHIBIT A

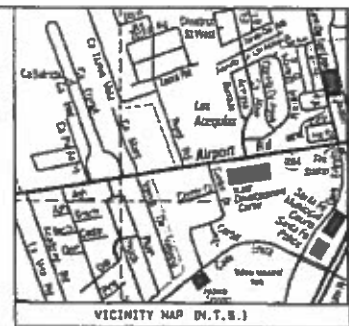
EASEMENT SURVEY FOR THE COUNTY OF SANTA FE OF LOT 9, DEL SOL UNIT 1 SUBDIVISION

LYING IN AND BEING SITUATE WITHIN SECTION 5, TOWNSHIP 16 NORTH,
RANGE 9 EAST, N.M.P.M. CITY & COUNTY OF SANTA FE, NEW MEXICO

PURPOSE: THIS PLAT CREATES A 20' SANITARY SEWER EASEMENT

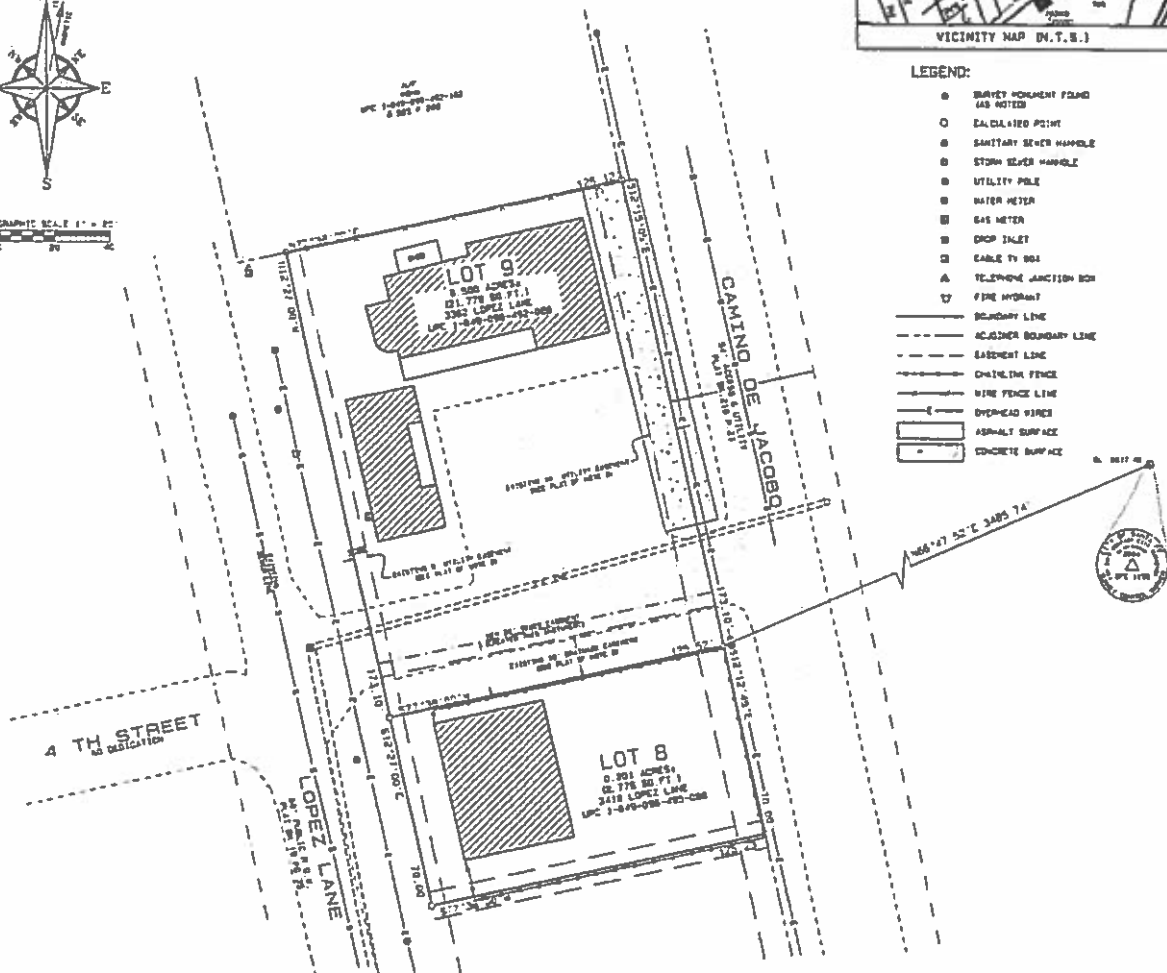


GRAPHIC SCALE 1" = 20'
0 20 40



LEGEND:

- SURVEY POINT FOUND
AS NOTED
- CALCULATED POINT
- SANITARY SEWER MANHOLE
- STORM SEWER MANHOLE
- UTILITY POLE
- WATER METER
- GAS METER
- DROP INLET
- CABLE TV BOX
- TELEPHONE JUNCTION BOX
- FIRE HYDRANT
- BOUNDARY LINE
- ADJACENT BOUNDARY LINE
- EASEMENT LINE
- CHAIN LINK FENCE
- WIRE FENCE LINE
- OVERHEAD WIRES
- ASPHALT SURFACE
- CONCRETE SURFACE



SURVEYOR'S NOTES:

- 1) BASIS OF BEARINGS IS TAKEN FROM ASTROLOGICAL OBSERVATIONS OF ASTROLOGICAL NORTH ON MARCH 12, 2014.
- 2) REFER TO A PLAT OF SURVEY ENTITLED "DEL SOL UNIT ONE", BY MONTE A. AMADIA, MAPS PLSO, DATED MAY 1978, AND RECORDED AT THE SANTA FE COUNTY CLERK'S OFFICE AS LBS 9 42883.
- 3) REFER TO A WARRANTY DEED BETWEEN ROBERT J. MONTANA (GRANTOR) AND FRANK MULLA (GRANTEE), RECORDED WITH THE SANTA FE COUNTY CLERK'S OFFICE IN BOOK 1036 PAGE 256, FOR LOT 8.
- 4) REFER ALSO TO WARRANTY DEED BETWEEN J & E JEAN (GRANTOR) AND JAMES S. E. PHINE BRECHER (GRANTEE), RECORDED WITH THE SANTA FE COUNTY CLERK'S OFFICE IN PLAT BOOK 3467 PAGE 152, FOR LOT 8.
- 5) REFER ALSO TO A PLAT OF SURVEY ENTITLED "LOT SPLIT SURVEY", BEING A PORTION OF P.C. 1244, TR-1 AND A PORTION OF P.C. 422, TR-1, PREPARED BY RAYMOND A. OTTIE, MAPS & SURVEY, RECORDED AT THE SANTA FE COUNTY CLERK'S OFFICE IN PLAT BOOK 252, PAGE 16.
- 6) LINES SHOWN HEREON ARE WITHIN "OTHER AREAS" ZONE "A" - AREAS ESTIMATED TO BE OUTSIDE THE 6-21 ANNUAL CHANCE FLOODPLAIN ACCORDING TO THE FEMA 0700 MAP 258-REC38-02, DATED JUNE 17, 2008.
- 7) THIS SURVEY IS SUBJECT TO ALL PERTINENT EASEMENTS, RESTRICTIONS AND COVENANTS, BOTH RECORDED AND UNRECORDED.
- 8) THE LINES SHOWN HEREON ARE WITHIN THE PLANNING AND PLATTING JURISDICTION OF THE CITY OF SANTA FE.

SURVEYOR'S CERTIFICATE

I, MICHAEL R. MCKINLEY, a duly licensed and sworn Surveyor of the State of New Mexico, do hereby certify to the City of Santa Fe, New Mexico, that this EASEMENT SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION ON JUNE 12, 2014. THAT I AM RESPONSIBLE FOR THIS SURVEY, THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING TO NEW MEXICO, AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

I FURTHER CERTIFY THAT THIS SURVEY IS NOT A LAND DIVISION OR SUBDIVISION AS DEFINED IN THE NEW MEXICO SUBDIVISION ACT AND THAT THIS INSTRUMENT IS AN EASEMENT SURVEY PLAT OF AN EXISTING TRACT OR TRACTS.

MICHAEL R. MCKINLEY S.P.S. NO. 5874



EASEMENT EXHIBIT C

Commencing at the Point of Beginning, being a calculated point marking the Southeast corner of Lot 9, as shown on plat of survey entitled, "DEL SOL UNIT ONE," prepared by Morris A. Apodaca, N.M.R.L.S. No. 5300, dated May 1976 and filed September 14, 1978, as Instrument No. 426883, Book 66, Page 23, in the records of Santa Fe County, New Mexico; from whence the city of Santa Fe Survey Control Marker SFC 1155 bears North 66°47'52" East, a distance of 3,486.74 feet.

Thence, from said Point of Beginning South 77°38'00" West, a distance of 125.52 feet to a point being the Southwest corner of said easement and Southwest corner of Lot 9;
Thence North 12°27'00" West, a distance of 20.00 feet to a point being the Northwest corner of said easement;
Thence North 77°38'00" East, a distance of 125.59 feet to a point being the Northeast corner of said easement;
Thence South 12°15'05" East, a distance of 20.00 feet to a point being the Southeast corner of said easement and the Point of Beginning.
Containing 0.058 Ac. (2,511 sq. ft.), more or less.

VIII. Matters From the County Attorney

**C. Possible Action(s) with Respect to
Threatened or Pending Litigation in
which Santa Fe County is or may Become
a Participant Discussed in Executive
Session. (Action Item)**

