

LICENSE AGREEMENT

This LICENSE AGREEMENT, is made and entered into this ____ day of _____, 2020, by and between SETTLERS IRRIGATION DISTRICT, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, hereinafter referred to as the "District," and

CITY OF MERIDIAN,
c/o Public Works Department,
33 East Idaho, Meridian, Idaho 83642,

hereinafter referred to as the "Licensee,"

W I T N E S S E T H:

WHEREAS, the District owns the irrigation ditch or canal known as the SETTLERS SOUTH SIDE CANAL (hereinafter referred to as "ditch or canal"), an integral part of the irrigation and drainage works and system of the District, together with the easement therefor to convey irrigation and drainage water, to operate, clean, maintain, and repair the ditch or canal, and to access the ditch or canal for those purposes; and,

WHEREAS, the District operates, cleans, maintains, repairs and protects the ditch or canal for the benefit of District landowners; and,

WHEREAS, the Licensee is the owner of real property/right-of-way for a water line that is servient to the District's ditch or canal and easement, and is particularly described in the "Legal Description" and/or deed attached hereto as **Exhibit A** and by this reference made a part hereof; and,

WHEREAS, the ditch or canal crosses and intersects the real property described in Exhibit A as shown on **Exhibit B**, attached hereto and by this reference made a part hereof; and,

WHEREAS, the Licensee desires a license to cross, encroach upon or modify said ditch or canal and/or the District's easement under the terms and conditions of this License Agreement;

NOW, THEREFORE, for and in consideration of the premises and of the covenants, agreements and conditions hereinafter set forth, the parties agree as follows:

A. Acknowledgment of the District's Easement

1. Licensee acknowledges that the District's easement for the ditch or canal includes a sufficient area of land to convey irrigation and drainage water, to operate, clean, maintain and repair the ditch or canal, and to access the ditch or canal for said purposes, is a minimum of 50 feet, 25 feet to either side of the centerline of the ditch or canal.

B. Scope of License

1. The Licensee shall have the right to modify the ditch or canal or encroach upon the District's easement along the ditch or canal in the manner described in the "Purpose of License" attached hereto as **Exhibit C** and by this reference made a part hereof.

2. Any crossing, encroachment upon or modification of the ditch or canal and/or the District's easement shall be performed and maintained in accordance with the "Special Conditions" stated in **Exhibit D**, attached hereto and by this reference made a part hereof. Any difference or discrepancy between the items listed in Exhibit C, "Purpose of License," and any plans or drawings referenced in or attached to Exhibit D shall be resolved in favor of Exhibit C. Licensee shall only be permitted to cross, encroach upon or modify the ditch or canal and/or the District's easement as described in Exhibit C even if any plans or drawings referenced or attached to Exhibit D provide or show otherwise.

3. This License Agreement pertains only to the Licensee's crossing, encroachment upon or modification of the ditch or canal and/or the District's easement for the purposes and in the manner described herein. The Licensee shall not excavate, discharge, place any structures, nor plant any trees, shrubs or landscaping within the District's easement, nor perform any construction or activity within the District's easement for the ditch or canal except as referred to in this License Agreement without the prior written consent of the District.

4. The Licensee recognizes and acknowledges that the license granted this License Agreement pertains only to the rights of the District as owner of an easement. The District has no right or power to create rights in the Licensee affecting the holder of title to the property subject to the District's easement. Any such rights affecting fee title must be acquired by the Licensee from the holder of title to the property. Should Licensee fail to obtain such rights from the holder of title to the property or should the rights obtained prove legally ineffectual, Licensee shall hold harmless, indemnify and defend the District from any claim by any party arising out of or related to such failure of rights and at the option of the District this License Agreement shall be of no force and effect.

C. Facility Construction, Operation, Maintenance and Repair

1. Licensee agrees that the work performed and the materials used in any construction permitted by this License Agreement shall at all times be subject to inspection by the District and the District's engineers, and that final acceptance of the such work shall not be made until all such work and materials shall have been expressly approved by the District. Such approval by the District shall not be unreasonably withheld.

2. Each facility ("facility" as used in this License Agreement means any object or thing installed by the Licensee on, over or in the vicinity of the District's easement) shall be constructed, installed, operated, maintained, and repaired at all times by the Licensee at the cost and expense of the Licensee.

3. Licensee agrees to construct, install, operate, maintain and repair each facility and conduct its activities within or affecting the District's easement so as not to constitute or cause:

- a. a hazard to any person or property;

- b. an interruption or interference with the flow of irrigation water in the ditch or canal or the District's delivery of irrigation water;
- c. an increase in seepage or any other increase in the loss of water from the ditch;
- d. the subsidence of soil within or adjacent to the easement;
- e. an interference with the District's use of its easement to access, operate, clean, maintain, and repair the ditch or canal;
- f. any other damage to the District's easement and irrigation works.

4. The Licensee agrees to indemnify, hold harmless, and defend the District from all claims for damages arising out of any of the Licensee's construction or activity which constitutes or causes any of the circumstances enumerated in the preceding paragraph, 3.a. through 3.f., or any other damage to the easement and irrigation works which may be caused by the construction, installation, operation, maintenance, repair, and any use or condition of any facility. The indemnification provisions contained in this License Agreement pertain to construction, installation, operation, maintenance, and repair and otherwise establish a duty owed by the Licensee to the District only, and this Agreement does not intend nor does it provide that this duty is owed to any other entity and/or person, and specifically this Agreement does not extend the duty of the Licensee to the public beyond the provisions of Idaho Code Section 36-1604, which are incorporated herein by this reference.

5. The Licensee shall, upon demand of the District, remove any facility or repair any alteration of the District's easement which interferes with the District's operation and maintenance of the ditch or canal, or causes or contributes to any of the circumstances enumerated in the preceding paragraph, 3.a. through 3.f., or any other damage to the easement and irrigation works. The District shall give reasonable notice to the Licensee, and shall allow the Licensee a reasonable period of time to perform such maintenance, repair, and other work, except that in cases of emergency the District shall attempt to give such notice as is reasonable under the circumstances. The District reserves the right to perform any and all work which the Licensee fails or refuses to perform within a reasonable period of time after demand by the District. The Licensee agrees to pay to the District, on demand, the costs which shall be reasonably expended by the District for such purposes. Nothing in this paragraph shall create or support any claim of any kind by the Licensee or any third party against the District for failure to exercise the options stated in this paragraph, and the Licensee shall indemnify, hold harmless and defend the District from any claims made against the District arising out of or relating to the terms of this paragraph, except for claims arising solely out of the negligence or fault of the District.

D. District's Rights Are Paramount

1. The Licensee understands and agrees that the ditch or canal is a manmade channel that was constructed and is used and maintained by the District for the exclusive purpose of conveying irrigation water to lands within the District. As such, Licensee further acknowledges and agrees that the ditch or canal does not constitute a natural or navigable watercourse or stream.

2. The parties hereto understand and agree that the District has no right in any respect to impair the uses and purposes of the irrigation works and system of the District by this License Agreement, nor to grant any rights in its irrigation works and system incompatible with the uses to which such irrigation works

and system are devoted and dedicated and that this contract shall be at all times construed according to such principles.

3. Nothing herein contained shall be construed to impair the ditch or canal or the District's easement, and all construction and use of the District's easement by the Licensee and the license herein provided therefor shall remain inferior and subservient to the rights of the District to the use of the ditch or canal for the transmission and delivery of irrigation water.

4. The Licensee agrees that the District shall not be liable for any damages which shall occur to any facility in the reasonable exercise of the rights of the District in the course of performance of maintenance or repair of the ditch or canal. The Licensee further agrees to suspend its use of the said easement areas when the use of the easement areas is required by the District for maintenance or repair under this or any other paragraph of this License Agreement.

5. In the event of the failure, refusal or neglect of the Licensee to comply with all of the terms and conditions of this License Agreement, the license of the Licensee under the terms hereof may be terminated by the District, and any facility, structure, plant, or any other improvement in or over the ditch, and the right of way therefor, which may impede or restrict the maintenance and operation of such ditch or canal by the District with its equipment for the maintenance of the ditch or canal shall be promptly removed by the Licensee upon demand of the District.

E. Applicable Law and Jurisdiction Unaffected.

1. Neither the terms of this License Agreement, the permission granted by the District to the Licensee, the Licensee's activity which is the subject of this License Agreement, nor the parties exercise of any rights or performance of any obligations of this License Agreement, shall be construed or asserted to extend the application of any statute, rule, regulation, directive or other requirement, or the jurisdiction of any federal, state, or other agency or official to the District's ownership, operation, and maintenance of its canals, drains, irrigation works and facilities which did not apply to the District's operations and activities prior to and without execution of this License Agreement.

2. In the event the District is required to comply with any such requirements or is subject to the jurisdiction of any such agency as a result of execution of this License Agreement or the Licensee's activity authorized hereunder, Licensee shall indemnify, hold harmless and defend the District from all costs and liabilities associated with the application of such laws or the assertion of such jurisdiction or, at the option of the District, this License Agreement shall be of no force and effect and the Licensee shall cease all activity and remove any facility authorized by this License Agreement.

F. Indemnification

1. In addition to all other indemnification provisions herein, Licensee further agrees to indemnify, hold harmless and defend the District from any injury, damages, claim, lien, cost and/or expense (including reasonable attorney's fees) incurred by, or asserted against, the District by reason of the negligent acts or omissions of Licensee or its agents, contractors or subcontractors in performing the construction and activities authorized by this License Agreement.

G. Fees and Costs

1. The Licensee agrees to pay attorney fees and engineering fees charged by the attorney for the District or by the engineers for the District in connection with the negotiation and preparation of this License Agreement.

2. Should either party incur costs or attorney fees in connection with efforts to enforce the provisions of this License Agreement, whether by institution of suit or not, the party rightfully enforcing or rightfully resisting enforcement of the provisions of this License Agreement, or the prevailing party in case suit is instituted, shall be entitled to reimbursement for its costs and reasonable attorney fees from the other party.

H. Miscellaneous

1. No Claims Created. Nothing in this License Agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by the Licensee or any third party against the District.

2. Assignment. Neither this License Agreement nor any agreement entered pursuant to this License Agreement may be assigned or transferred without the prior written approval of the Parties, which approval shall not be unreasonably withheld.

3. Amendment and Modification. Any amendment or modification of this License Agreement must be in writing and signed by all parties to be enforceable.

4. Interpreted. This License Agreement shall be interpreted and enforced in accordance with the laws of the State of Idaho. This License Agreement is not intended for the benefit of any third party and is not enforceable by any third party. If any provision of this License Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this License Agreement shall remain in full force and effect. The parties represent and warrant to each other that they each have authority to enter this License Agreement. The catchlines or section headings herein set forth are provided only for the convenience of the parties in locating various provisions of this License Agreement, and are not intended to be aids in interpretation of any provision of this License Agreement with respect to which the parties might disagree at some future time, and shall not be considered in any way in interpreting or construing any provision of the License Agreement.

5. Binding Effect. The covenants, conditions and agreements herein contained shall constitute covenants to run with, and running with real property of the Licensee described in **Exhibit A**, and shall be binding on each of the parties hereto and on all parties and all persons claiming under them or either of them, and the advantages hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns.

6. Notices. Any and all notices, demands, consents and approvals required pursuant to this License Agreement shall be delivered to the parties as follows:

Settlers Irrigation District

See page 1 for Licensee

P.O. Box 7571
Boise, ID 83707

Notices shall be deemed to have been delivered upon hand deposit in the United States mail as provided above.

7. Counterparts. This License Agreement may be executed and delivered in counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the District has hereunto caused its name to be subscribed by its officers first hereunto duly authorized by resolution of its Board of Directors and the Licensee has caused its name to be subscribed by its duly authorized officer/agent, all as of the day and year herein first above written.

SETTLERS IRRIGATION DISTRICT

By _____
Its President

ATTEST:

Its Secretary

CITY OF MERIDIAN

By: _____

ATTEST:

By: _____

STATE OF IDAHO)
) ss:
County of Ada)

On this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Ed Knight and Stefanie Keen, known to me to be the President and Secretary, respectively, of SETTLERS IRRIGATION DISTRICT, the irrigation district that executed the foregoing instrument and acknowledged to me that such irrigation district 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 Idaho
Residing at _____, Idaho
My Commission Expires: _____

STATE OF IDAHO)
)ss.
County of Ada)

On this _____ day of _____, 2020, before me, the undersigned, a notary public in and for said state, personally appeared _____ and _____, known to me to be the _____ and _____, of CITY OF MERIDIAN, the entity that executed the foregoing instrument, and acknowledged to me that such entity 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 _____
Residing at _____
My Commission Expires: _____

EXHIBIT A
Legal Description

Licensee is the owner of a right-of-way for a water line located within the road right-of-way for N. Hickory Avenue, south of the intersection of N. Hickory Avenue and Fairview Avenue, in the NE 1/4 of Section 8, Township 3 North, Range 1 East, B.M., Ada County, Idaho.

EXHIBIT B
Crossing Locations

See Exhibit D-1 attached hereto.

EXHIBIT C
Purpose of License

The purpose of this License Agreement is to permit Licensee to:

1. construct, install, operate and maintain a water line across and under the Settlers South Side Canal and within the District's easement,

all within Licensee's real property/right-of-way described in Exhibit A, located in the road right of way for N. Hickory Avenue in Meridian, Ada County, Idaho. No other construction or activity is permitted within or affecting the ditch or canal or the District's easement.

EXHIBIT D
Special Conditions

a. The construction described in Exhibit C shall be in performed in accordance with certain plans consisting of one (1) sheet and said plans are attached hereto as Exhibit D-1 and by this reference incorporated herein. The crossing shall be located a minimum of thirty-six inches (36") below the bottom of the ditch or canal.

b. Licensee shall notify the Manager of the District prior to and immediately after construction so that he or the District's engineers may inspect and approve construction.

c. Licensee represents that Licensee has complied with all federal, state or other laws, rules, regulations, directives or other requirements in any form regarding environmental or other matters, and specifically those relating to pollution control and water quality, as may be applicable under the subject matter, terms or performance of this agreement broadly construed. Licensee recognizes its continuing duty to comply with all such requirements that now exist or that may be implemented or imposed in the future. By executing this agreement the District assumes no responsibility or liability for any impact upon or degradation of water quality or the environment resulting from the discharge or other activity by Licensee which is the subject of this agreement.

d. Licensee hereby indemnifies, holds harmless and shall defend the District from any and all penalties, sanctions, directives, claims or any action taken or requirement imposed by any party or entity, public or private, with respect to environmental matters relating to the subject matter, terms or performance of this agreement unless the District shall be solely responsible for the condition or activity which gives rise to any such penalty, sanction, directive, claim, action or requirement.

e. In the event the District is required by any governmental authority to acquire or comply with any permit or other operational requirements associated with Licensee's discharge and other activity which is the subject of this agreement, Licensee shall indemnify, hold harmless and defend the District from all costs and liabilities associated with such permit and other requirements, including but not limited to all costs associated with all permit acquisition, construction, monitoring, treatment, administrative, filing and other requirements.

f. The parties to this agreement recognize this license agreement is an accommodation to Licensee. The District by this agreement does not assume, create, or exercise legal or other authority, either express or implied, to regulate control, or prohibit the discharge or contribution of pollutants or contaminants to the District's facilities or to any groundwater, waters of the State of Idaho or the United States, or any other destination. Such authority, to the extent that it exists, is possessed and exercised by governmental environmental agencies.

g. Construction and installation of the water line shall be completed during the non-irrigation season and thus construction shall not commence prior to October 15, 2021 and shall be completed prior to March 15, 2022. Time is of the essence.

