

Elephant Butte Irrigation District
Engineering Department
Phone: 575-526-6671
Office/Mailing Address: 530 South Melendres Street, Las Cruces, NM 88005

RIGHT OF USE LICENSE APPLICATION

1. APPLICATION DOES NOT GUARANTEE APPROVAL.
2. INITIAL ADMINISTRATIVE FEE OF \$300.00 PLUS TAX IS DUE AT THE TIME OF APPLICATION AND IS NON-REFUNDABLE WHETHER THE APPLICATION IS APPROVED OR DENIED.
3. THIS APPLICATION WILL NOT BE PROCESSED UNLESS ALL ITEMS ARE LEGIBLE, COMPLETED IN ENTIRETY, AND ATTACHED AS DESCRIBED BELOW.
4. ALLOW 60-90 DAYS FOR PROCESSING.
5. CONTACT EBID ENGINEERING DEPARTMENT FOR ASSISTANCE IN COMPLETING REQUIREMENTS.

FOR USE BY EBID ONLY:	
License Administrative Fee Paid	<input type="checkbox"/>
ENG Job No.	_____
Limited Use	Special Use _____
Government	Individual _____
Total Fees: _____	
Board Date: _____	
Approved	<input type="checkbox"/>
Denied	<input type="checkbox"/>
Remarks: _____	

Applicant's Name: _____

Business Name: _____

Mailing Address & Zip: _____

Date: _____ **Phone:** _____ **Cell:** _____ **Email:** _____

Type of Use (or Agreement)

- | | | | |
|-------------------|------------------------------|-----------------------|---------------------------------------------------|
| Area: | _____ Beehive | _____ Use of ROW | _____ Blanket Agreement # _____ |
| Crossing: | _____ Utility* | _____ Bridge | _____ Culvert _____ Flume _____ Siphon |
| Discharge: | _____ De-watering | _____ Lift Pump | _____ Stormwater _____ Well Pump (for LRG- _____) |
| Parallel: | _____ Harvest Gate | _____ Trail/path | _____ Turnout _____ Utilities* |
| Removal: | _____ Sediment (dirt, sand) | _____ Trees or Bamboo | _____ Water Extraction |
| Other: | _____ Encroachment Agreement | | |

*For Utilities, specify: _____ Cable _____ Electric _____ Gas _____ Sewer _____ Telephone _____ Water

Purpose *(describe what you propose to do, quantities, dimensions, etc.)* _____

Location *(describe exactly where the activity will take place – name the canal, lateral, drain or other EBID facility.)* _____ Aerial _____ Buried

EBID Facility: _____ **Station ID** _____

Nearest physical address (if different from above): _____

EBID Customer# _____ Parcel No. _____

Site Plan *(plan view of construction/installation)*

1. Attach a map(s) showing location and site of requested use including EBID facilities. Include a north arrow, rights-of-way, easements, property lines, and features affected by construction. Survey may be required to define property boundaries, if so, please provide a signed and sealed copy.
2. Provide site photos in four/all directions (north, south, east, west).

Construction/Design Drawing *(engineering design details-exact size, length, width, height, materials, specifications, etc.)*

1. Provide detailed design/construction plans. Drawings and specifications must comply with EBID design criteria (available at EBID office or online at www.ebid-nm.org).
2. Provide estimated construction dates. Include beginning and ending dates. (General Conditions Section 9 still applies)
3. A cross section or design profile of the EBID facility and adjacent land is required for crossings and most applications.

Design to be performed by: Self EBID Professional-Name _____

Construction to be performed by: Self EBID Professional-Name _____

Provide three (3) sets of final design plans, site plan, and photos in compliance with the District's design criteria. Alternatively, provide one (1) hard copy set and one (1) PDF digital copy (CD or jump drive) of all site plan, photos, and design drawings/plans.

Sign name(s) as written in License application. For partnerships, a general partner's signature is required. For corporations, an officer or other individual with proper authority evidenced by a corporate resolution granting such authority is required to sign. For a limited liability company, a member, manager, officer or other individual with proper authority evidenced by a company resolution granting such authority is required to sign. Any deviation from the required signatories must be approved by EBID.

<p style="text-align: center;">LICENSEE</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>SIGNATURE _____</p> <p>TITLE _____</p> <p>DATE _____</p> <p><input type="checkbox"/> License is for agricultural operations - land use fees requested waived.</p>	<p>I have read and reviewed the General Conditions language contained on the reverse side of this Application, and hereby accept the terms and conditions expressed or implied herein. I also agree to comply with all additional Special Conditions that may apply as specified on the Right of Use License. I further agree to pay all applicable License fees within 30 days of Board approval or this application becomes void. I understand the rules and regulations of Elephant Butte Irrigation District and agree to abide by same during the term of the Right of Use License.</p>
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THIS APPLICATION WILL BE RESEARCHED AND PRESENTED TO EBID BOARD OF DIRECTORS FOR APPROVAL. IF APPROVED AND THE LICENSE FEES ARE PAID IN FULL, A LICENSE WILL BE ISSUED TO YOU. IF DENIED, A LETTER WILL BE MAILED TO YOU.

THIS APPLICATION IS *NOT* A LICENSE

General Conditions

SECTION 1. Rights of Elephant Butte Irrigation District (EBID): The Elephant Butte Irrigation District (hereinafter Licensor) operates and maintains the New Mexico portion of the Rio Grande Project. It has fee simple and easement rights over canals, ditches and other rights-of-way within the District boundaries.

SECTION 2. Assignment and Binding Nature: Licensee shall not assign this license, in whole or in part, without Licensor's prior written consent, and absent such consent, any attempted assignment shall be void. Licensee shall make all requests for Licensor's consent to an assignment, modification, or amendment of the license in writing and shall accompany each request with an Administrative fee of \$50.00 Plus Applicable Taxes. Such service charge shall be the property of Licensor and not refundable to Licensee. Consent to assign to Licensee's subsidiary, parent, successor or affiliated entity will not be unreasonably withheld.

SECTION 3. Termination of the License:

3.1 Either party may terminate this license with or without cause upon not less than thirty (30) days written notice, provided that the Licensee shall be given thirty days after written notice to cure the circumstances giving rise to termination for cause. Fees will only be reimbursed on a prorated basis if EBID terminates the license without cause. Fees shall not be reimbursed under any other situation unless determined otherwise by EBID Board on a case-by-case basis.

3.2 If Licensee fails to comply with the conditions set forth herein, or if either party terminates this license, Licensee shall remove at its own cost, within thirty (30) calendar days after written notice from Licensor, any materials, improvements or facilities placed on Licensed Property by Licensee, its directors, officers, employees, or agents. If Licensee fails to remove any of the materials, improvements or facilities within the thirty (30) day period, Licensor at its election, (i) with or without giving notice to Licensee, may remove and store the materials, improvements of facilities or (ii) give written notice to Licensee that Licensor will retain the materials, improvements or facilities. Upon Licensor's giving said written notice to Licensee that Licensor will retain the materials, improvements, or facilities, Licensee's right, title and interest in the materials, improvements, or facilities immediately shall vest in Licensor.

3.3 If Licensor removes any materials, improvements or facilities pursuant to Section 3.2, Licensee shall reimburse Licensor for the costs of such removal or storage (as conclusively determined by Licensor) within ten (10) calendar days after Licensor presents Licensee a statement of such costs. Licensee hereby releases Licensor from any and all damages resulting to Licensee from such removal or storage. The provisions of this Section shall survive termination of this license.

3.4 If Licensee's right, title and interest in any of the materials, improvements or facilities vest in Licensor pursuant to Section 3.2, then Licensee shall execute, acknowledge and deliver to Licensor an instrument, acceptable to Licensor, transferring to Licensor all Licensee's right, title and interest in the materials, improvements or facilities. The provisions of this Section shall survive termination of this license.

SECTION 4. Maintenance of Licensed Property and Interface with Licensor's Use of Licensed Property:

4.1 Licensee, at its own expense, shall maintain the Licensed Property and all Licensee's materials, improvements and facilities thereon in good, sanitary and safe condition as conclusively determined by Licensor. Such maintenance shall involve but not be limited to, (a) repair and upkeep of the structure(s); (b) the removal of deposited sediment, trash, and other debris from within and adjacent to the structure(s); (c) control of vectors and other pests associated with the structure(s); and (d) repair of damages to the affected facilities of the Rio Grande Project as determined by EBID. Such maintenance shall be conducted by the Licensee annually or on request by EBID between the end of each irrigation season and December 31 of the same year, or at other times upon written notification by EBID. Such maintenance shall not interfere in any manner whatsoever with the construction, operation, and maintenance of any part of the Rio Grande Project. EBID shall be notified at least forty-eight (48) hours in advance of any planned maintenance, unless emergency conditions prevent such notification, and then notification will be given as soon as possible. Neither Licensee nor its agents shall interfere with the use of the Licensed Property by Licensor, or the interest of any other individual or entity in the Licensed Property.

4.2 If Licensee defaults in the performance of any provision of Section 4.1, as conclusively determined by Licensor, and Licensor gives notice of the default, Licensee shall correct such default to the satisfaction of Licensor within the required period of time set forth in the notice (Correction Period). If Licensee fails to correct the default within the Correction Period, Licensor may take any action determined by Licensor to be necessary to correct such default, including without limitation making any repair or modification to or removing any such materials, improvements or facilities. Licensee shall reimburse Licensor for the costs of correcting such default, as conclusively determined by Licensor, within ten (10) calendar days after Licensor presents Licensee a statement of such costs. Licensee hereby releases Licensor from all damages resulting to Licensee from correcting such default, so long as Licensee has complied with this provision, including without limitation those damages arising from all repairs or modifications to or removal of any materials, improvements, or facilities on the Licensed Property.

SECTION 5. Nonexclusive Rights: This license is nonexclusive and nothing herein shall prevent Licensor from accessing or using the Licensed Property or prohibit Licensor from licensing another entity to access or use the Licensed Property. Licensor shall not be liable to Licensee for any damage to public or private property or installations located upon the Licensed Property. Nothing in this license shall be construed to deny or lessen the powers and privileges granted Licensor by the laws of the State of New Mexico.

SECTION 6. Existing Easements and Licenses: This license is subject to all existing easements, licenses and matters of record.

SECTION 7. For "Individual" Licenses Only - Indemnification: "Individual" Licenses are defined to be all those Licenses issued to Licensees other than Governmental Entities. Non-Governmental entity Licensee (Indemnitee), its successors and assigns, shall indemnify and hold harmless Licensor (Indemnitor), and the directors, officers, employees, agents, successors and assigns thereof, against and from any claim, demand, lawsuit or action of any kind for damages or loss; whether directly or indirectly arising out of (a) acts or omissions of Licensee, its agents, officers, directors, or employees, (b) Licensee's use or occupancy of the Licensed Property for the purposes contemplated by this License, including but not limited to claims by third parties who are invited or Licensed onto the Licensed Property, either expressly or implied, by Licensee or by the nature of Licensee's development or other use pursuant to this License, or (c) Licensee's failure to comply with or fulfill its obligations established by this license or by law, and whether such damage or loss is to person or property. Such obligation to indemnify shall extend to and encompass all costs incurred by Licensor in defending against subject claims, demands, lawsuits, or actions, including though not limited to attorney, witness and expert witness fees, and any other litigation related expenses. Licensee shall have no obligation to indemnify Licensor against liability directly attributable to the negligence or willful actions of the Licensor, its directors, officers, employees, agents, successors or assigns. The provisions of this section shall survive termination of this license. Regardless of this Paragraph nothing in this License should be construed as a waiver of immunity, defenses, or limitations of liability provided to EBID by the New Mexico Tort Claims Act or other applicable law.

For "Government" Licenses Only - Tort Claims Act: By entering into this Agreement, the District and its "public employees" as defined in the New Mexico Tort Claims Act, and the Licensee and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense(s) and/or do not waive any limitation(s) of liability pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act. However, within the limitations above stated, each party shall be responsible for their own negligent acts. This Agreement is not intended by any of its provisions to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to this Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION 8. Insurance: Without limiting any liabilities or any other obligations or duties of Licensee, EBID at its option may require insurance and proof of insurance as a condition to this License. If the insurance is required, the Licensee will be notified by letter, which letter shall specify the amount and type of insurance required by EBID.

SECTION 9. Construction:

9.1 Prior to making any installations on the Licensed Property, Licensee shall submit to Licensor for its approval a detailed plan showing the location of any such installations, and pay Licensor all review and inspection fees required by Licensor. All construction on the Licensed Property shall be performed in accordance with specifications approved by Licensor. At least ten (10) days prior to the beginning of any construction on the Licensed Property, Licensee shall provide Licensor notice of the date that construction will begin and a schedule listing all construction activities and the dates when such construction activities will be performed. Licensee shall give Licensor written notice of all changes in the schedule and delays in construction immediately upon it being reasonably foreseeable that such change or delay will occur.

9.2 Licensee shall contact Licensor a minimum of 72 hours in advance of start of construction to obtain a construction clearance. Phone Number: (575) 526-6671. NOTE: A CONSTRUCTION CLEARANCE DOES NOT ASSURE THAT THE CANALS, LATERALS OR DRAINS WILL BE WITHOUT WATER.

9.3 Licensee's materials, facilities, improvements, and appurtenances constructed, installed, operated and maintained on the Licensed Property shall not interfere with Licensor's use of Licensor's existing and/or any future irrigation facilities on or adjacent to the Licensed Property.

9.4 Licensor may regulate the scheduling of construction, if any, located on the Licensed Property relating to irrigation operation, traffic control, backfilling, compacting, or paving and locating or relocating the materials, facilities, improvements or appurtenances.

9.5 If relocation of Licensee's materials, facilities, improvements or appurtenances is necessitated by Licensor's use of existing facilities or the construction of improvements by or on behalf of Licensor, Licensee shall bear the entire cost of relocating said materials, facilities, improvements and appurtenances.

9.6 Licensor shall not exercise its right to require relocation of Licensee's facilities in an unreasonable or arbitrary manner.

SECTION 10. Licenses, Statutes and Codes: Licensee shall comply with the applicable requirements of all statutes, acts, ordinances, regulations, codes, and standards of legally constituted authorities with jurisdiction, including continuous compliance with all Board of Director Policies in place governing the use of EBID property. Licensee shall obtain or cause to be obtained at its expense, all Licenses, approvals and authorizations required by Licensee's actions pursuant to this license taking effect. The provisions of this Section shall survive termination of this license.

SECTION 11. Licensor's Right to Inspect:

11.1 Licensor may enter any part of the Licensed Property at all reasonable times to make an inspection thereof. During any construction by Licensee, Licensor may inspect all trenching, backfilling and other related items and require conformance with all requirements and specifications established by Licensor.

11.2 Licensee shall release Licensor for all damages arising out of any delay, whether reasonable or unreasonable, or foreseeable or unforeseeable, by Licensor in Licensing or inspecting any work on the Licensed Premises. The provisions of this section shall survive termination of this license.

SECTION 12. Service of Notice: All notices and demands required or Licensed by this license shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) to the respective address as furnished by either party to the other pursuant to this section; (ii) delivered personally to the parties hereto.

SECTION 13. Administrative and Land Use Fees: Licensee shall pay all fees, including administrative costs in excess of the initial \$300.00 deposit already paid at the time of application for the preparation of the right-of-use document and land use fees pursuant to EBID Board Policy regarding Right of Use of EBID facilities. All costs will be invoiced either at the time of issuance of the License or at a later date as the same shall become known and due. Failure to pay within 30 days of such invoice will result in termination of the License.

SECTION 14. Waiver: No waiver by either party of any breach of any of the covenants or conditions of this license which are to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition. There shall be no waiver by implication, all formal waivers must be approved in writing by the waiving party.

SECTION 15. Attorneys' Fees upon Default: If Licensee defaults in the timely performance of its obligations under this license, the Licensor shall be entitled to recover all reasonable expenses and attorney's fees incurred by Licensor in enforcing its rights under the license including pre-suit fees and expenses and court costs, including expert witness fees and the like, as determined by a Court in any suit or proceeding. The foregoing shall not in any way limit or restrict any right or remedy at law or equity which would otherwise be available to such party in default.

SECTION 16. Force Majeure: If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this License, other than the obligation of Licensee to make payments of amounts due hereunder, then the obligations of both Licensee and Licensor, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied within a reasonable time. The term "force majeure" as employed in this license shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, interruptions by government not due to the fault of the parties, civil disturbances, explosions, or unforeseeable action or nonaction by governmental bodies in approving the applications for approvals or Licenses or any material change in circumstances arising out of legislation, regulation or litigation. Nothing in this section shall require Licensor to settle a strike.

SECTION 17. Entire Agreement; Changes After Execution: This License, including its specified addenda and exhibits, if any, constitutes the entire agreement between the parties, and any amendment hereto must be in writing, and signed by both parties.

SECTION 18. Water Damage: Licensor shall not be liable for any loss sustained by Licensee, its officers, employees, agents, assigns or invitees on the Licensed Property because of water damage from any sources whatsoever, including but not limited to, flood, drainage, or run-off, irrespective of any prior knowledge by Licensor of the possibility of such flood, drainage, or run-off, or any act, omission or negligence of Licensor, members of its governing body, directors, officers, employees, agents or assigns, arising from operation or maintenance of any Rio Grande Project dam, canal, drain or other works.

SECTION 19. Expiration: Construction authorized by the license must be initiated no later than two years after final approval by the EBID Board of Directors. Failure to comply with the two-year time limit invalidates the permit or license. All fees paid shall be forfeited.