



TWIN FALLS CANAL COMPANY

357 6TH AVE WEST
POST OFFICE BOX 326
TWIN FALLS, IDAHO 83303-0326



Re: Twin Falls Canal Company (TFCC) Agreement and Approval of Proposed Subdivision

Dear Developer:

Please find enclosed the following items to be reviewed regarding your proposed development:

- 1) Draft *Agreement to Relocate Ditch or Pipe Ditch in Subdivision*
- 2) TFCC Right-of-Way Brochure
- 3) Copies of Idaho Code §§ 42-1207, 1209

TFCC requires all developers that propose to re-locate or pipe an existing canal, lateral, or ditch to sign an agreement to cover the proposed change. The enclosed draft is the standard agreement that TFCC uses. Additional changes may be made at TFCC's discretion based upon unique circumstances for individual subdivisions. Since subdivisions and changes to agricultural land have the potential to impact TFCC operations, any changes to a canal or lateral must be pre-approved by TFCC to ensure that its water delivery and maintenance operations can continue without interference or obstruction.

The enclosed brochure discusses TFCC's right-of-way associated with its canals and laterals, and explains the necessary width required for operation and maintenance activities. Subdivisions must be designed with proper setbacks so that canal and lateral right-of-ways are protected.

The enclosed statutes describe TFCC's rights associated with its canal and lateral rights-of-way. Idaho law prohibits any changes to a canal or lateral without TFCC's approval. In addition, developers and landowners cannot "encroach" upon or place obstructions (fences, buildings, etc.) on TFCC's rights-of-way.

As set forth in the enclosed agreement, TFCC's signature on the agreement is deemed to constitute its approval that may be required by county or city planners. The Developer is required to provide a copy of the agreement to the relevant county or city planner and obtain its acknowledgement for TFCC's records.

Please contact Jay Barlogi at 733-6731 if you have any questions regarding this packet. We look forward to finalizing the agreement and approving your proposal.

Sincerely,

Jay Barlogi
Field Supervisor - TFCC

Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 12

MAINTENANCE AND REPAIR OF DITCHES

42-1207. CHANGE OF DITCH, CANAL, LATERAL, DRAIN OR BURIED IRRIGATION CONDUIT. Where any ditch, canal, lateral or drain or buried irrigation conduit has heretofore been, or may hereafter be, constructed across or beneath the lands of another, the person or persons owning or controlling said land shall have the right at their own expense to change said ditch, canal, lateral or drain or buried irrigation conduit to any other part of said land, but such change must be made in such a manner as not to impede the flow of the water therein, or to otherwise injure any person or persons using or interested in such ditch, canal, lateral or drain or buried irrigation conduit. Any increased operation and maintenance shall be the responsibility of the landowner who makes the change.

A landowner shall also have the right to bury the ditch, canal, lateral or drain of another in pipe on the landowner's property, provided that the pipe, installation and backfill reasonably meet standard specifications for such materials and construction, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done. The right and responsibility for operation and maintenance shall remain with the owner of the ditch, canal, lateral or drain, but the landowner shall be responsible for any increased operation and maintenance costs, including rehabilitation and replacement, unless otherwise agreed in writing with the owner.

The written permission of the owner of a ditch, canal, lateral, drain or buried irrigation conduit must first be obtained before it is changed or placed in buried pipe by the landowner.

While the owner of a ditch, canal, lateral, drain or buried irrigation conduit shall have no right to relocate it on the property of another without permission, a ditch, canal, lateral or drain owner shall have the right to place it in a buried conduit within the easement or right-of-way on the property of another in accordance with standard specifications for pipe, materials, installation and backfill, as set forth in the Idaho standards for public works construction or other standards recognized by the city or county in which the burying is to be done, and so long as the pipe and the construction is accomplished in a manner that the surface of the owner's property and the owner's use thereof is not disrupted and is restored to the condition of adjacent property as expeditiously as possible, but no longer than thirty (30) days after the completion of construction. A landowner shall have the right to direct that the conduit be relocated to a different route than the route of the ditch, canal, lateral or drain, provided that the landowner shall agree in writing to be responsible for any increased construction or future maintenance costs necessitated by said relocation. Maintenance of the buried conduit shall be the responsibility of the conduit owner.

Idaho Statutes

TITLE 42
IRRIGATION AND DRAINAGE -- WATER
RIGHTS AND RECLAMATION
CHAPTER 12
MAINTENANCE AND REPAIR OF DITCHES

42-1209. ENCROACHMENTS ON EASEMENTS AND RIGHTS-OF-WAY. Easements or rights-of-way of irrigation districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations, and drainage districts are essential for the operations of such irrigation and drainage entities. Accordingly, no person or entity shall cause or permit any encroachments onto the easements or rights-of-way, including any public or private roads, utilities, fences, gates, pipelines, structures or other construction or placement of objects, without the written permission of the irrigation district, Carey act operating company, nonprofit irrigation entity, lateral ditch association, or drainage district owning the easement or right-of-way, in order to ensure that any such encroachments will not unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Encroachments of any kind placed in such easement or right-of-way, without such express written permission shall be removed at the expense of the person or entity causing or permitting such encroachments, upon the request of the owner of the easement or right-of-way, in the event that any such encroachments unreasonably or materially interfere with the use and enjoyment of the easement or right-of-way. Nothing in this section shall in any way affect the exercise of the right of eminent domain for the public purposes set forth in section 7-701, Idaho Code.

Easement Information

We are your local irrigation organization. It's our job to safely and efficiently deliver irrigation water to users via a series of canals, ditches, and irrigation works.

To do that it's extremely important that we carefully maintain the canal and ditch banks and irrigation structures to prevent bank failures or water flow blockages that could cause serious damage to adjacent landowners.

This maintenance includes things like removing sediment and debris and controlling weeds by mowing, spraying or burning. We also may need to refurbish or repair banks, install bank lining, or even replace the open canal with covered pipe. But we cannot meet that vital responsibility unless we have unrestricted access to the canal or ditch banks.

Unrestricted access is crucial to safety and efficient water delivery, so much so that it is guaranteed under Idaho law. It is done by granting us easements - the legal right to cross or otherwise use someone else's land for a specified purpose – consisting of strips of land along the banks of our canals and ditches.

The red arrows in the photo below show the easements along a canal in a residential area.



Easement widths can vary depending on the size of the canal or ditch and the access needs of the irrigation entity. The easements apply to both banks of the canal or ditch.

The photo below shows ditch maintenance work that requires equipment to operate on



easements on both sides of the ditch that runs through farmland.

Weed control is an important part of system maintenance and landowner protection. Large tractor mowers are used extensively during the



irrigation season on one or both sides of canals and ditches. The size of the equipment means they must have wide, obstruction-free access for their safe and efficient operation.

Key Points About Easements

- We have the right to deposit material on the ditch banks that has been removed during cleaning and maintenance and it is not to be removed from the banks.

- We have the legal right to remove anything that blocks the easement and to prohibit activities which unreasonably interfere with maintenance. This includes buildings, parking areas, fences, landscaping and other structures or activities.
- We may need to trim or cut trees or remove shrubs from an easement area. Tree branches can droop or fall into the canal and obstruct water flows. Tree roots can actually rob the system of water. Tree roots can also cause seepage and result in eventual canal breaks.
- Easement areas are not public property and are not open to public use. Unauthorized use of these strips of land amounts to trespassing. Swimming in canals or laterals is very dangerous and is not allowed. It also constitutes trespassing.
- We cannot allow construction or other activities in easement areas if they will interfere with our access, operation, maintenance and repair activities.
- You should be aware that we sometimes use chemical weed killer as part of our regular bank maintenance. While we make every possible effort to make sure the spray is applied only in the easement, it can drift to areas immediately adjacent to the easement.

Knowledge Prevents Conflicts

We have found that nearly all easement conflicts are a result of landowners not being aware of the easement or not fully understanding just what the easement entails. Please contact us if your property is adjacent to a canal or ditch and you do not know just what the easement situation is on your property.

What Not To Do



Fences, trees and total lack of access make proper maintenance of this canal impossible.



Crops planted this close to the canal interfere with access needed for maintenance purposes.



Sprinkler equipment has completely blocked access to the ditch bank.



A residential property owner's shrubbery has begun to block this easement road.

How You Can Help

If we work together we can make sure water is delivered both efficiently and safely through our network of canals and ditches. Here are some important points to remember.

Always contact us first if you plan any construction, landscaping, or other activity within or near any easement along canals, laterals, or ditches. We will determine if what you want to do will interfere with our access, operations, maintenance, and repair activities.

Be sure to remove all siphon tubes and irrigation pipes from the canal right-of-way when our employees are burning weeds from ditches and canal banks.

**Your local
contact information
goes here.**

**Property
Owner
Information
About
Canal
and
Ditch
Easements
and
Right-of -
Ways**

AGREEMENT TO RELOCATE DITCH OR PIPE DITCH IN SUBDIVISION

THIS AGREEMENT is made and entered into this ____ day of _____, _____, by and between _____, hereinafter referred to as “the Developer”, and TWIN FALLS CANAL COMPANY, hereinafter referred to as “TFCC”.

WHEREAS, the Developer has purchased and owns a certain parcel of real property located in Twin Falls County, Idaho, which parcel is hereinafter referred to as “the Property” and which is more fully described and depicted on Exhibit “A”, attached hereto and by this reference made a part hereof as though fully set forth herein; and

WHEREAS, the Developer wishes to develop the Property and to relocate and/or pipe a TFCC watercourse (_____) and also as shown on Exhibit “A”(as shown on the final approved plat); and

WHEREAS, the TFCC is agreeable to the relocation and/or piping project (“the Project”) of TFCC’s watercourse by the Developer as submitted for the Property upon certain conditions; and

WHEREAS, the parties wish to set forth their agreement in writing so as to comply with the requirements of I.C. § 42-1207;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Developer acknowledges the TFCC has an easement for the full flow of water from all sources in their existing watercourse though the Property together with the legal right to do those things necessary to access said watercourse with men and machines to operate and maintain said watercourse. Nothing herein shall be construed as a relinquishment of TFCC’s rights for the full flow of water from any and all sources through said relocated and/or piped watercourse or prevent TFCC ‘s agents’ and employees’ right of ingress and egress over the easement for the relocated watercourse (together with their equipment) for the purpose of maintaining, operating, reconstructing, rehabilitating, or replacing the project.

2. At least thirty (30) days prior to the start of work on the Project or any portion thereof, the Developer shall provide TFCC with copies of all plans, materials, specifications and designs, and allow TFCC to have input into the location and design of said proposed facilities to insure that the operation of the facility when constructed, will not adversely affect the operation of TFCC. TFCC will review the plans and accept, return with modifications, or require a new design. Upon approval of plans the execution of this Agreement shall constitute the TFCC's approval for the Developer to proceed, provided the Developer has executed an easement in the form of Exhibit "B" hereto. Approval of Developer's plans by TFCC for purposes of this Agreement shall not be deemed a guarantee by TFCC that anyone other than Developer is responsible for any deficiencies in the construction or operation of the Project.
3. The Developer shall notify TFCC at least 7 working days prior to start of construction activities and shall implement such procedures as are necessary to insure that any construction is in accordance with the approved plans, drawings, and comply with City of Twin Falls/ISPWC Standards, with the exception of pipe materials to be specified by TFCC, and that Developer's construction activities shall not:

- (a) block the original watercourse or any rights of way or traditional accesses of TFCC to the original watercourse which TFCC may use until the new watercourse is operable and approved pursuant to paragraph 4 hereof;
- (b) violate any local, state or federal laws, rules or regulation relating to water quality;

After completion of the relocated watercourse, Developer covenants that neither Developer nor his successor or assigns shall:

- (a) impair, block or impede the surface of the easement of TFCC in any manner or block any flow of water within said easement in the new relocated watercourse;
- (b) impair operation, maintenance, construction and reconstruction of the relocated and/or piping project or appurtenant facilities.

4. When the new facilities are completed and operable to TFCC's satisfaction, TFCC shall advise Developer that Developer may remove TFCC's original existing facilities as shown on the Project drawings.
5. It is understood and agreed that any contractor or contractors employed by the Developer shall be an agent of the Developer and not an independent contractor and the Developer shall be liable as principal therefore.

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6. During the construction permitted by this Agreement, the Developer shall secure and continuously carry comprehensive general liability insurance for both bodily injury and property damage equivalent to the amount of one million dollars (\$1,000,000.00) combined single limit. Such insurance shall include an endorsement naming TFCC as an additional insured under this Agreement, and include a provision stating that such liability policies shall not be canceled or their limits of liability reduced without ten (10) days written notice to TFCC, and TFCC's written approval of said change.
7. It is further agreed that the Developer will indemnify and save harmless TFCC for and against all claims, suits, damages, costs, losses, fines, penalties, assessments, and expenses in any manner resulting from or arising out of the construction, operation, maintenance, renewal, repair, remodeling, use or existence of the pipeline, including TFCC's attorneys' fees, and including damage to crops of others resulting from interference or interruptions in the delivery of water by TFCC.
8. In addition to the recording of this Agreement and Exhibit "B" hereto, Developer agrees to disclose the existence of any buried pipe which is part of the Project to all buyers of lots through which said pipeline is buried and to provide for a specific "pass-through" of proportionate responsibility in Developer's conveyance to each lot buyer, and his successors and assigns, so said lot owner shall recognize his proportionate share of financial responsibility to provide for the operation, maintenance, repair, rehabilitation, or replacement of said pipeline. Developer shall remain responsible for each unsold lot, until a deed is recorded
9. The failure or refusal of the Developer to comply with any provision herein shall constitute a default and shall entitle TFCC to terminate this Agreement and to seek damages from the Developer for non-compliance. In the event TFCC is required to initiate either administrative or legal action to enforce its rights under this Agreement, the Developer shall indemnify and reimburse TFCC for any and all costs and expenses incurred by TFCC in enforcing its rights, including attorney's fees and costs.
10. In consideration for TFCC's agreement hereunder, Developer acknowledges that the responsibilities they assume pursuant to this Agreement shall constitute a covenant running with the land for the benefit of TFCC.
11. This agreement is deemed to constitute TFCC's approval of the Developer's proposed development with respect to impacts on TFCC's canal and right-of-way. Developer agrees to provide a copy of this Agreement to the appropriate county or city planners, where TFCC's approval has been requested by said county or city planner. Developer shall obtain the county or city acknowledgement of receipt of this Agreement and provide a copy to TFCC.

12. TFCC requires 3rd party inspection of all construction activities within TFCC facilities or right-of-ways. TFCC is contracted with JUB Engineering as our third party inspector. Developer agrees to pay estimated inspection fees of \$ _____, prior to execution of this agreement.

13. It is understood and agreed that any inspection fees over and above the original estimate, will be the responsibility of the developer, and any over payment will be refunded to the developer.
14. Developer agrees to pay TFCC for processing fees based on time spent evaluating modification to the property.
15. This Agreement contains the entire understanding and agreement of the parties hereto with respect to the subject matter hereof, and not prior written or oral agreement or understanding pertaining to any such matter shall be effective for any purpose. This Agreement may not be amended, modified, altered, changed, subtracted from, or added to except by an agreement in writing signed by the parties to this Agreement or their respective successors in interest.
16. This Agreement shall be binding upon the successors and assigns of the parties hereto.
17. All construction must be completed by March 1 of the upcoming water season.

IN WITNESS WHEREOF, The parties hereto have signed this Agreement on the date and year first above written.

IN WITNESS WHEREOF, The parties hereto have signed this Agreement on the date and year first above written.

“DEVELOPER”

By: _____

“TFCC”

SAMPLE

By: _____
Brian Olmstead, Manager

State of Idaho)
) ss.
County of Twin Falls)

On this ____ day of _____, 200_, before me, a Notary Public, in and for said County and State, personally appeared _____, known or identified to me to be the _____ of _____, the _____ that executed the foregoing instrument, and acknowledged to me that such company 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
Residing at: _____
My commission expires: _____

State of Idaho)
) ss.
County of Twin Falls)

On this _____ day of _____, 200_, before me, a Notary Public, in and for said County and State, personally appeared BRIAN OLMSTEAD, known or identified to me to be the manager for the Twin Falls Canal Company, the company that executed the foregoing instrument, and acknowledged to me that such company 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
Residing at: _____
My commission expires: _____

TWIN FALLS CANAL COMPANY REQUIREMENTS FOR UNDERGROUND UTILITY CROSSINGS

- 1.** Prior to crossing any TFCC waterways or ROWs location maps and construction plans for the proposed crossing must be submitted to TFCC for approval.
- 2.** All utility crossings must be constructed in a manner as to cause no interference with the normal operations and maintenance of TFCC.
- 3.** The use of explosives shall not be permitted within the ROW of any TFCC facility.
- 4.** Utility crossings under Twin Falls Canal Company (TFCC) waterways and rights-of-ways should be accomplished by boring methods if practicable.
- 5.** Where it becomes necessary to cut the banks of any TFCC Facilities the work will be accomplished only at times when the TFCC facilities are dewatered, and reconstruction of TFCC facilities will be done to TFCC's satisfaction.
- 6.** When TFCC waterways (ROW) must be or are disturbed, the waterways must be restored to the satisfaction of TFCC in as good as original condition.
- 7.** A clearance of 60 inches will be provided in unlined, earth lined, or concrete lined sections, between the underground facility and TFCC waterway and ROW. When the TFCC Facility is in a pipeline, a 36-inch clearance will be required.
- 8.** All Utilities buried beneath TFCC waterways and ROWs shall be encased in rigid steel carrier pipe.
- 9.** Upon completion of all utility crossings installation and maintenance of distinctively painted and identified metal posts extending not less than 4 feet above ground and at the outside edges of TFCC ROW will be required.
- 10.** All modifications to these requirements must be approved by TFCC.