

File

LICENSE AGREEMENT BETWEEN THE
MIDDLE RIO GRANDE CONSERVANCY DISTRICT
AND THE CITY OF ALBUQUERQUE, NEW MEXICO

THIS AGREEMENT, made this 7th day of March, 1977, pursuant to the Act of Congress approved June 17, 1902, (32 Stat. 388), and acts amendatory thereof and supplementary thereto, particularly the Act of August 4, 1939, (53 Stat. 1187), as amended by the Act of August 18, 1950, (64 Stat. 463) by and between the Middle Rio Grande Conservancy District, a municipal corporation of the State of New Mexico, hereinafter referred to as the DISTRICT, and the City of Albuquerque, a municipal corporation of the State of New Mexico, hereinafter referred to as the CITY.

WITNESSETH:

WHEREAS, the District has, pursuant to lawful authority and contract, transferred to the United States certain of its works, including rights of way, as hereinafter described, located within the City of Albuquerque and the County of Bernalillo; and

WHEREAS, the District, prior to assigning said rights of way to the United States had by agreement dated April 21, 1940, permitted the City to empty its 72" storm sewer line into the upper end of the San Jose Drain and to use said drain as an outfall to the Rio Grande River; and by License Agreement of October 24, 1961, the United States, the District and the City extended said Agreement as therein provided; and

WHEREAS, change in certain Federal laws and the rapid development of the City has made it desirable and necessary that said License Agreement be revised and extended covering use of the San Jose Drain by the City to dispose of storm waters; and

WHEREAS, the disposal of such storm waters to the drain as hereafter set forth will not interfere with the primary agricultural purpose of the drain; and

WHEREAS, this Agreement is subject to the approval of the United States, acting through the U.S. Bureau of Reclamation;

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the parties hereto agree as follows:

1. Subject to the terms and conditions hereinafter set out, the United States and District hereby license the City to discharge storm waters into the San Jose Drain as it is presently doing and to continue to do so in the future, in accordance with a master flood control plan of the City.

2. The 1940 Agreement between the District and the City covering the use of the San Jose Drain is hereby terminated.

3. The City shall perform all operations and maintenance work on the San Jose Drain and on any structures therein in such a manner so as to insure the functioning of the drain to serve properly the needs of all parties to this Agreement; this specifically requires the City to maintain a bottom grade at or below the grade as indicated on drawings MRGCD A-352, A-353, and A-354, this being the original grade of the drain as constructed by the District in 1934.

4. The structures of the City presently affecting the San Jose Drain are as shown on Drawing No. A-354 San Jose Reconstruction Project Plans on file with the City Clerk, which is attached hereto and made a part hereof. The City has a right to construct such additional facilities in the drain right of way as it deems necessary; provided, that such works will in no way impair the San Jose Drain insofar as its function as an interior drain is concerned, and that

the plans and specifications for such additional facilities first be approved in writing by the Project Manager, Middle Rio Grande Project, and the Chief Engineer for the District.

5. All future construction on the San Jose Drain right of way by parties other than the City shall be so regulated by the United States and District in a manner consistent with the rights hereby granted to the City.

6. The City assumes full and complete responsibility for any and all liability for injury or damage to any person or persons or property, and to hold and forever defend the United States and the Middle Rio Grande Conservancy District, their employees and their successors and assigns, free from any and all claims that may arise during or in consequence of the City's use of rights of way and facilities of the Middle Rio Grande Project in accordance with this Agreement.

7. The City shall defend the United States and the Middle Rio Grande Conservancy District in any action which alleges that the City's use of the drains or the premises thereof under this Agreement is unlawful in any manner, and further agrees to indemnify and hold the United States and the Middle Rio Grande Conservancy District harmless from the decision in any such type of litigation.

8. The City releases the United States and the Middle Rio Grande Conservancy District, their successors and assigns, from any and all damages of every description or kind whatsoever which may result from the operation and maintenance of Project facilities at the sites of the licensed structures established under this or any prior agreement.

9. This license shall extend for the useful life of the improvements placed in the ditch by the City, provided, however, that should any subsequent agreement be executed between the City and the United States which pertains to the rights covered by this license, this license, the rights, privileges, and obligations created hereby shall terminate immediately upon the execution of such subsequent agreement.

10. The jurisdiction of and supervision of the United States and District over rights of way in the San Jose Drain are not surrendered or subordinated by the issuance of this license.

11. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. To this end, the parties hereto recognize that at some future time, in accordance with applicable law, the works and facilities of the United States may be operated and maintained by the District and/or the title thereto may be reconveyed to the District.

12. Neither the United States nor the District shall have any duty or obligation to the City to continue the operation of the said San Jose drain solely for the purpose of providing a drain and outfall to the river for the City, but they shall not abandon the same nor surrender title to their property rights in the Drain so long as the City's improvements remain in use. Should the United States' and the District's need for the use of this drain cease, the City agrees to assume sole responsibility for operation, maintenance, care and control of said drain and assume all liabilities incurred by the continued operation of the drain, saving the United States and the District harmless from any liability arising out of the cities facilities, use thereof, or of the said drain.

13. In connection with the performance of work under this Agreement, the City agrees not to discriminate against any employee or applicant for employment because of race, religion, color or national origin. The aforesaid provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The City agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Project Manager setting forth the provisions of the non-discrimination clause. The City further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

14. The City will be solely responsible for or reimburse completely the District for any permits, monitoring, or other requirements under Public Law 92-500 or the Environmental Protection Agency, Safe Water Drinking Act, and Water Quality Control Act.

15. The City warrants that no person or agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the City for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Agreement without liability or in its discretion to require the City to pay, in addition to the agreement consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

16. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this Agreement if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

APPROVED FOR THE UNITED STATES OF AMERICA

By: R. E. Schenk
Projects Superintendent
Upper Rio Grande Basin
Projects
Bureau of Reclamation

MIDDLE RIO GRANDE CONSERVANCY DISTRICT

By: Ronald A. Lutz
President

ATTEST:

Jane Stone
Secretary - Treasurer
Title

CITY OF ALBUQUERQUE, NEW MEXICO

By: Frank A. Kleinhenz
Frank A. Kleinhenz
Chief Administrative Officer

ATTEST:

Mary Lou Cooney
City Clerk/Recorder

I hereby certify that the foregoing License Agreement was approved by the City Council at a regular meeting of the Council on March 7, 1977.

Mary Lou Cooney

Phyllis M. Martine
Notary Public

My Commission Expires 2/14/81