

AGREEMENT

AGREEMENT, made and entered into this ____ day of _____, 2021, by and between NAMPA & MERIDIAN 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

THE CITY OF MERIDIAN, a political subdivision and
municipality of the State of Idaho

hereinafter referred to as the "City,"

W I T N E S S E T H:

WHEREAS, the parties hereto entered into a Master Pathway Agreement For Developing and Maintaining Pathways for public use along and across some of the District's ditches and within some of the District's easements and fee title lands dated December 19, 2000, recorded as Instrument No. 100102999, records of Ada County, Idaho, hereinafter referred to as the "Master Pathway Agreement;" and,

WHEREAS, the District and the City intended by entering the Master Pathway Agreement to accomplish the following in a manner that is consistent with their respective legal and fiduciary responsibilities; to enhance the City's pathway planning through early consultation between the City and the District; to establish a process for the City's submission of pathway requests and the District's consideration of such requests; and to provide the general conditions for the District's approval and authorization of pathway requests affecting the District's ditches, property, operations and maintenance; and,

WHEREAS, the District grants to the City the right develop pathways to encroach within the District's easements and/or fee title property along and across the District's ditches, canals and easements/fee title property therefor upon the terms and conditions of said Master Pathway Agreement and after the execution of an agreement for each proposed crossing and encroachment; and,

WHEREAS, the City is the owner of the real property easement / right of way that is servient to the District's easement/fee title property particularly described in the "Legal Description" attached hereto as Exhibit A and by this reference made a part hereof; and,

WHEREAS, the District controls the irrigation/drainage ditch or canal known as the FIVE MILE DRAIN (hereinafter referred to as "ditch or canal") together with the real property and/or easements to convey irrigation and drainage water, to operate and maintain the ditch or canal, and which crosses and intersects said described real property of the City as shown on Exhibit B attached hereto and by this reference made a part hereof (in some locations along this portion of the Five Mile Drain the District owns real property in fee title); and

WHEREAS, the City desires approval to construct, install, operate and maintain a paved pathway within the District's easement/fee title property for the Five Mile Drain under the terms and conditions of said Master Pathway Agreement and those hereinafter set forth,

NOW, THEREFORE, for and in consideration of the premises and of the covenants, agreements and conditions hereinafter set forth and those set forth in said Master Pathway Agreement, the parties hereto agree as follows:

1. The City may construct, operate, maintain and repair a 10 foot wide asphalt pedestrian pathway and associated landscaping within the District's easement and/or fee title property for the Five Mile Drain at Gander Creek North No. 1 Subdivision, located southwest of the intersection of McMillan Road and McDermott Road in Meridian, Ada County, Idaho (the pathway is being constructed as part of Gander Creek North No. 1 Subdivision and is also be constructed on the District's fee title property to the south of Gander Creek North No. 3 Subdivision and to connect to N. Owyhee Storm Avenue).

2. Any construction, widening or crossing of said ditch or canal shall be performed in accordance with the "Special Conditions" stated in Exhibit C, attached hereto and by this reference made part thereof.

3. The permitted hours of use of the pathway shall be from one half hour before sunrise and one half hour after sunset.

4. The parties hereto incorporate in and make part of this Agreement all the covenants, conditions, and agreements of said Master Pathway Agreement unchanged except as the result of the provisions of this Agreement.

The covenants, conditions and agreements herein contained and incorporated by reference shall constitute covenants to run with, and running with, all of the lands of the City described in said 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.

IN WITNESS WHEREOF, the District has hereunto caused its corporate name to be subscribed by its officers first hereunto duly authorized by resolution of its Board of Directors and the City has hereunto subscribed its corporate name to be subscribed and its seal to be affixed thereto, all as of the day and year herein first above written.

NAMPA & MERIDIAN IRRIGATION DISTRICT

By _____
Its President

ATTEST:

Its Secretary

THE CITY OF MERIDIAN

By _____

ATTEST:

STATE OF IDAHO)
) ss:
County of Canyon)

On this _____ day of _____, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Clinton C. Pline and Michael Comeskey, known to me to be the President and Secretary, respectively, of NAMPA & MERIDIAN 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 _____, 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, known to me to be the _____ and _____, respectively, of The 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

A right-of-way/easement located within Gander Creek North No. 1 in the NE 1/4 of Section 32, Township 4 North, Range 1 West, B.M., Meridian, Ada County, Idaho. The portion of the pathway which is on north side of the Five Mile Drain is located on the District's easement or fee title property is being approved pursuant to this Agreement (i.e. there is no right-of-way/easement of the City for this portion of the pathway and improvements but said pathway and improvements are being approved/consent to pursuant to the terms of this Agreement).

EXHIBIT B
Location of Property/Drain

See Exhibit C-1 attached hereto.

EXHIBIT C
Special Conditions

- a. The location and construction of the pathway shall be in accordance with Exhibit C-1, attached hereto and by this reference made a part hereof.
- b. In the locations referenced herein and where City proposes construction, the District owns fee title to a portion of the real property along and adjacent to the Five Mile Drain. To the extent the District does not own the property in fee, Licensee acknowledges that the District's easement for the Five Mile Drain includes a sufficient area of land to convey irrigation and drainage water, to operate, clean, maintain and repair the ditch or drain, and to access the ditch or drain for said purposes, and is a minimum of 100 feet, 50 feet on either side of the centerline of the ditch or drain facing downstream.
- c. Construction shall be completed one year from the date of this agreement. Time if of the essence.

