

WHEN RECORDED, RETURN TO:

Beaver and Shingle Creek Irrigation Company  
P.O. Box 685  
395 S. 300 E.  
Kamas, Utah 84036  
435-640-5878

**CANAL CROSSING LICENSE AGREEMENT  
(General Form)**

**THIS CANAL CROSSING LICENSE AGREEMENT** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between **BEAVER & SHINGLE CREEK IRRIGATION COMPANY**, a non-profit mutual water company organized and existing under the laws of the State of Utah (Company), and \_\_\_\_\_ of \_\_\_\_\_ (Licensee). Company and Licensee are sometimes referred to herein individually as a Party or collectively as the Parties.

**RECITALS**

WHEREAS, Licensee is developing its property or constructing other improvements and/or utilities to service Licensee's development; and

WHEREAS, in the course of developing Licensee's property and/or constructing and installing the \_\_\_\_\_, Licensee must cross under or over and through Company's irrigation canal (the Canal). The legal description of the crossing area and a plan and profile drawing of the crossing are set forth in EXHIBIT A attached hereto and incorporated by reference herein (the A Crossing Area).

WHEREAS, Company is willing to grant a license and authorize and give its consent to the construction, installation, ownership, operation, maintenance, repair and replacement of the \_\_\_\_\_ by Licensee under and through the Canal within the Crossing Area, subject to and in conformance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the terms and conditions contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **AUTHORIZATION.** Company hereby grants to Licensee, and its agents, representatives and contractors, a license to excavate the Canal and construct and install the \_\_\_\_\_, and to thereafter own, operate, maintain, repair and replace the \_\_\_\_\_, under or over the Canal within the Crossing Area, and grants to Licensee and its agents, representatives and

contractors a license for access to the \_\_\_\_\_, including without limitation ingress and egress to and from Company's land and right-of-way within the Crossing Area, for the purpose of constructing, installing, owning, operating, maintaining, repairing and replacing the \_\_\_\_\_. This license, authorization and consent are given subject to the terms and provisions of this Agreement.

2. CONSTRUCTION AND USE REQUIREMENTS. The \_\_\_\_\_ shall be constructed and used in conformance with the following requirements:

(a) The construction and installation of the \_\_\_\_\_ shall only be authorized within the Crossing Area and according to the plan and profile approved by Company as described in Exhibit A herein.

(b) Licensee shall fully repair and rebuild the banks of the Canal and restore the Crossing Area to the same condition that existed prior to any such construction or service activity.

(c) The \_\_\_\_\_ shall be constructed by Licensee, and thereafter be owned, operated, maintained, inspected, protected, repaired, removed and replaced by Licensee, at its sole cost and expense, and without any cost, expense or obligation whatsoever on the part of Company.

(d) Licensee shall diligently construct the \_\_\_\_\_ with due care, and in accordance with sound design, engineering and construction practices customary for such improvements, and shall at all times thereafter own, operate, maintain, inspect, protect, repair, remove and replace the \_\_\_\_\_ in such a manner as will not interrupt, interfere with or otherwise impair, in any way, Company's constant, continuous and uninterrupted use of the Canal in providing irrigation water to its shareholders and/or its ability to operate, maintain, inspect, protect, repair and replace the Canal.

(e) Licensee hereby warrants that all work performed or to be performed on the Canal in connection with any construction, service or other activity performed by Licensee within the Crossing Area, including, without limitation, restoration of the Canal and Crossing Area, shall be of good quality, free from faults and defects. Licensee further guarantees that the Canal shall be free of any leaks or other damage caused by or otherwise attributable to any such construction, service or other activity by Licensee. All work which does not reasonably conform to these standards may be considered by Company to be defective.

(f) If at any time following completion of any construction, service or other activity associated with the \_\_\_\_\_, any of the work performed on the Canal is found by Company to be defective, Licensee shall, at its sole cost and expense, correct all such defective work promptly after receipt of written notice from Company to do so. If Licensee fails to correct such defective work within the time frame prescribed by Company in said notice, Company may perform the work and Licensee shall reimburse Company, as billed, for all costs and expenses reasonably incurred by Company in performing such corrective work on the Canal.

(g) Licensee shall give Company not less than fifteen (15) days prior written notice of any initial construction activity and, except in the case of an emergency, Licensee shall give Company not less than five (5) business days prior written notice of any subsequent construction or service activities to be performed by Licensee on the \_\_\_\_\_ within the Crossing Area. In

the event of an emergency, Licensee will give Company as much prior notice as is reasonably possible under the circumstances.

(h) No trash, waste, or other offensive material, soil or landfill will be placed or left within the Crossing Area by Licensee without Company's prior written consent.

(i) Upon completion of the initial construction, Licensee shall set a permanent marker on either side of the Canal, within the Crossing Area, marking the location of the \_\_\_\_\_, and provide a complete set of as built drawings of the \_\_\_\_\_ to Company.

(j) In the course of initial construction of the \_\_\_\_\_ or in connection with any subsequent construction or service activity associated with the \_\_\_\_\_ within the Crossing Area, Licensee covenants that it shall not use, employ, deposit, store, dispose of, place or otherwise allow to come in or on the Crossing Area any hazardous substance, hazardous waste, pollutant or contaminant, including, but not limited to, those defined in or pursuant to 42 U.S.C. ' 9601, et seq.

(k) Licensee shall not do any work within the Crossing Area that will result in any changes in the general topography of the land situated within the Crossing Area, including, but not limited to, changes resulting from excavation, dredging, movement or removal of soil, without Company's prior written consent. Licensee shall obtain any required state and/or federal permit(s) for performing construction activities in Waters of the State of Utah or the United States and shall comply with all local, state and federal laws, ordinances, rules and regulations.

(l) Except for the \_\_\_\_\_, no other man-made structure or facility shall be authorized to be placed in or on the Crossing Area without Company's prior written consent.

(m) Licensee agrees, with respect to the initial construction of the, and any subsequent construction, service or other activity by Licensee on the, that if Company or any of its shareholders, or any party to whom Company is contractually obligated to provide water, suffers financial loss because water is not delivered to them, and such financial loss results from or otherwise arises out of Licensee's ownership, operation, maintenance, inspection, protection, repair, removal or replacement of the \_\_\_\_\_ within the Crossing Area, then and in such event, Licensee shall pay all verifiable financial losses actually suffered by any shareholder or Party as a result thereof.

(n) No supervision or advisory control, if any, exercised by Company on its behalf hereunder, shall relieve Licensee of any duty or responsibility which it has to the general public with regard to the initial construction of the \_\_\_\_\_ by Licensee, nor relieve it of any duty or responsibility which it has to the general public with regard to its subsequent ownership, operation, maintenance, inspection, protection, repair, removal and replacement of the \_\_\_\_\_.

3. RESERVATION OF RIGHTS. Nothing herein shall be construed to change, qualify, restrict or limit, in any way, Company's title to or interest in the Canal or Company's right to own, operate, maintain, repair and replace the Canal, or to use the Canal, or the fee or easement lands owned

by Company associated with the Canal, within the Crossing Area, for any and all purposes as Company, in its sole discretion, sees fit.

4. CANAL CROSSING FEE. As consideration for Company's consent and authorization to cross under or over the Canal or to construct improvements or utilities adjacent to the Canal within the Canal right of way, as set forth herein, Licensee shall pay to Company a one-time, canal crossing fee in the amount of \$\_\_\_\_\_.

5. REIMBURSEMENT OF COSTS AND EXPENSES. In addition to the crossing fee required to be paid pursuant to Paragraph 4 above, Licensee shall promptly reimburse Company for any and all costs and expenses reasonably incurred by Company in connection with or arising out of its activities associated with canal crossing pursuant to this Agreement, if any, including, without limitation, the preparation, negotiation and execution of this Agreement. Payment shall be due and payable by Licensee to Company within ten (10) days from the date of receipt of any invoice therefore from Company.

6. PAYMENT AND PERFORMANCE BONDS: Licensee shall require its contractor to provide both payment and performance bonds ("Bonds") in the amount of the work to be performed pursuant to this Agreement, which Bonds shall run in favor of both the Company and Licensee. The Bonds shall be substantially in the form attached hereto and incorporated as Exhibits B and C. You must request the over \$500.00 crossing agreement to receive the additional forms.

7. INDEMNIFICATION. Licensee shall indemnify, save harmless, and defend Company, its officers, directors, employees, shareholders, agents and representatives, from and against any and all losses, expenses, costs (including without limitation attorneys' fees), claims, actions, demands, damages, and liabilities imposed or claimed to be imposed upon Company, its officers, directors, employees, shareholders, agents and representatives, for bodily injuries, including death, or for damage to property, real or personal, sustained by any person, including without limitation employees of Licensee, employees of Company or third parties, or for environmental liabilities (excluding any environmental liability to the extent it was or is the responsibility of Company irrespective of Licensee's actions), and whether such bodily injuries, death or damage to property arise or are claimed to arise in whole or in part out of negligence or any other grounds for legal liability (including violation of any duty imposed by statute, ordinance or regulation), which result from, arise out of or are otherwise attributable to Licensee's construction, installation, ownership, operation, maintenance, repair and replacement of the \_\_\_\_\_, or the very existence thereof within the Crossing Area, including, without limitation, water leakage from the Canal caused by, occurring as a result of or attributable to such activities, or the use of the land within the Crossing Area for the construction, installation, ownership, operation, maintenance, repair or replacement of the \_\_\_\_\_ by Licensee, and the use of such adjacent portions of Company's property as Licensee may utilize from time to time for said purposes; provided, however, that this indemnification shall not extend to any losses, expenses, costs, claims, actions, demands, damages, and liabilities to the extent that they are caused by, result from or are otherwise attributable to the negligence or willful misconduct of Company, its officers, directors, employees, agents and representatives.

8. AMENDMENT. This Agreement cannot be extended, terminated, modified or amended except by written agreement signed by each of the Parties.

9. INTEGRATION. This Agreement constitutes the entire understanding and agreement by and among the Parties hereto, and supersedes all prior agreements, representations or understandings by and among them, whether written or oral, pertaining to the subject matter hereof.

10. SUCCESSORS AND ASSIGNS. The rights, conditions and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties.

11. SEVERABILITY. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement will not be affected thereby, and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

12. ATTORNEYS FEES. In the event this Agreement or any provision hereof shall be enforced by an attorney retained by either Party hereto, whether by suit or otherwise, all costs incurred, including court costs and reasonable attorney's fees, and including all fees and costs incurred upon appeal or in bankruptcy court, shall be paid by the Party who breaches or defaults hereunder.

13. WARRANTY OF AUTHORITY. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

14. DEPOSIT. A minimum of \$500.00 will be deposited with Company upon execution of License. Deposit is Refundable 30 days after completion of project minus crossing fee of \$\_\_\_\_\_ if project meets requirements and is signed off on by a BSCIC Board Member.

15. PLAT MAPS. Plat Maps will not be signed until License is executed. The Board may make special consideration which will be added to the final plat map, these will be specified on Exhibit D. Exhibit D. Name and Location of Plat Map, \_\_\_\_\_, Plat Map checked by \_\_\_\_\_, \_\_\_\_\_.

16. INSPECTION. The Company reserves the right to inspect, at any time, the project and its progression. The inspector must sign off on project before any refund or release on Bond is issued. To set up inspection, call 435-640-5878 or any board member.

\_\_\_\_\_  
*Date Project Inspected*

\_\_\_\_\_  
*Print name of BSCIC Inspector*

\_\_\_\_\_  
*BSCIC Inspector Title*

\_\_\_\_\_  
*BSCIC Inspector Signature*

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their respective officers on the date first above written. **ACKNOWLEDGMENTS**

ATTEST: BEAVER AND SHINGLE CREEK IRRIGATION COMPANY

Its \_\_\_\_\_ By \_\_\_\_\_  
*Title Signature*

STATE OF UTAH )

:ss.

County of Summit )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me

\_\_\_\_\_, known to me, or proved to me on the basis of satisfactory evidence, to be the persons who executed the within instrument as a Board member, respectively, on behalf of Beaver and Shingle Creek irrigation Company, the corporation therein named, who duly acknowledged to me that the corporation executed the same.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NOTARY PUBLIC

ATTEST: LICENSEE \_\_\_\_\_

Its: \_\_\_\_\_ By \_\_\_\_\_  
*Title Signature*

STATE OF UTAH )

:ss.

County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, appeared before me

\_\_\_\_\_, personally known to me, or proved to me on the basis of satisfactory evidence, to be the representative of Licensee, who duly acknowledged that the within and foregoing instrument was signed on behalf of said Licensee by authority of a duly adopted resolution of said Licensee and that said Licensee executed the same.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

## **EXHIBIT D**