

RIGHT OF WAY USE AGREEMENT

THIS AGREEMENT, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, P.O. Box 1149, Santa Fe, New Mexico, 87504-1149, (hereinafter "NMDOT") and **AMERICAN FENCE AND SECURITY COMPANY, INC.** **2502 N. 27TH AVENUE, PHOENIX, AZ 85009**(hereinafter "Permittee").

Permittee desires to use highway right of way at the below referenced location for paved parking area, erection of portable, metal display corrals and display of business-related products, in a manner not inconsistent with or detrimental to NMDOT's statutory obligations for highway control and maintenance and in compliance with municipal or county customs, ordinances, zoning and agreements;

For purposes of this Agreement, "Right of Way Use" is defined as that space located above, at or below the highway's established grade line lying within the approved right of way limits; and

It is expressly agreed between the parties that the granting of this renewal Right of Way Use Agreement (hereafter "Agreement") does not convey or in any way give any interest or rights other than as indicated herein.

The parties agree as follows:

SECTION 1 NMDOT AGREES:

- A. To permit the right-of-way described below, and shown on the photograph and aerial site plan attached hereto as Exhibits "**A and B**" for paved parking area, erection of portable, metal display corrals and display of business related products ,

B. In consideration of Permittee's performance under the terms and conditions of this Agreement, to permit the described right of way to be used for a period of **FIVE (5) YEARS** from the date all parties have signed this Agreement, unless this Agreement is otherwise terminated or revoked as provided herein. Further, upon termination of this Agreement, Permittee shall vacate the premises as provided in Paragraph (o) herein.

C. Subject to the NMDOT's approval, Permittee may have the option of renewing this Agreement for up to **TWO (2) additional FIVE (5) YEAR** periods, but in no event may the original Agreement, plus any renewals thereof, exceed a total of **TWENTY (20) YEARS**. Before beginning a new **FIVE-year** renewal, market value must be established and the renewal rate will be based on the then current market value. Each renewal shall be exercised by giving **written notice to the NMDOT at least 30 days prior to the expiration of the original term or the then current renewal period**, as applicable, unless the Agreement is otherwise terminated or revoked as provided herein. If the Permittee fails to give such timely notice to the NMDOT, this Agreement will expire and the granting of a renewal will be solely within the NMDOT's discretion. Further, in the event the Permittee fails to provide timely notice of its intent to request a renewal of the Agreement as provided herein, Permittee will be charged a fee equal to double the daily rent for each day the Permittee continues to use or occupy the property after the expiration of the original term of the Agreement, or any renewal thereof, until the property is vacated. This fee shall be in addition to the current rent owed under this Agreement or any renewal thereof. Before beginning a new Five-Year renewal, market value must be established, and the renewal rate will be based on the then current market value as determined by a current appraisal to be ordered and paid for by the Permittee.

SECTION 2
PERMITTEE AGREES:

A. To develop and use the described Right of Way solely and exclusively for a paved parking area, erection of portable, metal display corrals and display of business related products in accordance with the photograph attached hereto as Exhibit "A" showing the site to be utilized in the Agreement, the aerial site plan attached hereto as Exhibit "B", and subject to the following conditions:

1. It is expressly agreed between the parties that this Agreement does not convey or grant in any way interests or rights other than as indicated herein.
2. Upon termination of this Agreement, the NMDOT shall have the right to re-enter and repossess the property described herein, and upon such termination, any permission Permittee may have under this Agreement to occupy or use the right of way shall be extinguished and this Agreement shall have no further effect.
3. No change in the established drainage pattern is authorized. Permittee is responsible for additional flow resulting from Permittee's development of site.
4. Permittee is solely liable for contamination of soils and/or ground water resulting from Permittee's activities on the property included within this Agreement. Such liability includes, but is not limited to, costs of response, costs of site investigation and remediation, damages for injury to, destruction of, or loss of natural resources including the costs of assessing such injury, destruction, or loss and/or the costs of any health assessments or health effects study. Permittee shall not cause or permit the escape, disposal, or release of any biologically or chemically active or other hazardous substances or materials on or about the property. Hazardous substances and materials shall include those described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, codified as 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act,

codified as 42 U.S.C. §§ 6901, et seq., and any applicable state or local laws and regulations. If, during the term of this Agreement or any renewal thereof, the NMDOT ever requests or requires testing to ascertain whether there has been any escape, disposal or release of hazardous substances or materials, the costs of such testing shall be paid solely by Permittee. Permittee's refusal to pay such costs shall be grounds for termination of this Agreement by NMDOT. Permittee shall also indemnify and hold the NMDOT harmless from any release of hazardous substances or materials on the property occurring during the term of this Agreement or any renewal thereof. Such obligation shall survive the expiration or early termination of this Agreement.

5. This Agreement shall be terminated at the NMDOT's discretion if the site is abandoned or is not used for the purposes set forth herein.
- B. The yearly rent for the five-year term of this renewal Agreement is \$3,265.00. Upon final execution of this Agreement, Permittee shall make an advance payment of that rental amount to cover the first year of the Agreement. For each year thereafter, Permittee shall pay the entire amount of rent due prior to the yearly anniversary of the effective date of the original Agreement. Permittee will be charged a late fee per month of 10% of the annual rent then due for any payments made after the anniversary date of the original Agreement. Such fee shall be in addition to the rent then due.
- C. The rent due for each five-year period after the first five-year term of the original Agreement shall be determined by adjusting the rent to reflect the current fair market value. Under Section 156, Chapter 1 of Title 23, Surface Transportation and Uniform Relocation Act of 1987, the adjusted rent shall, at a minimum, be based on fair market value. Permittee agrees the rent to be paid during the term of this Agreement, and any renewal thereof, is subject to

change in accordance with fluctuations in fair market value. In determining fair market value, customary methods of market analysis and appraisal may be used. This Agreement may be terminated by the NMDOT if the Permittee does not agree with the new rental fee as determined by the NMDOT. As determined in Section 1, Paragraph C, above, it is the responsibility of the Permittee to obtain and pay for an appraisal to determine the current market value.

D. All rent payments will be tendered to the address below when invoiced. Please contact the Property Management Unit at (505) 699-8885, Melissa McLaughlin, Agent, as the responsible party for this Agreement.

When invoiced please submit payment to:

New Mexico Department of Transportation
Finance Department
P.O. Box 1149
Santa Fe, NM 87504-1149

E. This Agreement shall not be transferred, assigned, or conveyed to another party. Any attempt by Permittee to transfer or assign this Agreement to another person or entity shall cause the Agreement to immediately terminate and to be of no further force or effect.

F. To maintain any improvements, in good condition both as to safety and appearance. Said maintenance shall in no way cause interference with highway use. If the NMDOT determines that Permittee has failed to adequately maintain the safety and appearance of its improvements, the NMDOT will send a written notice to Permittee requesting a correction of the condition. The NMDOT may terminate this Agreement or enter the premises

to perform the necessary maintenance work if the Permittee has not done so in a satisfactory manner, as determined by the NMDOT, and within **FIFTEEN (15) DAYS** from the date of written notice of the condition needing repair. In that event, the Permittee shall reimburse all costs incurred by the NMDOT in performing the maintenance work.

The NMDOT shall have the right to terminate this Agreement if Permittee fails or refuses to reimburse said costs within the time prescribed by the NMDOT.

G. To allow entry by authorized NMDOT or Federal Highway Administration ("FHWA") representatives when deemed necessary by NMDOT for purposes of inspection, maintenance, reconstruction, placement of permanent structures, facilities, and improvements above, on or below the right of way grade line, or for the purpose of ensuring compliance with all provisions of this Agreement. If the NMDOT's activities cause a temporary restriction of Permittee's activities under this Agreement, the Agreement may be terminated or extended by a period equal to the period of the temporary restriction if the Permittee was otherwise in compliance with the terms hereof.

H. Permittee agrees to allow access to the property described herein at all times to utility companies for maintenance of any existing and future utilities that include monitoring and remediation activities. The described activities include, but are not limited to installation, operation, and maintenance of such utilities.

I. Permittee agrees to indemnify NMDOT and to hold it harmless from all claims of injury to persons or property arising out of the negligent acts, errors and omissions of Permittee, its employees, agents, business invitees and customers in the maintenance and use of the described right of way.

J. Permittee agrees to purchase a policy of either comprehensive general liability insurance or commercial general liability insurance, including contractual liability coverage for its "hold harmless" obligation contained in the preceding paragraph of this Agreement, in the amount of not less than **ONE MILLION DOLLARS (\$1,000,000.00)**, and naming the NMDOT as an additional insured. A certificate of insurance showing the required coverage shall be provided to the NMDOT within (1) week of the execution of this Agreement. Furthermore, upon demand, Permittee shall furnish a copy of its insurance policy to NMDOT.

K. Permittee will not occupy or use the described right of way until such time as the required insurance policies are in force with appropriate certificates of insurance having been delivered to the NMDOT and containing a statement that the premiums have been paid in full and that the policy will not be canceled without **THIRTY (30) DAYS** notice to NMDOT.

L. Permittee for itself, its heirs, and successors-in-interest, as a part of the consideration for this Agreement, hereby covenants and agrees that if it constructs, maintains or otherwise operates facilities on the described right of way for a purpose for which a NMDOT program or activity is extended, or for another purpose involving the provision of similar services or benefits, Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and 42 USC §§ 12101 to 12213 (Americans with Disabilities Act), together with all regulations issued pursuant to those laws, including subsequent amendments.

M. Permittee for itself and its successors-in-interest, as a part of the consideration hereof, does

hereby further covenant and agree that:

- (1) No person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities on the ground of race, age, color, sex, national origin or disability;
- (2) No person on the basis of race, age, color, sex, national origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over or under such land and the furnishing of services thereon;
- (3) Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and 42 USC §§ 12101 to 12213 (Americans with Disabilities Act) together with all regulations issued pursuant to those laws, including subsequent amendments;
- (4) In the event of breach of any of the above non-discrimination covenants, the NMDOT shall have the right to terminate this Agreement and to re-enter and repossess said property and the facilities thereon and to hold the same as if said Agreement had never been made or issued.

N. This Agreement may be terminated by the NMDOT if the Permittee violates any

provision of this Agreement and after written notice such violation is not corrected within such time as the NMDOT deems reasonable.

- O. If this Agreement is revoked, terminated, or canceled as provided herein, Permittee shall vacate and remove the improvements from the described premises. Such removal must occur within ninety (90) days of the date of notice of revocation, termination or cancellation as provided herein. NMDOT may either accept possession of the remaining improvements or it may require removal of all improvements. If it becomes necessary for the NMDOT to remove the improvements, the Permittee will be billed for the costs of removal. Permittee shall pay NMDOT for each day Permittee retains possession of the property or any part thereof after the termination of this Agreement for any reason, an amount which is double the amount of rent per day, based on the annual rate of the monthly base rent in effect at the time of such termination, and any applicable additional rent for each day of the period in which such retention of possession occurs, and Permittee shall also pay all damages, consequential as well as direct, sustained by NMDOT by reason of such retention. Nothing in this provision shall operate as a waiver of NMDOT's right of re-entry or any other right or remedy of NMDOT.
- P. If this Agreement is terminated in accordance with the terms hereof, the NMDOT and the FHWA shall not be liable or responsible to Permittee for damages of any nature that may be incurred by Permittee as a result of the termination of this Agreement.
- Q. The parties agree that the Permittee is not entitled to relocation benefits under the New Mexico Relocation Assistance Act, NMSA 1978, Sections 42-3-1 through 42-3-15.
- R. This Agreement may be terminated for the convenience of either party upon written notice received **NINETY- (90) DAYS** in advance of termination without the necessity of showing the other's breach or default.

S. This Agreement may be terminated if the NMDOT determines it needs the right of way for highway purposes. In that event, the NMDOT shall provide written notice **THIRTY (30) DAYS** in advance of termination.

T. Excepting the terms and conditions required by law and regulation, this Agreement may be amended by mutual, written agreement and acceptance of the parties. This Agreement may be terminated as provided herein in the event of a dispute resulting from the failure of the parties to agree and accept changes to this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year written below.

“PERMITTEE”

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

By: Douglas Wodaoki VP & CFO

By: _____
Ricky Serna
Cabinet Secretary or Designee

On August 3rd, 2022

Reviewed and approved as to form and legal sufficiency by the Office of General Counsel by

Kenneth B Baca, General Counsel

August 1, 2022

Project Number: F-032-1(3)
Station Number: Sta.334+16.00 to
Sta.339+18.00
Location: US 550 Main St.
Provider Number: 05031

AIRSPACE AGREEMENT

THIS AGREEMENT, by and between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION**, P.O. Box 1149, Santa Fe, New Mexico, 87504-1149, (hereinafter "NMDOT") and **AMERICAN FENCE AND SECURITY CO.**, P.O. Box 19040, Phoenix, Arizona 85005, (hereinafter "Permittee")

Permittee desires to use highway right of way at the below referenced location for PARKING AND PRODUCT DISPLAY, in a manner not inconsistent with or detrimental to NMDOT's statutory obligations for highway control and maintenance and in compliance with municipal or county customs, ordinances, zoning and agreements;

For purposes of this Agreement, "Airspace" is defined as that space located above, at or below the highway's established grade line lying within the approved right of way limits; and

It is expressly agreed between the parties that the granting of this Airspace Agreement (hereafter "Agreement") does not convey or in any way give any interest or rights other than as indicated herein.

The parties agree as follows:

SECTION 1 **NMDOT AGREES:**

A. To permit the right-of-way described below, and shown on the drawings attached hereto as Exhibit "**A and B**" to be used for parking and display:

0.23 acres. More, or less, situate within the NE $\frac{1}{4}$ of Section 29. T 30 N, R 12 W, NMPM San Juan County, New Mexico, more particularly described as follows:

Beginning at a point which bears S 01° W 620.19 feet and N. 54°47' E 618.00 feet from the SW Corner of the SE ¼ NE 1/4 of Section 29;
Thence N 54° 47 E 502.0 feet
Thence S 35°13 E 20.0 feet
Thence S 54°47 W 502.0feet
Thence N 35°13 W 20.0 feet to point of beginning.

More commonly known as: 7212 E. Main Street, Farmington, New Mexico.

B. In consideration of Permittee's performance under the terms and conditions of this Agreement, to permit the described airspace to be used for a period of FIVE (5) YEARS from the date all parties have signed this Agreement, unless this Agreement is otherwise terminated or revoked as provided herein. Further, upon termination of this Agreement, Permittee shall vacate the premises as provided in Paragraph (o) herein.

C. Subject to the NMDOT's approval, Permittee may have the option of extending this Agreement for up to THREE (3) additional FIVE (5) YEAR periods, but in no event may the original Agreement plus any extensions thereof exceed a total of TWENTY (20) years. Each extension shall be exercised by giving written notice to the NMDOT at least 30 days prior to the expiration of the original term or the then current extension period, as applicable, unless the Agreement is otherwise terminated or revoked as provided herein. If the Permittee fails to give such timely notice to the NMDOT, this Agreement will expire and the granting of an extension will be solely within the NMDOT's discretion. Further, in the event the Permittee fails to provide timely notice of its intent to request an extension of the Agreement as provided herein, Permittee will be charged a fee equal to double the daily rent for each day the Permittee continues to use or occupy the property after the expiration of the original term of the Agreement, or any extension

thereof, until the property is vacated. This fee shall be in addition to the current rent owed under this Agreement or any extension thereof.

SECTION 2
PERMITTEE AGREES:

A. To develop and use the described airspace solely and exclusively for the purpose of parking and display in accordance with the Aerial Site Plan attached hereto as Exhibit “A” and the right of way map attached hereto as Exhibit “B”, and subject to the following conditions:

1. It is expressly agreed between the parties that this Agreement does not convey or grant in any way any interests or rights other than as indicated herein.
2. Upon termination of this Agreement, the NMDOT shall have the right to re-enter and repossess the property described herein, and upon such termination, any permission Permittee may have under this Agreement to occupy or use the right of way shall be extinguished and this Agreement shall have no further effect.
3. No change in the established drainage pattern is authorized. Permittee is responsible for additional flow resulting from Permittee’s development of site.
4. Permittee is solely liable for contamination of soils and/or ground water resulting from Permittee’s activities on the property included within this Agreement. Such liability includes, but is not limited to, costs of response, costs of site investigation and remediation, damages for injury to, destruction of, or loss of natural resources including the costs of assessing such injury, destruction or loss and/or the costs of any health assessments or health effects study. Permittee shall not cause or permit the escape, disposal or release of any biologically or chemically active or other hazardous substances or materials on or about the property. Hazardous substances and materials shall include those described in the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, codified as 42 U.S.C. §§ 9601, et seq., the Resource Conservation and Recovery Act, codified as 42 U.S.C. §§ 6901, et seq., and any applicable state or local laws and regulations. If, during the term of this Agreement, or any extension thereof, the NMDOT ever requests or requires testing to ascertain whether or not there has been any escape, disposal or release of hazardous substances or materials, the costs of such testing shall be paid solely by Permittee. Permittee's refusal to pay such costs shall be grounds for termination by NMDOT of this Agreement. Permittee shall also indemnify and hold the NMDOT harmless from any release of hazardous substances or materials on the property occurring during the term of this Agreement, or any extension thereof. Such obligation shall survive the expiration or early termination of this Agreement.

5. If the site is abandoned or is not used for the purposes set forth herein for a period of NINETY (90) DAYS after completion of improvements on the property, the Agreement shall be terminated at the NMDOT's discretion.
- B. Upon final execution of this Agreement, NMDOT shall invoice Permittee a rental fee in the amount of **\$3506.65** for the first year of the Agreement. For each year thereafter, when invoiced, Permittee shall pay the entire amount of rent due prior to the yearly anniversary of the effective date of the original term of this Agreement. Permittee will be charged a late fee per month of 10% of the annual rent then due for any payments made after the anniversary date of the original term of this Agreement. Such fee shall be in addition to the rent then due.
- C. Every Five years under Section 156, Chapter 1 of Title 23, Surface Transportation and Uniform Relocation Act of 1987, the adjusted rent shall at a minimum, be based on fair market value. Permittee agrees the rent to be paid during the term of this Airspace

Agreement, and any renewal thereof, is subject to change in accordance with fluctuations in fair market value. In determining fair market value, customary methods of market analysis and appraisal may be used and the NMDOT may rely on records of its own costs of acquisition in the vicinity of subject. This analysis includes direct comparison with similar rental properties. This Agreement may be terminated by the NMDOT if the Permittee does not agree with the new rental fee as determined by the NMDOT.

D. All rent payments will be tendered to the address below when invoiced. Please contact Property Asset Management at (505)-827-0686 as the responsible party for this Agreement.

When invoiced please submit payment to:

New Mexico Department of Transportation
Finance Department
P.O. Box 1149
Santa Fe, NM 87504-1149

E. This Airspace Agreement shall not be transferred, assigned or conveyed to another party. Any attempt by Permittee to transfer or assign this Agreement to another person or entity shall cause the Agreement to immediately terminate and to be of no further force or effect.

F. To maintain any improvements, including parking area, in good condition both as to safety and appearance. Said maintenance shall in no way cause interference with highway use. If the NMDOT determines that Permittee has failed to adequately maintain the safety and appearance of its improvements, the NMDOT will send a written notice to Permittee requesting a correction of the condition. The NMDOT may terminate this Agreement or enter the premises to perform the necessary maintenance work if the Permittee has not done so in a satisfactory manner, as determined by the NMDOT, and within **FIFTEEN (15) DAYS** from the date of

written notice of the condition needing repair. In that event, the Permittee shall reimburse all costs incurred by the NMDOT in performing the maintenance work.

The NMDOT shall have the right to terminate this Agreement if Permittee fails or refuses to reimburse said costs within the time prescribed by the NMDOT.

G. To allow entry by authorized NMDOT or Federal Highway Administration ("FHWA") representatives when deemed necessary by NMDOT for purposes of inspection, maintenance, reconstruction, placement of permanent structures, facilities and improvements above, on or below the right of way grade line, or for the purpose of insuring compliance with all provisions of this Agreement. If the NMDOT's activities cause a temporary restriction of Permittee's activities under this Agreement, the Agreement may be terminated or extended by a period equal to the period of the temporary restriction if the Permittee was otherwise in compliance with the terms hereof.

H. Permittee agrees to allow access to the property described herein at any and all times to utility companies for maintenance of any existing and future utilities that include monitoring and remediation activities. The described activities include, but are not limited to installation, operation and maintenance of such utilities.

I. Permittee agrees to indemnify NMDOT and to hold it harmless from any and all claims of injury to persons or property arising out of the negligent acts, errors and omissions of Permittee, its employees, agents, business invitees and customers in the maintenance and use of the described airspace.

J. Permittee agrees to purchase a policy of either comprehensive general liability insurance or commercial general liability insurance, including contractual liability coverage for its "hold harmless" obligation contained in the preceding paragraph of this Agreement, in the amount of not less than **ONE MILLION DOLLARS (\$1,000,000.00)**, and naming the NMDOT as an additional insured. A certificate of

insurance showing the required coverage shall be provided to the NMDOT prior to execution of this Agreement. Furthermore, upon demand, Permittee shall furnish a copy of its insurance policy to NMDOT.

K. Permittee will not enter into possession, occupy or use the described airspace until such time as the required insurance policies are in force with appropriate certificates of insurance having been delivered to the NMDOT, and containing a statement that the premiums have been paid in full and that the policy will not be canceled without **THIRTY (30) DAYS** notice to NMDOT.

L. Permittee for itself, its heirs, successors-in-interest and assigns as a part of the consideration for this Agreement, hereby covenants and agrees that if it constructs, maintains or otherwise operates facilities on the described airspace for a purpose for which a NMDOT program or activity is extended, or for another purpose involving the provision of similar services or benefits, Permittee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the NMDOT of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and 42 USC, Sections 12101 to 12213 (Americans with Disabilities Act), together with all regulations issued pursuant to those laws, including subsequent amendments.

M. Permittee for itself, its successors-in-interest and assigns, as a part of the consideration hereof, does hereby further covenant and agree that:

(1) No person shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities on the ground of race, age, color, sex, national origin or disability;

(2) No person on the basis of race, age, color, sex, national origin or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of any improvements on, over or under such land and the furnishing of services thereon;

(3) Permittee shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and 42 USC, Section 12101 to 12213 (Americans with Disabilities Act) together with all regulations issued pursuant to those laws, including subsequent amendments;

(4) In the event of breach of any of the above nondiscrimination covenants, the NMDOT shall have the right to terminate the Agreement and to re-enter and repossess said property and the facilities thereon and to hold the same as if said Agreement had never been made or issued.

N. This Agreement may be terminated by the NMDOT if the Permittee violates any provision of this Agreement and after written notice such violation is not corrected within such time as the NMDOT deems reasonable.

O. If this Agreement is revoked, terminated or canceled as provided herein, Permittee shall vacate and remove the improvements from the described premises. Such removal must occur within ninety (90) days of the date of notice of revocation, termination or cancellation as provided herein. NMDOT may either accept possession of the remaining improvements or it may require removal of all improvements. If it becomes necessary for the NMDOT to remove the improvements, the Permittee will be billed for the costs of removal. Permittee shall pay NMDOT for each day Permittee retains possession of the property or any part

thereof after the termination of this Agreement for any reason, an amount which is double the amount of Rent per day, based on the annual rate of the Monthly Base Rent in effect at the time of such termination, and any applicable additional Rent for such day of the period in which such retention of possession occurs, and Permittee shall also pay all damages, consequential as well as direct, sustained by NMDOT by reason of such retention. Nothing in this provision shall operate as a waiver of NMDOT's right of re-entry or any other right or remedy of NMDOT.

- P. If this Agreement is terminated in accordance with the terms hereof, the NMDOT and the FHWA shall not be liable or responsible to Permittee for damages of any nature that may be incurred by Permittee as a result of the termination of this Agreement.
- Q. The parties agree that the Permittee is not entitled to relocation benefits under the New Mexico Relocation Assistance Act, NMSA 1978, §§ 42-3-1 through 42-3-15.
- R. This Agreement may be terminated for the convenience of either party upon written notice received **NINETY- (90) DAYS** in advance of termination without the necessity of showing the other's breach or default.
- S. This Agreement may be terminated if the NMDOT determines it needs the airspace for highway purposes. In that event, the NMDOT shall provide written notice **THIRTY (30) DAYS** in advance of termination.
- T. Excepting the terms and conditions required by law and regulation, this Agreement may be amended by mutual, written agreement and acceptance of the parties. This Agreement may be terminated as provided herein in the event of a dispute resulting from the failure of the parties to agree and accept changes to this Airspace Agreement.

IN WITNESS WHEREOF, the parties here to have set their hands and seals on the day and year first above written.

"PERMITTEE"

By: Douglas Waslaski VP+CPD
Douglas Waslaski
American Fence and Security Co., Inc.

**NEW MEXICO DEPARTMENT
OF TRANSPORTATION**

By: Kathryn E. Bender
Kathryn E. Bender
Deputy Secretary Transportation
Programs and Infrastructure

Address: P.O. Box 19040
Phoenix, Arizona 85005

On 6-14-11, 2011

On 6/3, 2011.

Reviewed and approved as to form and legal sufficiency, by the Office of General Counsel by

John W. Rung
April 25, 2011.