



Kittitas Reclamation District

P.O. Box 276

Ellensburg, WA 98926

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

FACILITY MODIFICATION POLICY

Section 1. General.

This policy is intended by the Kittitas Reclamation District (hereinafter referred to as “KRD”) to apply to individuals and entities who apply to make Modifications to existing KRD facilities.

Modification includes, but are not limited to, the addition and/or improvements to trash racks, flow meters, measuring devices, bubblers, weirs, pumps, siphons, etc...

KRD will, as applications for modifying facilities are received, process all applications consistent with this policy.

Section 2. Definitions.

The terms used in this policy shall have the following definitions:

“Facility Modification License” means a revocable license substantially in the form attached hereto as **Exhibit A**, which authorizes a third party to make approved modifications to existing KRD Facilities.

“Irrigable Acreage” means the classification assigned by the United States Bureau of Reclamation (“USBR”) to acreage, which is based on soil type. Only acres classified as Classification 1, 2, and 3 are entitled to receive irrigation water from KRD.

“Modification” means the act of changing (altering, adding or subtracting) something from exiting KRD Facilities.

“KRD” means Kittitas Reclamation District, an irrigation district organized pursuant to Chapter 87.03 RCW.

“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.

"Landowner" means the owner of Irrigable Acreage according to the Kittitas County Assessor's office.

"Landowner Facilities" means any modification or improvement made, with the permission of the KRD, to the existing KRD Diversion to improve the landowner's ability to receive their water allotment and includes the requirements that the installation, repair, maintenance and operation is the sole responsibility of the landowner.

Section 3. Revocable and Permissive Use.

All Facility Modification Licenses are revocable by KRD. No right to modify KRD Facilities shall ripen into ownership through a claim of adverse possession or prescriptive use.

Section 4. Applicants.

All individuals or entities desiring to modify existing 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. The Board of Directors has the ability to approve or deny an application for any reason.

Section 5. Criteria and Fees.

5.1 Process. An application for Modification of existing facilities 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 5.2 support the ultimate approval of the application. If KRD concludes, after the preliminary review, the application should be rejected the applicant will be notified. If KRD determines the application should be approved then the Applicant shall sign the Facility Modification License, as the case may be.

5.2 Criteria. In approving or denying an application:

5.2.1 KRD will not approve the Facility Modification 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 modified 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 the KRD Facilities and the Applicant has executed the Facility Modification License in the form set forth on **Exhibit A**.

5.2.2 KRD will not approve the Facility Modification License unless and until the Applicant, at its sole cost and expense, agrees to construct, repair, and maintain the modifications

necessary to accomplish the use of the KRD Facilities. The Facility Modification License will not be approved unless the following conditions following modification of the facilities is agreed upon:

- a. Landowners cannot deviate or modify from the approved design.
- b. Design and installation of the modification must be completed by qualified contractor or other KRD approved personnel.
- c. Any approved improvement added to an existing KRD Diversion will not be maintained or operated by the KRD including the Landowner's private weed screens, flow meters, pumps and siphons. Private weed screens, flow meters, pumps and siphons will be maintained by the landowner issued the licenses, including any heirs, assigns and successors and are designated as Landowner Facilities.
- d. KRD reserves the right to have KRD engineers and/or personnel review any plans to construct, maintain, repair, or replace a diversion and/or a modification to an existing diversion. No construction, repair, maintenance, or replacement of a diversion may occur without the landowner(s) and/or the individual(s) who have a written right recognized by KRD to use the diversion obtaining the permission of KRD in advance of the construction, repair, maintenance, or replacement of the diversion.
- e. KRD has the right to inspect Landowner Facilities within the KRD canals and/or lateral system. If in the sole judgement of KRD and/or USBR, the extension/modification requires repair, maintenance, and/or replacement, the Landowner(s) and/or the individual(s) who have a written right recognized by KRD to use the diversion facility are responsible for the cost of the repair, maintenance, and/or replacement of the modified diversion. In the event the Landowner refuses and/or fails to maintain, repair, or replace the Landowner Facilities, then KRD may revoke the permission to utilize the Landowner Facilities on the KRD right-of-way and require the landowner to remove the Landowner Facilities. If the Landowner refuses and/or fails to remove the designated Landowner

5.2.3 KRD will not approve the Facility Modification 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.

5.3 Fees. Upon application for a Facility Modification License, the Applicant shall pay a nonrefundable fee of \$200.00 plus recording fees incurred by KRD to record the Facility

Modification License, plus the actual costs of any fees and costs KRD incurs as a result of KRD engineers' review of the Turnout plans and specifications. The fee reimburses KRD for the expenses incurred in investigating the proposed location or use and the cost of preparing the Facility Modification License. All fees due KRD shall be paid by the Applicant before the issuance the License by KRD.

Section 6. Insurance.

KRD, in KRD's sole and absolute discretion, may require the Applicant to provide insurance that names KRD as an additional insured. Whether to require insurance and if so required, in what amounts, shall be made by KRD on a case-by-case basis in the sole discretion of KRD.

Section 7. Hold Harmless and Indemnification.

The Applicant and any property owner benefited by the Facility Modification License created (hereinafter referred to as "Indemnitor") shall defend, indemnify and hold KRD (hereinafter referred to as "Indemnitee") harmless from any and all damages, claims and causes of action which may accrue to or be suffered by any Indemnitee by reason of, arising out of, or resulting from the use by the Indemnitor of the Facility Modification License or the use by the Indemnitor's employees, agents, lessees, licensees, invitees, and guests.

Section 8. Recording.

The KRD may, in its sole discretion, require the License to be recorded. In the event the KRD requires the license to be recorded, then the Applicant shall reimburse the KRD for the costs of recording.

EXHIBIT A

FACILITY MODIFICATION LICENSE

THIS FACILITY MODIFIUCATION 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 make a modification (diversion) on the existing KRD facilities as set forth on **Exhibit A**, attached hereto and incorporated by reference, to improve access to their designated water right for property they legal own, which is described as:

[INSERT LEGAL DESCRIPTION]

C. KRD is willing to grant a license to Licensee for the 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 Facility Modification. The use by Licensee shall be at the location and in the manner specified on the attached **Exhibit A**, provided that at no time shall the construction, operation, repair, maintenance or use of the Modification 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 Modification. The Modification of the facility shall be constructed, repaired, and maintained in such a manner so the modification or Licensee's use of the modification 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 Modification 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. KRD shall have the right to inspect the facility modification to ensure that it is working properly. All long-term maintenance and repair costs shall be the responsibility of the Grantee. Upon notification to the Grantee, Grantor shall have the right to conduct repairs and bill the Grantee.

4. Notice to the KRD. Prior to construction, repair, maintenance or redesign of the facility Modification, 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 Modified facility 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 modified facility.

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 Modified facility 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. KRD reserves the right to require insurance for the Modified Facility at our sole and absolute discretion. As such if requested, the 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 Modified Facility 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 Modified Facility 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 Modification 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 Existing Facilities. The terms and conditions of this license and the Facility Modification 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.

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: _____