

ENCROACHMENT PERMIT

THE BILLINGS BENCH WATER ASSOCIATION (BBWA) hereby quit Claims to CITY OF BILLINGS as (Permittees or Grantee), revocable permission to encroach on main canal to repair sewer line located on north end of the alley located between North 23rd and North 24th Streets. More specifically the repair will involve:

A portion of the north canal sidewall (approx. 24' wide) will be removed to allow the repair of the underlying 8" sanitary sewer main and the replacement of a sewer manhole just north of the canal. Prior to replacement of the sidewall, structural fill will be placed and compacted and a bentomat liner will be installed. The new sidewall will be keyed into the bottom and adjacent side concrete slabs to prevent undercutting and will also have #3 rebar placed at 12" O.C. to further strengthen the connection. Additionally, a waterstop will be placed along the seams to prevent any leakage from the canal. . BBWA grants construction on canal bottom and existing truck ramps to transport equipment to reach construction area provided canal is left in better condition than now exists. Plans for the repair are included as Attachment 1.

Sec. 32, TIN, R26E.

Subject to the following terms and conditions.

WHEREAS persons may not encroach upon or otherwise use or impair BBWA's Canal, or its primary or secondary easement, without obtaining approval and an easement therefore:

1. **PLANS AND SPECIFICATIONS OF ANY "ENCROACHMENT" or "DISTURBANCE" OR "PLACEMENT OF FACILITY":**

An "encroachment" or "disturbance" or "placement of facility" means the construction or the placement, and any work associated therewith, of any facility, including utility lines, pipes, pipeline, culverts, bridges, trees, buildings, etc. over, across, on, under, through or near the BBWA'S canal, laterals, embankment, or right-of-way thereof.

2. Any "encroachment", "disturbance" or "placement of facility" by PERMITTEE, over, across, under, on or near BBWA's canal, laterals, and embankment thereof, MUST BE DONE BETWEEN NOVEMBER 1, AND APRIL 1, of each year, unless a specific written exception is granted by BBWA. 'PERMITTEE', shall contact BBWA, at least twenty-four (24) hours in advance of any actual "encroachment" "disturbance", or "placement of facility."
3. Any "disturbance", or "encroachment", or "placement of facility", must be properly reclaimed. Any cuts or disturbance of BBWA's main canal and embankment shall be reclaimed by pouring a concrete slab four inches thick in the disturbed area, plus ten feet up-stream and ten feet downstream from the disturbed area and a foot above the high water line. One-foot upstream and downstream edges should be angled into the ground 8" deep to prevent undercutting of the slab.

On bridges and pedestrian bridges, BBWA requires, that a concrete slab be poured under the bridges a distance of the length and width of the bridge, plus ten feet up-stream and ten feet down-stream from the structure to one foot above the high water line.

On lateral crossings, BBWA requires using riprap and necessary measures to insure that the soil integrity of the canal will not give away or leak. All cuts in the laterals shall be lined with high swelling sodium type bentonite such as is produced by Wyo-Ben Inc. or other impervious material as agreed to by BBWA.

Requirements for boring under the canal: A cement pad must be placed for 10 feet upstream and down stream on the bottom of the canal directly above the installation and it must be at least 4" thick. The slab will be Steel Reinforced of minimum thickness 4" covering the bottom and both sides to one foot above the high water mark. The flow line must be kept at the same level as present ditch.

Final details of reclamation shall include:

Soil compaction per attached exhibits, surface restoration per attached exhibits, and grass areas will be sodded. Final reclamation shall be approved by BBWA prior to and after PERMITTEE'S "encroachment" "disturbance" placement of facility.

4. The installation of any culvert, bridge, fence, or any other "facility" will be such as to allow BBWA access to cleaning and allow safe and efficient operation, maintenance of its canals and laterals.

5. **BBWA shall be entitled to use the road easement in the operation and maintenance of its canal. The "Permittee" shall have right of access and enjoyment of its easement under this agreement so long as such use and enjoyment by "Permittee" does not interfere with the normal operation and maintenance of BBWA'S canals and only so long as the encroachment otherwise complied with the bylaws of BBWA as they may exist from time to time.**
 6. **The "Permittee", will take necessary actions to insure that the easement does not create a nuisance or hazard to the public, or that the easement will not interfere with other utility easements.**
 7. **The "Permittee" shall take necessary precautions to warn or prevent the public from using BBWA'S easement, in a manner which might result in harm or damage to BBWA'S canal, the "Permittee", or the public including the construction of a safety curb along the canal, and posting "No Trespassing" signs along the canal.**
 8. **The "Permittee" shall be responsible for the cleaning, and maintaining; of any facility it constructs or places in BBWA'S canal or laterals. "Permittee" shall be responsible for any damage associated with and "encroachment", "disturbance", or "placement of facility", by PERMITTEE". BBWA may, but has no duty to repair, replace or clean any structure of Permittee and assess against the PERMITTEE the cost thereof.**
 9. **The "PERMITTEE", and/or its contractors, shall provide BBWA with Proof of insurance, prior to any "encroachment", "disturbance", or placement of facility."**
-

BBWA'S general costs and expenses associated with this permit include a review of "Permittee's" plans, site inspection, development and operation of this permit system, record keeping, on site inspection prior to, during and after construction, and possible inconvenience and expense related to said "encroachment", "disturbance", or "facility", during future years of operation, maintenance, and cleaning BBWA'S canals and laterals. If BBWA has to clean, repair, or maintain any "encroachment", "disturbance", or facility, of PERMITTEE, BBWA shall do so, and send the "Permittee" a bill for such services.

10. **"PERMITTEE" is liable for any consequential damages related to or caused by "Permittee's" "encroachment", "disturbance", or "facility". "Permittee" agrees to indemnify and hold harmless the BBWA from any damages arising out of "PERMITTEE'S" "Encroachment", "Disturbance"**

or "Facility". In accepting this PERMIT, The permittee, its/his successors or assigns, agree to protect BBWA and save it harmless from all claims, actions or damage of every kind and description which may accrue, to or be suffered by, any person or persons, corporations or property by reason of the performance of any such work, character of materials used or manner of installations, maintenance and operation or by the improper occupancy of said encroachment, and in case any suit and/or action is brought against BBWA and arising out of, or by reason of, any of the causes, the "PERMITTEE" its/ his successor assigns, will upon notice to it/him of the commencement of such action defend the same at its/his sole cost and expense and satisfy any judgment which may be rendered against BBWA in any such suit or action.

11. In the event BBWA shall at any time in the future change the location or elevation of its canal or lateral at the point above referred to, necessitating any change in the location of the pipeline, the cost of the change or location of such pipeline to meet the needs of the BBWA, shall be borne by the "Permittee".
12. In the event the BBWA in the enjoyment and operation of the irrigation system, damages the pipeline of the "Permittee", that the "Permittee" will not claim any damage from the BBWA except in such instances as the damage is caused by the willful or gross negligence of the BBWA, its representatives, contractors, agents or servants.
13. If BBWA owns less than the entire and undivided fee simple title in said lands, then this easement applies only to the interest they have.
14. This Permit shall also be binding on any other successor or assignee of the "Permittee". THIS PERMIT SHALL RUN WITH THE LAND. Any successor in interest of "Permittee" shall immediately be bound by the terms of this agreement by any use of its benefits of the encroachment permit.
15. If "Permittee" is a contractor, agent, or other representative for another principal, city or county government, or any other person or entity, this permit shall be binding on such principal, government, and such other person or entity. This permit shall also be binding on any other successor or assignee of the "Permittee", and such entity waives all defenses of sovereign immunity, statutory, or constitutional rights of home rule.
17. In the event of a dispute over the terms and conditions of the Agreement, The BBWA shall be entitled to its reasonable attorney's fees and costs from the "Permittee", whether or not the same are incurred in connection with any lawsuit.

18. The Permittee warrants that it is authorized to enter into this agreement for and on behalf of all persons claiming an interest in this permit.
19. Each and every person using such permit shall by their use covenant and agree to be bound by the terms hereof to the same extent as the Permittee.
20. The Permit may not be assigned without written consent of BBWA.
21. Other terms, conditions and exceptions include: Compaction tests will be taken in the fill area. All soil will be replaced to a minimum of 95% of maximum density as determined by ASTM-D698 test method. All testing will be at the cost of the Permittee. Test results will be provided to the BBWA office.

Dated this 14 day of July, 2010.

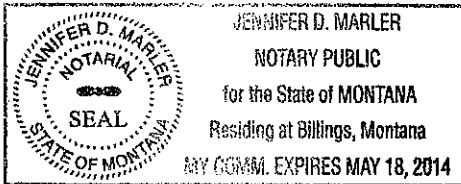
BILLINGS BENCH WATER ASSOCIATION

By *Gary M. Davis*
 It's Gary Davis, President

STATE OF MONTANA)
) SS
 COUNTY OF YELLOWSTONE)

On this 14 day of July, 2010, before me, the undersigned, Notary Public for the State of Montana, personally appeared GARY M. DAVIS, known to me to be the President of Billings Bench Water Association, whose name is subscribed to the within instrument and acknowledged to me that he 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.



Jennifer D. Marler
 Notary Public for the State of Montana
 (Printed name) Jennifer D. Marler
 Residing at Billings
 My commission expires May 18, 2014

CITY OF BILLINGS:

I AGREE TO THE TERMS AND CONDITIONS OF THIS PERMIT:

By _____
It's _____

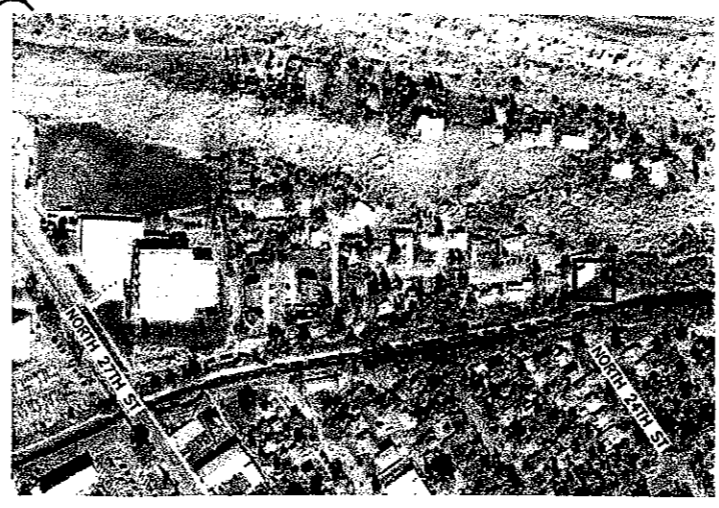
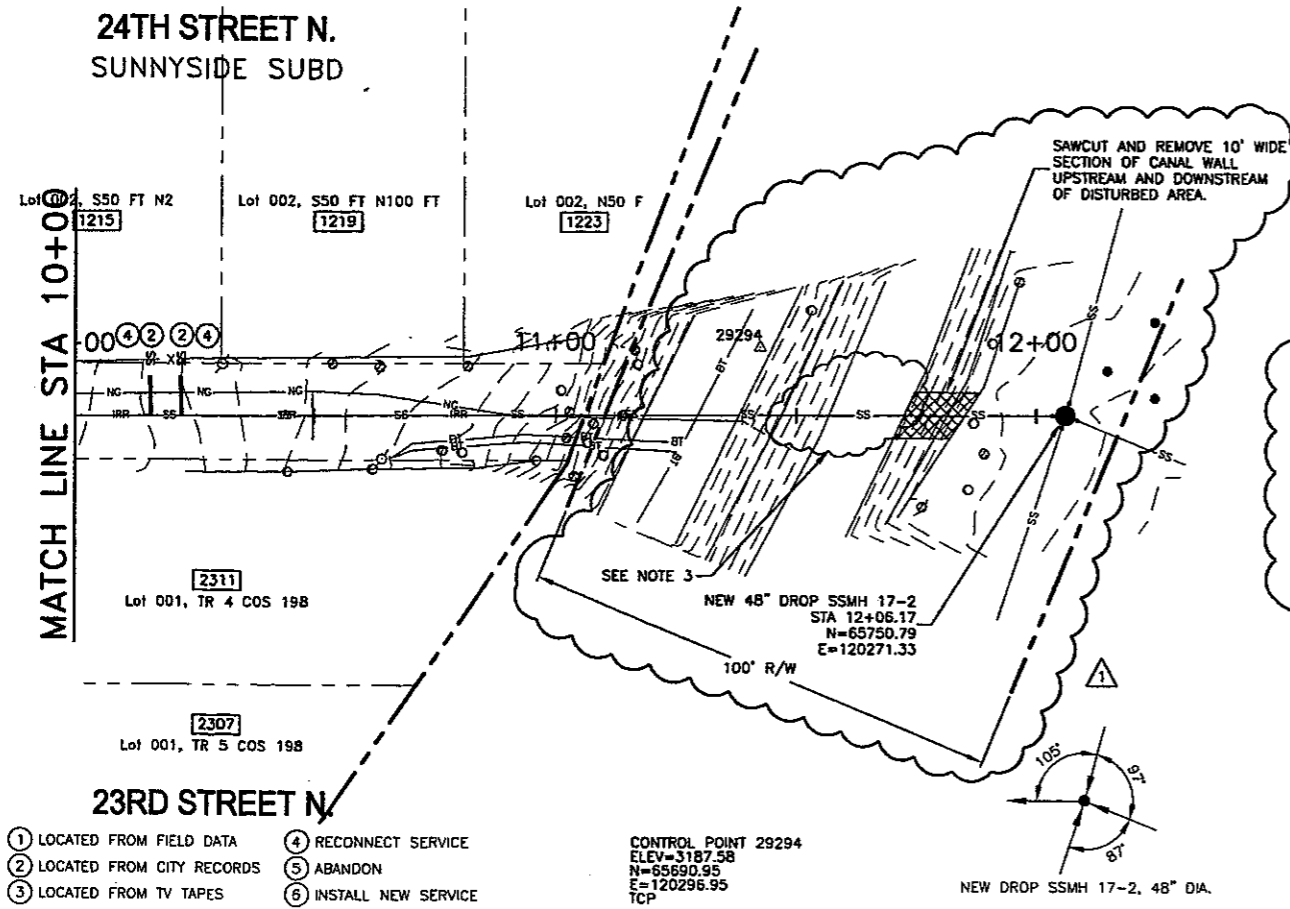
STATE OF MONTANA)
COUNTY OF YELLOWSTONE)

SS

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ for the City of Billings, and the person whose name is subscribed on this instrument and acknowledged to me that he 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 the State of Montana
(Printed name) _____
Residing at _____
My commission expires _____

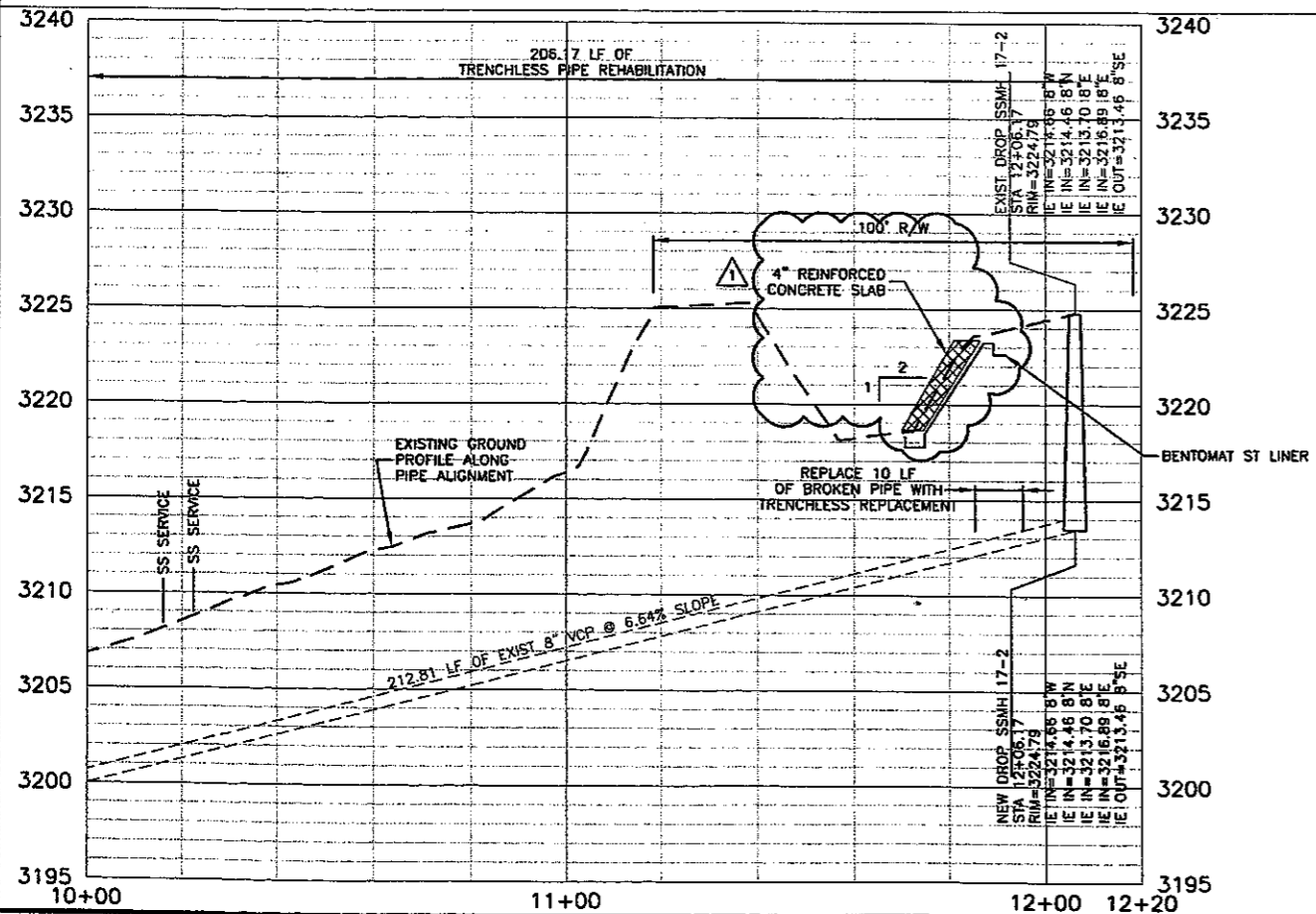
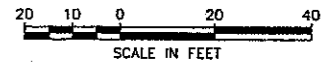


RAMP AT NORTH 27TH AVE.
SCALE: N.T.S.



RAMP AT BURNSTEAD DRIVE
SCALE: N.T.S.

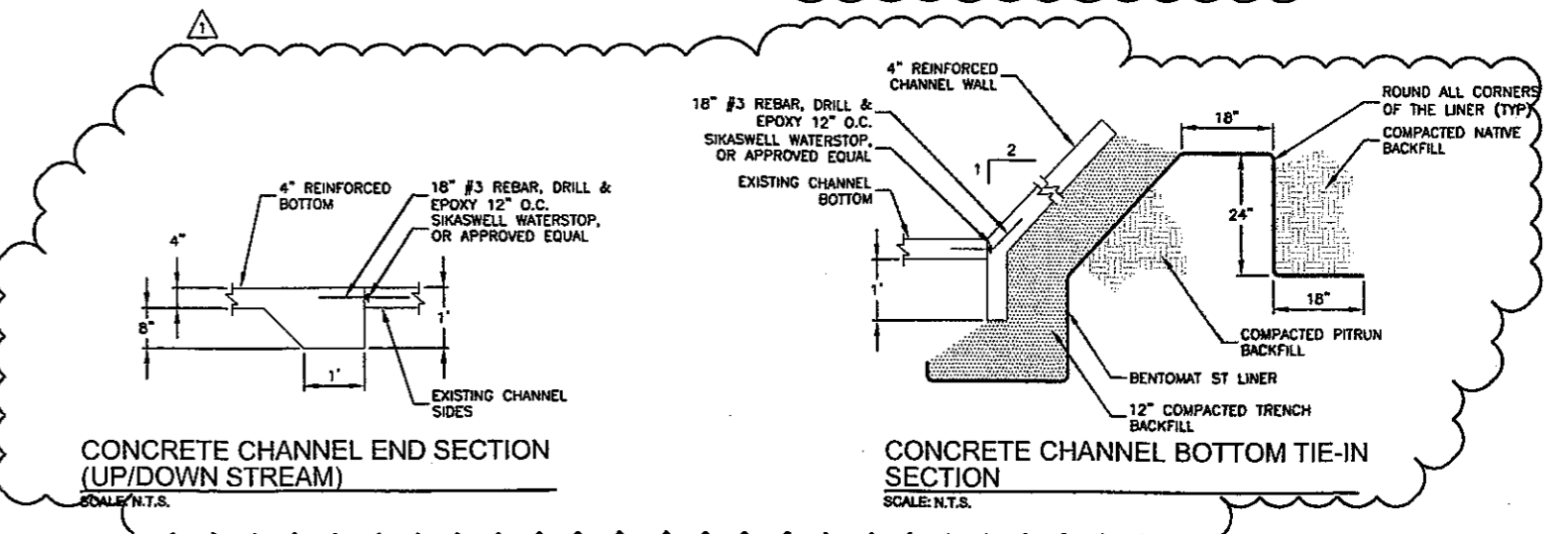
NOTE:
ACCESS TO SSMH 17-2 SHALL BE VIA THE BBWA CANAL AT THE ACCESS RAMPS SHOWN ABOVE.



PROFILE
HORIZ. 1"=20'
VERT. 1"=5'

CONTRACTOR SHALL NOTIFY ALL UTILITY COMPANIES FOR LOCATES BEFORE COMMENCING WORK. CALL BEFORE YOU DIG. 1-800-424-5555

- NOTES:
- PLEASE CONTACT VERN CARPENTER, WITH THE SUNNYSIDE WATER ASSOCIATION, AT 690-8022 WITH ANY CONCERNS REGARDING THE IRRIGATION SYSTEM.
 - THE WORK AREA FOR SSMH 17-2 SHALL BE LIMITED TO WITHIN THE BBWA CANAL RIGHT-OF-WAY.
 - CONTRACTOR SHALL BE AWARE THAT ANY DAMAGE TO THE CANAL IN ADDITION TO THE REPLACED SIDEWALL, WILL BE REPAIRED BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER, OR BBWA.



CONCRETE CHANNEL END SECTION (UP/DOWN STREAM)
SCALE: N.T.S.

CONCRETE CHANNEL BOTTOM TIE-IN SECTION
SCALE: N.T.S.

ADDENDUM NO. 1

VERIFY SCALE!		REVISIONS			
NO.	DESCRIPTION	DATE	BY		
1	ADDENDUM NO 1	3/24/10	RLI		

MODIFY SCALE ACCORDINGLY!

DOWL HKM
GRANITE TOWER BUILDING
225 N. 32ND ST., SUITE 700
P.O. BOX 21318
BILLINGS, MT 59107-1318
406-656-6399
406-656-6398 (FAX)
DOWLHKM.COM

MORRISON MAIERLE, INC.
An Employee-Owned Company

315 N. 25th Street, Suite 402
Billings, MT 59101
Phone: (406) 656-6000
Fax: (406) 656-6432

ENGINEER: RLL
CHECKED BY: DS
APPROVED BY: [Signature]
DATE: [Blank]
Q.A. REVIEW BY: [Blank]
DATE: [Blank]

BILLINGS MONTANA

2010 WATER AND SEWER-REPLACEMENT PROJECTS SCHEDULE 1

23RD STREET NORTH SEWERLINE STA 10+00 TO 12+00

PROJECT NUMBER 0686.174-0211
SHEET NUMBER 12
DRAWING NUMBER 23RD-S3