

# LICENSE TRANSMITTAL LETTER

November 2, 2004



Mr. Ron Bohannon  
Tierra West, LLC  
8509 Jefferson NE  
Albuquerque NM 87113

Dear Mr. Bohannon,

We are enclosing the following LICENSE AGREEMENT:

- ☐ in duplicate
- ☐ triplicate
- ☒ final executed

Description:

Lic No.:	Facility:	Licensee:
2-110-04	Isleta Drain	City of Albuquerque

- ☒ The \$200 license fee has not been received. Please contact the licensee and let us know the status of this payment.
- ☐ Please sign each copy of the license(s) and return all copies to this office. Upon execution, a completed copy will be returned for your information and record.
- ☒ For your records
- ☐ Licensee signature needs to be notarized and all copies returned to this office for further processing.

Should you have any questions or require further assistance, please contact Mr. Ray Gomez of our Engineering Department at (505) 247-0234 during regular office hours.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanette Bustamante".

Jeanette Bustamante  
Administrative Officer

P.O. Box 581

87103-0581

1931 Second St. SW

Albuquerque, NM

87102-4515

505-247-0234

Fax # 505-243-7308

M.R.G.C.D. CONTRACT NO. 2-110-2004  
M.R.G.C.D. MAP NO. 48  
TRACT NO. LORIS DRIVE  
SEC. 11, T. 9 N., R. 2 E.  
ISLETA DRAIN  
STATION 491+78± TO 493+78±

**MIDDLE RIO GRANDE CONSERVANCY DISTRICT  
LICENSE AGREEMENT**

**LICENSE WITH THE CITY OF ALBUQUERQUE TO INSTALL AND MAINTAIN AN 8' ROADWAY  
ENCROACHMENT WITHIN THE ISLETA DRAIN RIGHT-OF-WAY**

This License Agreement is made and entered into this 2<sup>ND</sup> day of NOVEMBER, 2004, by and between the Middle Rio Grande Conservancy District, ("the District"), and THE CITY OF ALBUQUERQUE, ("the Licensee").

WHEREAS, the District holds the right-of-way for the ISLETA DRAIN, ("the property"), in easement and the District operates and maintains the property as an integral part of the Districts works and property; and

WHEREAS, the District has assigned the United States Bureau of Reclamation, ("the Bureau"), an exclusive easement interest in the property; and

WHEREAS, the Licensee has requested permission from the District and the Bureau, to the extent of the Districts and the Bureaus 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 and the Bureau is willing to consent, to use of the property and encroachment upon the property pursuant to the conditions more particularly specified herein; and

NOW THEREFORE, the District agrees and the Bureau consents 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 8' ROADWAY ENCROACHMENT WITHIN THE ISLETA DRAIN RIGHT-OF-WAY, hereafter referred to as "the installation", across the property which will serve LORIS DRIVE, MRGCD Map 48, Station 491+78± TO 493+78±. The District agrees and the Bureau consents to the installation set forth in this paragraph only pursuant to the guidelines shown THE APPROVED CONSTRUCTION PLANS FOR ALBUQUERQUE SOUTH WAL-MART #5430-00, COORS & RIO BRAVO BOULEVARD attached hereto, and any and all other attached drawings and/or specifications which by this reference are made a part of this License Agreement.

2. As consideration for the license herein granted prior to the execution of this agreement, Licensee has paid a non-refundable sum of Two-hundred dollars (\$200.00) based on a fee amount for issuing and administering the License by the District and Bureau, for minimal engineering, outgrant appraisal, and environmental reviews, and for inspection of construction. When total charges are not known in advance due to extraordinary inspections, environmental considerations, or other requirements yet to be determined, an estimated amount will be paid in advance after billing, subject to later adjustment, as required, or billing of total fees and charges will be made at the completion of the job.

3. 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.

4. 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 and / or under bridge crossings.

~~5. 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 Districts works, or to interfere in any manner whatsoever with the construction, operation, maintenance and functions of the District or the Bureau. 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.~~

6. The Licensee shall be liable for any and all bodily injuries and or damages, to the property of the District and the property interest of the Bureau or the property of the Licensee or 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. In addition, the Licensee agrees to indemnify and hold harmless the District and the Bureau, their agents and employees from any and all claims, demands, actions, or suits of any nature by any third party that may arise as a result of Licensees negligent use of this License.

7. 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.

8. By this License, the District does not warrant its easement 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.

9. This License shall be revocable by the District and/or Bureau, 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: CITY OF ALBUQUERQUE, P.O. BOX 1293, ALBUQUERQUE, NM 87103

10. If, at any time, the Licensee shall, in the judgment of the District or the Bureau, fail to properly perform any of the terms, obligations or covenants under this agreement, the District and/or the Bureau 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 and or the property interest of the Bureau or any third party, or the public. In such event, Licensee agrees to pay any and all costs incurred by the District and/or the Bureau 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.

11. If the District and/or the Bureau 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 and/or the Bureau in connection with such suit.

12. 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.

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13. 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.

14. 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 and concurrence of the Bureau.

15. 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**.

16. 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, the District may permit work 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.

17. The Licensee, its employees, agents, contractors or subcontractors shall not store equipment, materials and/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.

18. 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**

*James B. Dwyer* DATE: 11/2/04  
~~Chief Executive Officer~~ A.O.

**CONCURRENCE:**

**UNITED STATES BUREAU OF RECLAMATION**

*Arthur E. Kavanagh* DATE: 9/16/04

**LICENSEE**

*Full Dwyer* DATE: 9-14-04  
Hf *Full Dwyer* 8/31/0

**ACKNOWLEDGMENT OF THE LICENSEE**

State of New Mexico )  
County of Bernalillo ) ss.

On the 14th day of September, 2004, 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.

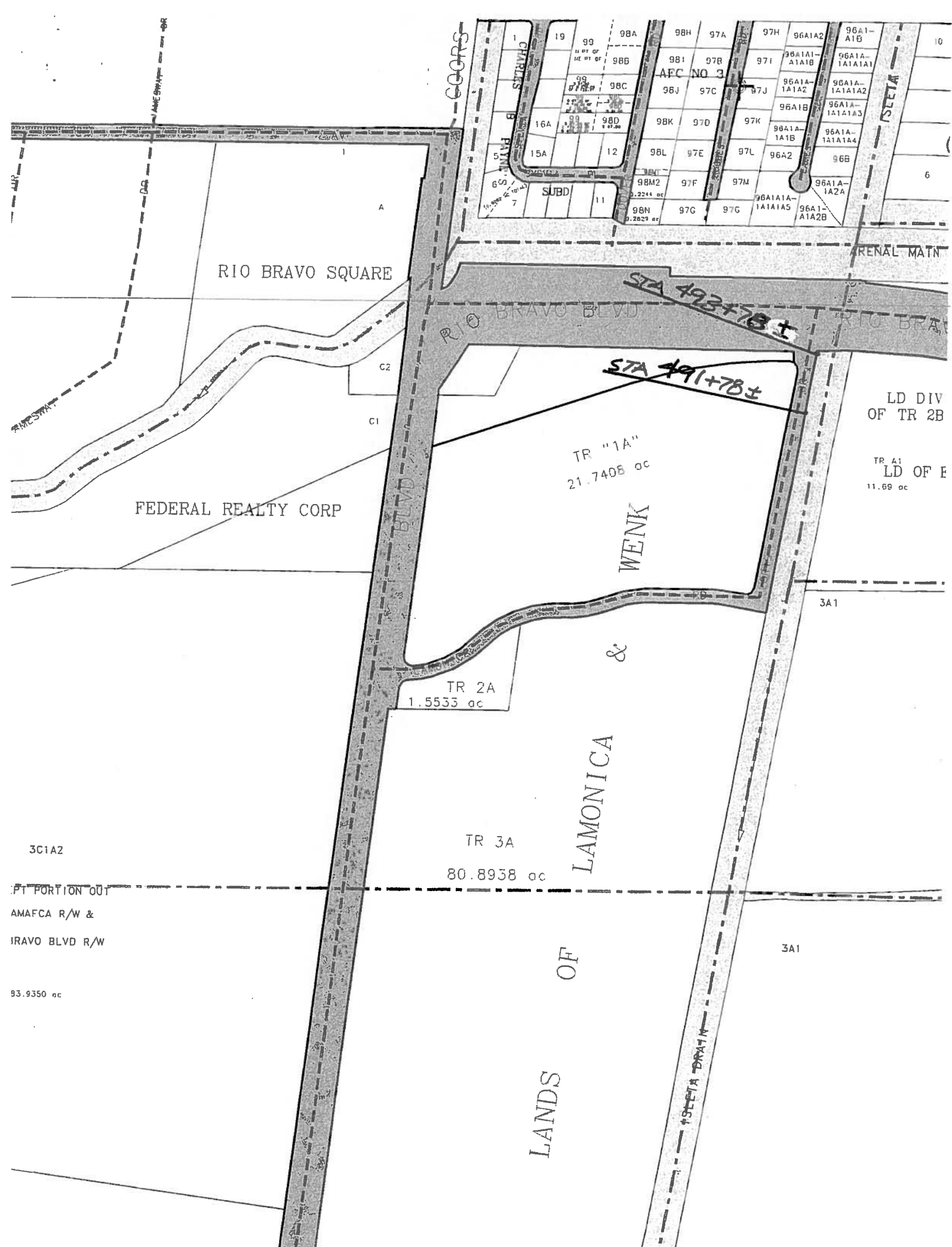
*Gloria D. Saavedra*

Notary Public in and for the  
State of New Mexico  
Residing at Bernalillo County  
My commission expires: 11-25-2007

**FINAL CONSTRUCTION INSPECTED:**

**MIDDLE RIO GRANDE CONSERVANCY DISTRICT**

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



June 14, 2004



Mr. Jonathan Niski  
Tierra West, LLC  
8509 Jefferson NE  
Albuquerque, NM 87113

REF.: ~~DRAINAGE REPORT FOR THE WAL-MART SITE AT~~  
COORS & RIO BRAVO BOULEVARD

Dear Mr. Niski:

The District has reviewed the grading and drainage plan for the above referenced. The following comments must be addressed prior to construction:

1. The District may consider a license to discharge storm water at a rate not to exceed 5 cfs if the Isleta Drain is improved per specifications by AMAFCA & MRGCD under the new drainage study to be completed by AMAFCA & Bernalillo County. Construction plans are required for review and comment.
2. A water quality improvement structure is proposed on the Wal-Mart site prior to discharging into the Isleta Drain. Provide the manufactures information for maintenance of the structure and information for sizing.
3. Who will be responsible for maintaining the water quality structure?
4. A license to replace the existing Rio Bravo Boulevard road culvert crossing is required. Construction plans are required for review and comment.
5. Your plans show the encroachment of a portion of Loris Drive within the Isleta Drain Right-of-Way. A license will be required to allow the encroachment.

If you have any questions please feel free to contact Mr. Ray Gomez for more information at (505) 247-0234.

Sincerely,

Subhas K. Shah  
Chief Executive Officer

P.O. Box 581

87103-0581

1931 Second St SW

Albuquerque, NM

87102-4515

505-247-0234

Fax # 505-243-7308

xc: Leonard Utter, Assistant Engineer  
Ray Gomez, Engineer 1  
Lynn Mazur, AMAFCA  
File



# TIERRA WEST, LLC

---

8509 Jefferson NE  
Albuquerque, NM 87113

(505) 858-3100  
fax (505) 858-1118

twllc@tierrawestllc.com  
1-800-245-3102

June 17, 2004

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Mr. Subhas K. Shah  
Chief Executive Officer  
Middle Rio Grande Conservancy District  
P.O. Box 581  
Albuquerque, NM 87103-0581

**RE: DRAINAGE REPORT FOR THE WAL-MART, (ALBUQUERQUE SOUTH),  
COORS & RIO BRAVO BOULEVARD, STORE #5430-00**

Dear Mr. Shah:

The following responses are to your comments from your letter dated June 14, 2004.

1. The District may consider a license to discharge storm water at a rate not to exceed 5 cfs if the Isleta Drain is improved per specifications by AMAFCA & MRGCD under the new drainage study to be completed by AMAFCA & Bernalillo County. Construction plans are required for review and comment.

**The channel will be designed and constructed based on comments received at the June 17, 2004 meeting with all agencies in attendance. Approval of the plans will be required by AMAFCA and MRGCD prior to the City of Albuquerque issuing a work order for the project.**

2. A water quality improvement structure is proposed on the Wal-Mart site prior to discharging into the Isleta Drain. Provide the manufacturers information for maintenance of the structure and information for sizing.

**The information you requested is enclosed for your review.**

3. Who will be responsible for maintaining the water quality structure?

**The Wal-Mart Supercenter will be responsible for the maintenance.**

4. A license to replace the existing Rio Bravo Boulevard road culvert crossing is required. Construction plans are required for review and comment.

**A license agreement will be submitted once the design of the crossing is agreed upon by AMAFCA and MRGCD.**



Mr. Subhas K. Shah  
June 17, 2004  
Page 2

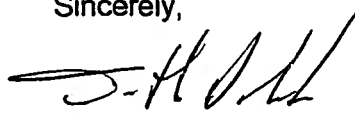
5. Your plans show the encroachment of a portion of Loris Drive within the Isleta Drain Right-of-Way. A license will be required to allow the encroachment.

**A license agreement for the roadway encroachment will be submitted within the next week.**

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If you have any questions or need additional information regarding this matter, please do not hesitate to call me.

Sincerely,



Jonathan D. Niski, E.I.

Enclosure/s

cc: Brad Bingham

JN: 220094  
JDR/mjr

2002-220094SubhasShah06162004

# TIERRA WEST, LLC

8509 Jefferson NE  
Albuquerque, NM 87113

(505) 858-3100  
fax (505) 858-1118

twllc@tierrawestllc.com  
1-800-245-3102

June 30, 2004

Mr. Ray Gomez  
MRGCD  
1931 Second Street, NW  
Albuquerque, NM 87102

**RE: Wal-Mart #5430-00  
Coors Boulevard and Rio Bravo Boulevard  
License Agreement Applications**

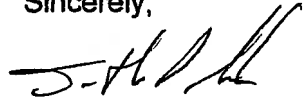
Dear Mr. Gomez:

Tierra West, LLC, on behalf of Wal-Mart Stores, Inc., and the City of Albuquerque is submitting these License Agreement Applications for approval. Please review the request and plans and advise our office of any comments you may have.

Wal-Mart is requesting a License Agreement to discharge a maximum of 5 cfs into the Isleta Drain. The City of Albuquerque is requesting a License Agreement for an 8-foot encroachment of a public roadway (Loris Drive) into the MRGCD right-of-way.

If you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Sincerely,



Jonathan D. Niski, E.I.

Enclosure/s

cc: Lynn Mazur  
Kevin Broderick

JN: 220094  
JDN/djb

2002 220094 Ray Gomez 06302004



# TIERRA WEST, LLC

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8509 Jefferson NE  
Albuquerque, NM 87113

(505) 858-3100  
fax (505) 858-1118

twllc@tierrawestllc.com  
1-800-245-3102

August 4, 2004

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Mr. Ray Gomez  
MRGCD  
1931 Second Street, NW  
Albuquerque, NM 87102

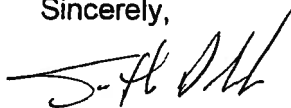
**RE: Wal-Mart #5430-00  
Coors Boulevard and Rio Bravo Boulevard  
Isleta Drain Improvements**

Dear Mr. Gomez:

Tierra West, LLC, on behalf of Wal-Mart Stores, Inc., is resubmitting the Isleta Drain construction plans for your review. All of your comments were addressed and we believe the plans are ready for your approval. With your approval the MRGCD should be able to issue the License Agreements required for Wal-Mart to begin construction. If you have any additional comments please let us know and we will address them immediately.

If you have any questions or need additional information regarding this matter, please do not hesitate to contact me.

Sincerely,



Jonathan D. Niski, E.I.

Enclosure/s

cc: Lynn Mazur  
Brad Bingham

JN: 220094  
JDN/bgd

# CONSTRUCTION PLANS FOR ALBUQUERQUE SOUTH WAL-MART #5430-00

COORS BOULEVARD AND RIO BRAVO BOULEVARD  
ALBUQUERQUE  
BERNALILLO COUNTY, NEW MEXICO  
JUNE 2004

*FW*

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VICINITY MAP ZONE ATLAS P-10-2  
SCALE: NONE

- NOTICE TO CONTRACTORS**
1. ALL WORK DETAILED IN THESE PLANS TO BE PERFORMED UNDER CONTRACT SHALL EXCEPT AS OTHERWISE STATED BE PROVIDED FOR HEREON, BE CONSTRUCTED IN ACCORDANCE WITH THE CITY OF ALBUQUERQUE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, 1986 EDITION (UPDATE #7).
  2. TWO WORKING DAYS PRIOR TO ANY EXCAVATION, THE CONTRACTOR MUST CONTACT NEW MEXICO ONE CALL SYSTEM (286-1982) FOR LOCATION OF EXISTING UTILITIES.
  3. ANY WORK AFFECTING AN ARTERIAL ROADWAY REQUIRES 24-HOUR CONSTRUCTION.
  4. PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL EXAMINE AND VERIFY THE HORIZONTAL AND VERTICAL LOCATIONS OF ALL OBSTRUCTIONS. SHOULD A CONFLICT EXIST, THE CONTRACTOR SHALL NOTIFY THE ENGINEER OR SUPERVISOR IMMEDIATELY SO THAT THE CONFLICT CAN BE RESOLVED WITH A MINIMUM AMOUNT OF DELAY.
  5. FIVE (5) WORKING DAYS PRIOR TO BEGINNING OF CONSTRUCTION, THE CONTRACTOR SHALL SUBMIT TO CONSTRUCTION COORDINATIONS DIVISION A DETAILED CONSTRUCTION SCHEDULE. TWO (2) WORKING DAYS PRIOR TO CONSTRUCTION, THE CONTRACTOR SHALL OBTAIN A SURVEILLANCE PERMIT FROM THE CONSTRUCTION COORDINATIONS DIVISION. CONTRACTOR SHALL NOTIFY BARRICADE ENGINEER (924-2400) PRIOR TO OCCUPANCY AN INTERSECTION. REFER TO STANDARD SPECIFICATIONS.
  6. ALL STREET STRIPING ALTERED OR DESTROYED SHALL BE REPLACED WITH PLASTIC REFLECTORIZED PREPARED MARKINGS BY THE CONTRACTOR TO LOCATION AS EXISTING OR AS INDICATED BY THIS PLAN SET.
  7. CONTRACTOR SHALL NOTIFY THE ENGINEER NOT LESS THAN SEVEN (7) DAYS PRIOR TO BEARING DOWN IN ORDER THAT THE ENGINEER MAY TAKE NECESSARY MEASURES TO INSURE THE PRESERVATION OF SURVEY MONUMENTS. CONTRACTOR SHALL NOT OBTAIN PERMANENT SURVEY MONUMENTS WITHOUT THE CONSENT OF THE ENGINEER AND SHALL NOTIFY THE ENGINEER OF ANY REMOVAL OR REPLACEMENT OF ANY MONUMENT THAT MAY BE DONE ONLY BY THE CITY SUPERVISOR. WHEN A CHANGE IS MADE IN THE FINISHED ELEVATIONS OF THE PAVEMENT OF ANY ROADWAY IN WHICH A PERMANENT SURVEY MONUMENT IS LOCATED, CONTRACTOR SHALL, AT HIS OWN EXPENSE, ADJUST THE MONUMENT TO THE NEW GRADE UNLESS OTHERWISE SPECIFIED. REFER TO SECTION 4.4 OF THE GENERAL CONDITIONS OF THE STANDARD SPECIFICATIONS. ANY PERMANENT SURVEY MONUMENT LOCATED WITHIN 50' OF THIS PROJECT THAT IS NOT SHOWN ON THE PLANS AND IS DESTROYED DURING CONSTRUCTION WILL BE REPLACED AT THE CONTRACTOR'S EXPENSE.
  8. FOR STORM DRAIN CONSTRUCTION, REEF PIPE JOINTS SHALL NOT BE GROUDED PRIOR TO FINAL INSPECTION. FINAL INSPECTION WILL DETERMINE JOINTS TO BE GROUDED FOR FINAL ACCEPTANCE OF THE CONSTRUCTION.
  9. CONTRACTOR SHALL MAINTAIN A GRADE-FREE WORK SITE. CONTRACTOR SHALL PROMPTLY REMOVE ANY AND ALL GRAPPY FROM EQUIPMENT, WHETHER PERMANENT OR TEMPORARY.

- THE FOLLOWING NOTES ALSO APPLY WHEN CHECKED
- ☒ ALL UTILITIES AND UTILITY SERVICE LINES SHALL BE LOCATED PRIOR TO INSTALLATION.
  - ☒ BACKFILL CONSTRUCTION SHALL BE ACCORDING TO SPECIFIED STREET USE.
  - ☒ TACK COAT REQUIREMENTS SHALL BE DETERMINED BY THE PROJECT ENGINEER.
  - ☒ ROCKWALLS AND SLOPEWALLS WITHIN THE CURB RETURNS SHALL BE CONSTRUCTED PRIOR TO NEW CURB RETURN IS CONSTRUCTED.
  - ☒ IF CURB IS COMPLETED FOR A DRIVEWAY, THE DRIVEWAY SHALL BE CONSTRUCTED PRIOR TO ACCEPTANCE OF CURB AND BUTTER.
  - ☒ ALL STORM DRAINAGE FACILITIES SHALL BE COMPLETED PRIOR TO FINAL ACCEPTANCE.

DRB # 1000650

TERRA WEST, LLC 8300 JEFFERSON NE ALBUQUERQUE, NEW MEXICO (505)358-3100		87111					
REV#	SHEETS	CITY ENGINEER	DATE	USER DEPT.	DATE	USER DEPT.	DATE
ENGINEERS STAMP & SIGNATURE		APPROVALS	ENGINEER	DATE	APPROVED FOR CONSTRUCTION		
		ORC Chairman					
		Transportation					
		Water/Wastewater					
		Fire/Police					
		AMATCA					
		Const. Mgmt.					
		Const. Coord.					
CITY PROJECT NO.		736581		SHEET		1 of 48	
RONALD B. BOWMAN P.E. #7880							



