

**GENERAL CONSTRUCTION AGREEMENT FOR CANAL CROSSING**

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, (541) 388-0658, fax:(541) 389-0433 and

**XYZ COMPANY**

hereinafter referred to as "Landowner", located at \_\_\_\_\_, Bend, Oregon 97701, (541) \_\_\_\_\_, fax (541) \_\_\_\_\_.

WHEREAS, Swalley has an easement or right of way on, over, and across land owned by the landowner upon which is located Swalley's Main Canal for the delivery of irrigation water, and

WHEREAS, Landowner desires to cross the Canal with vehicles by installing a bridge over the canal to be properly installed to allow for vehicle crossing, and

WHEREAS, Swalley has agreed to allow Landowner to make such change upon submittal and approval of engineering documentation submitted to Swalley,

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

**THE PARTIES AGREE AS FOLLOWS:**

1. Swalley hereby gives permission to Landowner to make the alterations to cross the Main Canal in accordance with the plans and specifications attached hereto as Exhibit "A".

2. The Landowner agrees to notify Swalley at such time as construction shall commence. At such time as the work has been completed, Swalley hereby reserves the right to inspect the installation and require such changes as it shall deem necessary to ensure that the construction has been in accordance with the plans and specifications provided by the Landowner so that Swalley can provide for adequate water delivery and protection of its delivery system.

3. Landowner agrees that the construction shall remain the responsibility of the Landowner. Any major repairs or replacement necessary in the construction shall remain the full responsibility of Landowner. Landowner further agrees to pay any and all cost associated with the construction.

4. Landowner agrees not to install or build any permanent structures on, over, and across the irrigation canal or Swalley canal easement as located without Swalley approval.

5. Landowner agrees to indemnify and hold Swalley harmless for any and all claims or damages arising out of the construction necessary or operation of the canal after completion.

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

7. Landowner 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 5 days and occur approximately every 4 to 6 weeks, weather permitting.

8. 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. 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.

9. In the case of a bridge installation, the Landowner will immediately remedy any leakage around the exterior of the structure. This includes any type of channelization or erosion that would not have existed before the bridge was installed. The Landowner shall install wingwalls at the beginning and end of the culvert or bridge section unless Swalley exempts that requirement for less than permanent structures. The wingwalls shall conform to Swalley's specifications unless otherwise agreed upon with Swalley's Manager. Landowner assumes permanent responsibility for the maintenance of the structure and the quality and quantity of riprap, concrete, or other material necessary for the protection of the surrounding banks and bridge integrity. In the event that the bridge fails in any way to adequately carry the full flow amount of water, the bridge will be replaced by the Landowner, or removed, under the direction of the District.

10. 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:

Landowner:

\_\_\_\_\_

Manager

As notarized on the following page:

Swalley Irrigation District

State of Oregon,  
County of Deschutes

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

Dated \_\_\_\_\_ Before me: \_\_\_\_\_

My commission expires: \_\_\_\_\_

Landowner:

State of Oregon  
County of Deschutes

Personally appeared the named \_\_\_\_\_ representing \_\_\_\_\_  
\_\_\_\_\_ and acknowledged the foregoing instrument to be \_\_\_\_\_ voluntary act and deed.

Dated \_\_\_\_\_ Before me: \_\_\_\_\_

My commission expires: \_\_\_\_\_

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