

Appendix E
Northeast Connector Memoranda of
Understanding

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NEW MEXICO DEPARTMENT OF TRANSPORTATION
AND
SANTA FE COUNTY**

**FOR THE NORTHEAST CONNECTOR FROM ST. FRANCIS DRIVE TO
RICHARDS AVENUE**

THIS MEMORANDUM OF UNDERSTANDING, (hereinafter referred to as "MOU") is made and entered into this 6th day of June 2006, by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "the DEPARTMENT") and the BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, a political subdivision of the State of New Mexico (hereinafter referred to as "the COUNTY"), and hereinafter referred to collectively as "the PARTIES."

RECITALS

WHEREAS, each party is a public agency or political subdivision of the State of New Mexico and empowered to enter into this **MOU**; and

WHEREAS, the parties agree that Interstate 25 (hereinafter referred to as "I-25") within Santa Fe County between Old Pecos Trail and Richards Avenue is an important highway corridor and that the mobility, function, operational efficiency and safety of this corridor must be preserved in the interest of the public health, safety and welfare; and

WHEREAS, the DEPARTMENT and the COUNTY agree the Metropolitan Transportation Plan is a Multi-Modal plan that covers all of the different modes of transportation; and

WHEREAS, the COUNTY has identified the need for a northeast connector between St. Francis Drive and Richards Avenue as part of the Metropolitan Transportation Plan; and

WHEREAS, the DEPARTMENT and the COUNTY are aware that requests to develop property in this area have been and continue to be numerous and that, unchecked, the cumulative impacts on the safety, mobility and function of the highway may be adverse; and

WHEREAS, the owners of certain properties in this area wish to proceed with development and improvements to those properties, and have obtained, or may

obtain certain development approvals that are conditioned upon development of the Northeast Connector project; and

WHEREAS, the owners of those properties in conjunction with Santa Fe County and the New Mexico Department of Transportation have the responsibility to provide for safe and efficient access to those properties; and

WHEREAS, DEPARTMENT regulations (Title 18, Chapter 31 Part 6, NMAC) authorizes establishment of access management requirements for traffic safety and authorizes protection of the functional integrity of the state highway system and the public and private investment in that system; and

WHEREAS, the COUNTY, in conjunction with the DEPARTMENT, intend to develop an interim transportation plan to address the development of the portion of the Northeast Connector that extends between St. Francis Drive and Richards Avenue in connection with the pending development, so as to permit reasonable development without compromising the functionality and needs of the proposed commuter rail, and preserving the right to subsequently secure any rights-of-way required for a multi-modal transportation system and to otherwise act in conformity Metropolitan Transportation Plan and other transportation planning efforts.

NOW THEREFORE, to ensure the functional integrity of a multi-modal transportation system, the DEPARTMENT and COUNTY agree, as follows:

THE COUNTY:

1. The COUNTY agrees to design, construct a Northeast Connector south of I-25 between St. Francis Drive and Richards Avenue and, after construction, to adopt the Northeast Connector as part of its county road system and shall thereafter be responsible for maintenance of the road.
2. The COUNTY may, through the appropriate written agreement, delegate this responsibility to a developer of properties in the area.
3. The COUNTY agrees to coordinate with the DEPARTMENT concerning any proposed access points from the Northeast Connector.
4. The COUNTY agrees that the northeast connector will be designed and constructed to a minimum of frontage road standards as defined by the AASHTO requirements for Geometric Design of Highways and Streets and approved by the DEPARTMENT.
5. The COUNTY agrees that the Northeast Connector shall be designed and constructed within 6 years of execution of this MOU and the COUNTY agrees to be responsible for all costs associated with design and construction.
6. The COUNTY agrees to cooperate in the development and finalizations of a comprehensive Corridor Study of I-25 between from NM 599 and

the Old Pecos Trail Interchange, including, but limited, to the Northeast Connector.

7. The COUNTY agrees to modify the existing intersections as set forth in the State Access Management Manual and other applicable federal and state regulations, including the intersection of St. Francis Drive and Old Agua Fria Road, and the railroad crossing on the Northeast Connector, and to obtain approval of this work from the DEPARTMENT.
8. The COUNTY agrees to facilitate access control line modifications that may result from the easement granted within Interstate Rights of Way, including a metes and bounds description of the proposed easement and shall be in a format acceptable to the DEPARTMENT. The easement document will then be recorded at Santa Fe County.
9. The COUNTY shall cooperate with the DEPARTMENT to preserve the DEPARTMENT's right to subsequently secure any rights-of-way required for a multi-modal transportation system and to otherwise act in conformity with the Metropolitan Transportation Plan and other transportation planning efforts. The COUNTY shall also cooperate with the DEPARTMENT to preserve the departments right to use the Northeast Connector for highway purposes if deemed necessary.

The DEPARTMENT:

1. The DEPARTMENT agrees to grant an easement through a Transfer Agreement or other appropriate document for the purpose of the construction of the Northeast Connector on portions of the existing I-25 right-of-way. The easement or transfer shall be conditioned upon the appropriate environmental clearances and any requirement imposed by the state or federal governments.
2. The DEPARTMENT agrees to incorporate the proposed regional transportation plan as part of the Corridor Study on I-25 from NM 599, Santa Fe Bypass, to the Old Pecos Trail Interchange.

Both PARTIES agree to further maintain the cohesion, continuity of direction and spirit of cooperation between the PARTIES by providing an on-going channel of communication involving development requests, access permits and conditions along this segment. In this regard, the DEPARTMENT will keep the COUNTY informed on any access permit approvals and conditions; the COUNTY will keep the DEPARTMENT informed on the status and conditions involving large residential subdivision and commercial development approval requests and changes to access as a result of land use modifications.

This document shall remain in force and effect until such time as changes or modifications hereto are deemed appropriate through agreement of both PARTIES. Such changes or modifications anticipated that may present additional opportunities for reevaluation or amendment include, but are not limited to, changes to the roadway classification, addition of frontage roads or other physical changes that

affect access management requirements and future evolution of the highway and regulatory environment.

SECTION ONE -- EQUAL OPPORTUNITY COMPLIANCE:

The DEPARTMENT and the COUNTY agree to abide by all federal and state laws, rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. In accordance therewith, the DEPARTMENT and the COUNTY agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the DEPARTMENT or the COUNTY is found to be not in compliance with these requirements during the term of this Agreement, the DEPARTMENT or the COUNTY agree to take appropriate steps to correct these deficiencies.

SECTION TWO -- CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:

The DEPARTMENT and the County shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The DEPARTMENT and the COUNTY further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented by the DEPARTMENT of Labor Regulations (41 CFR Part 60). Accordingly, 49 CFR Part 21 is applicable to this Agreement and incorporated herein by reference.

SECTION THREE -- NEW MEXICO TORT CLAIMS ACT:

As between the parties hereto, each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred as a result of the other party's acts or omissions in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq. as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort

Claims Act. The COUNTY and its "public employees" as defined in the New Mexico Tort Claims Act, and the DEPARTMENT and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

SECTION FOUR -- THIRD PARTY BENEFICIARY CLAUSE:

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury (ies) to person(s), damage to property (is), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION FIVE -- APPLICABLE LAW:

The Laws of the State of New Mexico shall govern this Agreement.

SECTION SIX -- SEVERABILITY:

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION SEVEN -- SCOPE OF THE AGREEMENT:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

SECTION EIGHT -- EFFECTIVE DATE AND TERM:

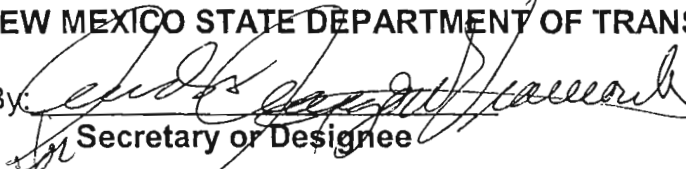
This Agreement shall not be effective until executed by the Secretary of the DEPARTMENT or her designee. The term of this Agreement is from the Official Date of Entry of the Agreement until such time as it is terminated in writing. Both Parties shall agree to termination.

SECTION NINE -- AMENDMENT:

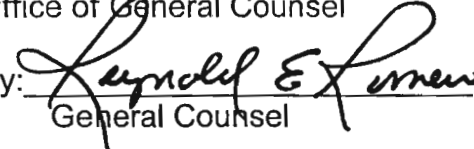
This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates specified below.


NEW MEXICO STATE DEPARTMENT OF TRANSPORTATION

By: 
Secretary or Designee
Date: 6-6-06


Approved as to form and legal sufficiency by the Department's Office of General Counsel

By: 
General Counsel
Date: 6-1-06

THE BOARD OF COUNTY COMMISSIONERS OF SANTA FE COUNTY, NEW MEXICO

By: 
Harry B. Montoya, Chair
Date: 5-26-06

ATTEST:

for 
Valerie Espinoza, County Clerk

Approved as to form:


Stephen C. Ross, County Attorney

**MEMORANDUM OF UNDERSTANDING BETWEEN
SANTA FE COUNTY AND OSHARA VILLAGE, LLC**

This Memorandum of Understanding (hereinafter referred to as the "Agreement") is made and entered into this 30th day of May, 2006, by and between the Board of County Commissioners of Santa Fe County, New Mexico (the "County"), a political subdivision organized and existing under the Laws of the State of New Mexico, and Oshara Village, LLC ("Oshara").

RECITALS

A. Oshara is the developer of a mixed-used, commercial and residential development located in Santa Fe County and known as "Oshara Village."

B. On June 14, 2005, the Board of County Commissioners for Santa Fe County granted Oshara's application for final development plan/plat approval for Phase I of Oshara Village subject to certain conditions, including, but not limited to, Oshara's obligation to construct a new road, known as the Northeast Connector extending from the intersection of St. Francis Drive and Rabbit Road to Richards Avenue through Phase I of Oshara Village (the "Northeast Connector"). A portion of the Northeast Connector includes that portion of existing Rabbit Road from the intersection of St. Francis Drive and Rabbit Road to the current western terminus of Rabbit Road.

C. The County and the New Mexico Department of Transportation ("NMDOT") have entered into that certain Memorandum of Understanding regarding the Northeast Connector ("County-NMDOT Agreement"), which agreement obligates the County to design, construct and maintain the Northeast Connector, and contemplates that the NMDOT will grant an easement to the County for a portion of the Northeast Connector for that purpose.

D. The County and Oshara have agreed that Oshara will assume the obligations of the County to design and construct the Northeast Connector pursuant to the Memorandum of Understanding.

E. The County and Oshara wish to memorialize their agreement with respect to Oshara's assumption of the County's obligations to construct the Northeast Connector as specifically set forth herein.

AGREEMENTS

NOW, THEREFORE, in consideration of the promises and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows

1. Assumption by Oshara.

(a) Oshara assumes the County's obligations under the County-NMDOT Agreement to design and construct, and pay for the design and construction of, the Northeast Connector from the intersection of St. Francis Drive and Rabbit Road through Phase I of Oshara Village to Richards Avenue.

(b) Oshara assumes the County's obligations under the County-NMDOT Agreement to design and construct, and pay for, any modifications or upgrades that may be required of the County under the County-NMDOT Agreement for the existing portion of the Northeast Connector, specifically to the existing portion of Rabbit Road and/or the intersection of St. Francis Drive and Old Aqua Fria Road (aka Rabbit Road). Additionally, Oshara shall pay for the costs (to the extent not covered by state, federal or other governmental funding) to upgrade the existing railroad crossing that intersects Rabbit Road if and to the extent the County is required under the County-NMDOT Agreement to upgrade said crossing. Prior to finalizing of the design of the Northeast Connector, Oshara shall meet with representatives of the County's Public Works Department and review the proposed design and obtain approval thereof from the County's Public Works Director, which approval shall not be unreasonably withheld and shall be limited to confirmation that the design and construction proposed by Oshara is in accordance with the standards for construction of the Northeast Connector as set forth in this Agreement and the County-NMDOT Agreement. Prior to beginning any construction, Oshara shall consult with representatives of the County's Public Works Department and review the proposed construction, and obtain approval for the commencement of construction from the County's Public Works Director. Following construction, Oshara shall apply to the County Public Works Department for acceptance of the Northeast Connector as a County road and shall make all changes required by the County Public Works Director and County road policy.

2. Construction Schedule. Oshara shall construct the Northeast Connector, make modifications and upgrades to the existing portion of the Northeast Connector and the aforementioned railroad crossing, as required herein, and provide the County with performance bonds for such construction and modifications, in accordance with final subdivision plat approvals and/or conditions of such approvals granted by the County for the various phases of Oshara Village. Oshara shall have no obligation to construct the Northeast Connector, or make modifications or upgrades to the existing portion of the Northeast Connector, in order to satisfy the requirements, obligations, approvals or needs arising from or relating to developments, projects or conditions other than as specifically required by the County for final subdivision plat approval for the various phases of Oshara Village.

3. Fair Share. Oshara shall endeavor to obtain a binding written "fair share" agreement from property owners and/or developers whose developments, or phases thereof, will contribute to the volume of traffic using the Northeast Connector. Under such agreement, the parties will make financial contributions or reimbursements for the costs to construct, modify and/or upgrade the Northeast Connector pursuant to this Agreement. The County shall reasonably cooperate with Oshara in its efforts to obtain such an agreement. If Oshara is unsuccessful in obtaining such an agreement within

six months after the date of this Agreement, then the County may, at its option, create and implement a "fair share" program under which the County shall take such steps, to the extent permitted by applicable law, to require such property owners and/or developers to contribute financially to the costs for the design and construction of the Northeast Connector and for modifications and upgrades made pursuant to this Agreement. Said contributions, if required, will be made pursuant to a reasonable formula that requires contributions in proportion to the volume of traffic from a development, or phase thereof, that will use the Northeast Connector, or portions thereof, based on reasonable estimates derived from traffic studies approved by the County, or some other reasonable method. Nothing in this provision shall prevent the County from imposing such requirement before the expiration of said six-month period with respect to developments seeking approvals prior to the expiration of said period.

4. Right to Construct Northeast Connector. The County grants to Oshara the full and irrevocable right, so long as Oshara is not in default of its obligations under this Agreement, to construct the Northeast Connector, or make modifications or upgrades to existing portions of the Northeast Connector, as required herein, within and under the easement granted to the County pursuant to the County-NMDOT Agreement as well as within and under the right-of-way in which the existing portion of Rabbit Road is located. The County shall cooperate with Oshara's performance of its obligations under this Agreement.

5. Condition to Oshara's Obligations. Oshara's obligations under this Agreement are subject to and contingent upon the granting of the easement for the Northeast Connector as contemplated by the County-NMDOT Agreement, including the granting of all necessary approvals by the Federal Highway Administration for the granting and creation of said easement. Oshara may terminate this Agreement in the event that the County-NMDOT Agreement is terminated.

6. Insurance and Indemnification. Oshara shall obtain insurance for protection from claims for damages because of bodily injury, including death, and claims for damages to property, caused by and during Oshara's operations in constructing or modifying the Northeast Connector pursuant to this Agreement, whether such operations are performed by Oshara or its agents, contractors or its assigns. The County shall be named as an additional insured and a certificate holder on all such policies of insurance obtained pursuant to the requirements of this paragraph. To the fullest extent provided by law, Oshara shall indemnify the County for any such claims asserted against the County.

7. Severability. In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

8. Merger. This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written

Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

9. Amendment. This Agreement shall not be altered, changed or amended except by an instrument in writing and executed by the parties hereto.

10. Governing Law. This Agreement, and the parties rights and obligations hereunder, shall be governed by New Mexico law.

11. Recitals. Each and all of the recitals set forth at the beginning of this instrument are hereby incorporated herein by this reference.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and assigns. Oshara may assign its obligations under this Agreement to another entity with the express written consent of the County.

13. Captions. The captions and paragraph headings of this Agreement are not necessarily descriptive, or intended or represented to be descriptive, of all the provisions thereunder, and in no manner shall such captions and paragraph headings be deemed or interpreted to limit the provisions of this Agreement.

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

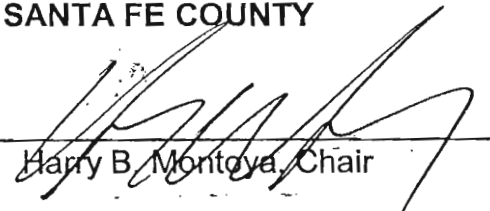
OSHARA VILLAGE, LLC

By



Name Alan Hoffman
Title Managing Member

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

By


Harry B. Montoya, Chair

ATTEST:


Valerie Espinoza, County Clerk

Approved as to form:



Stephen C. Ross, County Attorney