



# Kittitas Reclamation District

P.O. Box 276

Ellensburg, WA 98926

Phone: (509) 925-6158 Fax: (509) 925-7425

## CROSSING AND USE POLICY

- A) Applicability and Definitions: This policy is intended by Kittitas Reclamation District (hereinafter referred to as "KRD") to apply to individuals and entities who apply to either cross or use KRD facilities. Individuals and entities who apply to cross or use KRD facilities must also comply with KRD's Bridge Policy. KRD will, as applications for crossing or use of KRD facilities are received, process all applications consistent with this policy.
1. "KRD" means the Kittitas Reclamation District, an irrigation district organized pursuant to Chapter 87.03 RCW.
  2. "KRD Facilities" means real and personal property owned by KRD or real or personal property owned by the United States Bureau of Reclamation but under KRD control and for which KRD has the right and authority to grant third parties the right to use said real or personal property by virtue of an amendatory contract between the United States of America and Kittitas Reclamation District, dated January 20, 1949, and recorded in Book 82 of Deeds, Page 69, under Kittitas County Auditor's File No. 208267, as thereafter amended.
  3. "Crossing License" means a revocable license substantially in the form attached hereto as **Exhibit A**, which authorizes a third party to cross, by vehicle, equipment or foot, KRD Facilities.
  4. "Use License" means a revocable license substantially in the form attached hereto as **Exhibit B**, which authorizes a third party to use KRD Facilities for a specified purpose.
- B) Revocable and Permissive Use: All Crossing Licenses and Use Licenses are revocable by KRD. No right to cross or use KRD Facilities shall ripen into a claim of adverse possession or prescriptive use.
- C) Applicants: All individuals or entities desiring to use or cross KRD Facilities shall apply to KRD. Upon receipt of the application, KRD management shall review and investigate the application. KRD management shall make a recommendation on the application to the KRD Board of Directors.
- D) Criteria and Fees:

1. Process: An application for a Crossing License or Use License must be submitted to KRD. KRD will conduct a preliminary review of the application to determine if the application is complete, whether additional information is needed and whether the criteria set forth in Section 4.2 support the ultimate approval of the application. If KRD concludes, after its preliminary review, that the application should be rejected, then the applicant will be notified. If KRD determines the application should be approved, then the Applicant shall sign the Crossing License or Use License, as the case may be.
2. Criteria: In approving or denying an application:
  - (i) KRD will not approve the Crossing License or Use License unless and until the use by the Applicant is shown to be at the location and in the manner specified as acceptable to KRD, provided that at no time shall the construction, operation, repair, maintenance or use of the Use Facilities by the Applicant disturb, change, or alter in any manner the existing canals and laterals or KRD's use and operation of the canals or KRD Facilities and the Applicant has executed the Crossing License or Use License in the form set forth on Exhibit A or B, as the case may be.
  - (ii) KRD will not approve the Crossing License or Use License unless and until the Applicant, at its sole cost and expense, agrees to construct, repair, and maintain the improvements necessary to accomplish the use of the KRD Facilities.
  - (iii) KRD will not approve the Crossing License or Use License unless and until the Applicant agrees to perform all work to be done as provided for herein in such a manner so as not to cause loss or damage to KRD, the KRD Facilities, KRD water users or any third person, or interfere with the operation of the KRD system. As used herein, 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 Facilities or of the continuous delivery of water by KRD.
3. Fees: Upon application for a Crossing License or Use License, the Applicant shall pay a nonrefundable fee of \$200.00 plus recording fees incurred by KRD to record the Crossing License. The fees for any Crossing License or Use License which involves or seeks permission for the construction, repair or improvement of a Landowner Bridge shall be \$500.00 plus the actual costs of any fees and costs KRD incurs as a result of KRD and or USBR engineers' review of the bridge plans and specifications. The fee reimburses KRD for the expenses incurred in investigating the proposed crossing or use and the cost of preparing the Crossing License or Use License. All fees due KRD shall be paid by the applicant before the issuance the License by KRD.



## CROSSING LICENSE

THIS CROSSING LICENSE (the “Agreement” or “License”) made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, is by and between KITTITAS RECLAMATION DISTRICT, a corporation, (“KRD” or “Licensor”) and \_\_\_\_\_ (“Licensee”) (referred to collectively as the “Parties”).

### I. RECITALS

A. KRD is an irrigation district organized under Chapter 87.03 RCW. 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 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 cross the KRD property as set forth on **Exhibit A**, attached hereto and incorporated by reference, to access or cross property Licensee owns, which is described as:

[INSERT LEGAL DESCRIPTION]

C. KRD is willing to grant a license to Licensee for the crossing, construction, placement, repair and maintenance described in this agreement. Upon the terms and conditions in this Agreement, Licensee is willing to hold 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 Crossing Facility. The use by Licensee shall be at the location and in the manner specified on the attached **Exhibit A** (Crossing Facilities), provided that at no time shall the construction, operation, repair, maintenance or use of the Crossing Facilities by Licensee disturb, change, or alter in any manner the existing canals and laterals or KRD’s use and operation of the canals or KRD Property.

3. Cost of Construction, Repair and Maintenance. Licensee, at its sole cost and expense, shall construct, repair, and maintain the Crossing Facilities. The Crossing Facilities shall be constructed, repaired, and maintained in such a manner so the Crossing Facilities or Licensee’s use of the Crossing Facilities will not cause loss or damage to KRD, its water users or interfere with KRD’s operation of its irrigation water delivery system. All construction, repair, or maintenance of the Crossing Facilities shall be approved in advance by KRD and completed under the inspection and subject to the approval of 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 KRD, the 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 KRD.

4. Notice to KRD. Prior to construction, repair, maintenance or redesign of the Crossing Facilities, Licensee shall give advance written notice of Licensee's intention to perform such work to KRD and provide the KRD with sufficient information as to the details so 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 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 Crossing 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 Crossing Facilities.

6. Breach by Licensee. If Licensee fails to perform any duty or obligation required to be performed under this Agreement, KRD may, at its option, perform said duty or obligation. Licensee shall promptly reimburse 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 Crossing 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 KRD as an additional insured, and Licensee shall provide KRD with a Certificate of Insurance upon demand by KRD. In no event shall the limit of insurance limit the Licensee's liability to KRD.

9. Termination of License. If KRD finds in KRD's sole and absolute discretion that removal of the Crossing Facilities is necessary or desirable for operation of its canal or use of KRD rights-of-way, then KRD may terminate this license by giving the Licensee notice in writing thirty (30) days in advance of said termination. Upon termination, Licensee, at its sole cost and expense, shall remove such Crossing Facilities authorized or constructed because of this agreement upon KRD's request. If Licensee fails or refuses to remove any such structure or improvement, KRD may remove the same and charge the expense of removal to Licensee. Nothing in this agreement shall impair the rights of KRD under this paragraph to terminate or modify the license granted by this agreement.

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

11. Modification of the Crossing Facilities. The terms and conditions of this license and the Crossing Facilities may be modified at the sole expense of Licensee to the extent required by 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. KRD reserves the right to record this License.

KITTITAS RECLAMATION DISTRICT

LICENSEE

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 \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
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 \_\_\_\_\_, 20\_\_.

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



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. 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 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 KRD, its water users or interfere with KRD's operation of its irrigation water delivery system. All construction, repair, or maintenance of the Use Facilities shall be approved in advance by KRD and completed under the inspection and subject to the approval of 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 KRD, the 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 KRD canals, laterals and the KRD Property or of the continuous delivery of water by .

4. Notice to 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 KRD and provide KRD with sufficient information as to the details so 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 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, KRD may, at its option, perform said duty or obligation. Licensee shall promptly reimburse 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 KRD as an additional insured, and Licensee shall provide KRD with a Certificate of Insurance upon demand by KRD. In no event shall the limit of insurance limit the Licensee's liability to KRD.

9. Termination of License. If KRD finds in KRD's sole and absolute discretion that removal of the Use Facilities is necessary or desirable for operation of its canal or use of KRD rights-of-way, then KRD may terminate

this license by giving the Licensee notice in writing thirty (30) days in advance of said termination. Upon termination, Licensee, at its sole cost and expense, shall remove such Use Facilities authorized or constructed because of this agreement upon KRD's request. If Licensee fails or refuses to remove any such structure or improvement, KRD may remove the same and charge the expense of removal to Licensee. Nothing in this agreement shall impair the rights of KRD under this paragraph to terminate or modify the license granted by this agreement.

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

11. Modification of the Use Facilities. The terms and conditions of this license and the Crossing Facilities may be modified at the sole expense of Licensee to the extent required by 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.

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KITTITAS RECLAMATION DISTRICT

LICENSEE

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 \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
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 \_\_\_\_\_, 20\_\_.

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