

## **MASTER PATHWAY AGREEMENT**

THIS MASTER PATHWAY AGREEMENT (“Master Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between MIDDLETON MILL DITCH COMPANY and MIDDLETON IRRIGATION ASSOCIATION, INC., duly organized and existing Idaho corporations and ditch companies under and by virtue of the laws of the State of Idaho, (hereinafter collectively referred to as the “Ditch Company”), and CITY OF STAR, a municipal corporation (hereinafter “City”).

### **RECITALS**

WHEREAS, the Ditch Company owns or controls numerous irrigation canals, laterals, drains and irrigation works and maintenance roads (hereinafter collectively referred to as “ditches” and individually referred to as “ditch”) with associated rights-of-way and ditch easements (hereinafter collectively referred to as “associated property”);<sup>1</sup> and,

WHEREAS, the Ditch Company utilizes the aforementioned rights-of-way and ditch easements to access its ditches, to monitor and adjust water flows, to remove sediment and debris, to pipe, line and refurbish ditches, to maintain and repair ditch banks and ditch roads, and to perform other inspection, operation, maintenance and repair activities with the appropriate personnel and equipment, and it is necessary that the Ditch Company protect absolutely its right to control any modification or alteration of its ditches and its rights-of-way along its ditches; and,

WHEREAS, the City from time to time places a condition on development to construct a pathway and related landscaping and improvements within the Ditch Company’s easement or right-of-way; and,

WHEREAS the City desires a license from Ditch Company to permit the City, or to authorize a Landowner or Developer with the City’s approval and conditioning, to construct, install, and maintain a pathway, landscaping and/or related improvements within the Ditch Company’s ditch easement or right-of-way, and to make said pathway available to the public without charge for recreational activities, in the manner hereinafter appearing and under the terms and conditions hereinafter set forth; and,

WHEREAS, the activities of the City are such that the City anticipates that it will seek, and/or authorize and condition a Landowner or Developer, to construct and/or maintain pathways affecting the Ditch Company’s ditches and associated property on a continuing basis, and it is the intent of the parties hereto to simplify the process of negotiating separate agreements, and to confirm the understanding between the parties with respect to the Ditch Company’s requirements for such construction or activity; and,

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<sup>1</sup> The Ditch Company’s irrigation canals, laterals, irrigation works, maintenance roads and associated rights-of-way and ditch easements includes the laterals which are delivered water by the Ditch Company and delivered water to the end shareholders, including the Canyon Hill Ditch Company, Lemp Lateral, Inc., Newman Ditch Company, Flake Ditch Company and Foothill Ditch Company and thus the terms and conditions of this Master Pathway Agreement shall specifically include such laterals.

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

1. **General.** The Ditch Company hereby agrees, upon its Board approval, to grant to the City and/or a Landowner or Developer authorized and conditioned by the City, subject to the terms and conditions hereinafter provided, the right to construct, install, reconstruct, operate, and maintain pathway and associated landscaping and improvements over, across or into the Ditch Company's ditches and associated property where such grant will not be incompatible with the Ditch Company's operation and maintenance of said ditches or impair the use of said ditches for the transmission and delivery of irrigation and drainage water. The City agrees that neither the City or any Landowner or Developer authorized or conditioned by the City shall construct, install, reconstruct, or alter any facilities over, across or into the Ditch Company's ditches and associated property except as approved and licensed by the Ditch Company pursuant to this Master Agreement.

2. **Pathway Master Plan and Typical Sections.** The parties acknowledge that planning of pathways along or across the Ditch Company ditches, easements and fee title lands requires consultation between the parties as early as possible in the City's pathway-planning process to identify potential pathway locations and determine project feasibility before the City submits pathway requests to the Ditch Company as provided in Section 3 of this Master Agreement. They shall consult with each other in the City's planning process as follows:

a. The City shall provide the Ditch Company notice and an opportunity to comment on pathway plans, maps, proposals and requirements as early as possible in the City's pathway-planning process. This shall include, but is not limited to, situations in which the City requires, requests or authorizes third parties (Developers) to construct pathways across or along the Ditch Company's ditches, irrigation system and works, and associated real property interests.

b. The City shall prepare an initial draft Pathway Masterplan and proposed typical Sections which depicts existing pathways and the conceptual alignment for future pathways and proposed cross sections the City desires to construct or be constructed by developers along the Ditch Company ditches, easements and fee title lands. The City shall submit these documents for review by the Ditch Company. After submittal, the City and the Ditch Company representatives shall meet to review the proposed Path Masterplan and Typical Sections.

c. The Ditch Company shall: (1) advise the City whether the Ditch Company requires additional information in order to respond; (2) identify circumstances and options in which construction and maintenance of pathways across or along the Ditch Company ditches, easements and fee title lands may be compatible with the Ditch Company's primary interests, operations and obligations without creating unacceptable risks to public safety; (3) identify circumstances in which space constraints, and operation, maintenance and safety issues preclude, limit, or otherwise diminish the potential for the construction of pathways along or across the Ditch Company ditches, easements and fee title lands under consideration. The City shall revise these documents to reflect the Ditch Company comments and concerns. Following revision, the City shall submit the revised draft Path Masterplan and draft Typical Sections to the Ditch Company for formal review and comment. Subsequent meetings and

revisions will be held until each party are in agreement with the draft Path Master Plan and draft Typical Pathway Sections.

d. Approval of the Pathway Masterplan and Typical Sections shall be in writing by both parties. Once both parties have formally approved the draft Path Masterplan and draft Typical Sections they shall be referred to hereafter as Path Masterplan and Path Typical Sections. Future revisions of the Path Masterplan and or Typical Section shall follow the procedures outlined above for the initial approval.

e. The Ditch Company approval of the Path Masterplan and Path Typical Sections does not constitute approval to construct the pathway nor does it affect the Ditch Company rights to deny approval of a specific section of Pathway construction if the Ditch Company finds it interferes with the Ditch Company's use and management of the Ditch Company's property, business and affairs, the Ditch Company's delivery or drainage of water, or the Ditch Company's access, use, operation, maintenance and repair of its ditches and irrigation works or create unacceptable risks to public safety.

f. The City shall not submit plans for approval unless it is in compliance with the Path Masterplan and Typical Section or unless, prior to submittal, the City or Landowner/Developer requested and received written approval for a variance from the approved Path Masterplan and or Typical Section.

3. **Submission, Review and Approval of Facilities.** The following procedures, terms and conditions shall apply to the submission, review, and approval of requests to construct, install, operate, and maintain facilities:

a. Prior to constructing, requiring or authorizing any pathway and associated landscaping and improvements within or affecting any Ditch Company ditch, easement and/or associated property, the City agrees to submit a written request to the Ditch Company, and to obtain the Ditch Company's written permission and approval through execution of a license agreement. The written request may also be submitted by a Landowner or Developer authorized, required or conditioned by the City. Any request submitted by the Landowner or Developer must include the authorization and condition of the City.

b. The City and/or Landowner or Developer shall submit each request far enough in advance of the proposed initiation of construction or activity to provide the Ditch Company a reasonable time to evaluate and respond to the request. With respect to pathway requests only, in no event shall such a request be submitted less than three months prior to the first date of construction.

c. Each request shall describe the proposed construction or activity generally, identify the proposed dates of construction (if any), and shall identify any known local, state, or federal procedures or requirements which may affect the Ditch Company's review and approval of the proposed construction or activity.

d. Each request shall include a location map; fee title legal description, easement or authorization from the servient estate owner; and construction plans which show the

proposed location, design, and all physical structures, plants and landscaping proposed to be constructed, installed or planted.

e. The Ditch Company shall review each request and communicate by letter to the City and the Landowner or Developer if applicable and the Ditch Company's attorney whether the proposed construction or activity meets the requirements of the Ditch Company. Such letter shall not constitute approval of the Ditch Company. Approval may only be granted by the Ditch Company's board of directors through a resolution during one of its regular meetings.

f. If the proposed construction or activity meets the requirements of the Ditch Company, a license agreement shall be prepared. If the License Agreement is to be constructed and installed by the City then there shall be one license agreement between the Ditch Company and the City incorporating the terms of this Master Agreement. If the license agreement is with the Landowner/Developer that is constructing and installing the pathway then there shall be a license agreement between the Ditch Company and the Landowner/Developer which shall include a condition which conditions the approval of the pathway upon the acceptance and maintenance and operation of the pathway by the City. The Ditch Company's attorney shall also provide a separate license agreement between the Ditch Company and the City which provides for said acceptance, maintenance and operation of the pathway by the City. In either case, the license agreement between the Ditch Company and the City shall incorporate by reference all covenants, conditions, and agreements of this Master Agreement; shall identify the proposed construction or activity; shall give a legal description of the subject property; shall describe the width of the Ditch Company's easement; and shall include any special conditions applicable to the particular proposed construction or activity.

g. After signing the license agreement, the City shall return the signed original of the license agreement to the Ditch Company for consideration during the next meeting of the Ditch Company's board of directors for review and signature.

h. Once the license agreement is approved and signed by the Ditch Company's board of directors, the Ditch Company shall record the license agreement and return a copy of the recorded agreement to the City.

4. **Approval Conditions for Pathways.** Each pathway and associated landscaping and improvements affecting the Ditch Company's ditches, easements and associated property shall be constructed, installed, operated, maintained and repaired in accordance with following conditions:

a. Each pathway shall be constructed, installed, operated, maintained and repaired at all times by the City and at the cost and expense of the City. Provided, however, the City may condition and require a Developer/Landowner to perform the initial construction and installation of the pathway so long as the City accepts the pathway and the future operation and maintenance of said pathway.

b. The City and/or Landowner/Developer shall construct, install, operate, maintain and repair each pathway and associated landscaping and improvements and conduct its

activities within or affecting the Ditch Company's ditches, easement and associated property so as not to constitute or cause:

- i. a hazard to any person or property;
- ii. an interruption or interference with the flow of irrigation water in the ditch or the delivery of irrigation water by the Ditch Company;
- iii. an increase in seepage or any other increase in the loss of water from the ditch;
- iv. the subsidence of soil within or adjacent to the ditch and/or associated property;
- v. any other damage to the Ditch Company's ditches and associated property.

c. To the extent permitted by law, the City shall indemnify, hold harmless, and defend the Ditch Company from all claims for damages arising out of any of the City's construction or activity which constitutes or causes any of the circumstances enumerated in the preceding paragraph, 3(b)(i) through 3(b)(v), or any other damage to the Ditch Company's ditches, easement and/or associated property which may be caused by the construction, installation, operation, maintenance, repair, and any use or condition of any facility.

d. If caused by the City, the City shall, upon demand of the Ditch Company, repair any alteration of the Ditch Company's ditches, easement and/or associated property which interferes with the Ditch Company's operation and maintenance of its ditches and associated property, or causes or contributes to any hazard or unsafe condition, impediment to the flow of water in the Ditch Company's ditches, increase in seepage or other water loss from the Ditch Company's ditches, or any subsidence of soil in the associated property, or any other damage to the ditches and/or associated property of the Ditch Company. The Ditch Company shall give reasonable notice to the City, and shall allow the City a reasonable period of time to perform such maintenance, repair, and other work, except that in cases of emergency the Ditch Company shall attempt to give such notice as is reasonable under the circumstances. The Ditch Company reserves the right to perform any and all work which the City fails or refuses to perform within a reasonable period of time after demand by the Ditch Company. The City agrees to pay to the Ditch Company, on demand, the costs which shall be reasonably expended by the Ditch Company for such purposes. Nothing in this paragraph shall create or support any claim of any kind by the City or any third party against the Ditch Company for failure to exercise the options stated in this paragraph, and the City shall indemnify, hold harmless and defend the Ditch Company from any claims made against the Ditch Company arising out of or relating to the terms of this paragraph, except for claims arising solely out of the negligence or fault of the Ditch Company.

e. The City agrees that the work performed and the materials used in installation of the pathway and associated landscaping and improvements shall at all times be subject to inspection by the Ditch Company and by the engineers for the Ditch Company, and that final acceptance of the construction work shall not be made until all such work and materials

shall have been expressly approved by the Ditch Company. Such approval by the Ditch Company shall not be unreasonably withheld.

f. The City shall notify the Ditch Company prior to and immediately after construction so that the Ditch Company and/or the Ditch Company's engineers may inspect and approve construction. If the Ditch Company's engineers perform such inspection, the Developer shall pay the Ditch Company's engineers any reasonable fee charged in connection therewith.

g. The uses permitted by each license agreement executed pursuant to this Master Agreement shall all times be subordinate and subservient to the Ditch Company's rights and uses of the Ditch Company's ditches and associated property. Nothing contained herein or in any agreement executed pursuant to this Master Agreement shall be construed, implemented or enforced to impair, limit, restrict or otherwise affect the Ditch Company's rights, authority, powers, and discretion with respect to the Ditch Company's ditches and associated property, or to grant or create any rights which interfere with the purposes and uses to which the Ditch Company's ditches, easement and associated property are devoted and dedicated. The Ditch Company and the City agree that all of the Ditch Company's rights and discretion to access, operate, construct, maintain, repair, clean or otherwise use of any portion of the Ditch Company's ditches, easement and associated property are reserved.

h. The City acknowledges that the Ditch Company has, and agrees that the Ditch Company shall continue to have, the right to deposit sediment, plant material, debris and other material (collectively "spoil") which the Ditch Company removes from its ditches on the Ditch Company's easement and associated property. Without limiting this right, the Ditch Company agrees to exercise reasonable best efforts to avoid placing spoil on the City's facilities. The City may spread and level any spoil removed from the Ditch Company's ditches or, in the alternative, may transport the spoil to a sanitary landfill or some other authorized place of disposal. The Ditch Company shall have no obligation to spread, level, or remove any spoil removed from the ditches and place on the Ditch Company's easement and associated property.

i. The City shall not excavate, place any structures, plant any trees, shrubs, or landscaping, or perform any other construction or activity within or affecting the Ditch Company's ditches and associated property except as authorized by agreements executed pursuant to this Master Agreement without the prior written consent of the Ditch Company.

j. The City agrees that the Ditch Company shall not be liable for any damages which shall occur to any facility, plant, or any other improvement of any kind or nature whatsoever which the City shall install within the Ditch Company's ditches and associated property in the reasonable exercise of the rights of the Ditch Company in the course of performance of maintenance or repair of the Ditch Company's ditches and associated property. The City further agrees to suspend or modify, as necessary, its use of the Ditch Company's ditches and associated property when required by the Ditch Company to operate, maintain, inspect, access or repair the Ditch Company's ditches.

k. If the pathway is being constructed and installed by a Landowner/Developer, and then is subsequently going to be operated and maintained by the City per the terms of this Master Agreement, then the Landowner/Developer shall pay attorney fees

and engineering fees charged by the attorney for the Ditch Company or by the engineers for the Ditch Company in connection with the preparation or review of any license agreement with the Landowner/Developer and the license agreement between the Ditch Company and City executed pursuant to this Master Agreement. Provided, however, if the pathway is being constructed and installed by the City, then the City agrees to pay attorney fees and engineering fees charged by the attorney for the Ditch Company or by the engineers for the Ditch Company in connection with the preparation or review of any license agreement executed pursuant to this Master Agreement. Any fees charged to the City shall not exceed \$600.00, plus recording fees, unless otherwise agreed in writing by the City.

l. In the event of the failure, refusal or neglect of the City to comply with any of the terms and conditions of any license agreement executed pursuant to this Master Agreement, the rights of the City under the terms of such license agreement may be terminated by the Ditch Company, and any facility over, across or into the Ditch Company's ditches and associated property which may impede or restrict the maintenance and operation of the Ditch Company's ditches and associated property shall be promptly removed by the City.

m. The City shall comply fully with all federal, state or other laws, rules, regulations, directives or other governmental requirements in any form as administered by appropriate authorities, regarding environmental matters, and specifically those relating to pollution control and to materials and chemicals which may be inimical to human health or the environment, which may be applicable to its construction, installation, operation, or maintenance of any facilities pursuant to this Master Agreement and any license agreement executed hereunder.

n. The City shall have no right, power or authority to grant, allow or suffer any lien or other charge or encumbrance of any kind against the Ditch Company's right, title and interest in the Ditch Company's ditches and associated property.

o. The covenants, conditions and agreements contained in each license agreement and this Master Agreement shall constitute covenants to run with, and running with, the servient lands and/or easements of the City, and shall be binding on each of the parties hereto and on all parties and all persons claiming under them for as long as the subject facility continues to be used for the purposes authorized by each agreement. The City shall provide the Ditch Company written notice upon cessation of use of each authorized facility for the authorized purposes.

5. **Consultation in City Pathway Planning.** The parties acknowledge that planning of pathways along or across Ditch Company ditches associated property requires consultation between the parties as early as possible in the City's pathway-planning process to identify potential pathway locations and determine project feasibility before the City submits pathway requests to the Ditch Company as provided in this Master Agreement. The parties shall consult with each other in the City's planning process as follows:

a. The City shall provide the Ditch Company notice and an opportunity to comment on pathway plans, maps, proposals and requirements as early as possible in the City's pathway-planning process. This shall include, but is not limited to, situations in which the City

requires, requests or authorizes third parties to construct pathways or grant the City easements for pathways across or along the Ditch Company's ditches and associated property.

b. In its written comments, the Ditch Company shall: (1) advise the City whether the Ditch Company requires additional information in order to respond; (2) identify circumstances and options in which construction and maintenance of pathways across or along Ditch Company ditches and associated property may be compatible with the Ditch Company's primary interests, operations and obligations without creating unacceptable risks to public safety; (3) identify circumstances in which space constraints, and operation, maintenance and safety issues preclude, limit, or otherwise diminish the potential for the construction of pathways along or across Ditch Company ditches under consideration.

c. The City shall advise the Ditch Company in writing if, prior to submitting a pathway request, the City desires a statement from the Ditch Company regarding the feasibility of a specific pathway along or across a Ditch Company ditch and associated property based on the City's submission of preliminary plans. A statement that a proposed pathway is feasible shall not constitute Ditch Company approval, nor affect the parties' rights and obligations in the submission, review and approval of pathway requests as provided in this Master Agreement.

6. **Pathway Conditions.** In addition to all other covenants, agreements and conditions herein, construction, use, maintenance and repair of each pathway by the City and members of the public within or affecting the Ditch Company's ditches and associated property shall be performed in accordance with the conditions listed below.

a. The City shall be permitted to make the pathways available to the public without charge for recreational uses as contemplated by Idaho Code section 36-1604. The authorized uses of the pathways are limited to walking, jogging, and riding bicycles or other human-powered vehicles or devices. Authorized uses shall not include, hunting, or any use of motorized vehicles except for necessary access by law enforcement personnel or for construction, maintenance or repair work by the City of the pathway, landscaping, and related improvements or by the Ditch Company for Ditch Company purposes, or for access by handicapped persons with motorized wheelchairs or comparable equipment for access by handicapped persons. The authorized uses of the pathways may be expanded in certain circumstances depending upon the space constraints and the operation, maintenance and safety issues for a specific ditch and associated property. Such additional authorized uses shall be included in the license agreement executed pursuant to this Master Agreement.

b. The City shall enforce its anti-littering ordinances, provide waste receptacles, and take other reasonable actions within its authority to prevent litter, trash or other material to gather or be deposited on or along pathways authorized pursuant to this Master Agreement.

c. The City shall do the following to ensure that the permitted public uses of pathways do not interfere with the Ditch Company's ditches and associated property and the Ditch Company's access, operation, maintenance, cleaning and repair of its ditches and associated property:



i. The City shall prepare and install readily visible signs at pathway entrances or other appropriate locations along each pathway advising the public: that the pathway is located within the Ditch Company's associated property by the Ditch Company's consent; that the primary use of the associated property is for the Ditch Company's access, operation, maintenance, repair and cleaning of the Ditch Company's ditch and associated property; that users of the pathway must yield to Ditch Company personnel engaged in Ditch Company activities; that swimming, wading, boating and any other activity in Ditch Company ditches or within the inside slopes of Ditch Company ditch banks is prohibited; that public use of motor vehicles or equipment on the pathway is prohibited; that the pathway may be closed from time to time upon request of the Ditch Company; of any City ordinances which apply to public use of the pathway; the permitted hours of use of the pathway; and that persistent violations of any of these rules may result in temporary suspension of use of the pathway.

ii. The City shall take appropriate action and exercise best efforts to protect the safety of the members of the public who use the City's pathways, ensure that members of the public comply with the terms of this Master Agreement, agreements executed pursuant to this Master Agreement, and any City ordinance regarding activity on City pathways, prevent interference with the Ditch Company's use, operation, and maintenance of the Ditch Company's ditches and associated property, and prevent members of the public using City pathways from swimming, wading, boating, or conducting any other activity within the inside slopes of the Ditch Company's ditch banks. This Master Agreement shall not prevent the Ditch Company from enforcing any prohibition against unauthorized use of the Ditch Company's ditches and associated property.

d. If requested by the Ditch Company for a specific pathway, the City shall construct obstructions to unauthorized vehicles and equipment on each pathway and in a manner that will prevent access to the Ditch Company's ditches and associated property.

e. The City shall be allowed to use any pathway 1/2 hour before sunrise and 1/2 hour after sunset, on any day unless otherwise stated in each license agreement executed pursuant to this Master Agreement.

7. **Not a Public Dedication.** Except for the permission to construct and maintain the facilities contained in license agreements executed pursuant to this Master Agreement, nothing contained herein or in such agreements shall be deemed to constitute a gift or dedication of any portion of the Ditch Company's ditches and associated property to the general public or for the benefit of the general public or for any public purpose whatsoever, and nothing contained herein shall be deemed to provide that any facility shall be used for any other purpose than as stated herein and in agreements executed pursuant hereto, it being the intention of the parties that this Agreement and any further agreements will be strictly limited to and for the purposes expressed herein. The parties shall be permitted, from time to time, to take whatever reasonable action it or they deem necessary to prevent any portion of the Ditch Company's ditches and associated property from being dedicated or taken for public use or benefit.

8. **Relocation.** If desired by the Ditch Company, any facility within or affecting the Ditch Company's ditches and associated property may be relocated in a functionally similar manner. Such relocation shall be with the prior written approval of the City, which approval

shall not be unreasonably withheld. The costs of such relocation shall be borne by the Ditch Company.

9. **Indemnification**. To the extent permitted by law, the City agrees to indemnify, hold harmless and defend the Ditch Company, the Ditch Company's directors, officers, employees, agents, contractors, partners and the heirs, personal representatives, successors, and assigns of each of them (hereinafter collectively referred to as "Ditch Company" for purposes of the City's covenants to indemnify) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from: the terms and performance of this Agreement and any agreement executed hereunder; the City's construction, use, operation, or maintenance of facility and related facilities within and affecting the Ditch Company's ditches and associated property; or the use of such facility by any third party or member of the public. The provisions of this section establish duties between the City and the Ditch Company 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 section does not extend these duties to the public beyond the provisions of Idaho Code Section 36-1604, which are incorporated herein by this reference.

a. The Ditch Company shall continue to be responsible for the operation, maintenance, repair and cleaning of its property, ditches and irrigation works, including, but not limited to, those duties, obligations and responsibilities provided by Idaho law. The City agrees that the Ditch Company shall not be liable for any injury or damages which may occur to any pathway or facility installed by the City in the reasonable exercise of the rights of the Ditch Company in the course of the Ditch Company's access, use, operation, maintenance, repair and cleaning of its property, ditches and irrigation works.

10. **Piping or Relocation by the City**. This Master Agreement and any license agreement executed pursuant to this Master Agreement pertain only to the City's construction and installation of facilities for the purposes and in the manner described herein. The City shall not change the location of the Ditch Company's ditches, bury the Ditch Company's ditches in pipe, or otherwise alter the Ditch Company's ditches in any manner not described in this Master Agreement or any license agreement executed pursuant to this Master Agreement without first obtaining the written permission of the Ditch Company.

11. **Applicable Law and Jurisdiction Unaffected**. Neither the terms of this Master Agreement, nor any agreement executed hereunder, nor the parties exercise of any rights or performance of any obligations hereunder, shall be construed or asserted to extend the application of any such governmental requirements or the jurisdiction of any federal, state, or other agency or official to Ditch Company's ownership, operation, and maintenance of its ditches and associated property which did not apply prior to and without execution of this agreement.

a. By entering this Master Agreement the Ditch Company does not 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 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.

b. By entering this Master Agreement, the Ditch Company does not assume any responsibility or liability for any impact upon or degradation of human health or safety or the environment resulting from any activity of the other party, including, but not limited to, the City's construction, operation, and maintenance of its facilities.

c. In the event Ditch Company is required to comply with any governmental requirements or is subject to the jurisdiction of any governmental agency as a result of authorizing the construction and maintenance of any facility over, across or into the Ditch Company's ditches and associated property, the City, if it is the cause of such governmental intervention, shall: (1) immediately cease such action; and (2) indemnify, hold harmless or defend or reimburse the Ditch Company for its costs and liabilities associated with the governmental requirements and intervention.

12. **Authorization From Servient Estate Owners Required.** The City acknowledges that the Ditch Company has no right or power to create rights in the City affecting the holders of title to property servient to the Ditch Company's easements. With respect to the Ditch Company's easements, the Ditch Company's commitments in this Master Agreement and the uses permitted by any agreement executed pursuant to this Master Agreement pertain only to the Ditch Company's rights as the owner of easements. Rights affecting fee title must be acquired from the holders of title to such property. Should the City fail to obtain such rights from the holder of title to property servient to an easement of the Ditch Company which is the subject of a license agreement executed pursuant to this Master Agreement, or should the rights obtained prove legally ineffectual, the City shall hold harmless, and to the extent permitted by law, indemnify and defend the Ditch Company from any claim by any party arising out of or related to such failure of rights.

13. **Water Rights.** The City acknowledges that the waters in the Ditch Company's ditches are fully appropriated for beneficial use, and that the water flows in the Ditch Company's ditches fluctuate based on demand, diversion and use of water. The City shall not attempt to divert or claim the right to diversion or maintenance of minimum stream flows of any water in any of the Ditch Company's ditches. The City shall not in any manner attempt to require the Ditch Company to maintain any flow of water in any of the Ditch Company's ditches.

14. **No Claims Created.** Nothing in this Master Agreement or any agreement executed or permit issued pursuant to this Master Agreement shall create or support a claim of estoppel, waiver, prescription or adverse possession by either party hereto or any third party against either party hereto.

15. **Rights Nonexclusive.** This Master Agreement is entered subject to all rights previously acquired by third parties. The rights and privileges granted by this Master Agreement are nonexclusive and will not prohibit the Ditch Company or the City from entering into agreements with other parties.

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

17. **Attorneys Fees.** Should either party incur costs or attorney fees in connection with efforts to enforce the provisions of this Master Agreement or any agreement executed pursuant hereto, whether by institution of suit or not, the party rightfully enforcing or rightfully resisting enforcement of such provisions, 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.

18. **Dispute Resolution.** The parties agree to engage in mediation through a mutually acceptable mediator prior to institution of legal proceedings to resolve any issues pertaining to the provisions of this Master Agreement. The parties shall each pay fifty percent (50%) of all fees and costs charged by such mediator.

19. **Construction, Binding Effect.** This Master Agreement shall be construed and enforced in accordance with the laws of the State of Idaho and shall be binding upon and inure to the benefit of the parties hereto and their respective successors. This Master Agreement is not intended for the benefit of any third party and is not enforceable by any third party. If any provision of this Master Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, all remaining provisions of this Master Agreement shall remain in full force and effect. The parties represent and warrant to each other that they each have authority to enter this Master Agreement.

20. **Headings.** The section headings herein set forth are provided only for the convenience of the parties in locating various provisions of this Master Agreement, and are not intended to be aids in interpretation of any provision of the Master 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 Agreement.

21. **Notices.** Any and all notices, demands, consents and approvals required pursuant to this Master Agreement shall be hand delivered, sent by mail postage prepaid, return receipt requested, or by email addressed to the parties as follows:

Middleton Mill Ditch Company and  
Middleton Irrigation Association, Inc.  
P.O. Box 848  
Middleton, ID 83644

City of Star  
10769 W. State St.  
Star, ID 83669  
Email: staridaho@staridaho.org

With a copies to:

S. Bryce Farris  
1101 W. River Street, Suite 110  
Boise, ID 83702  
E-mail: bryce@sawtoothlaw.com

City Attorney  
Chris Yorgason  
Yorgason Law Offices, PLLC  
6200 N. Meeker Place  
Boise, ID 83713  
E-mail: chris@yorgasonlaw.com

IN WITNESS WHEREOF, the Ditch Company 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 caused its municipal name to be subscribed and its seal to be affixed by its officers first thereunto duly authorized by resolution of its City Council, all as of the day and year herein first above written.

**MIDDLETON IRRIGATION ASSOCIATION,  
INC.**

By \_\_\_\_\_  
Its Chairman

STATE OF IDAHO                    )  
  ) ss.  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public in and for said state, personally appeared \_\_\_\_\_, known to me to be the Chairman of MIDDLETON IRRIGATION ASSOCIATION, INC., the ditch company that executed the foregoing instrument and acknowledged to me that such ditch 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 FOR IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission Expires \_\_\_\_\_

**MIDDLETON MILL DITCH COMPANY**

By \_\_\_\_\_  
Its Board Member

STATE OF IDAHO                    )  
  ) ss.  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public in and for said state, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of MIDDLETON MILL DITCH COMPANY, the Ditch Company that executed the foregoing instrument and acknowledged to me that such Ditch 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 FOR IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission Expires \_\_\_\_\_

**THE CITY OF STAR**

By \_\_\_\_\_  
Trevor A. Chadwick, Mayor

ATTEST:

\_\_\_\_\_  
Jacob Qualls, City Clerk

STATE OF IDAHO                    )  
  ) ss.  
County of \_\_\_\_\_)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned notary public in and for said State, personally appeared Trevor A. Chadwick, known to me to be the Mayor, and Jacob Qualls, the City Clerk, respectively, of the CITY OF STAR, the political subdivision and municipality 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 IDAHO  
Residing at \_\_\_\_\_, Idaho  
My Commission Expires \_\_\_\_\_