

**ENCROACHMENT PERMIT**

**THE BILLINGS BENCH WATER ASSOCIATION (BBWA) hereby quit Claims to CITY OF BILLINGS as (Permittees or Grantee), revocable permission to**

**Install a 24" dia. Water main encased in a 36 inch diameter casing pipe under the canal by means of an open cut trench as per the plans filed at the office of the BBWA. The 36" casing pipe, bentonite cut-off walls, Bentomat St. liner, and concrete liner will be installed prior to April 1st, 2010. The 24 inch water main will be pushed through the 36" casing after April 1st.**

**(Legal description of area of encroachment). As per specifications on file at BBWA office.)**

**In the SW ¼ Section 36 Tnp 1 North, Range 25E. near Solomon Ave. and Kober Place.**

**Subject to the following terms and conditions.**

**WHEREAS persons may not encroach upon or otherwise use or impair BBWA's Canal, or its primary or secondary easement, without obtaining approval and an easement therefore:**

- 1. PLANS AND SPECIFICATIONS OF ANY "ENCROACHMENT" or "DISTURBANCE" OR "PLACEMENT OF FACILITY":**

**An "encroachment" or "disturbance" or "placement of facility" means the construction or the placement, and any work associated therewith, of any facility, including utility lines, pipes, pipeline, culverts, bridges, trees, buildings, etc. over, across, on, under, through or near the BBWA'S canal, laterals, embankment, or right-of-way thereof.**

- 2. Any "encroachment", "disturbance" or "placement of facility" by**

**PERMITTEE', over, across, under, on or near BBWA's canal, laterals, And embankment thereof, MUST BE DONE BETWEEN NOVEMBER 1, AND APRIL 1, of each year, unless a specific written exception is granted by BBWA. 'PERMITTEE", shall contact BBWA, at least twenty-four (24) hours in advance of any actual "encroachment" "disturbance", or "placement of facility."**

- 3. Any "disturbance", or "encroachment", or "placement of facility", must be properly reclaimed. Any cuts or disturbance of BBWA's main canal and embankment shall be reclaimed by pouring a concrete slab four inches thick in the disturbed area, plus ten feet up-stream and ten feet downstream from the disturbed area and a foot above the high water line. One-foot upstream and downstream edges should be angled into the ground 8" deep to prevent under cutting of the slab.**

**On bridges and pedestrian bridges, BBWA requires, that a concrete slab be poured under the bridges a distance of the length and width of the bridge, plus ten feet up-stream and ten feet down-stream from the structure to one foot above the high water line.**

**On lateral crossings, BBWA requires using riprap and necessary measures to insure that the soil integrity of the canal will not give away or leak. All cuts in the laterals shall be lined with high swelling sodium type bentonite such as is produced by Wyo-Ben Inc. or other impervious material as agreed to by BBWA.**

**Requirements for boring under the canal: A cement pad must be placed for 10 feet upstream and down stream on the bottom of the canal directly above the installation and it must be at least 4" thick. Steel Reinforced slab of minimum thickness 4" covering the bottom and both sides to one foot above the high water mark. The flow line must be kept at the same level as present ditch.**

**Final details of reclamation shall include:**

**Soil compaction per attached exhibits, surface restoration per attached exhibits, and grass areas will be sodded. Final reclamation shall be approved by BBWA prior to and after PERMITTEE'S "encroachment" "disturbance" placement of facility.**

- 4. The installation of any culvert, bridge, fence, or any other "facility" will be such as to allow BBWA access to cleaning and allow safe and efficient operation, maintenance of its canals and laterals.**

5. **BBWA shall be entitled to use the road easement in the operation and maintenance of its canal. The "Permittee" shall have right of access and enjoyment of its easement under this agreement so long as such use and enjoyment by "Permittee" does not interfere with the normal operation and maintenance of BBWA'S canals and only so long as the encroachment otherwise complied with the bylaws of BBWA as they may exist from time to time.**
6. **The "Permittee", will take necessary actions to insure that the easement does not create a nuisance or hazard to the public, or that the easement will not interfere with other utility easements.**
7. **The "Permittee" shall take necessary precautions to warn or prevent the public from using BBWA'S easement, in a manner which might result in harm or damage to BBWA'S canal, the "Permittee", or the public including the construction of a safety curb along the canal, and posting "No Trespassing" signs along the canal.**
8. **The "Permittee" shall be responsible for the cleaning, and maintaining; of any facility it constructs or places in BBWA'S canal or laterals. "Permittee" shall be responsible for any damage associated with and "encroachment", disturbance", or "placement of facility", by PERMITTEE". BBWA may, but has no duty to repair, replace or clean any structure of Permittee and assess against the PERMITTEE the cost thereof.**
9. **The "PERMITTEE", and/or its contractors, shall provide BBWA with Proof of insurance, prior to any "encroachment", "disturbance", or placement of facility."**

**10. The PERMITTEE' shall pay to BBWA,  
One thousand Five Hundred Forty Two and no/100 Dollars.**

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**(Receipt of which is hereby acknowledged,) for this permit and easement, Which fee is generally based upon \$1500.00, plus recording fees (\$42.00)for encroachment on BBWA's Main canal, and \$500.00, plus Recording fees on BBWA'S Laterals.**

**BBWA'S general costs and expenses associated with this permit include a review of "Permittee's" plans, site inspection, development and operation of this permit system, record keeping, on site inspection prior to, during and after construction, and possible inconvenience and expense related to said "encroachment", "disturbance", or "facility", during future years of operation, maintenance, and cleaning BBWA'S canals and laterals. If BBWA has to clean, repair, or maintain any "encroachment", "disturbance",**

or facility, of PERMITTEE, BBWA shall do so, and send the "Permittee" a bill for such services.

11. "PERMITTEE" is liable for any consequential damages related to or caused by "Permittee's" "encroachment", "disturbance", or "facility". "Permittee" agrees to indemnify and hold harmless the BBWA from any damages arising out of "PERMITTEE'S" "Encroachment", "Disturbance" or "Facility". In accepting this PERMIT, The permittee, its/his successors or assigns, agree to protect BBWA and save it harmless from all claims, actions or damage of every kind and description which may accrue, to or be suffered by, any person or persons, corporations or property by reason of the performance of any such work, character of materials used or manner of installations, maintenance and operation or by the improper occupancy of said encroachment, and in case any suit and/or action is brought against BBWA and arising out of, or by reason of, any of the causes, the "PERMITTEE" its/ his successor assigns, will upon notice to it/him of the commencement of such action defend the same at its/his sole cost and expense and satisfy any judgment which may be rendered against BBWA in any such suit or action.
12. In the event BBWA shall at any time in the future change the location or elevation of its canal or lateral at the point above referred to, necessitating any change in the location of the pipeline, the cost of the change or location of such pipeline to meet the needs of the BBWA, shall be borne by the "Permittee".
13. In the event the BBWA in the enjoyment and operation of the irrigation system, damages the pipeline of the "Permittee", that the "Permittee" will not claim any damage from the BBWA except in such instances as the damage is caused by the willful or gross negligence of the BBWA, its representatives, contractors, agents or servants.
14. If BBWA owns less than the entire and undivided fee simple title in said lands, then this easement applies only to the interest they have.
15. This Permit shall also be binding on any other successor or assignee of the "Permittee". THIS PERMIT SHALL RUN WITH THE LAND. Any successor in interest of "Permittee" shall immediately be bound by the terms of this agreement by any use of its benefits of the encroachment permit.
16. If "Permittee" is a contractor, agent, or other representative for another principal, city or county government, or any other person or entity, this permit shall be binding on such principal, government, and such other person or entity. This permit shall also be binding on any other successor

or assignee of the "Permittee", and such entity waives all defenses of sovereign immunity, statutory, or constitutional rights of home rule.

- 17. In the event of a dispute over the terms and conditions of the Agreement, The BBWA shall be entitled to its reasonable attorney's fees and costs from the "Permittee", whether or not the same are incurred in connection with any lawsuit.
- 18. The Permittee warrants that it is authorized to enter into this agreement for and on behalf of all persons claiming an interest in this permit.
- 19. Each and every person using such permit shall by their use covenant and agree to be bound by the terms hereof to the same extent as the Permittee.
- 20. The Permit may not be assigned without written consent of BBWA.
- 21. Other terms, conditions and exceptions include: A compaction test will be taken on the bottom of the canal and on each side. All soil will be replaced to a minimum of 95% of maximum density as determined by ASTM-D698 test method and three (3) density tests will be required in the cut – One inch on the floor of the canal and one in each bank. Test results will be provided to the BBWA office.

Dated this \_\_\_\_ day of \_\_\_\_, 20\_\_.

**BILLINGS BENCH WATER ASSOCIATION**

By \_\_\_\_\_  
It's President

STATE OF MONTANA            )  
                                          SS  
COUNTY OF YELLOWSTONE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the President of Billings Bench Water Association, whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for the State of Montana

