

AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 20____, by and between the Animas Consolidated Ditch Company whose address is: P.O. Box 3777, Durango, CO 81302, (hereinafter the "Ditch Company"); and 1. _____, whose address is: 2. _____, Durango, CO 81301 (hereinafter "Applicant").

RECITALS

WHEREAS, Applicant owns certain real property located in La Plata County, Colorado, located in: 3 _____ Parcel number _____ (the "Property"); and

WHEREAS, the Ditch Company owns an irrigation ditch, known as the Animas Consolidated Ditch, that traverses the Property, and has an easement across the Property for the Ditch and other associated uses, including the carriage of water, maintenance, inspection and repair of said Ditch (collectively "the Ditch"); and

WHEREAS, Applicant desires to encroach on the Ditch for purposes of 4. _____ ("the improvements"); and

WHEREAS, the Ditch Company is willing to allow the encroachment as described above provided that Applicant complies with the terms of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration the terms and conditions of this agreement, and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The Ditch Company grants a license to Applicant to encroach on the Ditch, in accordance with the terms set forth herein.
2. Applicant may, at its expense, encroach on the Ditch as set forth on the attached Exhibit A ("the Work"). The Work shall be constructed in accordance with the specifications shown on Exhibit A, which the Ditch Company has approved. Construction must be completed within two years of the date of this Agreement. Except as set forth in Paragraph 9 below, if construction is not completed within that time frame, this Agreement shall be null and void, and Applicant must submit a new application to the Ditch Company and may be required to pay an additional encroachment fee. The Work shall be constructed, maintained, used, repaired, and/or removed at the sole cost of Applicant and at no cost to the Ditch Company
3. Said encroachment shall be at the location on the Ditch set forth on Exhibit B, a graphic depiction of the property and encroachment location.

4. In addition to any other design specifications, the following requirements shall be adhered to for all of the improvements described above:

4.1 Construction shall meet the minimum specifications required by the ditch company for the type of encroachment desired. The minimum specifications are attached hereto as Exhibits B and C.

4.2. Applicant and its agents shall use their best efforts to ensure that sediment, rocks, snow, ice or other debris do not enter the Ditch during the construction activities authorized herein; any sediment, rocks, snow, ice or other debris that does enter the Ditch during construction, or thereafter, shall be promptly removed.

4.3 No improvements within the Ditch Easement, whether fabricated or natural (e.g. vegetation/trees) may interfere with the Ditch, maintenance thereof, or delivery of water. After providing notice to Applicant and allowing Applicant a reasonable time under the circumstances to remedy any problem noticed by the Ditch Company, the Ditch Company may remove any structures identified in the notice that it believes is or will cause damage to the Ditch, impede the flow of water, or otherwise adversely affect the ability of the Ditch Company to repair or maintain the ditch. All costs of such removal will be the responsibility of Applicant.

4.4 Applicant is not permitted to modify or interfere with gates, outlet structures or other structures on the Ditch without written permission from the Ditch Company.

4.5 Applicant must locate all underground utility lines before commencement of construction by utilizing the "CALL BEFORE YOU DIG" Utility Notification Center of Colorado (800) 922-1987.

4.6 In the event that any land in, on or around the Ditch is impacted by construction, Applicant will restore the land to the same condition it was in prior to construction, including re-seeding as necessary with seed mixture approved by the Ditch Company.

5. Any and all construction plans (including all material used) for any of the above improvements shall be provided to the Ditch Company for its review and approval. The Ditch Company has approved the construction plans described on Exhibit A. The actual construction activities shall also be subject to the Ditch Company's approval. Applicant shall notify the Ditch walker, Jud Hassel, as to the date when construction for the various improvements will begin, and the Ditch Company shall have the opportunity to monitor and inspect the construction process. Construction shall not be permitted during the irrigation season. If the Ditch Company believes Applicant, or its agents or contractors, are deviating materially from the design plans or construction specifications or causing damage to the Ditch, the Ditch Company shall bring such concern to the immediate attention of Applicant and Applicant shall promptly correct or resolve any such deviation. Upon completion of the improvements authorized herein, the Ditch Company shall provide a Notice of Completion to the Ditch Company President. If the Ditch Company does not object to the construction of the improvements authorized herein within 30 days after Notice of Completion is tendered, the Ditch Company shall be deemed to have approved the construction.

6. Applicant acknowledges that delivery of water to its shareholders is of paramount importance to the Ditch Company. Therefore, construction of the improvements described herein shall be commenced and conducted in such a manner as to not cause disruption of the delivery of irrigation water at any time. The timing of said construction must be approved by the ditch company prior to the start of construction. Additionally, in the event that water would otherwise be available but cannot be delivered to the Ditch Company's shareholders during the period of construction or warranty, Applicant agrees to pay the Ditch Company a penalty of three hundred dollars (\$300) per day for each day that water cannot be delivered to shareholders, unless the Ditch Company, in its sole discretion, provides its written consent to such non-delivery during said period. Additionally, Applicant shall be responsible for actual damages to the Ditch Company and shareholders, in the event that actual damages can be proven and exceed the amount already paid as penalties. Applicant shall also be responsible for attorney's fees, engineering costs, ditch rider and ditch secretary time needed to address the non-delivery matter.

7. If Applicant intends to utilize a contractor or other construction representative to accomplish the construction, Applicant will enter into a written construction agreement with the contractor prior to construction that provides, at a minimum, the following: 1) the work to be performed; 2) that the work will be performed in accordance with plans and specifications, approved by the Ditch Company; 3) the deadline for commencing and completing the work; 4) the cost of the work, and manner of payment; 5) that all work shall meet or exceed commonly accepted construction practices and 6) at least a one year warranty for defects in construction, said warranty to be for the benefit of the Ditch Company. Applicant shall be responsible for ensuring that the work is completed properly, and in a timely fashion in accordance with this Agreement.

8. Any warranties for materials and labor shall be made transferable to the Ditch Company. Applicant agrees that it will, at its sole cost and expense, repair and correct all defects in materials and workmanship, as well as all ordinary maintenance and repair for so long as Applicant maintains the encroachment structures. Additional maintenance requirements of the Ditch Company necessitated by the encroachment will be made at the expense of the Applicant. During this period, Applicant shall be responsible for the removal of all trash, snow, and ice at the location of the encroachment. All repair or maintenance work shall be completed in a timely manner and at no cost to the Ditch Company. In addition, as long as Applicant maintains a encroachment structure, it shall be responsible for all damages to the Ditch Company or its shareholders arising as a result of the installation of the structures authorized herein, including but not limited to damage to the Ditch, loss of water, loss of crops, or any other damage to person or property. In the event an emergency exists, or if Ditch Company shareholders cannot receive water due to failure of the any of the structures authorized herein, and Applicant fails to respond within five days after written notification of said event, the Ditch Company may, at its option, make repairs, and the cost of all repairs shall be reimbursed by Applicant within thirty days of invoicing. In the event of emergency, the Ditch Company need not wait five days to undertake costs and repairs.

9. Applicant acknowledges and confirms the easement owned by the Ditch Company. Notwithstanding any reference to a ditch easement on any plat of Applicant's property, under

Colorado law, the Ditch Company has the right to use the ditch and the land width on either side of the ditch that is reasonably necessary to properly operate, maintain and repair the ditch. Major repairs may require more width than normal operations and maintenance of the ditch. No permanent structures or landscaping shall be placed within the ditch easement without Ditch Company consent, or within 5. _____ of feet of the centerline of the Ditch. This paragraph shall survive any termination of this Agreement, and the setback and/or easement shall remain in effect.

10. Applicant shall indemnify and hold harmless the Ditch Company, and its successors and assigns, from any liability, including costs and attorney fees, resulting from any claims or injuries caused by or related to Applicant's construction, maintenance, or other actions or uses within the ditch company easement. For as long as Applicant maintains the encroachments described herein, Applicant will maintain a homeowner's liability policy of insurance. The Ditch Company shall be listed as an additional insured on the policy and shall contain an endorsement providing that it may not be cancelled without 30 days advance notice to The Ditch Company.

11. In the event that Applicant should fail or refuse to complete any part of the work in accordance with the agreed upon specifications, the Ditch Company may, in its discretion, undertake to complete the action items. The cost of completion shall be reimbursed by Applicant within thirty days of invoicing.

12. Applicant agrees to pay the encroachment fee of \$ 6. _____ per encroachment and further agrees to reimburse the Ditch Company for all future costs associated with implementing this agreement, including but not limited to attorney's fees at the regular attorney rate, engineering costs at the regular engineer rates, Ditch company secretary and ditch rider time at the rate of \$50.00 per hour, through the completion of construction and the warranty period. Payment shall be made within thirty (30) days of receiving invoices from the Ditch Company. All unpaid sums shall accrue interest at the rate of 1.5% per month. Additionally, all delinquent sums owed the Ditch Company shall be a lien against the Property, and an affidavit of the amount owed may be recorded by the Ditch Company to evidence said debt and lien and encumber the Property. Such lien may be foreclosed on in the same manner as mortgages under Colorado Law. If a lien is recorded, the Ditch Company agrees to record a release of lien after receipt of full payment that discharges the lien.

13. All sums invoiced to Applicant shall be due and owing within thirty days of invoicing. All sums not paid will accrue interest at the rate of 1.5% per month.

14. To ensure compliance with the terms of this Agreement and with the agreed upon plans and specifications, Applicant shall furnish a bond or a letter of credit to the Ditch Company no later than 15 days prior to commencement of construction of the Work contemplated by this Agreement, which shall remain in effect through the period of warranty, in the amount of the estimated cost of the construction, which estimate shall be pre-approved by the Ditch Company. The bond or letter of credit shall be released upon the expiration of the warranty period. In the event that Applicant does not comply with the terms of this Agreement as to time frames or

specifications, the Ditch Company shall have the ability to obtain funding through the letter of credit or bond to undertake and fulfill Applicant responsibilities.

15. Applicant's rights hereunder shall terminate upon Applicant's no longer using and maintaining the improvements authorized herein, provided Applicant removes the improvements and restores the ditch. Upon termination, Applicant shall remain liable for damages, including costs and attorney fees, resulting from any claims or injuries caused by or related to Applicant's construction, maintenance, or other actions or uses within the Ditch Company easement that occurred during the period of this agreement.

16. The Ditch Company does not authorize the modification to private laterals not owned by the Ditch Company. To the extent that modification of a private lateral is intended, Applicant must present evidence satisfactory to the Ditch Company in its sole discretion that the private lateral owner has agreed to said modifications or that Applicant has obtained a court order allowing the modification.

17. In addition to the new encroachment(s) described in the Recitals above and depicted on Exhibit A, Applicant acknowledges the existence of utility line encroachments, and the following existing encroachments also depicted on Exhibit A: 7.

_____ (“the Existing Encroachments”).
The Ditch Company agrees to allow the Existing Encroachments to remain in the Ditch Easement so long as they do not hinder or adversely impact the Ditch Company’s operations and maintenance of the Ditch. The terms of this Encroachment Agreement shall be equally applicable to the Existing Encroachments, and the Applicant accepts full responsibility for the maintenance, replacement and/or removal of the Existing Encroachments in the discretion of the Ditch Company.

18. General Provisions

18.1. The parties agree to execute all necessary documents to carry out the intent of this Agreement.

18.2. The governing law for this Agreement shall be Colorado law.

18.3. Should a dispute arise regarding this Agreement or the fulfillment thereof, one party shall give written notice to the other party of such dispute, and the parties shall first attempt to resolve the dispute through informal negotiations and/or mediation. If such efforts do not resolve the dispute within thirty days after written notice was provided, the parties may litigate the dispute through the Colorado courts of La Plata County and, if necessary, the Colorado appellate courts. If, however, the Ditch Company or Applicant deems any dispute to negatively affect the ability of the Ditch Company to deliver water to its shareholders, or to create a safety issue or otherwise create an imminent risk of damage to person or property, the requirements of this provision shall not be enforceable and shall be waived.

18.4. Should either party incur attorney's fees and costs to enforce any term or provision this Agreement, whether or not litigation is instituted, all enforcement expenses,

including but not limited to collection fees, witness fees, court costs and attorney fees shall be paid by the nonprevailing party.

18.5. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions that are otherwise lawful shall remain in full force and effect and, to this end, the provisions of this Agreement are declared to be severable.

18.6. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties.

18.7. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Faxed and emailed signatures shall have the same force and effect as original signatures.

18.8. All notices required or permitted under this Agreement shall be in writing and shall be either personally served, sent by overnight courier service, first class mail postage prepaid, or by email or fax at such addresses and numbers the parties may provide to each other in writing. Any such notice shall be deemed effective when: (a) such notice is actually received, if notice is personally served; (b) one day following notice being delivered to an overnight courier service; (c) two days following the date of deposit in the United States mail; or (d) upon verification of transmission if sent by email or fax. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Notices to the parties shall be sent to the addresses set forth above, or such other addresses as the parties may designate from time to time by notice to the other party:

18.9. The parties certify that the individuals signing this Agreement have been duly authorized to sign this Agreement on behalf of the Ditch Company and Applicant.

18.10. This Agreement shall be binding on Applicant's successors and assigns to ownership of the Property.

18.11. This Agreement may be recorded in the real property records of La Plata County, Colorado.

EXECUTED on the date first set forth above.

ANIMAS CONSOLIDATED DITCH COMPANY

By: _____

Its: President

Applicant

By: _____

Its: President

STATE OF COLORADO) ss
County of La Plata)

The foregoing instrument was acknowledged before me this _____ day of
20__ by _____, President of the Animas
Consolidated Ditch Company.

WITNESS my hand and official seal. My commission expires: _____

Notary Public

STATE OF COLORADO) ss.
County of La Plata)

The foregoing instrument was acknowledged before me this _____ day of
20__ by _____, for Applicant.

WITNESS my hand and official seal. My commission expires: _____

Notary Public