

CROSSING AGREEMENT

THIS **CROSSING AGREEMENT** ("Agreement") is made and entered into this ____ day of _____, 20__, by and between _____ Ditch Company, whose address _____, ("Ditch Company"), and [NAME], whose address is [ADDRESS], ("Grantee").

RECITALS:

WHEREAS, Ditch Company is the owner of that certain irrigation ditch system known as the _____, hereinafter the "Ditch", located in _____ County, Colorado; and

WHEREAS, Grantee desires to construct and maintain a [DESCRIBE PIPELINE, CABLE, BRIDGE OR OTHER STRUCTURE] [OVER] [UNDER] the ditch in Section --, Township --North, Range -- West of the 6th P.M. (at the locations and in the manner as shown and more particularly described on the construction plans and survey attached hereto as **Exhibit "A"**, and by this reference made a part hereof (the "Improvements"); and

WHEREAS, _____ Ditch Company is willing to grant the crossing desired by Grantee pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements of Grantee to be performed hereunder and upon the conditions and for the period herein stated, Ditch Company does grant to Grantee, its successors and assigns, a license to construct, install, lay, maintain, alter, repair, operate, remove, and replace the Improvements.

1. **Incorporation of Recitals**. The Recitals above are incorporated herein as if set forth below.
2. **Benefit**. This Agreement and the Improvements shall be for the use and benefit of the Grantee, and its respective successors and assigns.
3. **Permitted Uses**. The following terms and conditions shall apply to Grantee's construction, installation, maintenance, alteration, repair, operation, inspection, removal, and replacement of the Improvements (the "Permitted Uses"):
 - A. **Installation**. The pipeline crossing of the referenced ditch will be accomplished using Horizontal Directional Drilling (HDD) techniques as outlined in Exhibit A, with a minimum of 10 feet between the top of the bore pipe and the ditch bottom.
 - B. **Crossing Area**. All of the Permitted Uses provided for in this Agreement must occur within the area described in Exhibit A (the "Crossing Area").

- C. Access. Subject to all provisions of this Agreement, Grantee shall have the right to access the Improvements as necessary for the Permitted Uses. If Grantee requires access to lands not owned by Ditch or for which Ditch does not have a legal interest in, Grantee shall be responsible for obtaining the rights for such access at Grantee's sole cost and expense.
- D. Changes or Additions. Grantee shall seek Board approval for any increase in the number, size, type or location of the Improvements under the Crossing Area and, if required by the Board, shall remit to Ditch all fees associated with such change in accordance with Ditches' established schedule of crossing fees.
- E. Timing of Construction. Grantee further agrees that the construction of the Improvements shall proceed expeditiously and with reasonable diligence. Grantee agrees that the construction of the Improvements shall commence no sooner than **[DATE]** _____ and be completed no later than **[DATE]** _____. Grantee further agrees that construction shall not interrupt the delivery of water in or through the Ditch, whether such water is being delivered for irrigation, augmentation, recharge, or other uses. Grantee shall notify Ditch at least forty-eight (48) hours prior to commencement of construction of the Improvements or the replacement, reconstruction, maintenance, or repair of the Improvements permitted by this Agreement. If construction is not completed in the construction period detailed herein, this Agreement shall terminate, unless the Ditch Board provides written approval to Grantee allowing for an additional construction period after the construction period set forth here.
- F. Compliance with Applicable Law. Grantee agrees that the Improvements shall be installed and operated in compliance with all applicable local, state and federal laws, rules, orders, or regulations. Grantee is responsible, at its sole expense, for obtaining all required local, state and federal permits or approvals required prior to commencing any of the permitted uses or other activities provided for in this Agreement.

4. **Board Approval**. Grantee agrees not to commence construction or repair of the Improvements without first having obtained the consent and approval of the Board of Directors of Ditch ("Board"). Grantee acknowledges that, consistent with Ditches' Policy Regarding Crossing Agreements, the Board will not approve the Improvements until such time as Grantee has paid all administrative, legal, and

engineering expenses associated with the Board's review and approval of the proposed crossing, including this Agreement and the attachments hereto.

5. **Ditch Company Rights.** It is understood that this Agreement shall grant to Grantee only such rights as Ditch may grant.
6. **Damage.** In exercising the Permitted Uses of the Improvements, Grantee shall do so in such a manner as not to damage the Ditch or the embankments thereof so as not to interfere with the flow of water in the Ditch. At the expense of Grantee and to the satisfaction of Ditch, any and all excavations made shall be immediately leveled off, any and all excavations which bore under the ditch shall be performed consistent with industry standards and promptly lined with a bentonite slurry material and any damage to the ditch, embankments, fences, roads or other improvements shall be promptly repaired. Grantee shall ensure that exercising and performing the Permitted Uses of the Improvements does not increase seepage from the Ditch. Without limiting the damages or remedies available under other provisions of this Agreement to Ditch or its stockholders or the liability of Grantee under this Agreement, if seepage occurs or flow of water in the ditch is otherwise impaired due to Grantee's activities hereunder, Grantee shall make such repairs as are necessary to stop it, including, without limitation, installation of bentonite slurry lining material. Grantee agrees that it will not prevent, impede or restrict Ditch vehicular access to the Ditch. If deliveries cannot be made to any number of stockholders for more than twenty-four (24) consecutive hours, the parties agree that Grantee shall pay Ditch \$25,000 per day for each day that deliveries to all or any number of stockholders cannot be made, as a non-refundable penalty and approximation of partial liquidated damages hereunder, which payment Grantee shall make within ten (10) days of notice from Ditch that deliveries could not be made to any number of stockholders. Ditch does not, by agreeing to accept the \$25,000 per day penalty payment, waive any claim or right to seek additional damages. Nothing in this agreement shall be interpreted to prohibit or prevent Ditch from seeking additional damages, should such damages exceed \$25,000 per day.
7. **Maintenance.** Grantee agrees that it will at all times maintain the Improvements and repair all breaks, leaks and damages therein and thereto at its own expense and further that, if, by reason of any break, leak or damage in and to the Improvements, injury to the properties of Ditch is sustained, then Grantee will, with all due diligence, repair and replace such property of Ditch in the same condition as the same was in prior to such break, leak or damage in and to the said Improvements and will pay for any and all damages resulting from such break,

leak or damage sustained or incurred by Ditch or its stockholders or water users, including, but not limited to crop losses sustained by Ditch stockholders.

Grantee further agrees that, if at any time the Improvements cause any settling in the Ditch embankments, the roads thereon, or any part of the Ditch, it will, upon notification from Ditch, immediately make all repairs required by Ditch at Grantee's expense.

Grantee further agrees to indemnify and hold harmless Ditch, its successors, assigns, employees, agents and stockholders on account of any damage or loss sustained by them or any of them arising by reason of laying, construction, maintenance or removal of the Improvements.

8. **Future Ditch Improvements**. If, in the future, Ditch should desire to enlarge, deepen or otherwise change or relocate the Ditch or to construct any other canal, ditch or waterway on the Ditch or to do any other thing incident to the operation of the Ditch or any other portion of the irrigation system of Ditch, then Grantee agrees, at Grantee's expense, with all due diligence, to change, relay and reconstruct the Improvements as to comply with such plans and specifications as Ditch may prescribe as being necessary to permit the proper maintenance and operation of Ditch irrigation system.
9. **Maintenance and Proof of Insurance**. Grantee shall purchase, maintain and require its contractors to purchase and maintain such insurance as shall protect Grantee and Ditch from claims which may in any way arise out of or be in any manner connected with Grantee's performance of this Agreement, whether such claims arise out of the act or failure to act of the Grantee or of the direct or indirect agent, delegee, appointee, or employee of Grantee. Grantee shall also require its contractors to carry insurance in amount customarily carried by prudent contractors, and to carry workers' compensation insurance for its employees in statutory limits. All such insurance policies shall be endorsed to show that the insurers waive subrogation against Ditch, its directors, officers, employee and stockholders. Except for workers' compensation, automobile and professional liability insurance policies, all insurance policies shall identify Ditch as an additional insured. Certificates of Insurances acceptable to Ditch shall be submitted to Ditch no less than three (3) business days before Grantee commences construction and installation during the period prescribed in paragraph 3.E herein above. The certificates of insurance shall contain a provision that coverage afforded under the policies shall not be canceled or modified unless and until thirty (30) days prior written notice has been given to Ditch. Notwithstanding the foregoing sentence, Grantee has a continuing obligation to provide the insurance coverage described herein and none of the insurance required herein shall be canceled, changed or allowed to lapse. In the event that Grantee's coverage afforded under the policies is canceled, modified or allowed to lapse, Grantee shall promptly cease the exercise or performance of any

Permitted Uses until such time as Grantee provides Ditch with certificates of insurance acceptable to Ditch. Insurance specified herein shall be minimum requirements and Grantee is responsible for providing any additional insurance deemed necessary to protect Grantee's interests from other hazards or claims in excess of the minimum coverage. The liability of Grantee is not limited to available insurance coverage.

10. **Indemnification**. Grantee agrees to protect Ditch and hold it harmless from any and all third party claims and damages that the Improvements and the related construction, installation, operation, maintenance, repair, removal, replacement, alteration, re-installation and reconstruction may directly or indirectly cause; and Grantee hereby releases Ditch, its successors, assigns, employees, agents and stockholders from any and all claims and damages of whatsoever character to said Improvements or other property of Grantee located in, along or across said ditch arising out of either the operation, inspection, maintenance, repair, removal, replacement, alteration, re-installation and reconstruction of said ditch or other portions of Ditch irrigation system or resulting from any other act either on the part of Ditch or on the part of any third party provided however that such defense and release shall not apply to any claims, damages, or liabilities arising from negligence, gross negligence, or willful misconduct of Ditch.
11. **Term**. The rights granted herein to Grantee are perpetual, provided Grantee, its successors and assigns, continue to faithfully and promptly comply with the provisions herein stated.
12. **Fees**. Grantee has paid Ditch a crossing fee of \$_____ at or before the execution of this Agreement. In addition, Grantee has paid all of the Company's legal and engineering expenses associated with review, approval, and implementation of this Agreement to date, totaling \$_____. If Ditch incurs additional expenses related to changes in construction, operation, maintenance or replacement of the Improvements, Grantee agrees to pay such expenses within 30 days of Ditch request.
13. **Breach and Cure**. Should Ditch or Grantee breach any term or condition of this Agreement, the breaching party shall have ten (10) days from receipt of written notice of the breach from the non-breaching party in which to cure the breach. If the breaching party fails to cure the breach within said cure period, the breaching party will then be in default under this Agreement. In the event Grantee breaches and fails to cure within ten (10) days, Ditch may cancel this Agreement in its entirety, in addition to seeking other available remedies, and Grantee and its successors or assigns shall pay to Ditch all of Ditch costs and expenses, including Ditch actual attorney and engineering fees and costs caused by or resulting from such breach.

14. **Waivers.** No provision contained in this Agreement shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur. A provision contained in this Agreement may only be waived by a written instrument signed by the party waiving such provision.
15. **No Third Party Beneficiaries.** This Agreement is not intended to benefit any other parties other than the parties to the Agreement.
16. **Assignment.** This Agreement may not be assigned or transferred by Grantee without the prior written consent of Ditch, which consent shall not be unreasonably withheld.
17. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, exclusive of the principles of conflicts of law. The County and District Courts of County, Colorado shall have the sole and exclusive jurisdiction and venue to decide any and all disputes arising out of this Agreement. The parties to this Agreement hereby irrevocably submit to the *in personam* jurisdiction and process of said Courts, and waive their rights to a trial by jury.
18. **Remedies Cumulative.** All rights, remedies, and recourses afforded by reason of this Agreement, or otherwise, are separate and cumulative and may be pursued separately, successively, or concurrently, as occasion therefore shall occur, and are nonexclusive and shall in no way limit or prejudice any other legal or equitable right, remedy, or recourse that is available. No single or partial exercise of any right or remedy shall preclude further exercise thereof or the exercise of any other right or remedy.
19. **Notices.** All notices, requests, demands, or other communications called for or contemplated under this Agreement to be given to a party shall be in writing and shall be deemed to have been duly given when personally delivered or, if mailed, three (3) business days after the date of mailing, by Certified Mail, United States First Class Mail, proper postage fully prepaid, addressed to such party at the address listed in the introductory paragraph of this Agreement, or at such other address as such party may subsequently designate to the other parties by written notice in accordance with the terms and conditions of this section.
20. **Severability.** If any provision of this Agreement or portion thereof shall be found by any court having competent jurisdiction over this Agreement and the parties to be invalid, unlawful, or unenforceable, this Agreement shall nevertheless remain effective, but shall be considered amended to the extent considered by said court to be reasonably necessary to render said provision or portion hereof valid, lawful, and enforceable, and shall be fully enforceable as so amended. The parties do hereby expressly authorize any court of competent jurisdiction to modify any such

provision or portion thereof in order that any such provision or portion thereof may be enforced by such court to the fullest extent permitted by applicable law.

21. **Captions.** The captions and headings in this Agreement are for the sole purpose of convenient reference and in no way define, limit, or prescribe the scope or intent of this Agreement or any part hereof, and such captions and headings shall not be considered in interpreting or construing this Agreement.
22. **Time of the Essence.** Time is of the essence in this Agreement. If any duty or obligation under this Agreement is not timely performed or waived as herein provided, such action shall constitute a default and breach under this Agreement.
23. **Numbers and Genders.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, and the plural shall include the singular, and the use of any gender shall include all genders.
24. **Entire Agreement.** This agreement is intended to represent the entire agreement of the parties. Any revision or amendment must be in writing to be valid.
25. **Enforcement.** In the event of a dispute regarding this Agreement, the prevailing party shall be entitled to an award of attorney fees.
26. **Binding.** It is mutually understood and agreed that this Agreement and all the terms and conditions hereof shall extend to and be binding upon the parties hereto, their successors and assigns, and shall be recorded in the office of the Weld County Clerk and Recorder at Grantee's expense with a copy of the recorded agreement returned to Grantor at the address prescribed in paragraph 19 hereof.
27. **Counterparts and Electronic Delivery.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile, email or other electronic means, and, upon receipt, shall be deemed originals and binding upon the signatories hereto and shall have the full force and effect of the original for all purposes including the rules of evidence.
28. **Authorized Signatories.** The undersigned representative of Grantee certifies that he is authorized to enter into this Agreement and to legally bind Grantee to the terms and conditions of this Agreement. Ditch undersigned representative certifies that he is also authorized to enter into this Agreement and to legally bind Ditch to the terms and conditions of this Agreement.

Executed the day and year first written above.

DITCH COMPANY

ATTEST:

Secretary

By _____
[PRESIDENT], President

[GRANTEE]

ATTEST:

_____ By _____

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____,
20--, by [PRESIDENT] as President of the Ditch Company.

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ as
_____ of [GRANTEE].

WITNESS my hand and official seal.

My Commission Expires: _____

Notary Public

Ditch Company

Ditch Crossing Fee Example

Under the ditch by bore (Minimum 10 feet below the bottom of the ditch, contingent upon soil conditions and engineering recommendations)	
Diameter pipe	Cost (\$1,000 per dia. inch)
2" or less	\$2,000.00
4"	\$4,000.00
6"	\$6,000.00
8"	\$8,000.00
10"	\$10,000.00
12"	\$12,000.00
14"	\$14,000.00
16"	\$16,000.00
18"	\$18,000.00
20"	\$20,000.00
22"	\$22,000.00
24" and above	As determined by Board

**Note: Applicant assumes all legal and engineering expense.*

Crossings under the ditch by means other than by bore by Board approval only

Bridges, walkways, and other crossings over the ditch by Board approval only.