

GENERAL CONSTRUCTION AGREEMENT FOR CANAL REPLACEMENT

THIS AGREEMENT dated this ____ day of _____, 2004, between

SWALLEY IRRIGATION DISTRICT,

hereinafter referred to as "Swalley," located at 64672 Cook Avenue, Suite One, Bend, Oregon 97701, voice:(541) 388-0658, fax:(541) 389-0433 and

XYZ Company,

hereinafter referred to as "Developer". The development covered by this agreement is known as **XYZ Shopping Center**.

WHEREAS, the developer wishes to replace the open portion of the _____ Canal, an existing delivery structure providing water delivery to Swalley Irrigation District water users, with a buried pipeline constructed and realigned through the property, _____
_____(legal description);

FURTHER, the developer must provide a recorded easement for the placement of this pipeline through the developer's property to protect access to the irrigation system;

WHEREAS, Swalley agrees to allow developer to make change based on approved agreements, developer shall submit an engineered drawing of the alignment and provide the engineering specifications as Exhibit B to this agreement. Construction of the pipeline shall be to Swalley's pipeline specifications as provided to the developer.

Now, therefore, in consideration of the covenants and conditions set forth herein,

THE PARTIES AGREE AS FOLLOWS:

Swalley approves the installation requested by the developer and affirmed by the exhibit.

The developer agrees to notify Swalley at such time as construction shall commence. At such time as the canal relocation has been completed, but the pipe has not yet been buried, Swalley hereby reserves the right to inspect the pipeline installation and require developer to make such changes as it shall deem necessary to ensure that the construction has been in accordance with the attached plans and specifications. After completion of all work, Swalley is to be notified to review final project completion and to assure that the interconnection between the installation and Swalley's existing infrastructure will adequately provide for water delivery.

Developer agrees not to install or build any permanent structures on, over, and across the pipeline that could damage the pipeline.

Developer agrees not to interfere with the ability of Swalley to deliver irrigation water as a result of the construction described above.

Developer acknowledges that Swalley's normal irrigation season is from April 1st to and through October 31st. Further, that Swalley makes winter runs during the remainder of the year that last approximately 4 days and occur approximately every 6 weeks, weather permitting.

In the event any suit or action is brought to collect any of said costs or to enforce any

provision of this agreement, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees to be allowed the prevailing party in such suit or action and in the event of any appeal in such suit or action, the losing party agrees to pay such further sum as the appellate court shall adjudge reasonable as the prevailing party's attorney's fees.

Developer acknowledges that the subdivision review fee of \$1,000 will be paid to Swalley Irrigation District for review of specifications, inspections and staff assistance.

This instrument shall bind and inure to the benefit of, as the circumstances may be, not only the immediate parties hereto but their respective executors, administrators, successors in interest and assigns as well.

It is understood that either party hereto may be more than one individual or a corporation; therefore, the parties hereto agree that if the context and the circumstances so require, the singular as used herein shall mean and include the plural, the masculine pronoun shall mean and include the feminine and the neuter and that generally all grammatical changes shall be assumed, made or implied so that the provisions of this agreement shall apply equally to individuals and to corporations.

For Swalley:

For Developer:

Janet L. Lee
Manager

Swalley Irrigation District

State of Oregon,
County of Deschutes

Personally appeared Janet L. Lee, Manager and acknowledged the foregoing instrument to be his voluntary act and deed.

Dated _____

Before me: _____

My commission expires: _____

Developer:

State of _____
County of _____

Personally appeared the named _____ representing the
Developer and acknowledged the foregoing instrument to be _____ voluntary act and deed.

Dated _____ Before me: _____

My commission expires: _____