

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

(Space Above For Recorder's Use)

UTILITY LICENSE AGREEMENT
Pioneer Project No. 08-2023

This Utility License Agreement ("Agreement") is entered into and made effective this ____ day of ____, 20____, by and between **PIONEER IRRIGATION DISTRICT**, an irrigation district organized and existing under and by virtue of the laws of the State of Idaho, whose address is P.O. Box 426, Caldwell, Idaho 83606 ("Pioneer" or the "District") and City of Meridian, whose address is
(name of Licensee)
33 E. Broadway Ave. Suite 200, Meridian, ID. 83642 ("Licensee").

NOW, THEREFORE, in consideration of the mutual benefits to be received by the District and Licensee, and other good and valuable consideration, which consideration is hereby acknowledged by the parties, and the promises, covenants, agreements, and conditions hereinafter set forth, the parties agree with one another as follows:

1. Grant of Licenses. The District hereby grants a License ("License") to Licensee for the purpose of crossing or encroaching upon the Phyllis Canal
(name of canal, lateral or ditch)
_____ at the location described in **Exhibit A**, appended hereto, in order to construct, operate, inspect, maintain, and repair Sewer Lines
(list of crossing(s) – power, gas, cable, phone, etc.)
_____. This grant of License is subject and subordinate to any

and all property rights the District has in the Phyllis Canal

(name of canal, lateral or ditch)

_____ and its corresponding easement, and is further subject to the terms and conditions of the District's current published Standards and Specifications on file, which Standards and Specifications are hereby incorporated by this reference hereto.

Licensee expressly acknowledges and agrees that this License does not grant Licensee the right to install any property, utilities, equipment or other facilities, except as may be described in this Agreement, or the right to impair any rights of the District or others in the use of the Phyllis Canal or its corresponding easement. This
(name of canal, lateral or ditch)
grant of License is expressly conditioned upon the prior receipt by Licensee of any and all necessary approvals from governmental entities and private parties for the activities to be performed under the terms of this Agreement, and is further expressly conditioned upon the District's prior approval of all drawings and plans concerning the activities to be conducted by Licensee under this Agreement.

2. Term of Grant of License. The term of the License shall commence upon the effective date of this Agreement and shall continue for so long as Licensee is in compliance with the terms of this Agreement. The District reserves the right to revoke this License, effective upon thirty (30) days' prior written notice to the Licensee thereof, should Licensee at any time fail to comply with the terms and conditions of this Agreement, and fail to correct such noncompliance within thirty (30) days following service of written notice by the District ("Cure Period"). If Licensee begins but cannot complete corrective action within the Cure Period, the Cure Period may be extended, at the sole discretion of the District, for such amount of time as may be reasonably required to complete the corrective action.

3. Construction, Inspection, Maintenance, Repair, and Replacement of Crossing or Encroachment. Licensee, following execution of this Agreement by the parties, may have access across, or within, the Phyllis Canal and its (name of canal, lateral or ditch) corresponding easement to conduct its construction, inspection, maintenance, repair, or replacement of the Underground Sewer Lines as may be necessary, subject to any (type of crossing) restrictions imposed on Licensee's activities set forth in this Agreement. Licensee or its agents and contractors shall perform all work authorized herein in a workmanlike manner, and in accordance with the Engineering Plans and Specifications referenced in **Exhibit B**. Licensee further agrees to assume responsibility for all work authorized under this Agreement, including general liability and costs regardless of the type of work performed (*i.e.*, including, but not limited to, all construction, installation, inspection, maintenance, repair and replacement work).

Any activities by Licensee which may impede or impair the flow of water in the Phyllis Canal (name of canal, lateral or ditch) may only be performed during the non-irrigation season, which is usually between November 1 and March 15. Licensee expressly acknowledges that the District does not relinquish its ownership rights in any portion of the Phyllis Canal (name of canal, lateral or ditch) or the facility's corresponding easement.

Licensee shall provide Pioneer a minimum of seventy-two (72) hours' of advance notice prior to commencing construction under this Agreement to provide the District adequate opportunity to adjust its own facility operation and maintenance schedules and activities accordingly, and to provide the District adequate opportunity to schedule any on-site inspection and supervision activities it may choose to perform.

4. Utility Crossings. Licensee shall not allow any other utilities (*e.g.*, gas, phone, electric, cable, fiber optic, etc.) or any private party to attach to Licensee's facilities

governed by this Agreement, cross any portion of the Phyllis Canal
(name of canal, lateral or ditch)

_____, or otherwise use or encroach upon the corresponding easement, without the express written consent of the District. Said written consent may take the form of an addendum to this existing Agreement or, the District, in its discretion, may require that separate license agreements be executed between the District and the utility or private party seeking to cross the Phyllis Canal
(name of canal, lateral or ditch), or otherwise encroach upon the facility's corresponding easement.

5. Express Waiver. In the event that any utilities or private parties do attach to Licensee's facilities governed by this Agreement, cross District facilities and/or systems, or share in the use of District's facility and/or system easements, Licensee, utilities, and/or private parties waive any and all claims against the District, now and in the future, arising from the District's water distribution, operation, and maintenance activities involving its facilities and/or systems.

6. Indemnity. To the extent and as permitted by law, the Licensee shall indemnify, hold harmless, and defend Pioneer, including its officers, directors, employees, members and agents, from all claims for damages or injuries to the extent, and in the proportion, they arise out of Licensee's acts or omissions, or those of its employees, contractors or agents, causing:

(a) A hazard or damage to any person or property;

(b) An interruption or interference with the flow of water in the Phyllis Canal

_____;
(name of canal, lateral or ditch)

(c) An increase in seepage or any other increase in the loss of water from the

Phyllis Canal _____;
(name of canal, lateral or ditch)

(d) The subsidence of soil within or adjacent to the Phyllis Canal
(name of canal, lateral or ditch)

_____ and/or its corresponding easement;

(e) An impairment to the proper functioning of the Phyllis Canal
(name of canal, lateral or ditch)

_____;

(f) An obstruction to Pioneer's access to, operation or maintenance of the
Phyllis Canal and/or its corresponding easement; or
(name of canal, lateral or ditch)

(g) Any other damage to, or interference with, the Phyllis Canal
(name of canal, lateral or ditch)
_____ or its corresponding easement.

7. No Liens. Licensee shall allow no liens as a result of any labor performed or materials supplied in connection with his activities of Licensee, its agents, or contractors to attach to the Phyllis Canal, its easement, or to any adjacent lands held by the District.
(name of canal, lateral or ditch)

8. Permits. Licensee represents that he has obtained all permits, licenses, and authorizations required to conduct the activities to be performed under the terms of this Agreement. Additionally, Licensee shall deliver to counsel for the District a copy of a Clean Water Act (33 U.S.C. §§ 1251, *et seq.*) Section 404 Permit or a non-jurisdictional determination (waiver) from the United States Army Corps of Engineers prior to commencement of any construction affecting the District's facilities. In the event that a Section 404 Permit is not required, Licensee shall certify that its construction impacting the District's facilities does not fall under purview of the Clean Water Act and that a Section 404 Permit is not required. The parties hereby recognize and agree that this Agreement will not be executed by the District and recorded until the District is in receipt of the appropriate Section 404 Permit, non-jurisdictional determination (waiver), or written certification by Licensee that a Section 404 Permit is not

required for the construction contemplated under this Agreement. The applicable Section 404 Permit, non-jurisdictional determination (waiver), or certification shall be attached to this Agreement as **Exhibit C** and made a part hereof.

9. Authorization from Servient Estate Owners. Licensee acknowledges and agrees that Pioneer has no right or power to create rights in the Licensee affecting the holders of title to property servient to the Pioneer's easements, including that for the Phyllis Canal
(name of canal, lateral or ditch)

. The License granted herein pertains only to Pioneer's rights as the owner of an easement. Any rights affecting fee title must be acquired from the holders of title to such property. Should Licensee fail to obtain such rights from the holder(s) of title to property servient to Pioneer's easements, or should the rights obtained prove legally ineffectual, Licensee shall hold harmless, indemnify, and defend Pioneer to the extent as permitted by law from any claim by any party arising out of or related to such failure of rights.

10. Operation, Maintenance, and Repair of Crossing Improvements. It is recognized by the District that maintenance, repair and/or replacement of the crossing and/or encroaching improvements constructed by Licensee under the terms and conditions of this Agreement, and as identified in **Exhibit B**, may be necessary subsequent to the execution and recording of this Agreement. In the event that Licensee desires to perform any maintenance, repair and/or replacement of such improvements, they acknowledge and agree that the written consent of the District is required prior to commencement of any such maintenance, repair and/or replacement work unless an emergency reasonably precludes obtaining the District's prior written consent. Licensee shall provide written notice to the District of any emergency repair or replacement as soon as reasonably possible after completing such work. The District agrees that it will consider and act upon all non-emergency written requests for written consent from

Licensee in a business-like manner.

11. Stormwater Discharge. It is hereby acknowledged and agreed that Pioneer does not approve, authorize, permit, allow, or accept stormwater discharge into any facility owned, operated, and/or maintained by the District, whether it be through a pipe, conduit, culvert, canal, lateral, drain, or other ditch absent Pioneer's prior written permission in the form of a separate license agreement. Licensee agrees not to construct, or allow the construction of, any facilities capable of conveying stormwater discharge into the Phyllis Canal
(name of canal, lateral or ditch)
_____ unless the discharge is authorized, in writing, by Pioneer as determined within the discretion of the District Board of Directors on a case-by-case basis.

12. Limitations on Liability; Attorney Fees. The parties hereto agree that nothing contained herein shall be construed to create a joint venture, partnership, or other similar relationship which might subject any party to liability for the debts and/or obligations of the other, except as otherwise expressly agreed to in this Agreement. No director, officer, employee, member, agent, or designee of the District shall incur any liability hereunder to Licensee, crossing utility or private party, or any other party, in such person's individual capacity by reason of such person's actions hereunder or by execution hereof. In the event any party hereto shall bring any action to enforce a breach of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorney fees from the nonprevailing party, including any costs and attorney fees on appeal.

13. Further Consideration. The License granted herein benefits the Licensee only, and is of no benefit to the District. Therefore, and in further consideration for inducing the District to grant this License, the Licensee agrees to promptly pay all expenses incurred by the District relating to the negotiation, preparation, and execution of this Agreement.

14. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter of this Agreement. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

15. Binding Effect. The promises, covenants, conditions and agreements herein contained shall be binding on each of the parties hereto and on all parties and all persons claiming under them or any of them; and the rights and obligations hereof shall inure to the benefit of each of the parties hereto and their respective successors and assigns. No third parties are intended to benefit from, or obtain any rights under, this Agreement.

16. Governing Law; Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible. Further, the validity, meaning and effect of this Agreement shall be construed under and governed by the laws of the State of Idaho.

17. No Waiver. The failure of a party to insist on the strict performance of any provision of this Agreement, or to exercise any right or remedy upon a breach hereof, shall not constitute a waiver of any provision of this Agreement or limit such party's right to enforce any provision or exercise any right.

18. Representation of Parties.

(a) District. The District represents and warrants that: (i) it is an irrigation district organized and existing under and by virtue of the laws of the State of Idaho; (ii) it has the capacity and all legal rights necessary to enter into and perform the District's obligations under this Agreement; (iii) all organizational and other actions required to authorize the District to enter into and perform this Agreement have been properly taken; and (iv) this Agreement has been properly executed and delivered by the District and is valid and binding upon the District in

accordance with its terms.

(b) Licensee. Licensee represents and warrants that: (i) it has the capacity to enter into and perform its obligations under this Agreement; (ii) all actions required to authorize Licensee to enter into and perform this Agreement have been properly taken; (iii) it has obtained all permits, licenses, and acknowledgements required to conduct the activities to be performed under the terms of the Agreement; (iv) this Agreement has been properly executed and delivered by the Licensee and is valid and binding upon the Licensee in accordance with its terms; and (v) (check one of the following, if applicable):

- ☒ Licensee is an Idaho municipal corporation incorporated and in good standing in the State of Idaho;
- ☐ Licensee is a _____ partnership established and in good standing in the State of _____.
- ☐ Licensee is a _____ incorporated or organized and in good standing in the State of _____.

19. Notices. All notices permitted or required to be given under the terms of this Agreement shall be in writing and shall be deemed effective upon receipt if sent by first class mail, postage prepaid, and addressed to the respective party hereto as follows, or at such other address as a party designates in writing.

PIONEER IRRIGATION DISTRICT
P.O. Box 426
Caldwell, Idaho 83605

City of Meridian

Licensee

33 E. Broadway Ave. Suite 200, Meridian, ID. 83642

Address

City, State, and Zip Code

20. Recording. This Agreement shall be recorded upon execution in the office of the County Recorder for each county in which any portion of the land covered by this Agreement is located.

IN WITNESS WHEREOF, the parties have hereunto caused their names to be subscribed to this Agreement of the date first set forth above.

PIONEER IRRIGATION DISTRICT

By _____
Brad Benke, President
of its Board of Directors

Attest:

Judy Read, Secretary/ Treasurer

STATE OF IDAHO)
) ss.
County of Canyon)

On this ____ day of ___, 202___, before me, the undersigned Notary Public in and for said state, personally appeared **BRAD BENKE** known or identified to me to be the President of the Board of Directors of **PIONEER IRRIGATION DISTRICT**, the person who executed the instrument on behalf of the **PIONEER IRRIGATION DISTRICT**, and acknowledged to me that **PIONEER 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 _____
My Commission Expires _____

STATE OF IDAHO)
) ss.
County of Canyon)

On this ____ day of ___, 202___, before me, the undersigned Notary Public in and for said state, personally appeared **JUDY READ** known or identified to me to be the Secretary/Treasurer of **PIONEER IRRIGATION DISTRICT**, the person who executed the instrument on behalf of the **PIONEER IRRIGATION DISTRICT**, and acknowledged to me that **PIONEER 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 _____
My Commission Expires ____

LICENSEE

Attest:

By Chris Johnson, City Clerk

City of Meridian
Name of Licensee

By Robert E. Simison
Its Mayor

STATE OF IDAHO)
) ss.

County of _____,

On this ___ day of ___, 202___, before me, the undersigned
Notary Public in and for said state, personally appeared _____
known or identified to me to be the _____ of _____, who
is the person who executed the instrument on behalf of _____
_____ and acknowledged to me that
he/she/it 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 _____

My Commission Expires _____

STATE OF IDAHO)
) ss.

County of _____,

On this ___ day of ___, 202___, before me, the undersigned
Notary Public in and for said state, personally appeared _____
_____ known or identified to me to be the _____ of _____, who
is the person who executed the instrument on behalf of _____
_____ and acknowledged to me that
he/she/it 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 _____

My Commission Expires _____

EXHIBIT A

Location of Phyllis Canal Crossing and/or Encroachment

**CORRESPONDING
AREA MAP
PAGE 4**

K2	K4
L2	L4

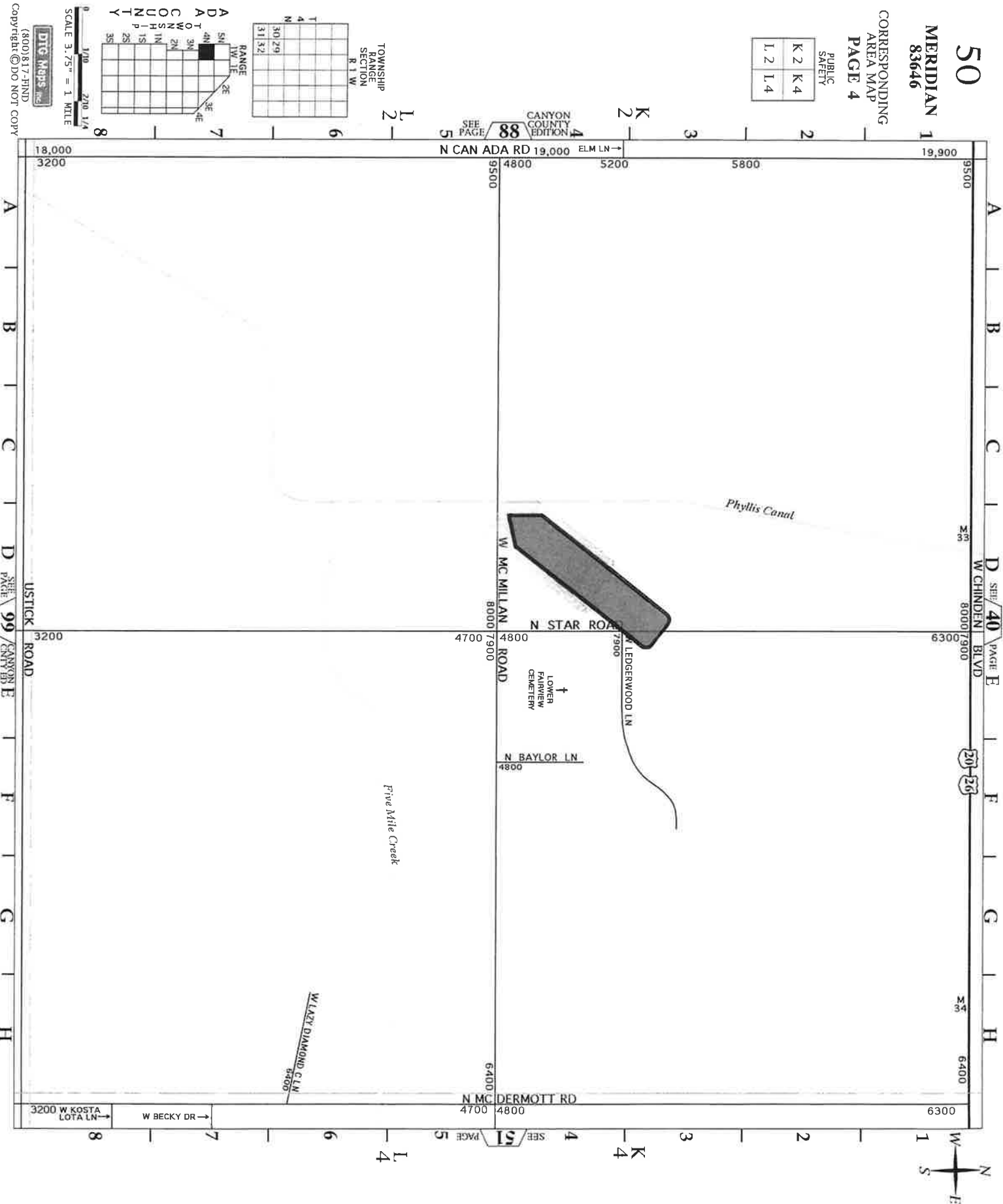
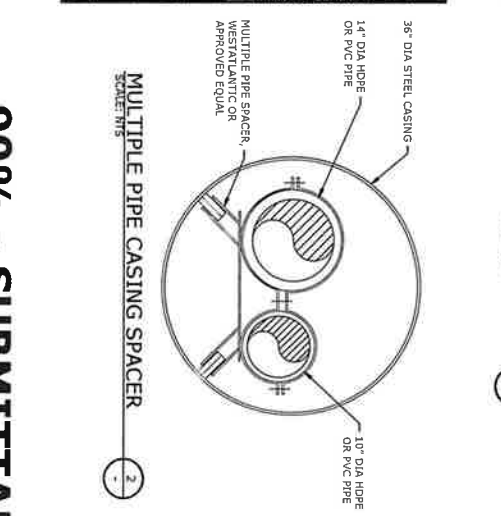
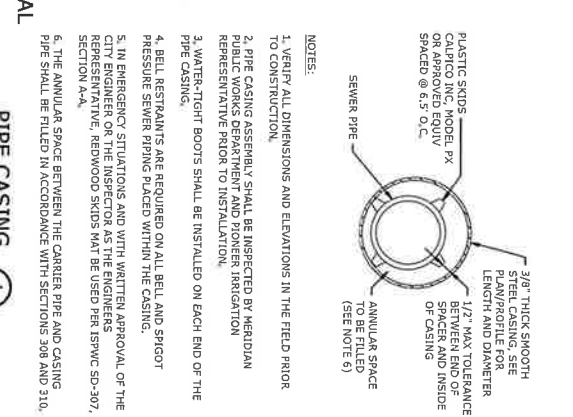


EXHIBIT B

Engineering Plans and Specifications

**City of Meridian Placing 2 Pressurized Sewer Lines and 1 Gravity Sewer Line in sleeves
minimum 3' under the Phyllis Canal @ McMillan Rd. Bridge**



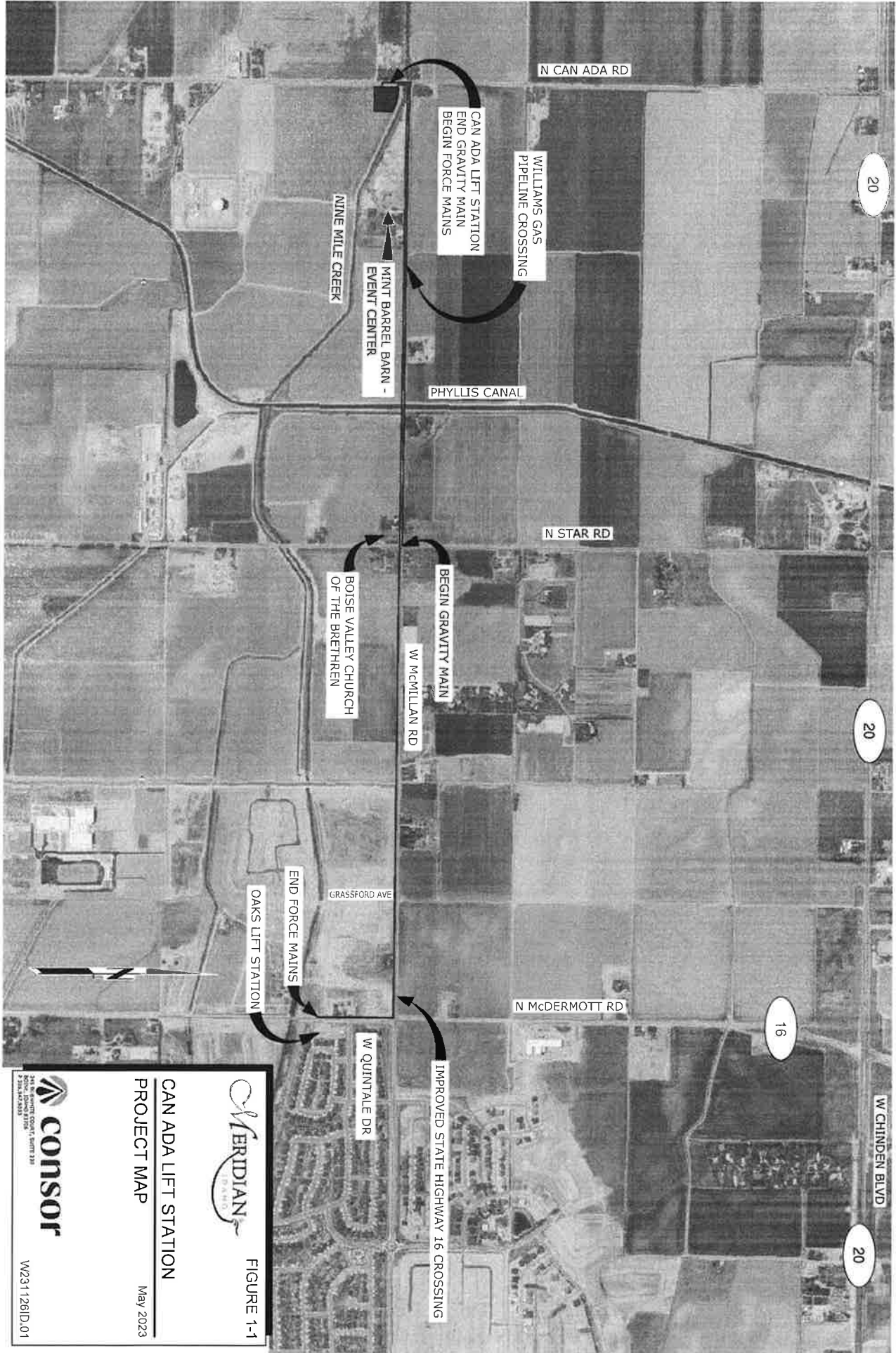


EXHIBIT C

Clean Water Act Section 404 Permit Certification

The undersigned represents he/she is a duly authorized representative of City of Meridian

(name of Licensee)

("Licensee"), and hereby certifies that a Clean Water Act Section

404 Permit is not required for Licensee's trenchless

(description of crossing(s))

crossing(s) of the Phyllis Canal, for the following reason:

(name of canal, lateral or ditch)

- ☐ The crossing(s) contemplated under this Agreement will be overhead crossings and will not include any excavation in or around or any discharge of dredged or fill material into the District's facility.
 - ☒ Licensee will be using the "boring" method of construction which will not include any excavation in or around or any discharge of dredged or fill material into the District's facility.
 - ☐ The Phyllis Canal is an existing piped facility; thus, any construction impacting the facility will not include any discharge of dredged or fill material into the District's facility.
- (name of canal, lateral or ditch)
- ☐ The crossing(s) contemplated under this Agreement will be inserted into existing conduit crossing(s) of the Phyllis Canal.
- (name of canal, lateral or ditch)
- ☐ Licensee is in receipt of a Clean Water Act Section 404 non-jurisdictional waiver letter from the United States Army Corp of Engineers (copy attached hereto).

DATED THIS 8 day of Feb, 2024.

City of Meridian

Name of Licensee

By David Briggs
Written Name: David Briggs, PE, PMP
Authorized Title: Staff Engineer II

EXHIBIT C