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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF RIVERSIDE'S
PETITION FOR DECLARATORY RULING
REGARDING NEED FOR A WATER
RIGHT UNDER REUSE PERMIT NO.
M-255-01

Docket No. P-DR-2020-01

**REUSE PROPONENTS' SUBMISSION OF
EXHIBITS A-F**

Pursuant to *Reuse Proponents' Stipulation of Facts*, the Association of Idaho Cities (“AIC”), the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, and the Hayden Area Regional Sewer Board (“HARSB”) (collectively, “Municipal Intervenors”) and Pioneer Irrigation District (“Pioneer”) hereby submit true and correct copies of the documents identified below. Municipal Intervenors and Pioneer are referred to collectively as “Reuse Proponents.”

Exhibit A	Map showing Canyon County irrigation districts (Reuse Application, Figure 5).....	9
Exhibit B	Map showing Nampa’s area of city impact and the district boundaries of irrigation districts.....	10
Exhibit C	Map showing proposed alternatives for discharge of recycled water to Phyllis Canal (Attachment to Reuse Agreement).....	12
Exhibit D	Map of Recycled Water Flow through Pioneer (Reuse Application, Figure 8).....	13
Exhibit E	Map of Recycled Water Flow through Pioneer: Focus on Upper Portion of Area of Analysis (Reuse Application, Figure 9)	14
Exhibit F	Reuse Agreement (3/7/2018).....	15

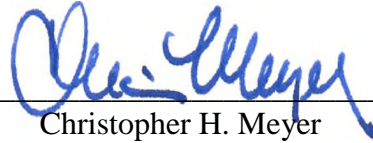
Respectfully submitted this 30th day of June, 2020.

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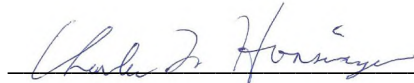
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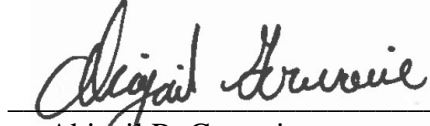
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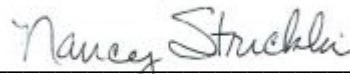
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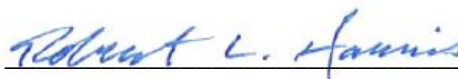
SOMACH SIMMONS & DUNN



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Attorneys for City of Pocatello

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Robert L. Harris

Attorneys for City of Idaho Falls

I HEREBY CERTIFY that on this 30th day of June, 2020, the foregoing was filed, served, and copied as shown below.

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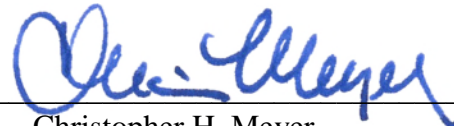
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Christopher H. Meyer

Exhibit A MAP SHOWING CANYON COUNTY IRRIGATION DISTRICTS (REUSE APPLICATION, FIGURE 5)

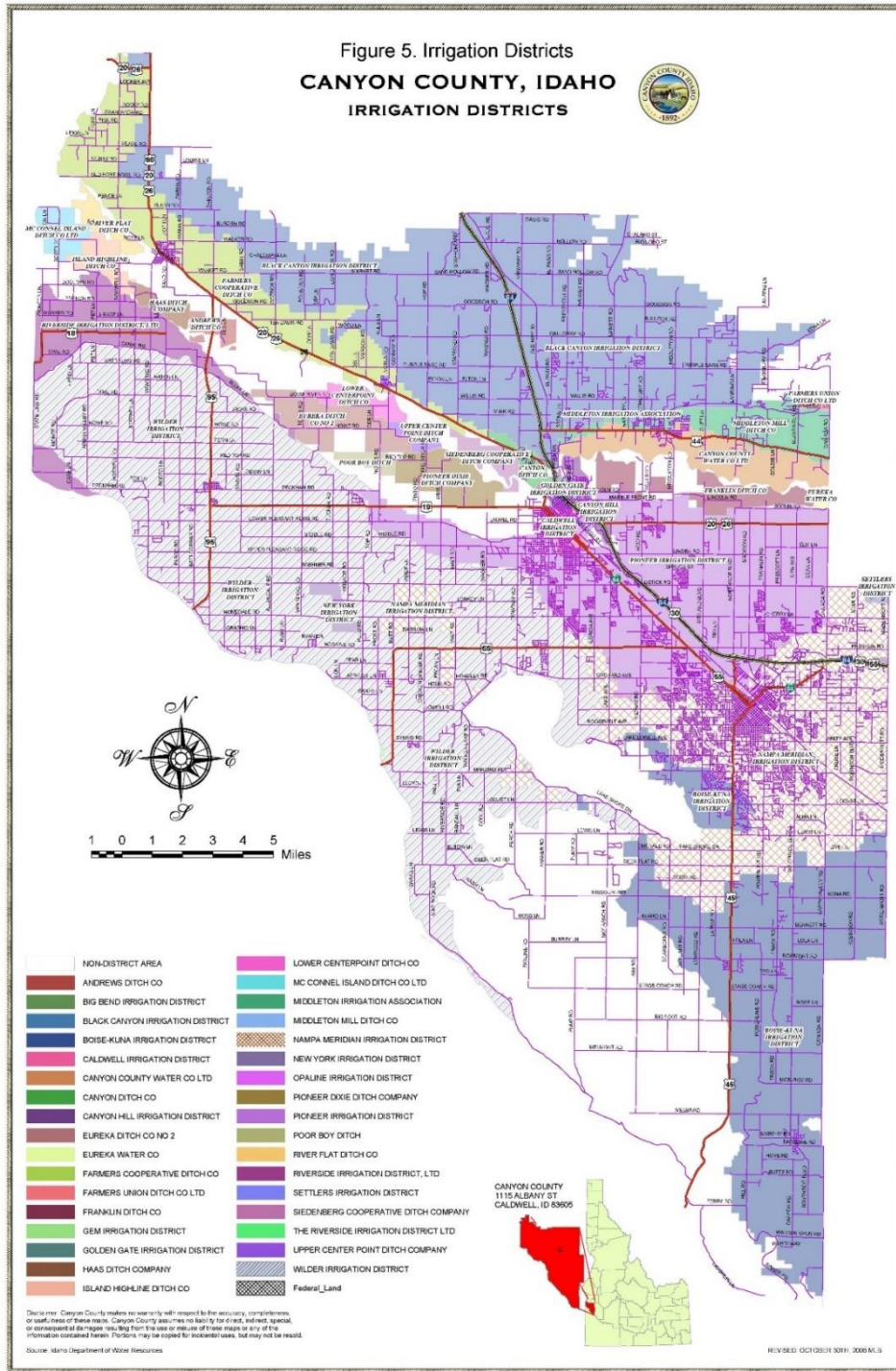
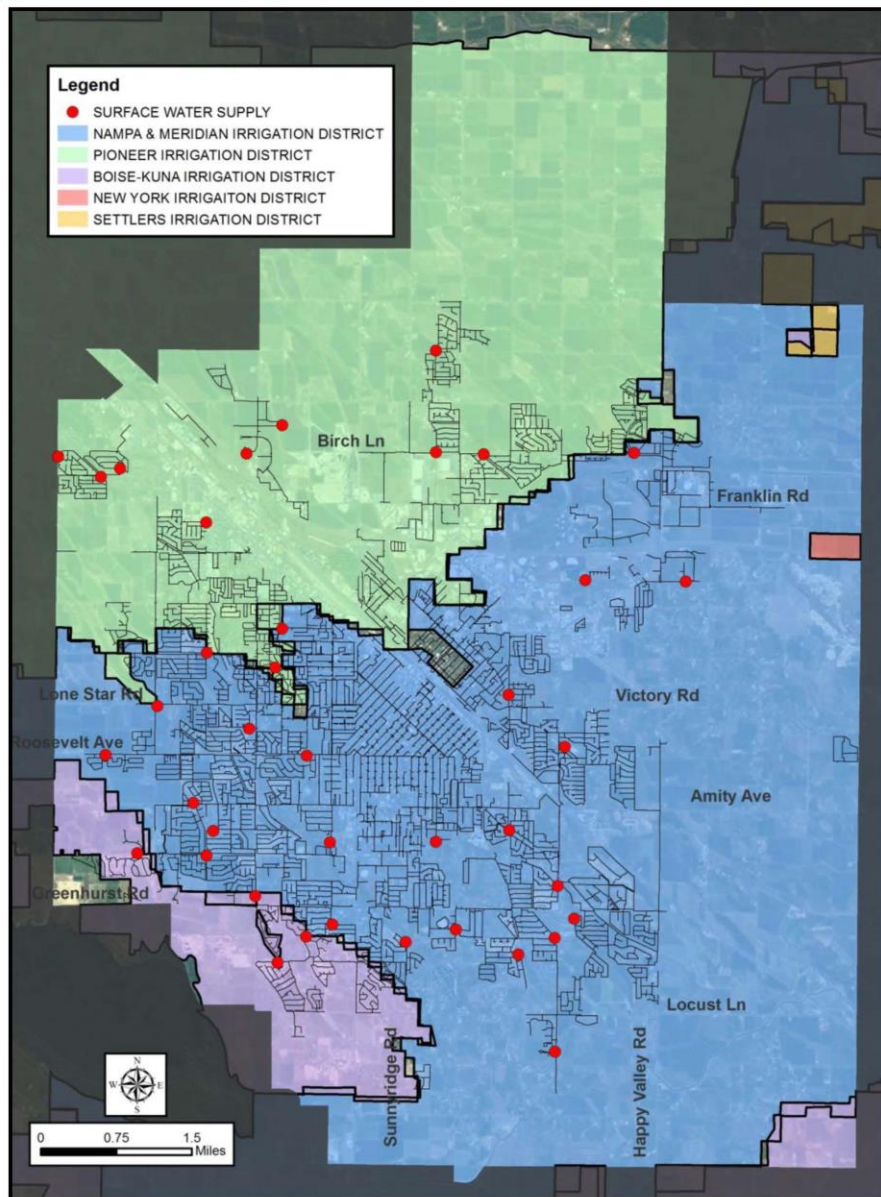


Figure 5 from *Recycled Water Reuse Permit Application Plan of Operations* (3/19/2019)

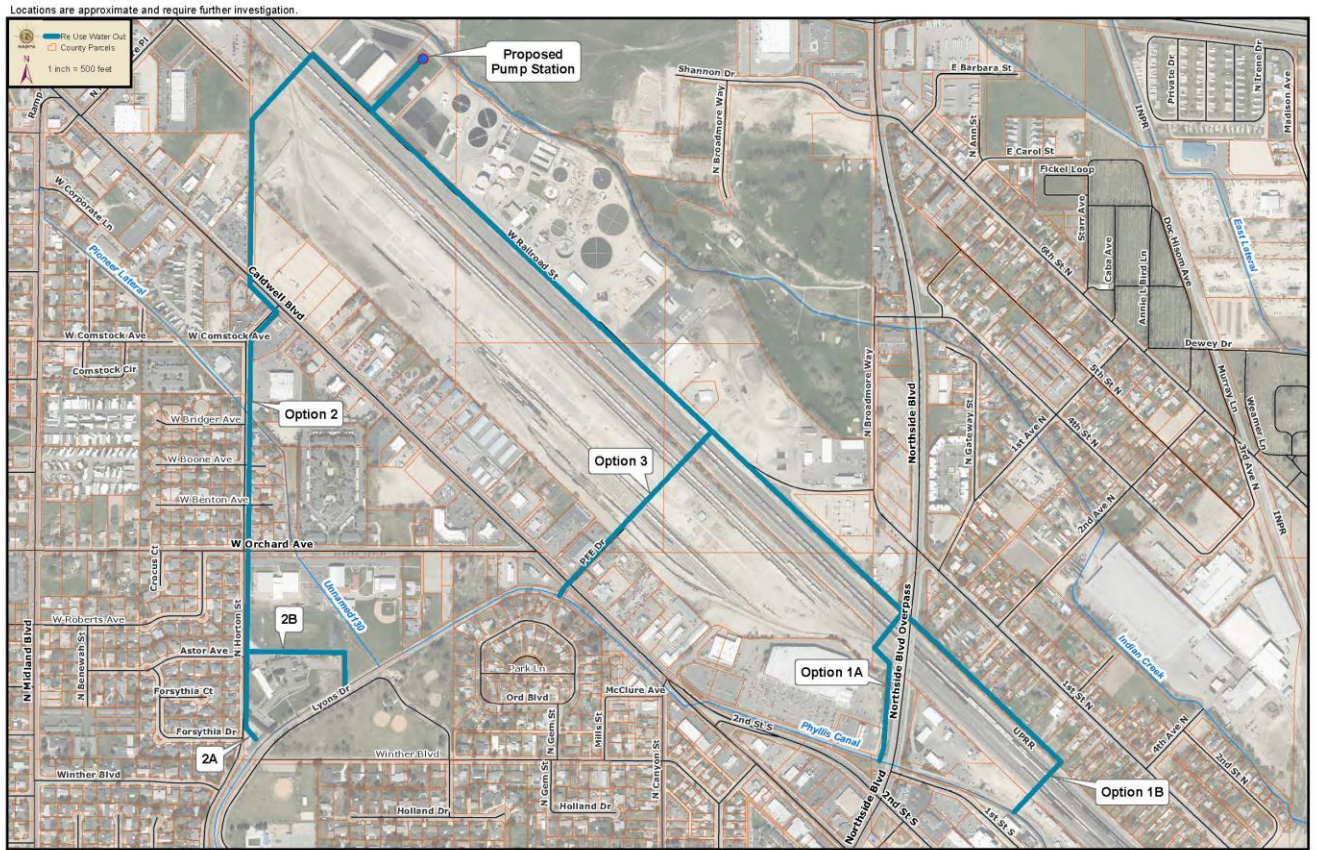
Exhibit B MAP SHOWING NAMPA'S AREA OF CITY IMPACT AND THE DISTRICT BOUNDARIES OF IRRIGATION DISTRICTS

Figure 2.1: Irrigation District Boundaries



*Note: The boundaries shown in Figure 2.1 are approximate and illustrate some discrepancies (gaps and overlaps) in service areas.

Exhibit C MAP SHOWING PROPOSED ALTERNATIVES FOR DISCHARGE OF RECYCLED WATER TO PHYLLIS CANAL (ATTACHMENT TO REUSE AGREEMENT)



Attachment to the *Pioneer/Nampa Reuse Agreement* (Exhibit F) showing options 1A, 1B, 2A, 2B, and 3

Exhibit D MAP OF RECYCLED WATER FLOW THROUGH PIONEER (REUSE APPLICATION, FIGURE 8)

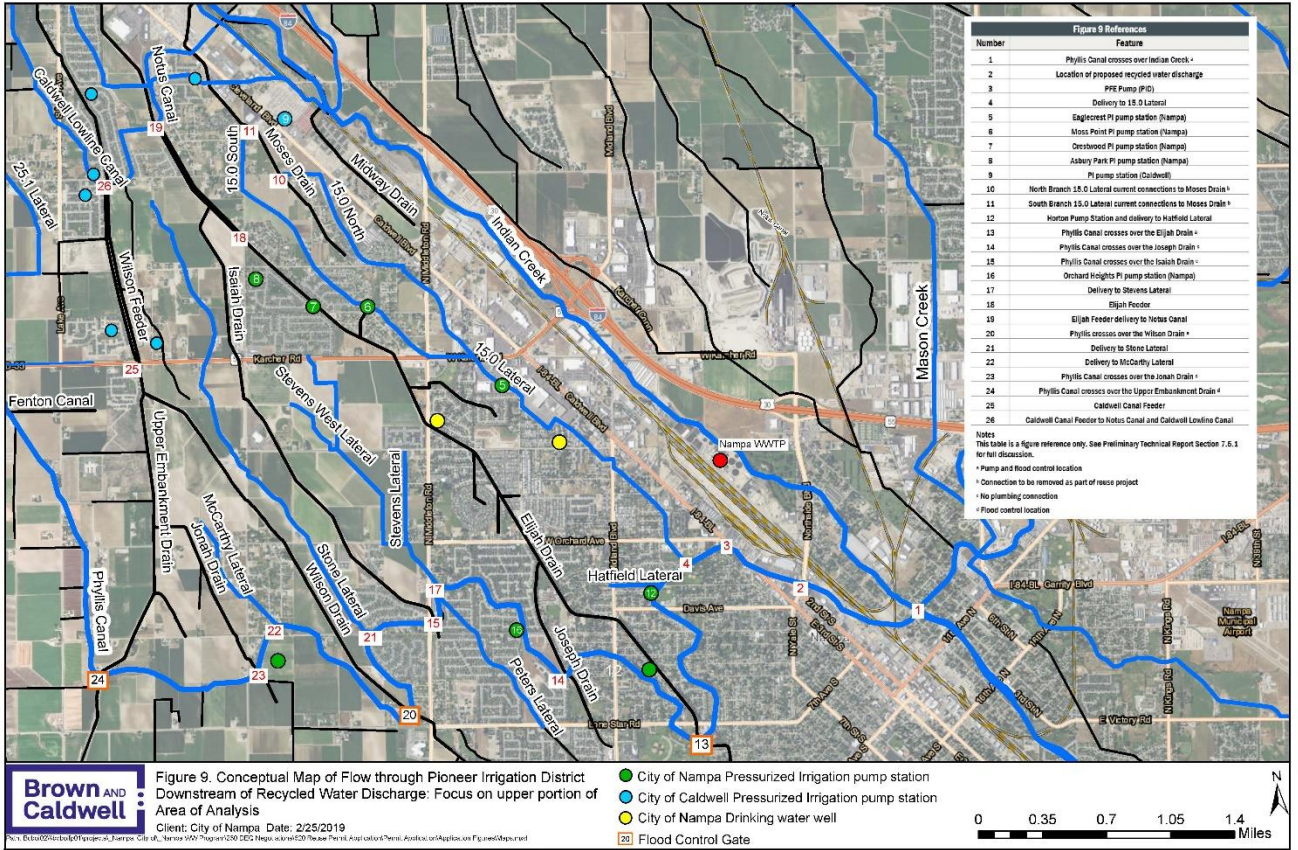


Figure 8 from *Recycled Water Reuse Permit Application Plan of Operations (3/19/2019)*

Exhibit E

MAP OF RECYCLED WATER FLOW THROUGH PIONEER: FOCUS ON UPPER PORTION OF AREA OF ANALYSIS (REUSE APPLICATION, FIGURE 9)

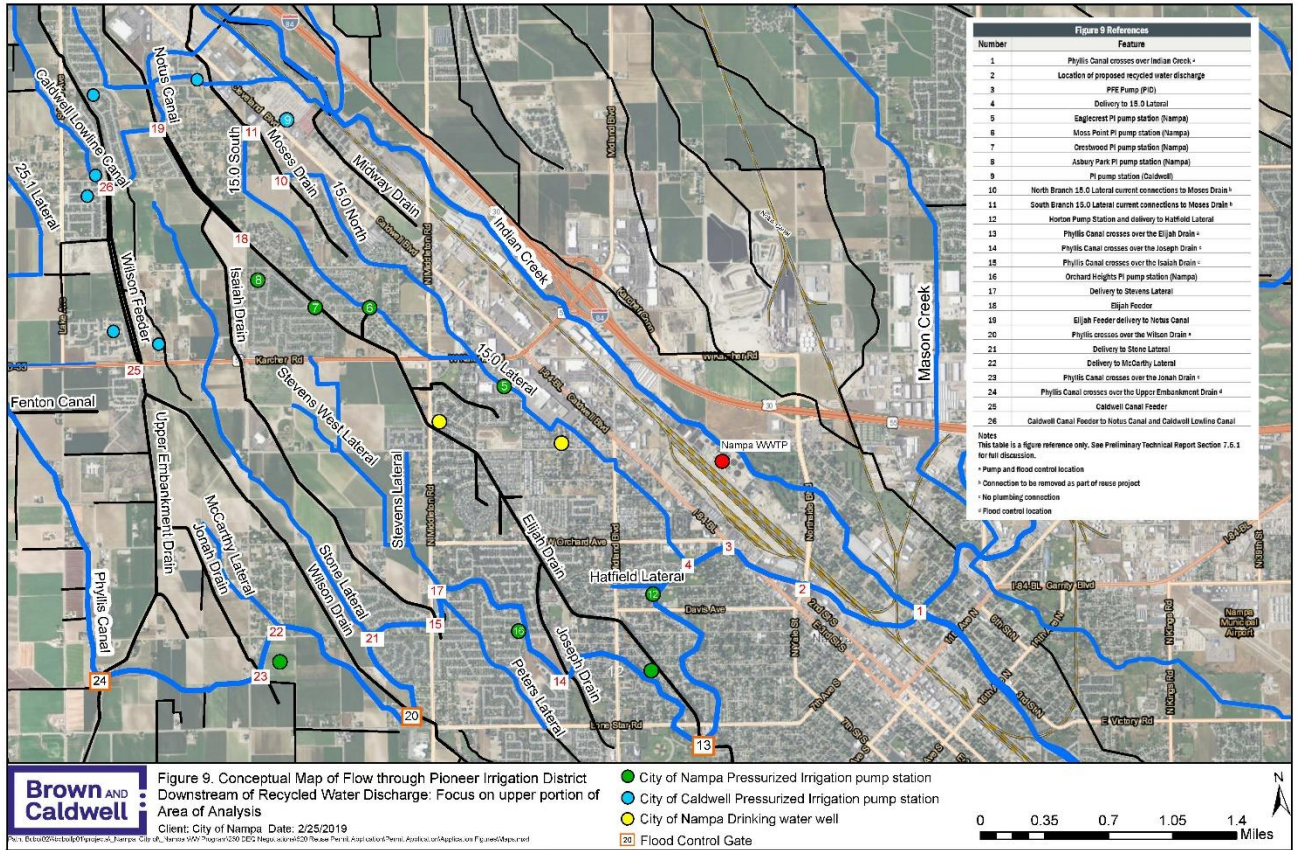


Figure 9 from *Recycled Water Reuse Permit Application Plan of Operations (3/19/2019)*

Exhibit F REUSE AGREEMENT (3/7/2018)

RECYCLED WATER DISCHARGE AND USE AGREEMENT

This RECYCLED WATER DISCHARGE AND USE AGREEMENT ("Agreement") is made and entered into as of the date of the latest signature on the signature pages of this Agreement, by and between the City of Nampa ("City") and Pioneer Irrigation District ("Pioneer") for the purpose of allowing the discharge of recycled water from the Nampa Wastewater Treatment Plant to Pioneer's Phyllis Canal.

WHEREAS, City owns, operates and maintains a public wastewater collection and treatment system which provides wastewater and collection services for City customers; and

WHEREAS, City owns and operates the Nampa Wastewater Treatment Plant ("NWWTP") located at 340 W Railroad St., Nampa, Idaho 83687, to treat collected wastewater; and

WHEREAS, Pioneer owns and operates the Phyllis Canal, passing within approximately one-half (1/2) mile from the NWWTP, which provides irrigation water to lands located within the Pioneer service area; and

WHEREAS, City currently discharges treated wastewater from the NWWTP to Indian Creek pursuant to an NPDES discharge permit issued by the U.S. Environmental Protection Agency ("EPA"), Permit No. ID0022063, which permit is current and in good standing; and

WHEREAS, the City desires to have the option to seasonally discharge Class A recycled water to Pioneer's Phyllis Canal ("Recycled Water") as necessary to provide NPDES permit compliance flexibility related to City's Indian Creek discharges; and

WHEREAS, Pioneer desires to seasonally receive Recycled Water from the City as a supplemental source of irrigation water supply; and

WHEREAS, City and Pioneer agree that it is in the best interests of the citizens and landowners of both entities to enter into a long-term agreement providing terms for the discharge and use of Recycled Water from the NWWTP to the Phyllis Canal.

NOW, THEREFORE, in consideration of the foregoing, it is mutually agreed by the parties that:

SECTION A -CITY OBLIGATIONS

1. City, at its sole cost, shall design, construct and maintain necessary improvements to connect the outflow of the NWWTP to the Phyllis Canal. City shall obtain written approval of piping and connection plans and designs from Pioneer prior to beginning construction of the improvements necessary to make the connection.

2. Upon connection, the City shall be authorized to discharge up to 41 cfs (annual average) of Recycled Water, or more if approved in subsequent writing by Pioneer. The timing of discharges shall be governed by the following provisions:

- a. For discharges that occur during times when Pioneer is using the Phyllis Canal for irrigation water delivery ("Irrigation Season"), City shall forecast and provide Pioneer the estimated flow rates and duration of any anticipated Recycled Water discharge to the Phyllis Canal on a weekly basis for the upcoming week so that Pioneer can coordinate its canal operations accordingly.
- b. If City desires to discharge Recycled Water at times other than during the Irrigation Season such discharges shall be coordinated with, and approved in advance by, Pioneer so as to ensure compatibility with Pioneer's canal operations, maintenance schedules and obligations. Provided, however, that in the absence of an emergency beyond Pioneer and City's reasonable control, Pioneer shall plan its canal operations, maintenance schedules and obligations to accommodate the discharge of Recycled Water to the Phyllis Canal under this Agreement every year between May 1 and October 1.
- c. City may commence discharges as soon as the 2026 Irrigation Season but cannot commit to any specific commencement date. City anticipates at this time that discharges will be underway by, or before, the Irrigation Season for the year 2031.

3. Unless otherwise agreed to in writing by the parties and approved by the Idaho Department of Environmental Quality ("DEQ"), all Recycled Water discharged to Pioneer's Phyllis Canal shall meet or exceed the water quality requirements for Class A Recycled Water as specified in IDAPA 58.01.17, Recycled Water Rules. However, it is understood that all non-water quality-related requirements such as signage, setbacks and recycled water piping will not be applicable. The City shall also be responsible for meeting any more stringent requirements, if required, by DEQ.

4. City, at its sole cost, will be responsible for operation and maintenance of all piping, pumping and other conveyance facilities from the NWWTP to the point of discharge to the Phyllis Canal. City shall ensure that at all times a functioning and accurate measurement device is installed, maintained and operating downstream of the NWWTP but upstream from the point of connection to the Phyllis Canal for purposes of measuring discharges. The measuring device shall be automated, capable of sending Pioneer flow data in real time so that Pioneer can detect and track/monitor discharge flow fluctuations and coordinate its canal operation and maintenance activities accordingly. Pioneer shall have the right to inspect and verify the functionality and accuracy of the measuring device upon request. City also agrees to explore additional discharge automation opportunities in the future in cooperation with Pioneer, which automation may, for example, link instantaneous City Recycled Water discharge data with Pioneer Phyllis Canal diversions at the Boise River and other canal input locations effectively mitigating canal flow fluctuations.

5. City shall comply with any and all applicable local, state, and/or federal laws, rules

RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 2

and regulations, including obtaining any and all permits necessary, concerning the construction and maintenance of the connection facilities and the discharge of Recycled Water to the Phyllis Canal.

6. The City shall conduct effluent testing in accordance with all applicable laws, rules, regulations and permits concerning its discharge of Recycled Water to the Phyllis Canal. The test results shall be shared with Pioneer via electronic media on a monthly basis. The City shall notify Pioneer within 24 hours of determination that the City is out of compliance with any Class A Recycled Water quality requirement and shall take steps reasonably necessary to cease all discharges into the Phyllis Canal until City has established it is able to discharge consistent with Class A water quality requirements/criteria. City shall immediately cease discharge if the City or Pioneer determines that City's discharge fails to meet Class A Recycled Water standards in accordance with IDAPA 58.01.17, or otherwise presents an immediate health risk to Pioneer patrons.

7. Up to a maximum amount of \$5,000, City agrees to pay all attorney fees, and any other fees and costs incurred by Pioneer from and after October 1, 2017 in connection with the negotiation, preparation and execution of this Agreement and any related agreements and other documents, within forty five (45) days of the City receiving itemized invoices. The billing shall be sent directly to the City, attention Public Works Director.

8. City shall use its best efforts to obtain all necessary discharge permits and upon obtaining said permits shall complete design and construction of piping and other construction necessary to enable it to discharge into the Phyllis Canal. City anticipates construction shall be complete no later than March 15, 2031.

9. City reserves the right to serve itself and its own municipal irrigation system customers with Recycled Water, provided such use is compliant with all applicable laws, rules and regulations, including Idaho Code Sections 67-6537 and 31-3805.

10. City shall comply with any request by Pioneer to suspend discharges in the event of an emergency or other circumstance which requires Pioneer to dewater or reduce flows in its canal system.

SECTION B -PIONEER OBLIGATIONS

1. Subject to the provisions of this Agreement, Pioneer agrees to allow the City to do all things reasonably necessary to connect the Recycled Water outflow of the NWWTP to the Phyllis Canal at the point(s) shown on **Exhibit A** attached hereto and incorporated by reference herein. Pioneer shall review and provide written comment and/or approval of City-prepared piping and connection plans and designs prior to the City beginning construction of the improvements necessary to make the connection. Pioneer will grant the City all necessary licenses and easements to allow for construction and maintenance of the connection consistent with its (Pioneer's) review of facility encroachments under Idaho Code Section 42-1209.

2. Upon connection, Pioneer authorizes the City to discharge up to 41 cfs (annual
RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 3

average) of Recycled Water to the Phyllis Canal each year consistent with Section A.2, above.

3. Pioneer acknowledges that the City is not obligated, nor does it guarantee, to provide any Recycled Water flow to Pioneer. Pioneer also acknowledges that the City needs the use of the Phyllis Canal for effluent temperature mitigation and that Pioneer will handle, manage and convey discharged Recycled Water as an integrated part of its irrigation operations.

4. Pioneer shall actively cooperate with City in obtaining all permits and approvals from DEQ necessary for the discharge contemplated under this Agreement. It is the parties' intent under this Agreement to obtain a recycled wastewater re-use permit from DEQ under IDAPA 58.01.17. The parties are not obligated to seek or obtain an NPDES permit authorizing the discharge of Recycled Water to the Phyllis Canal contemplated herein. To the contrary, the parties find any NPDES permit requirement unnecessary and inconsistent with Idaho's Water Quality Standards.

SECTION C -MISCELLANEOUS PROVISIONS

1. This Agreement shall continue in force until terminated by either party as provided herein.

2. Due to the substantial up-front costs incurred by the City in making the connection from its NWWTP to the Phyllis Canal and City's corresponding long-term NPDES Permit compliance requirements, during the first twenty-five (25) years of this Agreement Pioneer may only terminate this Agreement if: 1) the City is determined to be in material breach; or 2) the discharge of Recycled Water into the Phyllis Canal will require Pioneer to obtain and comply with an NPDES permit for its operations; or 3) the acceptance of the Recycled Water imposes additional requirements or restrictions upon Pioneer, including water quality monitoring or reporting not otherwise currently required of it that cannot or will not be performed by City or by mutual agreement between City and Pioneer; or 4) termination is required pursuant to an administrative or judicial order; or 5) the discharge of Recycled Water causes (or threatens to cause) Pioneer to be in violation of any law, rule or regulation of any governmental agency having or asserting jurisdiction over Pioneer and its facilities and activities. After twenty-five (25) years, Pioneer may terminate this Agreement with or without cause by providing at least five (5) years written notice to the City of intent to terminate. At termination, City will take all necessary steps, at its own expense, to cease the Recycled Water discharge and disconnect the City piping from the Phyllis Canal.

3. The City may terminate this Agreement if Pioneer is determined to be in material breach of this Agreement, or without cause by providing at least ten (10) years written notice to Pioneer of its intent to terminate. In the event either party claims a material breach of this Agreement, the parties shall enter into a dispute resolution process, which shall include good faith negotiations attempting to resolve the dispute in a manner saving and continuing the terms of this **RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 4**

Agreement.

4. This Agreement shall be declared null and void should the City and Pioneer fail to obtain any necessary approvals, including permits, licenses or easements, for the discharge of Recycled Water to the Phyllis Canal.

5. The City shall defend, indemnify and save and hold harmless Pioneer from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the City's discharge of Recycled Water under this Agreement not caused by or arising out of the negligent conduct of Pioneer or its agents, contractors or employees. Pioneer shall defend, indemnify and save and hold harmless City from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the conveyance of the Recycled Water following its discharge into the Phyllis Canal not caused by or arising out of the negligent conduct of City or its agents, contractors or employees. Nothing herein shall be construed as a waiver of the parties' respective rights, claims, or defenses under the Idaho Tort Claims Act.

6. If necessary or desired, and expressly agreed to by the parties, Pioneer and City shall cooperatively educate and inform the public and Pioneer patrons of the benefits and advantages realized by Pioneer and City as a result of this Agreement.

7. No waiver or modification of this Agreement shall be valid unless it is in writing and signed by each of the parties hereto.

8. This Agreement shall be binding upon, and inure to the benefit of, the parties and their heirs, successors, and assigns.

9. If either party hereto shall be determined to be in material breach of any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including reasonable attorneys' fees, incurred by such party in enforcing the terms of this Agreement, subject to the good faith dispute resolution requirements of Section C.3, above.

10. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other Agreements, whether or not in writing, between the parties with respect to the subject matter hereof.

11. This Agreement shall be subject to and governed by the law of the State of Idaho. Exclusive jurisdiction and venue for the interpretation and enforcement of this Agreement lies in

RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 5

the District Court for the Third Judicial District, Canyon County, Idaho.

12. The headings in this Agreement are inserted for convenience only and shall not be considered in interpreting the provisions hereof. The recitals are a part of this Agreement and contractual.

13. 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.

14. 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.

15. City shall not allow any liens as a result of any labor performed or materials supplied in connection with its activities under this Agreement to attach to the Phyllis Canal, its corresponding irrigation easement and right-of-way, or to any other adjacent lands or easements held by Pioneer.

16. The parties hereto agree that nothing herein contained 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 in this Agreement. No director, officer, staff member, agent, or designee of either party hereto shall incur any liability hereunder to the other party hereto, or to any other party in such person's individual capacity by reason of such person's actions hereunder or execution hereof.

17. Notwithstanding anything to the contrary in this Agreement, City acknowledges and agrees that it is solely responsible for the operation and maintenance of the NWWTP, and all related infrastructure, including the Recycled Water discharge pipeline contemplated in this Agreement. City also acknowledges and agrees that it is solely responsible for achieving and maintaining any and all applicable regulatory compliance regarding the operation of the NWWTP including, without limitation, NPDES Permit No. ID0022063. Pioneer shall not be liable for any costs or expenses associated with the NWWTP or its related infrastructure, or for any costs or expenses related to the regulatory burdens thereof including, without limitation, any fines, penalties, expenses, fees or costs arising from any regulatory enforcement actions commenced against City in relation thereto.

18. All notices shall be given in writing to the other party at their address set forth

RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 6

below, and shall be effective upon receipt:

Pioneer: Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606
Attn: Superintendent

Nampa: City of Nampa
411 3rd Street So.
Nampa, Idaho 83651
Attention: Public Works Director

19. This Agreement shall not be used or construed as creating or establishing, or entitling any third party to create or establish, any water right in connection with the Recycled Water.

20. The parties represent and warrant that the person signing this Agreement on behalf of each party has been duly authorized to do so, and is fully vested with the authority to bind that party in all respects.

THE PARTIES hereto have executed this Agreement effective as of the latest date of execution set forth below.

THE CITY OF NAMPA, IDAHO

By Deborah Kling
Deborah Kling, Mayor
Dated 3-5-18

ATTEST:

[Signature]
City Clerk

PIONEER IRRIGATION DISTRICT

By Alan Newbill
Alan Newbill, President
Dated 3/7/2018

ATTEST:

[Signature]
Secretary

RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 7

