

M.R.G.C.D. CONTRACT NO. 2-081-2010  
M.R.G.C.D. MAP NO. 44  
LOTS NO. 4 & 5, LANDS OF S. SANCHEZ  
SEC. 32, T. 10 N., R. 3 E.  
SAN JOSE LATERAL  
STATION 8+00±

**MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
LICENSE AGREEMENT**

**LICENSE WITH FRANK SANCHEZ TO INSTALL AND MAINTAIN AN EARTHEN  
DRAINAGE SWALE CROSSING ACROSS THE SAN JOSE LATERAL RIGHT-OF-WAY**

This License Agreement is made and entered into this 13th day of October, 2010, by and between the Middle Rio Grande Conservancy District, ("the District"), and FRANK SANCHEZ ("the Licensee").

WHEREAS, the District holds a fee simple estate interest for the SAN JOSE LATERAL, ("the property"), and the District operates and maintains the property as an integral part of the Districts works and property; and

WHEREAS, the Licensee has requested permission from the District, to the extent of the Districts property interest, to utilize the property in a manner more particularly specified herein for a period of fifty (50) years beginning on the date of execution of this agreement; and

WHEREAS, the District is willing to agree to use of the property and encroachment upon the property pursuant to the conditions more particularly specified herein; and

NOW THEREFORE, the District agrees to use of, and encroachment upon the property by the Licensee only to the extent and for the purpose set forth below:

1. Licensee shall INSTALL AND MAINTAIN AN EARTHEN 10' WIDE X 50' LONG DRAINAGE SWALE CROSSING ACROSS THE SAN JOSE LATERAL RIGHT-OF-WAY, hereafter referred to as "the installation", across the property which will serve LOT 4 & 5, LANDS OF FRANK S. SANCHEZ, MRGCD Map 44, Station 8+00±. The District agrees to the installation set forth in this paragraph only pursuant to the guidelines shown on the approved grading and drainage plan attached hereto, and any and all other attached drawings and/or specifications which by this reference are made a part of this License Agreement. Under no circumstance shall any structure, pavement, and or improvement be installed / constructed within the San Jose Lateral Right-of-Way without the written approval of the District. Any unauthorized structure, pavement, and or improvement shall be removed at the expense of the Licensee. The Licensee shall ensure the retention pond has adequate capacity to pond the 100 year - 10 day storm event for Lots 4 & 5 of the Lands of Frank S. Sanchez, the San Jose Lateral Right-of-Way, and any off-site drainage flows from 2<sup>nd</sup> Street. No storm water shall be discharged into any of the Districts ditches, laterals, canals, or drains.

2. This License shall be null and void if the installation and/or construction of the work set forth in paragraph 1 and the attached drawings and specifications is not completed within **one (1) year** from the date of execution of this Agreement.

3. The Licensee shall, at its own expense, locate, install, construct, maintain and/or repair any structures, accessories, or any installation permitted by this License and shall, at its own expense, bear all costs incurred by reason of the exercise of the privilege conferred by this License. Maintenance responsibilities include, but are not limited to, cleaning of debris, silt, weeds and other obstructions inside road culvert crossings and around the inlet and outlet ends of road culvert crossings or under bridge crossings.

4. The privilege granted by this License shall not be exercised, nor shall any structure, accessory, or installation be constructed or maintained so as to obstruct in any manner the flow of water into or through the District's works, or to interfere in any manner whatsoever with the construction, operation, maintenance and functions of the District. Should the installation permitted under this License become damaged or require removal, relocation, or protection as a result of District operation and maintenance of the property, the Licensee shall, at its own expense, repair, remove, relocate, or protect the installation.

5. The Licensee shall be liable for any and all bodily injuries and/or damages to the property of the District or the property of the Licensee or, subject to paragraphs 6 and 7, any third party or parties arising from or by reason of the existence, construction, maintenance, repair, condition or use of any structures, accessories or encroachments authorized by this License or by the exercise of the privilege conferred by this License. The Licensee shall defend, indemnify and hold harmless the District, its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties arising from or by reason of the negligent existence, construction, maintenance, repair, condition or use of any structures, accessories or encroachments authorized by this License or by the negligent exercise of the privilege conferred by this License, provided, however, to the extent, if at all, NMSA 1978, Section 56-7-1 is applicable to this License, this agreement to indemnify shall not extend to liability, claims, damages, losses or expenses, including attorneys' fees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications by the District, or their agents or employees of the District; or (2) the giving of or the failure to give direction or instructions by the District or the agents or employees of the District, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

6. This License is not intended by any of the provisions of any part of the License to create in the public, or any member thereof, a third-party beneficiary or to authorize anyone not a party to the License to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property and/or any other claim(s) whatsoever pursuant to the provisions of the License.

7. By entering into this License Agreement, 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 License 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.) and any amendments thereto. This paragraph is intended only to define the liabilities as governed by common law or the New Mexico Tort Claims Act. The District and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitations of liability pursuant to law. No provision in this License modifies and/or waives any provision of the New Mexico Tort Claims Act.

8. Where the property that is the subject of this License is held by the District other than as a fee simple estate, the Licensee shall be solely responsible for ascertaining whether the installation will encroach upon property belonging to entities or persons other than the District and for obtaining any additional permission

or licenses that may be required from property owners other than the District. The Licensee shall obtain the requisite permission prior to the use of or encroachment upon the property.

9. By this License, the District does not warrant its fee simple estate interest. This License serves solely to define the conditions pursuant to which the District will permit encroachment upon its property as evidenced by existing records and as defined by this License.

10. This License shall be revocable by the District, upon thirty (30) days written notice to the Licensee if the District determines that the continuation of this License is detrimental to the interest of the District. Upon such revocation, all structures, accessories, and installations shall be removed by the Licensee without delay at the expense of the Licensee. Any rights that the Licensee may have under this License shall terminate immediately upon receipt of written notice of revocation. Revocation shall not release the Licensee from any liability or obligation, whether of indemnity or otherwise, that may have attached, accrued, or was accruing at the time of such revocation. Notice of revocation shall be sufficient if mailed to Licensee at: FRANK SANCHEZ, 1200 RINER COURT SW, ALBUQUERQUE, NM 87105

11. If, at any time, the Licensee shall, in the judgment of the District, fail to properly perform any of the terms, obligations or covenants under this agreement, the District may, at their option, perform or have performed such work as it deems necessary for the safe operation of the works of the District, or to protect the property of the District or any third party, or the public. In such event, Licensee agrees to pay any and all costs incurred by the District in the performance of such work, including costs related to the supervision of the work. Payment shall be made by the Licensee within thirty (30) days after a bill is rendered.

12. If the District is required to bring suit in any court for the purposes of enforcing this agreement or any provision or portions thereof, the Licensee shall be liable for all costs and reasonable attorney's fees incurred by the District in connection with such suit.

13. The Licensee upon completion of the installation licensed by this agreement, shall notify the District and the District shall inspect the construction, and if the construction complies with all terms of this Agreement, the District shall sign the "Final Construction Inspected". If the construction fails to comply with all terms of this Agreement, the Licensee shall correct all problems specified by the District.

14. The Licensee shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any federal, state, or local government body having jurisdiction over the real property for which the License is granted.

15. The provisions of this agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, personal representatives, successors, and assigns of the parties hereto; provided, however, that no such heir, executor, administrator, personal representative, successor or assign of the Licensee shall have the right to use, alter, or modify the installation / encroachment in a manner which will increase the burden of the installation / encroachment on the property. This License shall not be assignable by the Licensee without prior written approval from the District.

16. All work to be done within the property must be approved by the District prior to commencing work, and shall be closely coordinated with the District's Engineering Department and appropriate field offices, Phone: (505) 247-0234.

17. Licensee shall not perform work on the property or upon structures belonging to, or operated by the District between March 1 and October 31 inclusive. However, work may be permitted by the District if the Licensee demonstrates to the District, prior to commencing work, that the work will not interfere with the District operations and maintenance of the property.

18. The Licensee, its employees, agents, contractors or subcontractors shall not store equipment, materials or debris on the property which may interfere with operations and maintenance of the property and shall not service vehicles or equipment on the property.


19. Seeding of disturbed areas within the right-of-way is required per District seeding specifications and must meet the satisfaction of the District staff.

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

**APPROVED:  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT**

 DATE: 10/13/10  
Subhas K. Shah, Chief Executive Officer

**LICENSEE**

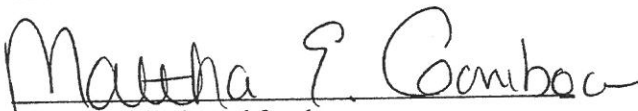
 DATE: 10/13/10

**ACKNOWLEDGMENT OF THE LICENSEE**

State of NM )  
 )ss.  
County of Bernalillo )  
                    CN

On the 13 day of October, 2010, the above noted Licensee personally appeared before me, known to me to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he / she signed the within and foregoing instrument as his / her free and voluntary act and did for the uses and purposes therein mentioned.

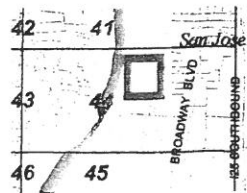
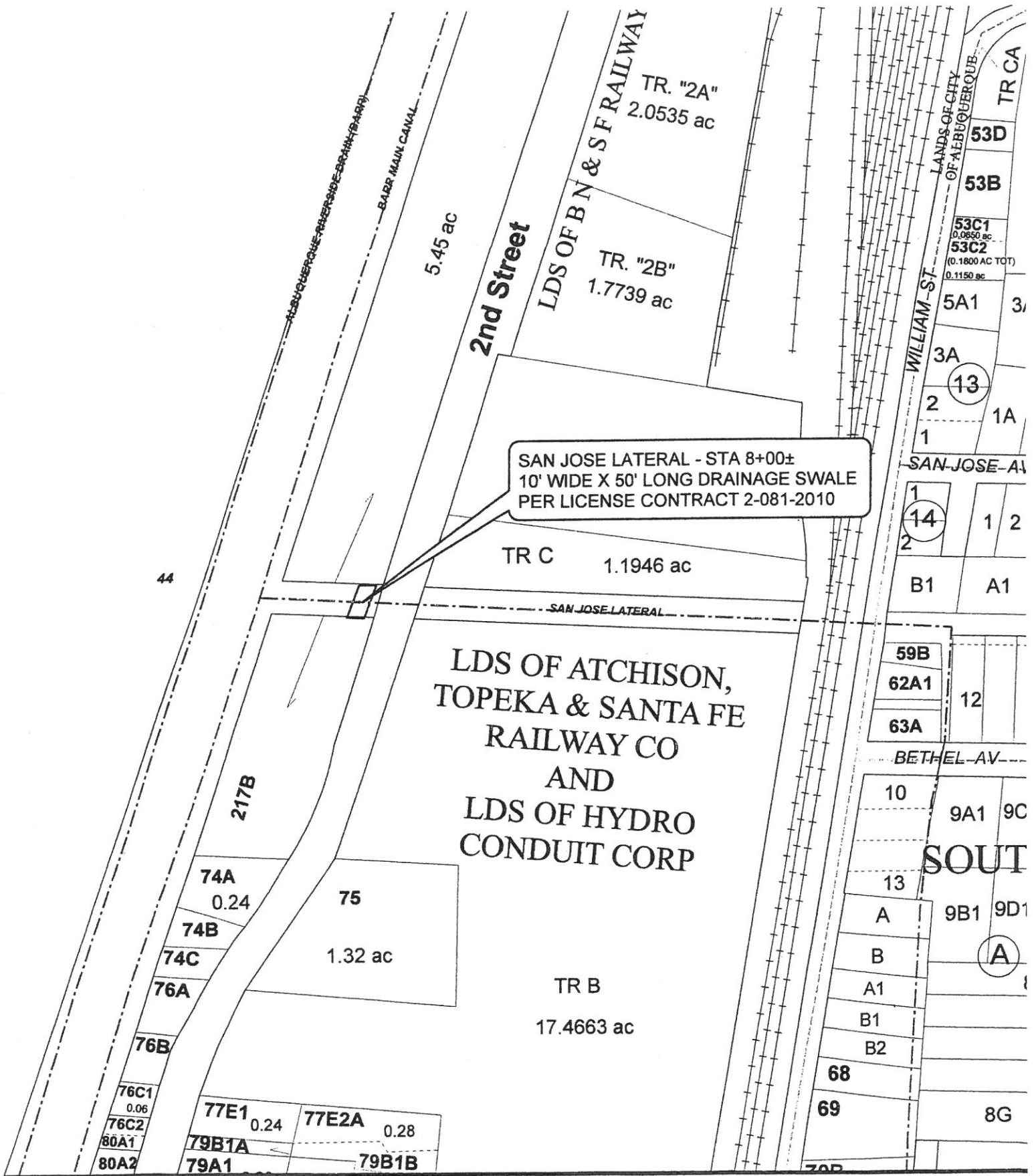
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

  
Notary Public in and for the  
State of NM  
Residing at  
My commission expires: Sept 30, 2014



**FINAL CONSTRUCTION INSPECTED:  
MIDDLE RIO GRANDE CONSERVANCY DISTRICT**

\_\_\_\_\_  
DATE: \_\_\_\_\_



**EXHIBIT "A"**

