

## USE LICENSE

THIS USE LICENSE (the "Agreement" or "License") made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2013, is by and between KITTITAS RECLAMATION DISTRICT, a corporation, ("KRD" or "Licensor") and \_\_\_\_\_ ("Licensee") (referred to collectively as the "Parties").

### I. RECITALS

A. The KRD is an irrigation district organized under Chapter 87.03 RCW. The KRD owns or has a right to use and operate irrigation canals, laterals, roads and irrigation control facilities ("KRD Property") to transport irrigation water to land within the KRD service area under agreements with the United States Bureau of Reclamation (USBR), which agreements give the KRD the right and authority to grant third parties the right to use said canals and property in Kittitas County, State of Washington.

B. Licensee desires to use the KRD property as set forth on Exhibit A, attached hereto and incorporated by reference, to access or use property Licensee owns, which is described as:

[INSERT LEGAL DESCRIPTION]

C. The KRD is willing to grant a license to Licensee for the use, construction, placement, repair and maintenance described in this agreement. Upon the terms and conditions in this Agreement, Licensee is willing to hold the KRD harmless from any loss, damage, liability or expense arising because of this License.

NOW, THEREFORE, for and in consideration of the mutual provisions in this agreement and no monetary consideration, the Parties agree as follows:

### II. TERMS AND CONDITIONS

1. Grant of License. The KRD grants permission and a license to Licensee to use the KRD Property as set forth above and as described on **Exhibit A**, attached hereto, under the conditions and terms in this Agreement. Licensee agrees this License does not give Licensee an ownership interest in the KRD Property and Licensee's use of the KRD Property as set forth in this Agreement is permissive and shall not give the Licensee, its heirs, successors and assigns any claim of title by adverse possession or an easement by prescription.

2. Description of Use Facility. The use by Licensee shall be at the location and in the manner specified on the attached **Exhibit A** (Use Facilities), provided that at no time shall the construction, operation, repair, maintenance or use of the Use Facilities by Licensee disturb, change, or alter in any manner the existing canals and laterals or the KRD's use and operation of the canals or KRD Property.

3. Cost of Construction, Use and Repair. Licensee, at its sole cost and expense, shall construct, repair, and maintain the Use Facilities. The Use Facilities shall be constructed, repaired, and maintained in such a manner so the Use Facilities or Licensee's use of the Use Facilities will not cause loss or damage to the KRD, its water users or interfere with the KRD's operation of its irrigation water delivery system. All construction, repair, or maintenance of the Use Facilities shall be approved in advance by the KRD and completed under the inspection and subject to the approval of the KRD. Licensee shall perform all work to be done under this Agreement in such a manner so as not to cause loss or damage to the KRD, KRD Property, KRD water users or any third person, or interfere with the operation of the KRD system. As used in this Agreement, the terms "interfere with its operations" or "interfering with its operations" means the interference with or interruption of the flow of water in or the use by KRD or the maintenance by KRD of the KRD canals, laterals and the KRD Property or of the continuous delivery of water by the KRD.

4. Notice to the KRD. Prior to construction, repair, maintenance or redesign of the Use Facilities, Licensee shall give advance written notice of Licensee's intention to perform such work to the KRD and provide the KRD with sufficient information as to the details so the KRD can either approve or deny the proposed work, and have an opportunity to be present when such construction, repair, or maintenance is performed.

5. Indemnification and Hold Harmless. Licensee shall defend, indemnify and hold the KRD harmless from any and all claims, losses, damages, liabilities, obligations, costs or expenses, including reasonable attorney's fees, which result from Licensee's construction, repair, maintenance or use of the Use Facilities or from Licensee's breach of any covenant or obligation created in this agreement or arising under law because of Licensee's use of the Use Facilities.

6. Breach by Licensee. If Licensee fails to perform any duty or obligation required to be performed under this Agreement, the KRD may, at its option, perform said duty or obligation. Licensee shall promptly reimburse the KRD for all expenses KRD incurred in performing the duty or obligation.

7. Assumption of Risk by Licensee. Licensee assumes all risks now known or unknown arising because of Licensee's use of the Use Facilities or from this Agreement, and recognizes that damages or injuries could occur during Licensee's operation, repair, maintenance or use of the KRD property.

8. Insurance. Licensee shall obtain and provide \$1,000,000 of insurance coverage for each event from which liability or claims may arise incident to the construction, repair, maintenance, operation, use or existence of the Crossing Facilities authorized by this Agreement. The insurance shall name the KRD as an additional insured, and Licensee shall provide the KRD with a Certificate of Insurance upon demand by the KRD. In no event shall the limit of insurance limit the Licensee's liability to the KRD.

9. Termination of License. If the KRD finds in the KRD's sole and absolute discretion that removal of the Use Facilities is necessary or desirable for operation of its canal or use of its easement or if this agreement is terminated, Licensee, at its sole cost and expense, shall remove such Use Facilities authorized or constructed because of this agreement upon the KRD's request. If Licensee fails or refuses to remove any such structure or improvement, the KRD may remove the same and charge the expense of removal to Licensee. Nothing in this agreement shall impair the rights of the KRD under this paragraph to terminate or modify the license granted by this agreement.

10. Breach of Agreement. If the Licensee breaches this agreement the KRD may, at its election, terminate this agreement.

11. Modification of the Use Facilities. This grant of license to use the KRD Property described shall be modified at the sole expense of Licensee to the extent required by the KRD for the efficient and/or desirable operation of its canal and water distribution system. If Licensee refuses or fails to modify the Uses Facilities as required by KRD then this License shall terminate.

12. Attorneys' Fees. If any legal action is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover from the other party, reasonable attorneys' fees as determined by the court in addition to the costs allowed by law. The venue for any action brought upon this Agreement shall be in Kittitas County, Washington. This Agreement shall be governed by and construed under the laws of the state of Washington.

13. Successors and Assigns. This License shall be binding upon Licensee, and Licensee's successors and assigns, and shall run with the land described above in Recital B.

14. Recording. The KRD reserves the right to record this License.

KITTITAS RECLAMATION DISTRICT

LICENSEE

By: \_\_\_\_\_  
Its: Chairman

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Its: Secretary-Manager

STATE OF WASHINGTON )  
 ) ss.  
County of Kittitas County )

On this day personally appeared before me \_\_\_\_\_, to me known to be the \_\_\_\_\_ of the KITTITAS RECLAMATION DISTRICT, as the individual who executed the within and foregoing instrument, and acknowledged that he/she was authorized to sign the same as the free and voluntary act and deed, for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_  
My appt. expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
County of Kittitas )

I certify that I know or have satisfactory evidence that \_\_\_\_\_, to me known to be the individual who appeared before me, and said individual acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of \_\_\_\_\_  
My appt. expires: \_\_\_\_\_