



# City Council Agenda

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City of Idaho Falls  
Regular Council Meeting  
680 Park Avenue

**Thursday**  
**May 11, 2023**  
**7:30 p.m.**

**Mayor**

Rebecca Casper

**City Council**

Michelle Ziel-Dingman  
Council President

John Radford  
Council Seat 5

Jim Freeman  
Council Seat 6

Tom Hally  
Council Seat 3

Jim Francis  
Council Seat 4

Lisa Burtenshaw  
Council Seat 2



Livestream at [www.idahofallsidaho.gov/429/Live-Stream](http://www.idahofallsidaho.gov/429/Live-Stream)

# PUBLIC PARTICIPATION

Welcome to the Idaho Falls City Council Meeting.

Regularly scheduled City Council meetings are open to the general public. City Council meetings are also live-streamed and archived on [the City website](#). Please be aware that the meeting agenda will differ from the published version if amendments to the agenda are made by the Council during the meeting.

The Council encourages public input. While a general public comment option is not required by Idaho law, the Idaho Falls City Council welcomes general public input as part of regular City Council meetings. General public comment will be allowed for up to 20 minutes. However, citizens are always welcome to contact their Council representatives via e-mail or telephone, as listed on [the City website](#). The Council is committed to an atmosphere that promotes equal opportunity, civility, mutual respect, property decorum and freedom from discrimination or harassment.

Those who wish to address City Council during the council meetings are encouraged to adhere to the guidelines below.

## Public Comment Guidelines

Speakers are encouraged to:

- State their name and city of residence.
- Focus comments on matters within the purview of the City Council.
- Limit comments to three (3) minutes or less.
- Refrain from repeating information already presented to preserve time for others to speak. Large groups are encouraged to select one or two speakers to represent the voice of the entire group.
- Practice civility and courtesy. City leaders have the right and the responsibility to maintain order and decorum during the meeting. Time may be curtailed for those speakers whose comments are profane or disruptive in nature.
- Refrain from comments on issues involving matters currently pending before the City's Planning and Zoning Commission or other matters that require legal due process, including public hearings, City enforcement actions, and pending City personnel disciplinary matters.
- Comments that pertain to activities or performance of individual City employees should be shared directly with the City's Human Resources Director (208-612-8248), the City's Legal Department (208-612-8178) or with the Office of the Mayor (208-612-8235).

## Public Hearing Guidelines

- In-person Comment. Because public hearings must follow various procedures required by law, please wait to offer your comments until comment is invited/indicated. Please address comments directly to the Council and try to limit them to three (3) minutes.
- Written Comment. The public may provide written comments via postal mail sent to City Hall or via email sent to the City Clerk at [IFClerk@idahofalls.gov](mailto:IFClerk@idahofalls.gov). Comments will be distributed to the members of the Council and become a part of the official public hearing record. Written testimony must be received no later than forty-eight (48) hours prior to the date of the hearing to ensure inclusion in the permanent City record.
- Remote Comment. When available, the public may provide live testimony remotely via the WebEx meeting platform using a phone or a computer. Those desiring public hearing access should send a valid and accurate email address to [virtualattend@idahofalls.gov](mailto:virtualattend@idahofalls.gov) no later than twenty-four (24) hours prior to the date of the hearing so log-in information can be sent prior to the meeting. Please indicate which public hearing the testimony is intended for on the agenda. Please note that this remote option will not be available for all meetings.

**If communication aids, services, or other physical accommodations are needed to facilitate participation or access for this meeting, please contact the City Clerk at (208) 612-8414 or the ADA Coordinator at (208) 612-8323 not less than 48 hours prior to the meeting. They will help accommodate special needs wherever possible.**





# City Council Meeting

## Agenda

680 Park Avenue  
Idaho Falls, ID 83402

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Thursday, May 11, 2023

7:30 PM

City Council Chambers

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### City Council Agenda:

1. Call to Order.
2. Pledge of Allegiance.
3. Public Comment.

Please see guidelines above.

4. Consent Agenda.

A Consent Agenda item may be moved to the Regular Agenda for separate consideration if requested by a Council member. Other changes to this agenda may require the approval of a majority of Council.

#### A. Office of the Mayor

- 1) Appointments to City Boards, Committees and Commissions **23-157**

**Attachments:** 2023 Golf Board Appointment Memo.pdf  
Golf Advisory Board Application Dayley, Kelby.pdf

#### B. Public Works

- 1) Bid Award - Sewer Dig and Point Repairs 2023 **23-151**

**Attachments:** SWR-2023-25 Bid Tab Sewer Dig Point Repairs

#### C. Idaho Falls Power

- 1) Idaho Falls Power Board Meeting Minutes - February and March Meetings **23-155**

**Attachments:** 2023 0208 and 0308 IFP Board Meeting Minutes.pdf

#### D. Office of the City Clerk

- 1) Minutes from Council Meetings **23-156**

**Attachments:** 2022 1110 City Council Meeting Unapproved.pdf  
2022 1121 Work Session Unapproved.pdf

- 2) License Applications, all carrying the required approvals

**Action Item:**

Approve, accept, or receive all items on the Consent Agenda according to the recommendations presented (or take other action deemed appropriate).

**5. Regular Agenda.****A. Fire Department**

- 1) Hughes Purchase Agreement and PNC Lease Schedule No. 98987736-2 **23-143**  
for (3) Pierce Enforcer Pumpers for the Fire Department

This purchase request for additional Fire apparatus is essential to maintain the Idaho Falls Fire Department's compliance with the National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus regarding life expectancy for fire apparatus over the next 3-years. With Fire apparatus build times currently between 36-44 months, advanced planning and approval is essential for the Fire department to maintain compliance with NFPA. The approval and purchase of the fire apparatus are to replace a front-line apparatus unit and implement the department's capital plan for an add to fleet for a future station and rotate a current unit to reserve status.

**Action Item:**

Accept and approve the Hughes Purchase Agreement through cooperative purchasing contact NPPGov PS20240 with the PNC Lease Schedule for (3) Pierce Enforcer Pumpers for a total of \$3,009,845.05 (or take other action deemed appropriate).

**Attachments:** Idaho Falls Enforcer Pumpers Purchase Agreement 04-25-2023.pdf  
Idaho Falls Enforcer Pumpers Lease Schedule 98987736-2 .pdf

**B. Public Works**

- 1) Agreement for Professional Services with Consor North America for the **23-152**  
Wastewater Treatment Plant Dewatering Project.

The purpose of this Agreement is to establish a contract providing construction administration assistance for the Wastewater Treatment Dewatering project.

**Action Item:**

Approve the Agreement for Professional Services with Consor North America, Inc., and authorize the Mayor and City Clerk to execute the document (or take other action deemed appropriate).

**Attachments:** Professional Services Agreement - WWTP Dewatering Project  
4.28.23 (CBA Executed)

- 2) State Local Agreement with the Idaho Transportation Department (ITD) **23-153**  
for the US 20/26 (Yellowstone Highway) and Birch Street Railroad  
Crossing Vehicle Height Detection Project.

Attached for your consideration is a State Local Agreement to install early warning vehicle height detection equipment to deter and eliminate vehicles from striking and wedging under low clearance Union Pacific Railroad structures on US 20/26 and Birch Street.

**Action Item:**

Approve the State Local Agreement with ITD for US 20/26 (Yellowstone Highway) and Birch Street Railroad Crossing Vehicle Height Detection project and authorize the Mayor and City Clerk to sign the documents (or take other action deemed appropriate).

**Attachments:** 23369 State Local Agreement RR Overheight Detection  
TRF-2023-22 K23369 VHD Installation Exhibit Sheets 1 and 2  
Revised.pdf

**3) Agreement to Purchase Water Right from Idaho Water Company, LLC. 23-154**

The purpose of the Agreement is to purchase a water right with a priority date of May 3, 1971, a diversion rate of 0.76 cubic feet per second, and an annual volumetric limit of 182 acre-feet.

**Action Item:**

Approve the Agreement to Purchase Water Right from the Idaho Water Company, LLC, and authorize the Mayor and City Clerk to execute the document (or take other action deemed appropriate).

**Attachments:** PSA WR 27-7017 IWC Signed

**C. Community Development Services**

**1) A vacation of a portion of the right-of-way of Tara Street and public utility easements associated with Freeway Commercial Center Division No. 4. 23-148**

A vacation of a portion of Tara Street located in a portion of the SW ¼ of Section 24, Township 2 North, Range 37 East, a Vacation of a portion of a public utility easement located in a portion of the SW ¼ of Section 24, Township 2 North, Range 37 East, and a Vacation of a public utility easement and a public storm pond easement located in a portion of the SW ¼ of Section 24, Township 2 North, Range 37 East. The vacations must occur prior to the approval of the plat for the Freeway Commercial Center Division No. 4. Staff recommends approval of the ordinance for vacations.

**Action Item:**

Approve the ordinance vacating of a portion of the right-of-way of the Tara Street and public utility easements under a suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary (or consider the Ordinance on the first reading, reject the ordinance, or take other action deemed appropriate).

**Attachments:** Ordinance

- 2) Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Freeway Commercial Center Division No. 4 23-147

Attached is the application for the Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Freeway Commercial Center Division No. 4. The Planning and Zoning Commission considered this item at its December 6, 2022, meeting and unanimously voted to recommend approval for the final plat as presented. Staff concurs with this recommendation.

**Action Item:**

1. Approve the Development Agreement for the Final Plat for Freeway Commercial Center Division No. 4 and give authorization for the Mayor and City Clerk to sign said agreement (or take other action deemed appropriate).
2. Accept or Approve the Final Plat for Freeway Commercial Center Division No. 4 and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat (or take other action deemed appropriate).
3. Approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Freeway Commercial Center Division No. 4 and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

**Attachments:** Zoning Map  
Aerial  
Final Plat  
Staff Report  
PC Minutes  
Reasoned Statement.docx  
Development Agreement

- 3) Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Maverik Idaho Falls Subdivision 23-149

Attached is the application for the Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Maverik Idaho Falls Subdivision. The Planning and Zoning Commission considered this item at its December 6, 2022, meeting and unanimously voted to recommend approval for the final plat to the Mayor and City Council as presented. Staff concurs with this recommendation.

**Action Item:**

1. Approve the Development Agreement for the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor and City Clerk to sign said agreement (or take other action deemed appropriate).
2. Accept or Accept the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat (or take other action deemed appropriate).

3. Approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

**Attachments:**    Zoning Map  
                         Aerial  
                         Final Plat  
                         Staff Report  
                         PC Minutes  
                         Reasoned Statement.docx  
                         Development Agreement.pdf

6.      **Announcements.**

7.      **Adjournment.**



# Memorandum

File #: 23-157

City Council Meeting

**FROM:** Bud Cranor  
**DATE:** Friday, May 5, 2023  
**DEPARTMENT:** Mayor's Office

## Subject

Appointments to City Boards, Committees and Commissions

## Council Action Desired

- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Give consent to Mayor Casper's appointment of Kelby Dayley to serve on the Golf Advisory Board as listed below (or take other action deemed appropriate).

## Description, Background Information & Purpose

Attached please find a memorandum from Director PJ Holm in reference to Mr. Dayley's appointment to the Golf Advisory Board.

Name	Expires	Status
Kelby Dayley	12/31/2026	3- year Appointment-Golf Advisory Board

## Alignment with City & Department Planning Objectives



Involving citizens in governance decision making processes supports the highest values of the strategic plan.

## Interdepartmental Coordination

N/A

**Fiscal Impact**

Activities for this committee will be accounted for pursuant to Title II of the City Code, and funding will come from the Parks and Recreation Department budget. The money to be spent, if any, is expected to be negligible.

**Legal Review**

N/A



## MEMORANDUM

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**TO:** Rebecca Casper, Mayor

**FROM:** PJ Holm, Director, Parks and Recreation Department

**DATE:** May 1, 2023

**RE:** Parks and Recreation Department Boards, Committees and Commission Re-  
Appointments

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The Parks and Recreation Department respectfully submits the following name for consideration for appointment to the Golf Advisory Board. The appointment is for a three-year term.

- Kelby Dayley

Kelby will replace Dr. Gary Lattimore whose term expired in December of 2022.



**City of Idaho Falls**  
**Boards, Committees and Commissions**  
**Citizen Application**

Thank you for your willingness to serve our community. Complete this form and attach a résumé prior to submitting. If you wish, you may also submit a cover letter explaining your interest in city service.

Your application will be kept on file. When there is an opening on a relevant board, committee or commission, your application will be reviewed. Return the completed form to the Mayor's Office at: City of Idaho Falls Mayor's office: P.O. Box 50220, Idaho Falls, ID 83405 or electronically at [mayor@idahofallsidaho.gov](mailto:mayor@idahofallsidaho.gov).

Name:	Kelby Dayley		
Mailing Address:	1350 Oma Jeane Drive		
City, State, Zip:	Idaho Falls, ID 83402		
Email Address:	kelby.dayley@gmail.com		
Daytime Phone:	208-312-2067	<input checked="" type="checkbox"/> Message?	<input checked="" type="checkbox"/> Text?
Evening Phone:	208-312-2067	<input checked="" type="checkbox"/> Message?	<input checked="" type="checkbox"/> Text?
Cell Phone:	208-312-2067	<input checked="" type="checkbox"/> Message?	<input checked="" type="checkbox"/> Text?
I am an Idaho Falls Resident <u>Yes</u> I am a current or former employee of the city <u>No</u>			
I have a family member or person in my household who works for the city <u>No</u>			

What is your motivation for service on this/these committee(s)?

Motivation would be to share experiences from working at the golf course to playing the different courses here in Idaho Falls. Being able to communicate with others about the growing needs and concerns of the city polices that are taken for consideration of the different courses.

How does your background training and experience lend itself to service on this/these committee(s)?

I worked as an assistant to the Pro at Rivers Edge Golf Club at Burley. I enjoyed associating with people and hearing the golfers talk about things and tried to implement them to the city council on different subjects.

Please list any relevant areas of expertise, education or training you possess that will be helpful for service.

Golf Course Grounds/Pro-Shop Staff at the Burley Golf Course and Rivers Edge Golf Club at Burley from April 2010 to July 2016.

<b>FOR OFFICE USE ONLY:</b>	
Date received by Mayor's Office:	Date appointed:
City Departments(s) application forwarded to:	Board, Committee or Commission appointed to:

	<u>Length of Term (Years)</u>	<u>Meeting Frequency</u>
<b>Mayor's Office</b>		
<input type="checkbox"/> Citizen Review Committee <sup>1</sup>	One(1)	As Needed
<input type="checkbox"/> Mayor's Youth Advisory Committee	Three(3)	Bi-Monthly
<b>Fire Department</b>		
<input type="checkbox"/> Fire Code Appeals Board	Five(5)	Yearly/As Needed
<b>Human Resources</b>		
<input type="checkbox"/> Civil Service Commission	Six(6)	Semi-Annual/As Needed
<b>Library</b>		
<input type="checkbox"/> Library Board	Five(5)	Monthly/As Needed
<b>Municipal Services</b>		
<input type="checkbox"/> City Safety Committee	Not Established	As Needed
<input type="checkbox"/> Civic Auditorium Committee	Two(2)	As Needed
<b>Parks and Recreation</b>		
<input checked="" type="checkbox"/> Golf Advisory Board	Three(3)	Every Other Month
<input type="checkbox"/> Ice Arena Advisory Committee	Three(3)	Monthly
<input type="checkbox"/> Parks and Recreation Commission	Three(3)	Monthly
<input type="checkbox"/> Shade Tree Committee	Three(3)	Monthly
<input type="checkbox"/> Swimming Pool Advisory Committee	Not Established	Monthly
<input type="checkbox"/> Tautphaus Park Zoological Society	Three(3)	Quarterly
<b>Community Development Services</b>		
<input type="checkbox"/> Beautification Commission <sup>2</sup>	Three(3)	3 <sup>rd</sup> Wednesday
<input type="checkbox"/> Board of Adjustment	Five(5)	2 <sup>nd</sup> Thursday/As Needed
<input type="checkbox"/> Building Code Board of Appeals	Three(3)	As Needed
<input type="checkbox"/> Electrical Board of Review	Two(2) & Three(3)	As Needed
<input type="checkbox"/> Historic Preservation Commission <sup>3</sup>	Three(3)	1 <sup>st</sup> Thursday
<input type="checkbox"/> Idaho Falls ADA Accessibility Commission <sup>4</sup>	Three(3)	As Needed
<input type="checkbox"/> Idaho Falls Business Assistance Corp	Staggering Terms	Quarterly/As Needed
<input type="checkbox"/> Idaho Falls Redevelopment Agency	Five(5)	3 <sup>rd</sup> Thursday
<input type="checkbox"/> Mechanical Appeals Board	Three(3)	As Needed
<input type="checkbox"/> Planning Commission <sup>5</sup>	Six(6)	1 <sup>st</sup> Tuesday
<input type="checkbox"/> Plumbing Appeals Board	Three(3)	As Needed
<b>Police Department</b>		
<input type="checkbox"/> Traffic Safety Committee	Two(2)	As Needed
<b>Regional Committees</b>		
<input type="checkbox"/> Bonneville Metropolitan Planning Organization (BMPO)		
<input type="checkbox"/> Targhee Regional Public Transportation Association (TRPTA)		

<sup>1</sup> City of Idaho Falls residents preferred.

<sup>2</sup> Five (5) members shall have professional training or experience in the disciplines of horticulture, landscape architecture, architecture, community development, urban forestry, parks planning and administration, economic development or related fields.

<sup>3</sup> Four (4) members shall have professional training or experience in the disciplines of architecture, history, architectural history, urban planning, archaeology, engineering, law, or other historic preservation-related disciplines.

<sup>4</sup> All members shall be a person with a disability or have a demonstrated interest, competence or knowledge of disabilities.

<sup>5</sup> One (1) member shall be a Bonneville County resident residing within the area of city impact.

*Please note: Those who stand to receive a direct financial benefit from a particular position, who are involved in litigation with a relevant city department, and who are not city residents may be declared ineligible to serve on a committee.*

*Any Information supplied is subject to disclosure under the Idaho Public Records Law §§ 9-337 through 9-350*



# Memorandum

File #: 23-151

City Council Meeting

**FROM:** Chris H Fredericksen  
**DATE:** Friday, April 28, 2023  
**DEPARTMENT:** Public Works

## Subject

Bid Award - Sewer Dig and Point Repairs 2023

## Council Action Desired

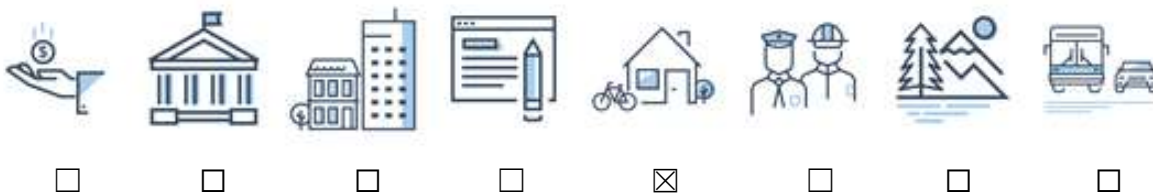
- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the plans and specifications; award the bid to the lowest responsive, responsible bidder, 3H Construction, LLC, in the amount of \$119,020.00; and authorize the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

On Tuesday, April 25, 2023, bids were received and opened for the Sewer Dig and Point Repairs 2023 project. The tabulation of bid results is attached. The purpose of the proposed bid award is to contract with the lowest bidder to repair damaged sewer lines identified through camera inspections.

## Alignment with City & Department Planning Objectives



This project supports the community-oriented result of reliable infrastructure by investing in the repair of the sanitary sewer system.

## Interdepartmental Coordination

Project reviews have been conducted with all necessary city departments to ensure coordination of project activities.

## Fiscal Impact

Cost allocation for this project will come from the Wastewater Fund. Sufficient funding and budget authority exist for completion of the proposed improvements.

**Legal Review**

The City Attorney's office has reviewed the bid process and concurs that the Council action desired is within Idaho State Statute.

0-00-00-0-SWR-2023-25  
2023-33

# SEWER DIG & POINT REPAIRS 2023

## 0-00-00-0-SWR-2023-25

### PROJECT LOCATIONS



### MAYOR

REBECCA L. NOAH CASPER

### CITY COUNCIL

MICHELLE ZIEL-DINGMAN  
LISA BURTENSHAW  
THOMAS HALLY


JIM FRANCIS  
JOHN B. RADFORD  
JIM FREEMAN

### ENGINEERING DIVISION

PUBLIC WORKS DIRECTOR  
CHRIS H FREDERICKSEN, P.E.

CITY ENGINEER  
KENT J. FUGAL, P.E., PTOE

2023

 Digitally signed by Kent J. Fugal Fugal:A01410C00000177F92E041C00017648 Date: 2023.03.31 16:41:17-06'00'	
AS BUILT DATE / BY: _____ / _____	
SCALE SHOWN IS FOR SHEET 11 x 17 ONLY	
ENGINEERING DIVISION	
SEWER DIG & POINT REPAIRS 2023	
TITLE PAGE	
CHECKED BY: CEP	DESIGN TECH: CW
DATE PLOTTED: 3/31/2023	SHEET NO. 1 OF 11

# City of Idaho Falls

## Engineering Division

### Bid Tabulation

**Project:** Sewer Dig & Point Repairs 2023  
**Submitted:** Kent J. Fugal, P.E., PTOE  
**Number:** 0-00-00-0-SWR-2023-25  
**Date:** April 25, 2023

Item Number	Reference Number	Description	Estimated Quantity	Unit	Engineer's Estimate		3H Construction LLC		JM Concrete Inc.		Vanguard LLC	
					Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
		<b>DIVISION 200 - EARTHWORK</b>										
2.01	201.4.1.D.1	Removal of Sidewalk	9	SY	\$40.00	\$360.00	\$50.00	\$450.00	\$100.00	\$900.00	\$167.00	\$1,503.00
2.02	201.4.1.E.1	Removal of Curb & Gutter	44	LF	\$30.00	\$1,320.00	\$20.00	\$880.00	\$30.00	\$1,320.00	\$68.00	\$2,992.00
		<b>DIVISION 500 - SEWER</b>										
5.01	502.4.1.A.1	Sanitary Sewer Manhole – Type 1	4	EA	\$10,000.00	\$40,000.00	\$11,950.00	\$47,800.00	\$20,000.00	\$80,000.00	\$27,500.00	\$110,000.00
5.02	507.4.1.E.1	Replace 8" Dia. Pipe	40	LF	\$1,000.00	\$40,000.00	\$600.00	\$24,000.00	\$800.00	\$32,000.00	\$2,250.00	\$90,000.00
5.03	507.4.1.F.1	Repair Service Connection	6	EA	\$1,000.00	\$6,000.00	\$1,100.00	\$6,600.00	\$10,500.00	\$63,000.00	\$1,800.00	\$10,800.00
5.04	509.4.1.E.1	Bypass Sewage Pumping	1	LS	\$15,000.00	\$15,000.00	\$11,800.00	\$11,800.00	\$30,000.00	\$30,000.00	\$24,000.00	\$24,000.00
		<b>DIVISION 700 - CONCRETE</b>										
7.01	706.4.1.A.7	Curb and Gutter, Type Standard	44	LF	\$100.00	\$4,400.00	\$65.00	\$2,860.00	\$100.00	\$4,400.00	\$85.00	\$3,740.00
7.02	706.4.1.E.1	Concrete Sidewalks, 5"	9	SY	\$300.00	\$2,700.00	\$160.00	\$1,440.00	\$200.00	\$1,800.00	\$200.00	\$1,800.00
		<b>SPECIAL PROVISIONS</b>										
SP-1	S0507	Replace Drop Invert	1	EA	\$10,000.00	\$10,000.00	\$19,790.00	\$19,790.00	\$20,000.00	\$20,000.00	\$35,000.00	\$35,000.00
SP-2	S0525	Manhole Repair	1	EA	\$2,000.00	\$2,000.00	\$3,400.00	\$3,400.00	\$10,000.00	\$10,000.00	\$3,000.00	\$3,000.00
		<b>TOTAL</b>				<b>\$121,780.00</b>		<b>\$119,020.00</b>		\$243,420.00		\$282,835.00

# Memorandum

File #: 23-155

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Thursday, May 4, 2023  
**DEPARTMENT:** Idaho Falls Power

## Subject

Idaho Falls Power Board Meeting Minutes - February and March Meetings

## Council Action Desired

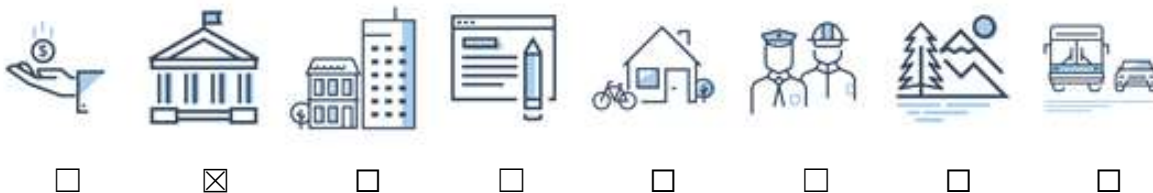
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve Idaho Falls Power Board Meeting minutes from February 8, 2023 and March 8, 2023 (or take other action deemed appropriate).

## Description, Background Information & Purpose

The Idaho Open Meetings Law requires the governing body of a public agency to provide for the taking of written minutes for all public meetings.

## Alignment with City & Department Planning Objectives



The action is in accordance with Idaho Code § 74-205(1) and supports good governance by demonstrating sound management and enabling trust and transparency.

## Interdepartmental Coordination

n/a

## Fiscal Impact

n/a

## Legal Review

n/a



### **February 8, 2023 Unapproved**

The Idaho Falls Power Board of the City of Idaho Falls met Wednesday, February 8, 2023, at the Idaho Falls Power Boardroom, 140 S. Capital, Idaho Falls, Idaho at 7:45 a.m.

#### **Call to Order, Roll Call, and Announcements:**

There were present:

Mayor Rebecca L Noah Casper

Board Member Michelle Ziel-Dingman

Board Member Tom Hally

Board Member Jim Francis

Board Member Jim Freeman

Board Member Lisa Burtenshaw

Board Member John Radford

Also present:

Bear Prairie, Idaho Falls Power (IFP) General Manager

Stephen Boorman, IFP Assistant General Manager

Will Hart, Idaho Consumer-Owned Utilities Association (ICUA) Executive Director

Randy Fife, City of Idaho Falls Attorney

Linda Lundquist, IFP Board Secretary

Mayor Casper called the meeting to order at 7:48 a.m.

#### **Calendar, Announcements, Events and Updates**

Mayor Casper announced that the city recently applied for a community development grant.

Board Member Radford said most of the focus in the recent American Public Power Association (APPA) Policy Maker's Council (PMC) meeting was on talking points for the upcoming meetings in Washington, D.C. He added that not much has happened over the last month, but that there have been committee assignments and leadership changes. Board Member Freeman commented on recent substation attacks throughout the county and Board Member Radford asked if it would lead to reinforced building structures or different designs. General Manager (GM) Prairie reminded the Board of IFP's Strategic Plan includes hardening utility infrastructure and said that APPA is focused on addressing supply chain issues and building a sufficient stock of transformers; especially for emergencies. Board Member Radford gave updates on the status of local and national bills under consideration and mentioned that the United States (U.S.) House is considering a fossil fuel production bill.

GM Prairie reported on upcoming utility retirements and succession planning. He announced his recent board chair election to the Public Power Council (PPC), an organization which represents 75 members in the Northwest region, whose main focus currently is on helping members retain their preference rights in the Bonneville Power Association (BPA) contract negotiations. GM Prairie explained that the Mountain American Center (MAC) has a need for an additional Zamboni to clear the ice quicker and serve as a backup. He is proposing to purchase an all-electric Zamboni to wrap in Idaho Falls Fiber (IFF) advertising and noted that once it's reached its useful life for the arena, will be donated to the city's ice arena for use. Board Member Hally stated that it is good for IFF to participate in activities that broaden fiber exposure in the city. Board Member Francis asked who will handle the maintenance and GM Prairie said MAC will take care of the maintenance and insurance and that the purchase would come out of the energy efficiency budget. He explained that he plans to double that budget and increase clean energy initiatives over the next year. No one voiced concerns and supported moving forward with the Zamboni and marketing relationship. GM Prairie explained that the bucket truck purchase request from the December 2022 City Council meeting wasn't a process breakdown on the side of the city, but a misunderstanding of the city's process on the part

### **February 8, 2023 Unapproved**

of the vendor who instead of working through the purchasing office, delivered a demo truck (from a verbal price request to see if IFP would purchase it) before the purchase was approved and a purchase order was issued. Board Member Francis said the explanation would have been appreciated in the December Council meeting and Board Member Ziel-Dingman said she thought someone could have been hiding something.

### **Board Policy No. 2 – City Council Acting as IFP Board Review**

Board Member Radford asked what role the Board serves from a legal standpoint and Mr. Fife explained that the Board is also the City Council and pointed out that they govern the utility and it's up to the Board/Council to determine oversight. Board Member Radford then asked the role of the Public Utilities Commission (PUC) and Mr. Fife said the PUC is not the regulator of Idaho Falls Power and pointed out that the regulatory oversight we are subject to outside of Council is by the Federal Energy Regulatory Commission (FERC) and North American Electric Reliability Corporation (NERC). Board Member Francis said it would be good to know what each agencies' requirements are and maybe list them out in the Board book. There was a compliance discussion and GM Prairie said he would initiate a timely process of providing/sharing compliance documents with the Board. Board Member Francis said he is wanting to clarify the language in the policy with regard to APPA training and agenda development. Mayor Casper suggested having this topic in a Council work session opposed to now, where all city boards would be present. Mr. Fife explained that the Idaho State Code states that the city mayor shall be the chief official of the city and preside over meetings and determine the agenda. He stated that if the Board wants more control over the agenda and meetings, then the city ordinance would need to be changed. There was a short discussion on how official meetings are expected to function in Idaho. Board Member Francis said that he is not suggesting that the Board take a role in setting agendas, as he thinks the way it's currently being done is good, but that he was only looking for clarity on the process. GM Prairie asked the Board to provide him edits to the policy and then he would work with the Mayor to redline the language and bring back to a future meeting.

### **Review of 2022 Board Self-Evaluation Results**

Board Member Radford reviewed and discussed the survey slides where Board members weren't in 100 percent alignment. Board Member Francis commented that he prefers things in writing to pass to the next generation. GM Prairie said things shouldn't get rubber stamped and that the Board is encouraged to question and ask for clarity. He added that mutual respect is appreciated as the Board and City Council serve the community.

### **State Legislative Update**

Mr. Hart stated that about 40% of the Idaho Legislature is turning over this year, which has created more opportunities for him to share with the legislature what public utilities are currently and mostly focused on. He gave an update on the status of current bills in the house and senate and commented that there has been active lobbying on the part of the Association of Idaho Cities (AIC) and referenced a bill that if passed, could help put more youths into utility jobs. There was a discussion about retention times for electronic records; specific to video recording which is being led by AIC. Mr. Hart listed the top issues this session, that in his opinion will likely move forward because they've already helped many Idahoans with issues like: education, lunch program vouchers, property tax relief and Medicaid expansion. He explained how he's been working hard behind the scenes on getting funding for fiber, not only for Idaho Falls, but for all of Idaho. GM Prairie gave an update on the \$35 million in grants being administered by the Idaho Broadband Committee and pointed out that Representative Ehardt who is on the broadband advisory board, also has been working to keep the Idaho Falls Fiber project on their agenda and hopes that GM Prairie might be able to attend in person soon. GM Prairie reminded the Board that fiber is in the last phase of expansion this year and would greatly benefit by receiving a grant and that the State of Idaho would get recognition for supporting fiber in Idaho Falls.

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### **Carbon Free Power Project (CFPP) Resolution Review**

GM Prairie reviewed Utah Associated Municipal Power Systems' (UAMPS) timeline and noted that November 2023 is their target to move to a Class 2 project cost estimate (PCE) with new pricing, which would trigger another offramp. Board Member Ziel-Dingman asked if an 80% subscription rate was in their contract and GM Prairie said it was and offered that it was his opinion that NuScale has a product that it is struggling to find buyers for and that NuScale wants UAMPS to sell the product/project with the latest increased development/price cost increases. He reviewed the costs of the class 3 PCE and noted that most of the increases over the past two years were due to inflationary pressures on supply chain like steel, concrete, rebar, labor and honestly about everything, that have not been seen in this magnitude for more than 40 years. GM Prairie said that it was his duty to disclose the project risks and known costs and restated his concerns with developing first-of-kind nuclear technology and its unforeseen and uncapped cost escalation risks. However, he said he welcomes the opportunity for UAMPS to bring back a better deal that makes economic sense and arrives at an acceptable cost/risk factor for Idaho Falls. He reminded the Board that he views his role as doing analysis and bringing professional industry expertise and he is not the decision maker on this, and that decision is theirs alone to make. GM Prairie reviewed the costs of exiting the project now versus staying in until the next offramp period. He reminded the Board that he set aside a liability fund to pay as we go. He explained that IFP's additional costs to stay in until January are just over \$2.5 million – which assumes that 80% subscription was achieved and the levelized cost of energy (LCOE) for the class 2 PCE comes in under \$89 megawatt hour (MWh) (2022 dollars) – all based on a \$5.1 billion project with the support of the Department of Energy (DOE) and tax credits from the Inflation Reduction Act (IRA). GM Prairie said that currently, NuScale has the project at around *\$105 LCOE* and pointed out that the project needs to be cut roughly by \$700 million to get to \$89 LCOE. GM Prairie reviewed the construction phases and noted some of the benefits of the CFPP to be: carbon free baseload power, major economic development and opportunity for Idaho Falls and Eastern Idaho, local generation/regional generation = reliability improvements for the overall grid, advances nuclear for Idaho National Laboratory (INL), DOE, electric utility industry, USA, etc. GM Prairie talked about the possible paths forward and staying in one more cycle to help the project stand on its own. Mayor Casper said she thinks the project won't move forward unless the deal is more attractive and that we need to consider other projects with INL and recognize there is a \$2 million difference to remain in and noted that everyone else is going to be hitting the same issues at some point and acknowledged there are a lot of unknowns right now.

There was a discussion on power supply costs and filling the peak energy need with more expensive energy purchases and GM Prairie said that the CFPP would need to come down by 55% to be competitive with the market. He said there is not a utility or market expectation that there will be coal plants running a decade from now and Board Member Burtenshaw said she thought many utilities are bridging with gas plants and GM Prairie said they are and explained that utilities need to find ways to bridge so that manufacturing doesn't shut down while they're waiting for lower energy costs like is already happening in some areas of the country. Board Member Francis asked GM Prairie to demonstrate what a \$89 LCOE looks like in 2031 dollars and GM Prairie broke out two cost scenarios based on modest inflation assumptions to be \$107.31 MWh and a higher inflation assumption to be \$120.45 MWh project and compared them to the 2031 projected market prices for Palo Verde at \$64.37 and Mid-C is at \$77.81 and pointed out that the market is predicting lower prices than the CFPP. He said there needs to be low inflation from 2023-2028 and after 2028 inflation well above 2% to push CFPP into the money relative to current market price projections. This is because also CFPP has a 2% annual increase in its price per MWh in the current power sales agreement. He reviewed the UAMPS' commodities slides and cautioned the Board that the CFPP is not inflation protected because cost increases above projections are borne by the developer which is UAMPS and its members in the project. Board Member Radford expressed his concerns that if this project doesn't move forward, what that could mean for small modular reactor (SMR) production in general and said he's worried that regulation may prevent nuclear production at all. GM Prairie gave several examples of other countries bringing in plants on budget, on time *and* at affordable pricing, mostly located in China.

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GM Prairie commented that he has been to many meetings recently, including CFPP sales meetings and notices that utilities are still not subscribing, but instead wishing the project well. He said it was his opinion that even if the project gets to \$89 LCOE and 80% subscribed by November, that it still is not an attractive deal for Idaho Falls due to the combination of price and development risk for first of kind. Board Member Burtenshaw said she agrees with the GM and has a hard time evaluating the true risk with the project feeling so desperate. Mayor Casper said it is less about the money and more about the symbolism of the host city and said she appreciates that the Board is getting the benefit of GM Prairie's sophisticated analysis, which is likely not the case with most other boards in the project. GM Prairie commented that this Board knows more than a number of the PMC members and pointed out that *all* the big utilities have left the project but the smaller utilities stay in because they are trusting UAMPS. Board Member Ziel-Dingman commented that it's wonderful to be an informed board, but that you have to question why the large utilities are dropping out of the project. Board Member Hally commented that he thinks people are waiting for the Board's decision whether to move forward or not and stated that taking risks is good and thinks we need to just be bold and keep going. Mayor Casper said there could be international orders coming in for more modules and GM Prairie said according to Bob Coward that the \$89 LCOE is based on 40-50 modules being sold. Mayor Casper said she is comforted by the UAMPS' resolution that the PMC passed earlier today and thinks that Idaho Falls should remain in the project until the numbers come in under or the PMC terminates the project because it failed to hit the numbers. Board Member Burtenshaw asked for more clarity on exiting the project and details contained in the UAMPS resolution. GM Prairie said the UAMPS' resolution states that the project has to come in/or under \$89 LCOE and be subscribed at least by 80% and if UAMPS fails to do that, then just one member of the PMC can vote to terminate the project. He continued to explain that if they do meet the numbers, then Idaho Falls will have an option to stay in or exit the project but that the cost to IFP would be \$3.7 million. Board Member Freeman said he is in support of the project because it is in our own backyard and of what the success of the project could mean for the community. Board Member Francis expressed his concerns of not having enough control over the project, where the additional \$2.5 million will come from (and what it pays for), and said the most important thing to him is his responsibility to IFP. GM Prairie clarified that the additional \$2.5 million risk gets us another nine months of information that was requested by UAMPS and their consultants. He suggested looking at it from the standpoint of not spending the extra \$2.5 million *but instead* saving over \$1 million if the PMC terminates the project. He then pointed out that if UAMPS gets to their numbers then that means they've de-risked the project and it will work better for Idaho Falls. Board Member Ziel-Dingman said her thoughts tend to align with the Mayor's to stay in the project in support of decarbonization. GM Prairie said he doesn't know what UAMPS is looking to do and said that maybe they'll lean on the DOE to backstop the project, in which case they'll rerun the numbers and off we go. He said he thinks the current offramp decision has a lower risk with better economics than the last decision and said that he will add all the edits to the resolutions that were sent to him and asked the Board to get additional edits to him by 3 p.m. today so the draft could be edited up to and possibly at the City Council meeting the next evening. Mr. Fife added that a motion can be made if the resolution is still being worked on during the meeting.

### Energy Research Park & Peaking Plant Update

GM Prairie said that INL approached IFP about supporting them in their building a hydrogen electrolyzer demonstration in the desert. INL has been working with General Electric (GE) on a turbine to burn the hydrogen created on the desert site for the IFP Clean Energy (CE) site (Energy Research Park) and was hopeful that GE would then sell the test turbine to IFP at a *steep* discount after INL testing is complete. Meanwhile for the testing, hydrogen will be trucked between the desert and the CE site. GM Prairie explained that while the focus will be on hydrogen production, the desire is to help buildout the research park. He said the turbine can produce 22 megawatts (MW) and to meet peak energy demands and added that INL will be forwarding a site plan soon. He cautioned that the lead time on a transformer post COVID is about 2.5 years, and that the plan is to utilize IFP's mobile sub until the transformer arrives. Board

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Member Francis asked if the peak load could be converted to baseload if needed and GM Prairie said there are likely more economic ways to meet baseload, which would have to be explored within the IFP portfolio.

**Utility Updates**

*Safety* – GM Prairie said the utility continues to have a clean bill of health.

*Board Training* – GM Prairie advised the Board to let staff know if there is training that is desired.

*Downed Powerline* – GM Prairie said that there was a new, unenergized powerline that went down in a field on the east side of town, likely due to the continued cold temperatures coupled with engineering or design problems. He explained that a deenergized line wouldn't be warm and could have been part of the sag issue. He said that it was later learned that IFP engineers designed the tension from IFP's standard sag chart, but that the contracted engineers who built the line, strung it to their own tension charts. GM Prairie said it shouldn't have happened and takes full responsibility for the engineering failure and will get the lines restrung to proper tensions.

There being no further business, the meeting adjourned at 12:01 p.m.

s/ Linda Lundquist

Linda Lundquist, BOARD SECRETARY

s/ Rebecca L. Noah Casper

Rebecca L. Noah Casper, MAYOR



### March 8, 2023 Unapproved

The Idaho Falls Power Board of the City of Idaho Falls met Wednesday, March 8, 2023, at the Idaho Falls Power Boardroom, 140 S. Capital, Idaho Falls, Idaho at 7:45 a.m.

#### Call to Order, Roll Call, and Announcements:

There were present:

Mayor Rebecca L. Noah Casper, Ph.D.

Board Member Michelle Ziel-Dingman

Board Member Tom Hally

Board Member Jim Francis

Board Member Jim Freeman

Board Member Lisa Burtenshaw

Board Member John Radford (joined via Zoom at 7:50 a.m.)

Also present:

Bear Prairie, Idaho Falls Power (IFP) General Manager

Stephen Boorman, IFP Assistant General Manager

Wilson Lin, IFP Engineer

Mike Squires, Utah Associated Municipal Power Systems (UAMPS) Director of Government Affairs

Josh Roos, IFP Chief Financial Officer

Lorna Planesi, City Accountant III

Randy Fife, City of Idaho Falls Attorney

Linda Lundquist, IFP Board Secretary

Mayor Casper called the meeting to order at 7:49 a.m.

#### Calendar, Announcements, Events and Updates

Mayor Casper reviewed the April announcements and upcoming events. Board Members Radford and Freeman gave an update on their recent, annual American Public Power Association (APPA) Legislative Rally event in Washington D.C., where much of the conversation was focused on the difficulty of funneling federal dollars down to local projects. Board Member Radford said he feels there's a general feeling that D.C. is supportive of nuclear projects and pointed out that the Vogtle plant in Georgia has one of their two units up and running. He asked how IFP is marketing the clean energy program and General Manager (GM) Prairie said that mailers were sent to all commercial accounts stipulating a four percent (4%) premium and noted that unfortunately, there were no responses to the mailing. He explained how energy credits that don't get used locally are sold off in other regions and pointed out that although the Idaho National Laboratory (INL) has big net zero goals, they aren't participating in our clean energy program. Mayor Casper and Board Member Radford said they don't recall seeing clean energy advertising and Board Member Radford suggested putting flyers in with the power bills. Board Member Burtenshaw said she prefers to sell the credits and Board Member Radford said he thinks that some customers would opt-in at a premium if they knew more about the program. GM Prairie said in addition to the mailers, that he plans on promoting clean energy programs with the Zamboni at the Mountain America Center (MAC) among other ways and means. He continued to explain that the power prices remain high with a lot of market volatility, and pointed out that it was good to have purchased energy for this summer at last spring's pricing (\$169 MWh) from the Bonneville Power Administration (BPA). He noted that the BPA energy rates on the tier 2 level are about \$30 less per megawatt hour (MWh) than purchasing through Utah Associated Municipal Power Systems (UAMPS). GM Prairie said that transformers are made of steel and when they're at the end of their use, instead of sending them for scrap metal, they are instead refurbished and put back into use. Board Member Freeman asked how the weight and size of transformers impacts poles and GM Prairie said that bigger poles and pads are required with heavier transformers, which also means taking up more space in customer's

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yards. AGM Boorman mentioned that the 2011-12 Horse Butte wind farm is reaching the cost curve of its benefit analysis.

#### Annual Service Policy Review

IFP Engineer Wilson Lin stated that the IFP Service Policy is updated annually and explained that this year's updating was mostly refining definitions and clarifying utility expectations, specific to builders and the public. He added that the utility is continuing to incorporate fiber requirements into policy standards. There was a short discussion about the updated sections. Board Member Burtenshaw asked how updates to the policy is communicated and GM Prairie explained that construction kickoff meetings are held at IFP where contractors are provided copies of the policy if requested and they are encouraged to ask questions about the changes or policy itself. Mr. Wilson said there has been an uptick in solar pricing requests and GM Prairie explained that customers are required to meet with IFP staff prior to installation, to ensure they are not oversizing their system and can meet IFP's net metering requirements and expressed that he prefers customers investing in solar compared to the utility investing in large solar farms.

#### Bonneville Power Administration Post 2028 Contract Negotiation Update

GM Prairie reviewed the Provider of Choice timeline for the BPA contract and explained that ongoing meetings in Portland, Oregon are between BPA its 120+ regional preference customers to negotiate a 20-year contract that meets each of their own system needs. Public Power Council (PPC) represents preference customers to BPA. Not all customers belong to PPC but they work to represent all of public power interests in the basin to BPA. There are 20 members in the PPC Executive Group that formed an ad hoc group to find consensus recommendations on behalf of public power to BPA. GM Prairie emphasized that the importance of the new contract to IFP is an estimated \$700 million value over 20 years, that has/should going forward, roughly provide sixty percent (60%) of the city's power supply at an average price of \$35 MWh historically, which is *very* low dispatchable carbon free power. He pointed out various complexities with IFP's system, that the BPA Tier 1 system size is finite and that BPA's system is not growing enough to meet the region's customer's needs; let alone the region's industrial, new load and investor-owned customers that all want access to power. GM Prairie said he is concerned that BPA doesn't like the SLICE product and it appears to be getting stripped out of the new contract and may not be financially and/or operationally viable with regard to meeting peak net requirements. He explained that *load following* products aren't good for IFP because they are historically more expensive due to resource integration costs and reiterated that IFP already has load balancing services from UAMPS. GM Prairie said the world may look very different in 10 years with new regional transmission organizations (RTOs), etc., but that the contract needs to be durable over those first ten years. Board Member Francis asked if he expects IFP to lose the SLICE component in the new contract and GM Prairie said there will likely be wins/loses. He said that BPA has all the power and authority since wholesale markets remain high and noted the customers moving from traditional carbon based resources are willing to pay up to \$80 MWh for dispatchable carbon free resources. Board Member Hally asked the cost of building other resources and GM Prairie said the margins are \$60-65 MWh for battery paired with 4-hour battery storage and \$40-45 MWh for solar or wind. He said that energy is a fundamental component in the economy and that the industry thinks technology will solve the issues but we need to be thoughtful to maintain reliability and economic affordability.

#### International Brotherhood of Electrical Workers (IBEW) Negotiation Update

GM Prairie said his goal is to bring a union contract to vote on at the next Board meeting and explained that he plans to hold two to three meetings with the union's negotiators and their union manager from Salt Lake City, Utah between now then; kicking off this afternoon with the first meeting. He reminded the Board of the good relations between IFP management and the union since he has been involved in the negotiations. GM Prairie said they continue to focus on clarifying business practices and communication. Board Member Hally asked if the negotiators brings wage statistics to the meetings and GM Prairie said that the union agreed to follow the Milliman market survey so that the market sets what their labor is worth and said he

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wanted to make sure that the labor paid is fair in the market. Mayor Casper invited City Attorney Fife to explain the Board's role in the negotiation meetings and Mr. Fife explained that the Mayor and City Council (Board) act in an advisory capacity and are not directly associated with the negotiations until the contract is voted on. GM Prairie acknowledged that the meetings are open to the public but with no opportunity to participate, and explained that employees are welcome to attend on their own time.

### Federal Legislative Update

Mike Squires, UAMPS' Director of Government Affairs gave an overview of the federal budgeting session, congressional committee assignments and noted top issues to watch for. He said he thought support was positive in both chambers for the Carbon Free Power Project (CFPP), which is only one of many funding priorities and feels there is a general acceptance from even those that have championed clean energy standards in the past. He added that transmission, critical minerals, and hydropower could be bipartisan issues. Regarding the permitting reform, he asked what IFP's hydropower relicensing timeline was and GM Prairie said that the normal process takes 10-12 years and noted that Idaho Power Company, in Boise is relicensing 1800 megawatts (MW) at 3 dams and are still in the process that was initiated in 2003. He said he has concerns due to experiences by other utilities as IFP is entering its own renewal process.

### Board Policy No. 5 Review – Financial Stability & Credit Worthiness

GM Prairie explained that he prefers to tie this policy into the annual report and reminded the Board that when reviewed last year, the fund balance was increased from \$20 million to \$25 million. He reviewed the Board's and Management's responsibilities and IFP's reporting requirements and doesn't recommend any changes this year but advised the Board to let him know over the next month if they want to bring any items back to the next meeting for further review.

### Q1 Financials/Annual Report/2022 Operations

Lorna Planesi, City Accountant III said the audited financials are expected next month. She reported that the cash on hand is \$2.5 million. She pointed out a decrease in fixed assets due to open work orders that have since been closed. Board Member Ziel-Dingman asked to have the net pension asset liability explained and Ms. Planesi said the auditors wanted pensions accounted for as of Sept. 30, 2022 and noted that the city's pension had dropped and was only booked for September 2022. She pointed out that it was a recognized and not realized item. GM Prairie said it's a strange factoid and pointed out that it doesn't pertain the Public Retirement System of Idaho (PERSI). He said that sometimes in corporate pension plans when people retire, they have the option for an annuity or lump sum payment and based on interest rates and future rates of return, the payment could go down causing weird outcomes. Ms. Planesi continued to review the balance sheet for IFP and reminded the Board that what is reflected is merely a snapshot of revenue and expenses throughout the year. She pointed out that the accounts receivable seems in line with the prior years' and noted that the power purchase payables had slightly increased due to higher energy costs. Board Member Radford said he thought the Sugarmill to Paine project was more than \$20 million and GM Prairie explained that was IFP's portion to fund the feeder line but that the total project cost was closer to \$27 million with PacifiCorp paying up to around \$7 million as a partner on the line component. Ms. Planesi said that residential revenues increased by eight percent (8%) and commercial by six percent (6%) and pointed out that the overall position at the end of twelve months is up three percent (3%) despite income being slightly down. She noted that IFP is putting money into big capital projects and GM Prairie agreed that the last three years and next several years will be IFP's largest capital expansion in 30 years. Ms. Planesi explained that the fiber to home project has been ramping up with a lot of outgoing dollars as some projects finish up with the current liabilities sitting at \$1.3 million. GM Prairie reminded the Board that fiber will pay back power with interest (\$16-17 million) and noted that fiber is in its last year of major expansion and noted that while fiber was a big capital project up front that the business is highly lucrative, and noted he would like to drive down connection costs. He said fiber has passed its 5000<sup>th</sup> customer and have passed by 15,000 homes and noted the take rate lags by about a year. Ms. Planesi said that fiber's net position has

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decreased but pointed out the revenue is up. GM Prairie pointed out that the internet service providers are charged \$5,000 per month to be on the network. He said that salaries have increased and positions have been added, but everything is quite in line with what was anticipated. Board Member Hally asked if infrastructure is depreciated and GM Prairie said it is. Mayor Casper asked if there are any grants coming to fiber and GM Prairie said there are ongoing efforts to capture grant dollars and noted his frustration with the process as fiber is wrapping up this year and is his understanding that grants have to be received before buildout is complete.

GM Prairie reviewed IFP's peak load over the last 12 years and noted a five percent (5%) customer growth over the last year, due in part to the large Rocky Mountain Power (RMP) customer buyout and said that it was a lot of work to get 720 customers cut over and pointed out that 92% of these new customers will end up ahead on their bills. Board Member Burtenshaw asked if the numbers for 2014-19 reflect conservation efforts and GM Prairie said yes and added that some was also due to natural gas, but pointed out that now we're seeing a lot of electric heavy load as some new homes and apartments are being constructed all electric. He said the insurance market continues to stabilize and is looking good for this year's renewal and noted insurance companies have a lot of terrorism exclusions. GM Prairie said the utility is focused on cyber security and continues to move things from fiber relays to the fiber network. He said that BPA power supply costs were higher than budgeted but will dial in a better model for next year's forecasting, but pointed out that wholesale purchases were under forecasted, so the budget is right on track. Board Member Burtenshaw asked if this was reflective of a critical water year and GM Prairie said that revenue is set on critical water basis, but that rates are set more on an average water basis (cost of service not actual), and that knowing the power cost adjustment (PCA) element to factor in. He noted the PCA was \$0 again due to the newer fund balance requirement of \$25 million (which is a bit over). He said that September 2022 was really good, but that November and December reflected a bad water year and needed more money. He explained the zeros for the lower generation and that 2023 would be zeros for the Upper Plant as the runner hub will be getting refurbished. GM Prairie explained that we're still short in the winter as the heavy load position generally shows the region and nation is short on capacity. He reviewed the forward hedge BPA purchase in February at Mid-C Index plus \$33.55 to lock in the price exposure. GM Prairie said he's been investing heavily in traffic and noted traffic is a general fund obligation. He compared the fund balance targets to actual. He reviewed the labor trends and noted that wages continue to move fast and upward (especially in the electric utility industry) and noted that infrastructure money causes more upward wage pressure and demand for labor. GM Prairie said he is noticing that employees aren't sticking around once they reach retirement eligibility and that younger employees are exploring multiple job opportunities. He mentioned the engineering staff risks and current hiring struggles and talked about the success of the apprentice program, noting the industry dropout rate is about two thirds. He said there is around a 12-15% turnover rate in the utility with the front desk turning over twice in the last year alone. GM Prairie said in looking ahead, that market-based salaries helps to recruit and retain a good labor force, but noted that with utility jobs being highly technical that the utility ends up being a mid-career place to work, but plans to keep the organization chart fluid to accommodate talent. He talked about succession planning and said his areas of focus are employee morale, workforce changes and training. Mayor Casper agreed that supervisors need better training to support their employees.

There being no further business, the meeting adjourned at 11:50 a.m.

s/ Linda Lundquist

Linda Lundquist, BOARD SECRETARY

s/ Rebecca L. Noah Casper

Rebecca L. Noah Casper, MAYOR

# Memorandum

File #: 23-156

City Council Meeting

**FROM:** Corrin Wilde, City Clerk  
**DATE:** Thursday, May 4, 2023  
**DEPARTMENT:** Mayor's Office

## Subject

Minutes from Council Meetings

## Council Action Desired

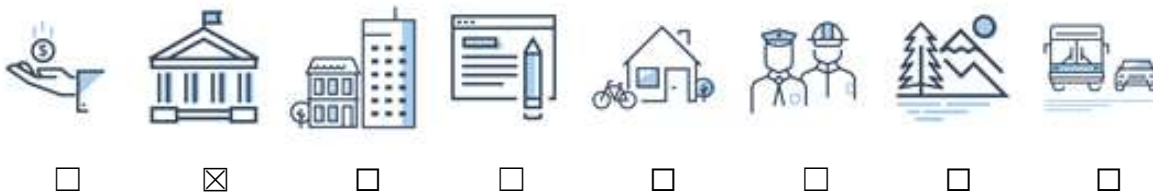
- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the minutes as described below (or take other action deemed appropriate).

## Description, Background Information & Purpose

November 10, 2022 City Council Meeting and November 21, 2022 City Council Work Session .

## Alignment with City & Department Planning Objectives



The minutes support the Good Governance community-oriented result by providing assurance of regulatory and policy compliance to minimize and mitigate risk.

## Interdepartmental Coordination

N/A

## Fiscal Impact

N/A

## Legal Review

N/A



# City Council Meeting Minutes - Draft

680 Park Avenue  
Idaho Falls, ID 83402

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Thursday, November 10, 2022

7:30 PM

City Council Chambers

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## 1. Call to Order

**Present:** Mayor Rebecca L Noah Casper, Council President Michelle Ziel-Dingman, Councilor Radford, Councilor Hally, Councilor Freeman, Councilor Francis; and Councilor Burtenshaw

### Also present:

All available Department Directors  
Randy Fife, City Attorney  
Jasmine Marroquin, Deputy City Clerk

## 2. Pledge of Allegiance

Councilor Hally led those present in the Pledge of Allegiance.

Mayor Casper directed some order changes to the agenda due to continued software glitches. Mayor Casper added (D) Municipal Services and renumbered the items following Municipal Services.

## 3. Public Comment

Dominique Howard from Idaho Falls. Howard has concerns regarding the duties of the Idaho Falls Police Department. Howard acknowledges that this concern has been addressed previously. Howard stated that there have been incidents of tagging and graffiti throughout the City, and they have caught on video the car license plate and the people coming out of the house and all this information was given to the police. Howard has requested as a business to have the perpetrators make restitution to the business, and nothing has been done about it. Howard has had several people relate similar stories to her with domestic violence, trespassing, vandalism, etc. that have gone unattended by the police department. Howard stated that if they must endure these issues without law enforcement protection, then why are they paying taxes for these services. Howard stated that if the police cannot keep them safe, and they have to be more vigilant at policing themselves, then they should be compensated by not having to pay the City for that service. Howard quoted Idaho Statute Title 50 Chapter 6 Section 5602. "The Mayor is to preserve order and take care that the ordinances of the City are complied with." Howard stated that they are writing tickets by the airport, and she is asking if this is how visitors to the State should be greeted. Howard stated that the enforcement of the 2-hour parking downtown also creates tickets, and it is inconvenient for employees to stop what they are doing and move their car every two hours and that creates an unproductive work environment. Howard asked if the \$28 million police facility has payment due and payment can only be made from revenue generated by the police department. Howard asked how the police department generates revenue. Howard submitted a public record request for monthly spending report for the police department on October 21, 2022, and



perhaps there are expenses being paid that make the police department unable to financially perform their duties. Howard stated that according to the State of Idaho Attorney General, she is entitled to that information, but it was not given to her within 3 business days with a possible extension of 10 days. She made a phone call to the City Clerk today to get that request met. Howard suggested that the police department has not yet earned their money for such a big expensive facility.

#### **4. Consent Agenda**

##### **A. Idaho Falls Power**

- 1) Idaho Falls Power Board Meeting Minutes

##### **B. Municipal Services**

- 1) Q-23-002 HVAC Updates at Water Division
- 2) IF-23-D Purchase Rear Loader for Public Works
- 3) License Applications

It was moved by president Ziel -Dingman, seconded by Councilor Francis to approve, accept, or receive all items on the Consent Agenda according to the recommendations presented. The motion carried by the following vote: Aye – Councilors Dingman, Radford, Francis, Burtenshaw, Hally, Freeman. Nay - None

#### **5. Regular Agenda**

##### **A. Public Works**

- 1) Professional Services Agreement for a Wastewater Facility Planning Study with Stantec Consulting Services Inc. and Keller Associates Inc.

A Professional Services Agreement with Stantec and Keller to update the City's 2010 Wastewater Facility Plan. Work will include documenting a series of technical evaluations and condition assessments, developing a list of future improvements, prioritizing, and recommending allocations for capital improvements, complete environmental studies and compile evaluations and information into a comprehensive Facility Plan.

Public Works Director Chris Frederickson stated this is a redo of the planned document for Wastewater Facility completed in 2010. The City went through a quality bid selection process as required by State Statute and determined that this was the best consulting group submitted to complete the study. Director Fredrickson stated that this document provides the overall guiding work for the facilities in wastewater planning. He said all the technical work that goes into completing all the needed improvements, forecasted out to 20 years, and they are to a point where they have completed capital improvements for the last 10 years based on the study completed in 2010, and the work that is needed

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is anticipated to cost just under \$497,000 of which they have a \$250,000 grant from the Idaho Department of Environmental Quality. Director Fredrickson stated It will evaluate the existing nearly 10 billion gallons of flow for today and give a road map of what improvements need to be made to accommodate those flows into the future, and the reason that changes somewhat in the wastewater industry, is they always have new requirements that are brought through environmental issues associated with new permitting. Director Fredrickson stated that at some point Idaho Falls will have a new discharge permit that will likely have new constituents that will need to evaluate and plan for. He said the ideas and possible changes that could happen are evaluated, and they also evaluate the overall plant capacity of 17 million gallons, and there is a lot that goes into that evaluation. He said the strength of flow is important, and not just the total volume that flows through the plant. Director Fredrickson stated that the study will help evaluate some of the things as they come along with constituents that they test for, and it will give them other items to keep on their mind as far as other improvements that will be triggered, even though they aren't approaching the 17 million gallons of treatment per day. Councilor Francis stated that he is trying to process the implications of the growth that the City is facing, and how it affects the wastewater plant. Councilor Francis asked if this would be finished in 1 year. Fredrickson stated that is the anticipated time frame.

It was moved by Councilor Hally, seconded by Councilor Burtenshaw to Approve the Professional Services Agreement and authorize the Mayor and Deputy City Clerk to execute the necessary documents. The motion carried by the following vote: Aye – Radford, Freeman, Burtenshaw, Francis, Dingman, Hally Nay – None

### **B. Idaho Falls Power**

#### **1) Amended Ordinance Title 8, Chapter 5, Section 7**

General Manager Bear Prairie presented an amendment to Ordinance Title 8, Chapter 5, Section 7. GM Prairie stated that this allows them the ability to remove services to businesses or residences after 18 months of no service being paid and being disconnected from services. GM Prairie stated that it allows them, when they are rebuilding areas with services that are in the way of other upgrades and future line expansions, it doesn't make sense to maintain and continue to work around a service of something that doesn't have a customer, and it make sense to remove those. GM Prairie stated that it will give them the ability to clean up and maintain their electric system.

Mayor Casper stated that the City Attorney is at a conference for training, and they have Assistant City Attorney Michael Kirkham joining on Webex, and Mayor Casper asked Kirkham about the wording on the motion being incomplete. Mr. Kirkham stated that it is incomplete if what you want to do is suspend the rules of three separate readings, you could pass it, and then in the next two council meetings present it again and vote three times, but if you'd like to suspend that rule, then you need to add that language onto the motion. Mayor Casper read "suspend the rules requiring three complete and separate readings, publishing by title, and reading it by summary". Mayor Casper allowed Councilor Radford to determine which version of the motion he'd like to make. Councilor Burtenshaw stated that it does have the old City Clerk Kathy Hampton's name listed, and Mayor Casper asked Mr. Kirkham if



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that needed to be addressed. Mr. Kirkham stated whoever is doing the verification on that, can be added, and a clean copy can be made, and if that is made very clear on the record that is fine, but it is not an original part of the document, it is just a verification that the clerk saw it and recorded it in the City records.

It was moved by Councilor Radford, seconded by Councilor Freeman to Approve amended City Ordinance Title 8, Chapter 5, Section 7 and give authorization to the Mayor and City Clerk under a suspension of the rules requiring three complete and separate readings and ask that it be read by title and published by summary. The motion carried by the following vote: Aye – Councilors Hally, Burtenshaw, Dingman, Freeman, Francis, Radford. Nay. None.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

## ORDINANCE NO. 3491

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING CITY CODE SECTION TITLE 8, CHAPTER 5, SECTION 7 TO REQUIRE CUSTOMER PAYMENT FOR REESTABLISHMENT OF ELECTRIC SERVICES, IF ANY, TO THAT LOCATION, AND TO AUTHORIZE REMOVAL OF UNUSED ELECTRIC FACILITIES AT THE DISCRETION OF IDAHO FALLS POWER; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

### C. Fire Department

- 1) Declaration of Sole Source Vendor and Purchase of MagneGrip 100% source capture exhaust removal systems for fire stations 4 and 5.

Chief Dwayne Nelson is requesting a declaration for a sole source vendor for a purchase of an exhaust system for Station 4 and 5. This exhaust system is compatible with the current exhaust systems, which will allow them to have the systems compatible across multiple apparatuses, and not have to use different parts for repairs. Chief Nelson stated that the current exhaust systems are out of repair and out of life and cannot be repaired. Chief Nelson is requesting a declaration for a sole source vendor for the purchase of MagneGrip 100% Exhaust Removal System.

Councilor Radford appreciates the effort, as this is critically important, and is important for the City. Councilor Francis stated that there was something similar done in the Consent Agenda for the water department ventilation system, he said these are things that protect our workers, and this protects the firefighters. Councilor Freeman stated that they started filtering the exhaust in the station later, and it is a big step forward. He said that there is equipment on the trucks and that needs to be compatible from Station to Station.

It was moved by Councilor Freeman, seconded by Councilor Dingman to Declare Weidner Fire as the only vendor reasonably available for source capture exhaust removal systems because the compatibility of components and the replacement of parts for the exhaust removal system with the City's existing exhaust removal systems are the paramount considerations for this purchase and authorize the sole



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source purchase for the Fire Department from Weidner Fire purchasing proposals #1207202IF4 in the amount of \$102,973.66 for the purchase of MagneGrip 100% source capture exhaust removal system for fire stations 4 and 5. The motion carried by the following vote: Aye – Councilors Burtenshaw, Hally, Radford, Dingman, Freeman, Francis. Nay. None.

## **D. Community Development Services**

### **1) Legislative Hearing for Consideration of an Ordinance approving the Pancheri East Bank Urban Renewal District**

Mayor Casper opened the public hearing for consideration of an Ordinance approving the Pancheri East Bank Urban Renewal District.

Community Development Services Director Brad Cramer appeared and presented the following:

Director Cramer stated this is the final step in the creation of a new urban renewal district. Director Cramer stated that they have seen this before when they authorized the Idaho Falls Redevelopment Agency to proceed with other steps, including the development of a plan that establishes the types of projects that can be completed; establishes a time frame for the district; and, the Financial Feasibility Report to make sure the anticipated revenues are sufficient to cover the anticipated project cost. Director Cramer introduced Meghan Conrad, Esq., from Elam and Burke who is legal counsel for the Idaho Falls Redevelopment Agency, and Renee Magee who is a consultant that worked on both the Eligibility Report and Financial Feasibility Report. Director Cramer stated that the incomplete wording of the motion on the previous item made him realize that he also forgot to write in the three and complete separate readings language and asked them to transfer that to the motion.

Meghan Conrad, Esq., Elam and Burke presented: Conrad gave a quick reminder that an Urban Renewal Plan is not a contract, but rather a framework for an implementation of projects that are anticipated to occur within a specific geographic area, for a specific period, by Statute is 20 years or less.

Slide 1 - Conrad showed the project area that is approximately 32 acres and a portion of it was originally included in the Pancheri project area that was terminated in 2020. This portion for the new project area was not developed in the first effort and the area that did develop is not included in within the boundaries of the project area. Conrad stated that the area has been underdeveloped and vacant. Conrad stated that the driver behind this project is the proposed 90 room hotel, and the goal would be to have revenue allocation proceeds from that development be available to reimburse certain eligible improvements. Conrad stated that they have also considered in the projections the potential for a small restaurant site, or small retail and office building.

Slide 2 - Conrad showed the path the project will take and the opportunities to touch the public as they work through the project. Conrad stated that Urban Renewal planning has two phases, with the first phase being the eligibility phase where the area is reviewed for the presence of certain statutory conditions, and that effort was completed in February, whereafter the planning effort moved forward. Conrad stated that the Plan was reviewed by the Agency Board in August 2022 and thereafter the Agency Board took action adopting the plan on September 15, 2022, and the recommended approval of



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the Plan has been transmitted to the City for the necessary steps and action under the Statute. Ms. Conrad stated that Planning and Zoning took a look at the plan and found it in conformity with the Comprehensive Plan of the City on October 4, 2022. The first notice of the public hearing was published in the Post Register on October 7, 2022, and that is the date that the overlapping taxing districts received a copy of the planning documents; the second publication thereafter occurred on October 21, 2022.

Slide 3 – Ms. Conrad reminded the Council that what is included in the Urban Renewal Plan is governed by Statute. Idaho Code 50-2905 identifies information that a Plan must include with a level of specificity. Ms. Conrad stated that the required elements are discussed in the Plan narrative and the related attachments, and below each of the elements is a specific plan section where you can find the topic specifically addressed. Ms. Conrad stated that the first element is the 10% levitation. They look at the combined assessment roles of the existing revenue allocation areas and compare it to the total taxable value of the City and combined that number cannot exceed 10% of the total assessed value of the City, and after review of that analysis, addition this revenue allocation area, would still be well within the 10%. Ms. Conrad stated that they listed the public works projects that are anticipated to be funded with revenue allocation proceeds under the plan, and those are predominately identified in attachment 5 with some additional information set forth in a narrative format in Section 301. Elements 3 and 4 are the Economic Feasibility Studies together with the specific list of the estimated project costs and those are covered in attachment 5. Element 5 is the Fiscal Impact Statement, showing the impact of the revenue allocation area on the overlapping taxing districts. Ms. Conrad stated that when they talk about impact, they are meaning the deferral of the new development value that would appear on the new construction role, which is delayed until the termination of the revenue allocation area, and this area is small at 32 acres, and that is limited delay over a period of 20 years. Element 6 is the description of the method of financing, and they address what projects are to be funded on a pay as you go basis or if there is going to be a reimbursement with a public entity, or a developer or owner. Ms. Conrad stated that this section does address the different methods throughout the life of the District as well as in attachment 5. Ms. Conrad indicated that this plan is predominately configured to be funded through reimbursement, meaning that the developer would advance funds for the improvements, which would be reimbursed over the life of the District until the District terminates, or the improvements have been fully funded. Element 7 requires a termination date, and the 20-year termination date, if adopted this year, would be December 31, 2042, and the revenue allocation proceeds would flow to the Agency in 2043. Element 8 is the description or retention of assets, and if the Agency does acquire assets, it is anticipated that they would flow to the City or another pertinent public entity, and there is an opportunity for the Agency to retain assets post termination should there be revenues other than revenue allocation proceeds to fund the maintenance.

Slide 4 – Ms. Conrad indicated that this highlights the 10% valuation limitation that was discussed, and the combined revenue allocation base assessment role, represent .22% of the total taxable value of the City.



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Slide 5 - Renee Magee, 815 Nez Pearce Street, Moscow, Idaho. Ms. Magee was the Executive Director for the Idaho Falls Redevelopment Agency from 1997 – 2016. Ms. Magee reviewed the Economic Feasibility Study for the Pancheri East Bank Project Area. Ms. Magee directed Council to page 205 – 212 of the material available for tonight's meeting, and also found on the Council website pages. Ms. Magee stated that the purpose of the Study is to determine if a hotel to be constructed on 4 acres will generate sufficient revenues to finance the public improvements that are necessary to ensure the construction of the hotel.

Slide 6 – Ms. Magee stated that the Financial Feasibility Study found that the hotel will generate sufficient revenue to reimburse the developer \$390,000 for environmental remediation, demolition, and improvements to Riverwalk Drive. Ms. Magee stated that over the life of the project area it is anticipated that \$2.8 million will be generated, and that estimate is based on the 2021 tax levy rates.

Slide 7 – Ms. Magee stated that it is assumed that the developer will initially fund the assistance and be repaid from the tax increment generated by the hotel. Ms. Magee stated that in addition to the assistance for demolition and Riverwalk improvements, there may be a need for additional assistance for right of way improvements and public utilities. Ms. Magee stated that there is not an internal street system in this area, and there are no public utilities in this area, as everything is under private ownership.

Slide 8 – Ms. Magee showed the anticipated projects for the area. Ms. Magee showed that the first \$350,000 in public improvements are anticipated to be completed by the developer in 2023 and 2024 and that will include the demolition and Riverwalk improvements. Later years of the project area it is anticipated that there will be sufficient funding to do additional right of way improvements, and to assist with public utilities, and possibly do a portion of an internal street system in the area.

Slide 9 – Ms. Magee summarized that it is anticipated that approximately \$2.8 million will be generated through the construction of the hotel, and additional private investment.

Slide 10 – Ms. Magee stated that this table is found on page 209 of the materials for Council. Magee stated that the table assumes that the hotel is completed in 2025 and additionally a small retail building and a restaurant are constructed in 2027 – 2030. The assessed valuation of the additional investments would total less than \$3 million. Ms. Magee stated that there is a major decrease in the total assessed valuation between 2022 and 2023/2024, and that is to reflect the demolition of the King B Manufacturing plant.

Slide 11 – Ms. Magee showed the slide that explains the assumptions that went into the table and estimated revenues. Ms. Magee stated that they do not believe that revenue will flow from the hotel until 2027 because it is not anticipated to be completed until the end of 2025. The table shows a Mill levy decrease of 1% annually and the value of new construction of the hotel and a small retail building and restaurant will be increased by 2% annually, with a base assessment (value of the buildings that presently exist) will increase by .5% a year based on what has historically happened in this area. Ms. Magee stated that the base assessment will be reduced by the demolition of the former King B manufacturing facility. Ms. Magee stated that the base value of the beginning of this project is



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estimated to be slightly below \$6million. Ms. Magee stated that the value of the new hotel is estimated to be \$13.5 (less than estimated by the developer).

Slide 12 – Ms. Magee stated that this slide illustrates the cash flow, showing estimated revenues and estimated expenses. Ms. Magee indicated that this table is found on page 209 of the materials for Council. Ms. Magee stated that this table shows the developer should be reimbursed by 2030 the \$390,000. Ms. Magee stated that in addition, they should be able to repay a loan that has been received from another District of \$30,000 by the year 2028. Ms. Magee showed that they estimate to have \$2 million for additional public projects in the area.

Slide 13 – Ms. Magee stated that the developer advanced \$38,000 for the cost of creating the plan for the project area. Ms. Magee stated that there is an inter-district loan of \$30,000 anticipated and the payment to the developer would be covered by an owner participation agreement with 75% of the tax increment will be paid to the developer under the OPA and 15% is set aside to cover administrative assistance in the last table (They might need the full 25% in the initial years). The developer should be repaid \$390,000 to cover \$350,000 for demolition, public infrastructure, and \$38,000 advance.

Slide 14 - Meghan Conrad, Esq., stated that this slide highlights the Planning Commissions' finding of conformity with the Comprehensive Plan, the proposed development of the hotel and retail and the potential office space falls within the mixed-use corridor and urban core planning areas, and the Riverwalk improvements are also highlighted as part of the project.

Slide 15 – Ms. Conrad stated that this is a post July 1, 2016, plan so if approved there are limitations of the ability to amend this plan in the future by City Council Ordinance. Ms. Conrad stated that should the plan be amended by City Council Ordinance, it would trigger a reset of the base assessed value to the current assessed value, eliminating the revenue stream in that project area. Ms. Conrad stated that there are specific exceptions to a base reset, including an annexation of up to 10% of the acreage, de-annexation, ministerial/technical changes, and extension to a portion of the industrial area, that is existing within the project area.

Slide 16 – Ms. Conrad stated that today is the time set for the public hearing and the City Council consideration of the Ordinance. Ms. Conrad stated that if the ordinance is adopted, there is publication of the ordinance summary, recording the ordinance, and transmittal of the documents to county and State officials as well as the overlapping taxing districts. Ms. Conrad stated that to establish the area by January 1, 2023, the deadline to do all these things is December 1, 2022.

Councilor Francis asked if the area is 32 acres, or 36 acres (32 acres + 4 acres for hotel). Ms. Conrad stated that a discrepancy occurred when adding up the survey maps and legal that occurred later in the process. Ms. Conrad directed Council to attachment 2 to the Plan and the surveyed legal is closer to 32 acres. Ms. Conrad stated that references to 36 is an overstatement.

Mayor Casper asked about the \$350,000 for demolition, remediation, and Riverwalk improvements, and feels it is a small amount. Ms. Magee stated that the figures come from the developer, and she would



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assume that remediation will be not overwhelming, however \$250,000 to demolish the building is not a minor sum.

Mayor Casper opened the hearing to the public for testimony.

No one appeared in support or opposition.

Councilor Francis asked if they need to make an amendment to reflect the references to 36 acres need to be adjusted to 32 acres, although the actual Ordinance does say 32. Mayor stated that the ordinance does govern it. Mayor Casper stated that is a procedural item.

Mayor Casper closed the public hearing.

Councilor Burtenshaw thanked Director Cramer and acknowledged that this takes a lot of time from his department and thanked Magee and Ms. Conrad for their time and expertise. She left it up to Councilor Francis to make an amendment if desired, or she will say that the documents should reflect the actual area. Councilor Hally stated that he wanted to address the reason behind the 20-year limitation on the area. He said you never know on construction what kind of development could come forth besides the hotel, and construction takes time, a recession can slow things down, and so you can always finish the project earlier and close the district, but you cannot add time to it. Councilor Hally stated that the developer in this instance estimated the acreage to start with without a formal evaluation, and that is why it went from 36 to 32 acres. He noted that there will be several plans that the District will engage with the developer along the way, and things can change during that period of time. Councilor Hally stated that you never know what could be found in the area, as far as basalt, and sometimes it takes extensive amount of work or dynamite. He said this area was part of another District, and nothing happened, and now we have a developer that wants to make something happen, and it is along the Snake River, and a development that they should be happy about. He said that when the district closes, the base will go back to the City and the base is permanent. Councilor Hally is in favor of the project.

Councilor Francis stated that there used to be several businesses operating in this area, but they have gone away and now it sits as not vacant, but not being fully used, and when this develops this will benefit the entire community because it will be developed with some public space. He said the redevelopment will allow stimulation for the benefit of the entire community, not just this area. Francis strongly supports this project.

Mayor Casper expressed her strong support for urban renewal, and noted for public that urban renewal in the City of Idaho Falls is a success story, and for every District they have opened, they have increased the value of the real estate in the District, and every time a District has closed, the citizens of Idaho Falls have been better off because they have created property that has increased value, and grown the tax base, and thereby lower taxes for residents across the community.

Councilor Francis asked Mr. Kirkham if they need to make the adjustment in the document even though the ordinance is correct. Mr. Kirkham asked Francis what document he was referring to. Councilor Francis indicated that the supporting document (study, supporting documents, exhibits). Mayor Casper stated that Ms. Conrad indicated that in places where the number is different from 32 acres, it is



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because early on the developer estimated the acreage, and the acreage wasn't established until later. Dingman stated that the Ordinance refers to attachment 5, which is the Feasibility Study. Mayor Casper stated that the Economic Feasibility Study does not have the acreage in it. Council President Dingman feels it is ok. Councilor Francis stated that on page 207 it states 36 acres and that is part of the Economic Study. Director Cramer stated that there are some references in the Economic Feasibility Report that point to 36 acres, and it is not just an estimate, but when they initially create a boundary, they use parcel maps that are provided from the County, but by the end of the exercise there was a surveyed boundary. Director Cramer stated that at the time of the Eligibility Report, the Financial Feasibility Report, they were going off parcel maps, and the acreage was correct. Director Cramer showed that part of the 4 acres difference was as the lines slide up based on the survey they are shrinking. It is in Director Cramer opinion that there is nothing inaccurate, as the Economic Feasibility Study was based on 36 acres, and the Eligibility Report was based on 36 acres, the survey boundary line corrected and did all sorts of research (tricky with easements, etc.) and it shrunk the official size down to 32. Director Cramer doesn't feel there is anything inaccurate, but the boundary did change between the different reports. Councilor Francis stated that his comment had nothing to do with the accuracy or inaccuracy, but rather when they pass the document, they want it to be legal, so they don't have to come back. Mr. Kirkham stated that he is looking at the ordinance and Exhibit 2 which is the notice that was published, and it reflects a parcel of approximately 31.5 acres, and that is correct, so the studies were based on estimated boundaries, and the notice part, and the official legal description will be applied, and the fact that the boundaries weren't exactly what everyone thought at the planning stage, isn't going to change what the development zone will be. Mr. Kirkham doesn't feel that they need to amend or correct the feasibility studies, because the legal description will apply to the redevelopment area and the ordinance itself.

It was moved by Council Burtenshaw, seconded by Councilor Francis Approve the Ordinance approving the Pancheri East Bank Urban Renewal District under suspension of the rules requiring three complete and separate readings and request it be read by title and published by summary and give authorization for the Mayor and City Clerk to execute the necessary documents. The motion carried by the following vote: Aye – Councilors Dingman, Burtenshaw, Francis, Freeman, Hally, Radford. Nay – None

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

## ORDINANCE NO. 3492

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, APPROVING THE URBAN RENEWAL PLAN FOR THE PANCHERI EAST BANK URBAN RENEWAL PROJECT, WHICH PLAN INCLUDES REVENUE ALLOCATION FINANCING PROVISIONS; AUTHORIZING THE CITY CLERK TO TRANSMIT A COPY OF THIS ORDINANCE AND OTHER REQUIRED INFORMATION TO COUNTY AND STATE OFFICIALS AND THE AFFECTED TAXING ENTITIES; PROVIDING SEVERABILITY, CODIFICATION, AND PUBLICATION BY SUMMARY; PROVIDING FOR A WAIVER OF THE READING RULES; AND PROVIDING AN EFFECTIVE DATE.



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2) Legislative Public Hearing-Part 1 of 2 of the Annexation and Initial Zoning-Annexation Ordinance and Reasoned Statement of Relevant Criteria and Standards for 10.649 acres for the Southeast ¼ of Section 23, Township 2 North, Range 37 East.

3) Legislative Public Hearing-Part 2 of 2 of the Annexation and Initial Zoning of LC, Limited Commercial with Controlled Development Airport Overlay Zones, Initial Zoning Ordinance and Reasoned Statement of Relevant Criteria and Standards, 10.649 acres of the SE ¼ of Section 23, Township 2 North, Range 37 East.

Mayor Casper opened the public hearing for Annexation and Initial Zoning of LC for 10.649 Acres.

Applicant: Matthew Bird, 4980 Riverbend Lane, Idaho Falls. Bird thanked City staff for their help with the application process. Bird stated that they have received recommendation of approval from Planning and Zoning for annexation with initial zoning of LC for approximately 10.649 acres off Skyline Drive. Mr. Bird showed on the map east of Skyline Highschool is the proposed property. Bird stated that the property just to the north (in red) has already been approved LC; Camping World is adjacent to this property. Bird stated that this zoning would follow the Imagine IF Comprehensive Plan.

Councilor Freeman asked if the parcel to the north in red is related to this parcel. Mr. Bird stated that they are not related, but just requesting the same designation.

Director Brad Cramer appeared and presented the following staff report:

Slide 1 – Zoning Map. Director Cramer stated that besides the LC to the North, there is HC zoning in the area, as well as R1 with Skyline Highschool. Director Cramer stated that further east you see some of the R1 as well, and that area is back and forth between County and City, and that reflects which properties have City utilities and were annexed by the City.

Slide 2 – Comprehensive Plan. Director Cramer stated that the future land use map shows this area as mixed-use centers and corridors, where it is along I15, and Skyline is a minor arterial where you'd expect to find LC types of development. Cramer stated that it is consistent with the principles of the Comprehensive Plan

Slide 3- Aerial outline of where the parcel is located. Director Cramer showed where the parcel is located. Slide 4 – Aerial. Director Cramer showed that the property is currently undeveloped.

Director Cramer stated that P&Z recommended approval and staff concurs.

Councilor Francis asked if they are annexing the whole road of Skyline along with this piece. Director Cramer agreed that they are annexing the whole road. Councilor Francis asked if all South Skyline will now be developed with City standards. Director Cramer agreed.

No one appeared in support or opposition.

Mayor Casper closed the public hearing.



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Councilor Burtenshaw feels that everything is sufficient in the packet and pointed out that there is not a connection to Stosich Lane, and the access will be from 17<sup>th</sup> South and Skyline.

Mayor Casper added that it is a Category A Annexation.

It was moved by Council Burtenshaw, seconded by Councilor Francis to Approve the Ordinance annexing 10.649 acres for the Southeast  $\frac{1}{4}$  of Section 23, Township 2 North, Range 37 East under a suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary. The motion carried by the following vote: Aye – Councilors Francis, Dingman, Freeman, Hally, Radford, Burtenshaw. Nay – None

It was moved by Council Burtenshaw, seconded by Councilor Francis to Approve the Reasoned Statement of Relevant Criteria and Standards for the annexation of 10.649 acres for the Southeast  $\frac{1}{4}$  of Section 23, Township 2 North, Range 37 East and give authorization for the Mayor to execute the necessary documents. The motion carried by the following vote: Aye – Councilors Burtenshaw, Hally, Dingman, Radford, Freeman, Francis. Nay – None

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

### ORDINANCE NO. 3493

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 10.649 ACRES DESCRIBED IN EXHIBIT A OF THIS ORDINANCE, AMENDING THE LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Council Burtenshaw, seconded by Councilor Francis to Assign a Comprehensive Plan Designation of “Mixed Use Centers and Corridors” and approve the Ordinance establishing the initial zoning for LC, Limited Commercial with Controlled Development Airport Overlay Zones as shown in the Ordinance exhibits under a suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary, that the City limits documents be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, amendment to the Comprehensive Plan, and initial zoning on the Comprehensive Plan and Zoning Maps located in the Planning office. The motion carried by the following vote: Aye – Councilors Hally, Francis, Radford, Dingman, Burtenshaw, Freeman. Nay – None

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

### ORDINANCE NO. 3494

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE INITIAL ZONING OF APPROXIMATELY 10.649 ACRES DESCRIBED IN EXHIBIT A OF THIS ORDINANCE AS LC, LIMITED COMMERCIAL AND CONTROLLED DEVELOPMENT AIRPORT

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OVERLAY ZONES; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Council Burtenshaw, seconded by Councilor Francis to Approve the Reasoned Statement of Relevant Criteria and Standards for the Initial Zoning of LC, Limited Commercial with Controlled Development Airport Overlay Zones, and give authorization for the Mayor to execute the necessary documents. The motion carried by the following vote: Aye – Councilors Freeman, Radford, Burtenshaw, Francis, Dingman, Hally. Nay – None

## **6. Announcements**

Mayor Casper announced that tomorrow is Veterans Day and invited everyone to reflect on the Veterans and their service.

Mayor Casper stated that the next meeting will be on the 21<sup>st</sup> will be work session from 3 – 6 pm and Tuesday 22<sup>nd</sup> will be the City Council Meeting.

Mayor Casper stated that the City will not be open for business on Thursday or Friday during Thanksgiving week.

## **7. Adjournment.**

There being no further business, the meeting adjourned at 8:45 PM

s/ Corrin Wilde  
Corrin Wilde, City Clerk

s/Rebecca L. Noah Casper  
Rebecca L. Noah Casper, Mayor

## **November 21, 2022 Council Work Session Unapproved**

The City Council of the City of Idaho Falls met in Council Work Session, Monday, November 21, 2022, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls at 3:00 p.m.

### **Call to Order and Roll Call**

There were present:

Mayor Rebecca L. Noah Casper  
Council President Michelle Ziel-Dingman  
Councilor John Radford  
Councilor Tom Hally  
Councilor Jim Freeman  
Councilor Jim Francis  
Councilor Lisa Burtenshaw

Also present:

Rick Cloutier, AirPort Director  
Pam Alexander, Municipal Services Director  
PJ Holm, Parks and Recreation Director  
Nick Terry, TOK Commercial Real Estate  
Brad Cramer, Community Development Services, Director  
Josh Roos, Treasurer  
Mark Hagedorn, Controller  
Michael Kirkham, Assistant Attorney  
Corrin Wilde, Accounting Clerk  
Jasmine Marroquin, Deputy City Clerk

Mayor Casper called the meeting to order at 3:02 p.m. with the following items:

### **Calendars, Announcements, Reports, Updates, Questions, and Discussion:**

November 24-25 Thanksgiving Holiday

November 28, Mountain America Center Ribbon Cutting 11am

November 29, AIC Legislative Summer, 9am-3am, Boise

November 30, (ATI) Associated Taxpayers of Idaho Annual Conference (webinar-CIF Council Chambers)

Mayor Casper stated that next Tuesday Legislative Summit in Boise is for Legislatures and City Officials, and no one from Idaho Falls, there are two issues they are taking to the Legislature this year. Mayor Casper feels that those will be covered by the lobbyist. The rest of the items in the packet are from an event that happened today. The EILQ brings Mayors and Legislatures from Eastern Idaho Districts 27-35. This is the first time in person since Covid. Mayor Casper explained how it got its start as a collaboration between the Chambers and the Eastern Idaho Water Rights Coalition. Mayor Casper stated that there were good issues on the agenda. Mayor Casper asked for input from various mayors and pulled out information on how eastern Idaho is represented on various Boards. Mayor asked for any adjustments to create a living document. Mayor Casper asked Councilors to add dates to their calendars that are listed. Mayor Casper presented that Mayor Colletti suggested creating a law enforcement district, and his letter that he put together with County Commissioners is included in the packet. Mayor Casper showed a heat map that showed two places in Eastern Idaho (north and south of Idaho Falls) where personal wells have been drilled in the last little while. Mayor Casper showed a visual showing the wells in Bingham County and then explained that there is a septic next to each of the wells, and there was discussion about water contamination, and they want Legislatures to be aware and potentially take the authority to approve septic systems away from health districts and give it to an entity that make more sense with water quality. Mayor Casper would like a similar map for other parts of eastern Idaho, as well as a septic system map because they do not want contamination. Mayor Casper thanked Council Members for the tree lighting and braving the cold.

## **November 21, 2022 Council Work Session**

### **Liaison Reports and Councilmember Concerns:**

Council President Dingman had no items to report.

Councilor Hally gave an update on Prestwood. They have people installing the big poles and putting wiring in the big poles, and take the other poles down, then work on the curbs for disability access. 25<sup>th</sup> Street is open for business now.

Councilor Radford presented that the Zoo is open Friday – Sunday in November, and Saturday and Sunday in December. Parks and Recreation is working on things to bring back. The PMC call was right after the election, so there was a lot of conversation about the election. Radford said it is nothing too compelling because at the time they did not know who was going to control the House. Mayor Casper stated that nothing strong in Idaho has changed. They went to the USU presentation, and it is recorded with a Webex link to rewatch.

Councilor Francis stated that with Sister Cities there is a Resolution on tomorrow's Agenda Authorizing a Borrowing Agreement for the Collection of the library to serve the purpose of improving outreach and making sure the collection is well protected. Councilor Francis announced that Symphony, the Art Museum, and Idaho Falls Downtown Development have worked together to put a program together for December 3 at the Art Museum in the afternoon. It will be a drawing together of themes inside Jazz music and the idea is commonalities and diversity. The event is sponsored by INL. Councilor Hally stated they have exhibits going on in the different rooms. Councilor Francis stated that at one point they talked about a winter market Downtown and the potential to have cultural exhibits at the winter market, but there were not enough vendors to pull it off. Councilor Francis indicated that the skating rink is here and will be assembled this week.

Councilor Freeman had no items to report.

Councilor Burtenshaw had no items to report.

### **Airport - FAA Grant and Consideration of a Professional Service Agreement:**

Director Rick Cloutier stated that the packet contained a scope of work from Thiel Engineers on the terminal design, Fee Estimate and record of negotiations, and letter from FAA accepting the fee. This is for design for the terminal extension. They are trying to get this done so they can issue a grant by the end of November, and they need to get it back to them and approved. This has been presented before to the Council. They knew this was coming forward this year for the construction and expansion to the terminal to the south. He said this is estimated to be a \$30 million project. The scope of work in front of the Council will be 95% funded by the FAA and the rest from airport funding already identified in this year's budget. Councilor Freeman stated he had \$40 million listed on his paperwork. Director Cloutier stated it could change many times. Councilor Radford asked how the Airport is getting the information about the design work. Councilor Radford mentioned issues like with a missionary return and a big gathering for that. Councilor Radford asked if they have any ideas or concerns should he just get information to Director Cloutier. Director Cloutier stated Salt Lake is a good example and it is data driven, they look at passengers, meeter/greeter, bathroom use, etc. it is all data driven for the space. One of the items in this project is expansion to the front of the building for meeter and greeter area and exit from the upstairs directly into the back room. They have counters for every person that comes through the door, and they know how many staff members, and can come up with a number of people coming to drop people off. They will have numerous meetings to discuss needs and requirements. Councilor Francis asked if they approved a contract to do the entire layout. Director Cloutier stated that was the previous phase and these are connected. There are six expansion plans for the terminal building identified and three have been completed (including this one) and three more over the next 5 years totaling \$100 million in terminal expansion projects. Councilor Freeman asked what the baggage makeup area is as he is unfamiliar with the term. Director Cloutier explained that behind the ticketing area the bag disappears and goes to TSA and behind that the bags go to planes, and it is 30' belt (short) and that will be expanded to make it more efficient. The original baggage makeup area was made for two airlines. Councilor Francis asked about ground Gates, and which one will be expanded. Director Cloutier stated that Gate A1 will be expanded, A2 and A3 will stay the same for this expansion and the next expansion will recommend going to the north. Councilor Burtenshaw stated this would be a good time to look at curbside drop off etc. It does not appear



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to be part of this, but it needs to be done to coincide. Director Cloutier stated that they will take over the parking area in December and they will take a wholistic approach to arrivals and to parking.

Mayor Casper stated that recently she was traveling she noticed a way of handling baggage by the people that take your luggage when you check in. The people had a perpendicular belt that connected to the belt in the back, so there was not a need to throw, or lug heavy bags, and it would avoid hardship on the check in staff. Mayor Casper asked if that is possible and would there be time within any of the expansion to sit down with the designers and explain visions, thoughts, worries, and have an opportunity to interact. Director Cloutier stated that they have done that with the initial conceptual plan that they received from the architects. The conceptual design has been seen and as they progress through there will be different steps, so there will be time to answer those questions, and this time they will use a contract construction manager at risk instead of going out to bid so there will be more input for things as to what is designed, instead of what you are stuck with in a bid. Mayor Casper wants to set it up and invite Councilmembers to discuss airport issues at a meeting. Director Cloutier agreed they could schedule something to give information.

It was moved by Council President Dingman, seconded by Councilor Freeman to approve the Professional Services Agreement and Work Order for T/O Engineers, Councilor Freeman seconded the motion. The motion carried by the following vote: Aye – Councilors Francis, Dingman, Freeman, Hally, Radford, Burtenshaw. Nay – None

#### **Municipal Services: Reconsideration of Real Estate Transaction.**

Director Alexander, Director PJ Holm, and Nick Terry with TOK Real Estate, appear. Director Alexander showed the property that they are calling “property adjacent to Pinecrest Golf Course.” 4 Parcels of land adjacent to the Pinecrest Golf Course, estimated at 8.6 acres, with a property appraisal of \$1.89 million. After the public auction process, they were approached by Nick from TOK Commercial and entered into an exclusive agreement for him to act as the City’s broker for the property. The real estate purchase and sale agreement was approved by the City Council on September 8, 2022 for \$2 million. It was refundable earnest of \$15,000- and 4-month due diligence as part of the vendors submittal for a proposal. The City is currently under contract with J.E.T Real Estate Holdings LLC for this property. Director Alexander stated that the pictures showed what the property currently looks like, as well as different utilities on the property. Director Alexander stated that they have received a request from J.E.T Real Estate Holding in regard to a counteroffer of \$1.4 million, due to infrastructure cost estimate with rock blasting at \$400,000; there is need for power line extension; potential public utility easement impact on buildable space; and extend the due diligence from 4 months to 1 year. Nick Terry will talk about the commercial industry and things that have changed with interest rates, etc. Mr. Terry stated that when this property was appraised in March 2022 the interest rate (prime rate) was 3.5% and currently the rates are 7%. The proposed buyer is proposing a 150–unit apartment complex with an approximate cost of \$15 million – \$19 million, depending how nice they want to go. The potential effect of the interest rates increase equates to \$5,000/month for every \$1 million that is borrowed. The loan amount will be \$10-\$13 million and that will equate to \$52,000-\$68,000 a month on the increase to what it will cost them to have the project in place. There is merit to the argument that they cannot pay as much for the land. Mr. Terry stated that he has reviewed the arguments, and some are very valid. The appraisal accounted for rock blasting to \$90,000-\$100,000 per site, using comparisons from other projects that took place along Utah and by the river. The engineer’s response estimated about \$200 per linear foot for rock blasting, mostly talking about road base which equates to \$124,000, which is not far off from the appraiser’s report. There is potentially more rock blasting. The appraiser stated that there is rock, but it was unknown of how much, so they concluded other projects cost \$90,000-\$100,000. The increase for this project seems inline. Mr. Terry stated that the more impactful item is the interest rates, and the value of the land is determined from how much money they can make from the property and if they are losing \$50,000-\$68,000/month in potential profits, there is argument that they should purchase for less. Mr. Terry stated that his official recommendation is if the City were to decide to accept \$1.4 million, they should stick to the original closing contract on February 10, as opposed to extending the due diligence for another year. The risk of holding is they could still back out, and interest rates are estimated to continue to increase. Mr. Terry wants to hold to \$1.4 million and execute within the time as outlined originally. If they are not ok with doing that, take it back to the

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market and do some things different in advertising for the public, with a rock profile completed, and do a geo tech report to help potential buyers know that due diligence is done. The risk of taking it back to the market right now is the result could be similar. Mr. Terry feels the biggest benefit to the City is to define the amount of rock in existence on the property. That will help the potential buyer to get a firmer commitment on the next purchase sale contract. Councilor Freeman stated that they did a survey when they put in the sprinkler system and there was rock all the way across. They know there is a lot of rock. There was a discussion to make a counteroffer as the offer is too low. Mr. Terry stated that J.E.T did counter with \$1 million and the City countered with an argument, and so they have come back with \$1.4 million and a one-year due diligence, as they try to get a redevelopment district approved to pay for the road. Councilor Hally feels it is too much of a drop. There was discussion about what the procedure for redevelopment. Director Cramer discussed two ways that redevelopment happens. If someone purchases property, they will approach the redevelopment agency with the request for what they have run into such as rock removal. The second option that the Redevelopment Agency has seen is, a property owner will have the Agency buy an option on the property and send out an RFP, which is an option being discussed. When they have done the RFP, you can put the purchase price in the RFP and put conditions on what you want and how you want it developed. Councilor Francis stated that they can make this decision from some strength, as they are not tied to take the deal or leave it. Councilor Francis agrees with Councilor Hally and is not ready to accept the \$1.4 million now. Councilor Freeman asked Director Holm if there is something on the horizon that he needs the money for now. Director Holm stated that they need to build the soccer fields in the next 4 years. It will require funding from this sale. Councilor Burtenshaw is wondering if they renegotiate at \$1.4, she was in favor of taking \$1.4 with no extension. She feels if it sells in February for \$1.4 - \$1.7 she would be ok with that. Mayor Casper feels that Councilor Francis is correct that we are not in a push, and there is strength to hold on. Mr. Terry agreed and responded that a lot of the items identified are costs. When the developer countered, they then brought up the interest rates issue and indicated that the most they can pay is \$1.4 million.

Mayor Casper asked Councilors what they should direct staff to do. Mayor Casper agrees no one wants to accept the offer as delivered. Council members discussed making a counteroffer of 1.6 with no extension. Director Cramer stated as a property owner, putting a project out there that no one wants to build is a risk. If a property owner comes to the Agency, it is 6-9 months to get a district. The other way with the City owning the property could put more time on it with the RFP Process and could add 1.5 years. Councilor Burtenshaw asked if there is a sweet spot and asked if \$2 million is too much. Mr. Terry stated that he feels they would find a party interested. There have been developers coming from the Wasatch front and he would not be surprised to find an interested developer. Councilor Francis feels \$1.6 is too low for a counter. Councilor Francis asked if they are obligated to stick to the original agreement with February and \$2 million. Terry stated that the City is not obligated, as part of the due diligence they uncovered that the prior Belair development has some restrictions as you can only build a single-family, single-story building, and they are working on getting that amended. The City can officially back out, and they can back out, neither is held to the existing contract. Councilor Burtenshaw moved to go to the original appraisal of \$1.89 and require them to close by February 10.

Terry stated that one of the things they did delay with the due diligence is the problem with the Belaire development. So, they have put a hold on additional due diligence until that gets resolved. Mr. Terry feels that is quick, and they will not accept that. 4 months is fast to complete due diligence to get a clean title. Councilor Francis stated that is not just a zoning thing, which is a covenant thing. Terry agreed that you cannot have multi story or commercial use. The City attorney is working to amend the CC&Rs to fit zoning allowed development. Mayor Casper asked the attorney how that was going. Mr. Kirkham stated it is a complicated question as there is at least two versions of the CC&Rs recorded on the property and they reference a third set that was recorded but has not been found. Kirkham stated that they cannot give an opinion on how easy it is to get off the property without seeing the third document. Once they find the document, they will be able to make better sense. Kirkham gave some history on what they have found with recordings dating back to 1950, and detailed some of the paper chase they are on, and who was involved, and what divisions are involved.

Councilor Hally clarified that the \$1.4 is off the table if the CC&R is not taken care of by February 10. Terry stated that at this point it is fluid with timelines because they are past when they were to accept the title on September

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21. They replied and gave a notice of termination because of the title and identified issues to be sorted out. They are still willing to proceed if they can get the CC&R fixed. Mr. Terry stated that the assumption is that they will get the CC&R resolved, and if so, they are offering \$1.4 million with 1-year due diligence.

Council members discussed different options and discussed problems with the CC&R and restrictive covenants as well as different values for the property and what could be done with the property regarding development. It is the consensus among the Council members to counteroffer. Mr. Terry read back his understanding: Counteroffer of the appraisal of \$1.89 with the contingency to clear the restrictions on CC&R and upon completion of the contingency being released they will extend a 3-month due diligence period for them to close 3 months after the completion.

### **Municipal Services: Year End/Fourth Quarter Financial Report.**

Director Alexander stated that this will be the last presentation of The City Treasurer (Josh) as he has accepted a promotion to be the Idaho Falls Power CFO, and he will leave on the 28<sup>th</sup>.

Slide 1 - In the General Fund there are disbursements at \$15.8 million. It is higher than normal, but every year September has higher expenditures because it is the end of the year, and people are paying off purchase orders, paying contractors, etc. There is shown a Police bond payment roughly \$1.5 million, payment for fire property purchased \$1 million, fire station purchases \$1.5 million, and three payroll periods, so that contributes to the higher month. It breaks it down to \$23 million in the General Fund compared to last year's \$18million. \$12 million is designated and in Merc fund there is \$3.5 million, and without that, there is \$8 million in the General Fund. The Police Capital improvement with negative .5 million with costs going into police station. They incur the costs and once they get the cost, they get a draw from the bond to pay those off, so those will fluctuate in the negative and back to positive. Slide 2 - September 2022 Investments Maturity. At the end of month, they ended with \$146 million invested and throughout the year they had \$113 million that matured or was sold, and they purchased \$145 million of different securities. The majority of investments are from 0–2-year mark to be able to have cash flow for construction. Interest rates have been higher in the 0–2-year range versus the 2-5 year. This is not normal, and this year has been different. Slide 3 - September 2022 Types of Investments. Agencies, Bonds (re-labeled to corporate), Treasury. Three types of securities holding the majority of the investments. Adding those three together is about 87% of the portfolio. At the end of the year there was \$146 million versus last year's \$126 million. \$20 more million to push in investments to receive more interest. \$2.2 million in interest received from investments.

Slide 4 - Market Adjustment. This report shows negative market adjustment. 87% of the portfolio is within bonds and when interest rates fall, bond prices increase. As interest rates increase, bonds decrease. You will see the city-wide market adjustment is negative \$6 million because in October last year interest was at .07% right now at 4.73% which is the largest increase seen in interest rates, and the value of the bonds has gone down significantly. They are not losing out on money because they hold bonds until they mature.

Slide 4: Market Adjustment. This report shows negative market adjustment. 87% of the portfolio is within bonds and when interest rates fall, bond prices increase. As interest rates increase, bonds decrease. You will see the city-wide market adjustment is negative \$6 million because in October last year interest was at .07% right now at 4.73% which is the largest increase seen in interest rates, and the value of the bonds has gone down significantly. They are not losing out on money because they hold bonds until they mature.

Councilor Radford asked about \$120 million – \$146 million (Slide 3) did they add more money or did they earn \$20 million. Josh indicated that more cash was available to invest into the portfolio.

Hagedorn stated that the reason they show the market is because governmental accounting principles changed 4 years ago. They used to record investments at par value, which is the amount they would back when they matured, but now they record at market value due to a change in standards. Mayor Casper stated that there is transparency in that requirement, but it is not realistic.

Slide 5 - Changes to the Investment Policy: The three main objectives are Safety (all money insured in some way). They added a paragraph that any funds in the Cities' bank accounts must be insured at all times. The second addition is banking relationships, and every 5 years they want to reevaluate banking relationships and look at capital assets and see how they are doing, is the City growing faster than the institution can handle. So, every 5

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years they will be reevaluated. Lastly, they want to make sure they have enough liquid cash to pay off cash flow needs. If they have everything invested, they would have to take a loss if they needed cash flow. They need 8-15% of monthly cash needs are to be kept liquid. Director Alexander added that the Treasurers' information will be on the consent agenda for tomorrow's meeting.

Mr. Hagedorn reviewed the following with general discussion throughout:

**Fiscal Year- Ending September 30-City-Wide-Revenue-**

2021-2022 Budget = \$234,444,041

Fiscal Year-End = \$211,560,840

Percentage received = 90.24%

### **Fiscal Year – Ending September 30 – City-Wide Expenditures**

2021-2022 Budget Original = \$294,891,737

2021 -2022 Budget Revised = \$294,891,737

Fiscal Year End = \$205,786,427

Percentage Expended = 69.8%

### **Fiscal Year-Ending September 30 – General Fund Revenue**

2021-2022 Budget = \$53,588,052

Fiscal Year End = \$53,617,027

Percentage Received = 100.05%

### **Fiscal Year-Ending September 30 – General Fund Expenditures**

2021-2022 Budget Original = \$53,588,052

2021-2022 Budget Revised = \$58,545,662

Fiscal Year-End = \$54,470,570

Percentage Expended = 93.0%

### **Status of Approved ARPA Projects**

Amount requested = \$10,552,851

Amount Expended = \$1,146,642.97

Amount Remaining = 9,406,208

### **Budgetary Highlights and Factors**

- Fleet Maintenance Facility parts and fuels
- Capital projects.
- Investment Market valuation
- Change in property tax laws.
- September spending activity
- General Fund net savings

Mr. Hagedorn stated that fuel was listed specifically because it was the biggest influence over the entire budget for expenditures. The cost principle applies to everything, but fuel was the biggest issue. He said they have a lot of big capital projects in play, and they bought things for the Fire Station. The Police Station is ongoing. There are good projects in place that are helping to raise the City's ability to offer services. Investment Market Evaluation had a \$6 million factor to the City which depressed the revenue for the City. Mr. Hagedorn stated that the County no longer pays interest on collection of property tax and that was \$120,000 that was budgeted but not received. Councilor Hally asked if that is Statewide. Mayor Casper stated that only two counties have done it. Mr. Hagedorn stated that the new State tax law has retroactive property taxes. So, if someone challenges property tax value during the year, it goes retroactive to the beginning of the year. The City is in the process during their audit to calculate the value of loss due to the recalculation of taxable value. Mr. Hagedorn stated that this September they spent more than the last 10 years. They had the Fire Station, Fire Station land, ARPA Funds, third payroll and with all that pulled back, they still spent more. They will look at that, as they usually say do not spend in September, and it had to do with not staying on top of things, as some departments held onto invoices too long, and some of



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it was timing of expenditures. They want to come up with a plan to deal with it next year on a more consistent basis. It makes forecasting difficult when you have high spending on your last month. They want people to be strategic about their spending, and not spend a lot in the last month because they have budget left. General Fund Net Savings. Even though expenditure exceeded revenue by \$1.5 million some of that market change meant they had savings from the General Fund, and they are estimating about \$800,000 in savings. They suggest that in December/January they would transfer the 800,00 into savings. Right now, they have \$1.6 million in the General Fund, and then transfer \$1 million into savings. That will be addressed in the first quarterly report.

### **City Attorney's Office: Briefing Impact Fee Appeals Process:**

Assistant City Attorney Michael Kirkham appeared to give an overview of the appeal procedure. Mr. Kirkham will not talk about facts and circumstances surrounding the issues you will hear tomorrow. Mr. Kirkham does not want to have a conversation about merits today. Mr. Kirkham wants to focus on procedural issues so tomorrow during the hearing they have less questions. Slide 1 – Idaho Falls City Code Appeals 10-8-10 They have options on what to decide, including: Whether the fee is applicable to the development; the correct amount of the impact fee, based on the structure the impact fee was built around; whether credit should be applied to impact fee; and amount of any refund, reimbursement, or credit. Slide 2 – Appeals Process. Kirkham stated that the fee payer has 15 days to file an appeal after you have asked the Fee Administrator to make a determination on your fee, or 15 days after you have paid your fee under protest. The appeal for tomorrow had a fee paid under protest and the determination is implied when someone comes in and pays the fee under protest. Once the City receives a notice of appeal, the City sets the date for the appeal, and the Ordinance requires the appeal be heard in 30 days once the appeal is filed, and that issue will need to be looked at tomorrow. The appellant can present evidence and testimony that illustrates City Staff made mistake, and Fee Administrator can appear and present evidence. The appellant bears the burden of proof and must demonstrate that the fee was in error. Appellant gives first argument; City Staff (Respondent) position; Appellant rebuttal; Close the hearing and deliberate. They are required to have conversations in public and they should decide at the end of deliberation. The Council can ask questions of the people presenting. Mr. Kirkham anticipates that the appellant will bring people to participate tomorrow, and City staff will have different people to present evidence. The Council can ask specific questions during deliberation before the hearing is closed. There is flexibility to reopen the hearing. There is no formal structure for how it is going to be done. Mr. Kirkham encouraged Council to keep it orderly. Mr. Kirkham wants to let the appellant get their explanation and argument out however the appellant wants. Mr. Kirkham stated that the decision is made on the preponderance of evidence that an error was present. Preponderance of evidence means that given everything that was presented it is more than likely that this is the case. Same standard as applied in a civil case. There are criteria that Council is given from the Ordinance, as Council should consider what more accurately reflects the intent that new growth and development pay for itself in a proportionate cost. If there is a debate about how the Ordinance is written the interpretation of the ordinance should take the one that reflects the purpose. When Council makes the decision they can affirm, reject, or revise the decision. Then articulate the reasons for their decision, and staff will help prepare a written findings of facts and conclusions which will be the final written decision, and if appellant is still unsatisfied, they can bring it to Court for review. Mr. Kirkham stated that under the State of Idaho's law they are obligated to receive an administrative remedy prior to a judicial remedy. The appellant is required to come to Council first about their dissatisfaction and have Council weigh in on Council's own Ordinance. The Council is in the best position to determine what their Ordinance means. Mayor Casper stated that in terms of conduction of the hearing they should manage it in an orderly manner like when they do quasi-judicial hearings.

### **Mayor's Office: Request to sign Global Covenant of Mayors for Climate & Energy:**

Mayor Casper indicated that the Mayor of Toki Mura, Japan wanted to have a discussion with the City of Idaho Falls, and the group on their end consisted of City Administrators, Sister City people, and the Mayor. One thing that they wanted to discuss was an invitation to sign a Global Covenant of Mayors for Climate and Energy. Mayor Casper told them that she would have to discuss it with the City Council. Mayor Casper stated that we are not

### November 21, 2022 Council Work Session

unfamiliar with this idea because of the nuclear power work. If you sign this you need to be willing to do certain things, including checking off several items. Mayor Casper cannot do it on her own and feel good, as it would involve staff. Mayor Casper does not want to dive deep into this but is just checking on interest from the Council. Councilor Burtenshaw read the actual Compact List. Mayor Casper stated that there is a lot of language and if they broke it down, they would realize they are doing a lot of these things, but also some stretch goals. Councilor Radford has been interested in having some sort of resolution in working towards the same as INL, working toward Net Zero. He feels the City should be working on for their organization. Councilor Radford feels that if they are going to commit to this there are resources and dollars, and someone should be hired to direct this mission. Councilor Radford stated that Net Zero is a deep dive, and a lot to consider. Councilor Radford is in support. Mayor Casper stated that they did not achieve a lot in terms of commitment, and so it increases the pressure on future action to achieve certain goals by certain dates. Council President Dingman stated that on a municipality level it is hard to commit to something like that without staff and resources to execute the plan. Councilor Radford stated that there are some grants and dollars out there, but someone must find the data. Mayor Casper suggested having the grant coordinator to see if they can find some ways to find money, and if they can pay someone to develop a report so they can sign in good faith. Without that research they cannot sign in good faith. Councilor Freeman agrees they cannot sign today, as he does not even know how to do a greenhouse gas inventory. Mayor Casper asked if it was worth a dialogue. Councilors Radford and Francis agree it is worth dialogue if they do not have to spend a lot of money and a lot of staff time on it. President Dingman agreed that if the staffer comes back with a 20-hour project just to get preliminary information, then that might be too much. Mayor Casper stated that 12,629 have signed, but none from Idaho, as far as she could find. Councilor Burtenshaw stated other cities are different, and we have snowplows that are diesel, and we have a power plant and that is unique to our City, and we have a commitment to provide inexpensive reliable power, and not many cities have that as part of their fiduciary responsibility. Councilor Burtenshaw does not feel it is realistic. Councilor Radford stated that they are there on carbon free power, and he feels it is critically important to deal with this issue, it is exponential to what is going to happen to our lives. Council President Dingman stated that it needs to start at staff level. Councilor Radford feels that INL will give resources and information on this issue. Councilor Hally agreed that they can do these things with or without signing, and there are issues in the details, as they might have to make purchases to purchase power, and that might not be clean power. Councilor Radford feels that the issue with snowplows is real, and they can work towards that. Mayor Casper agreed it is getting on a path. Mayor Casper feels they should go to the grant coordinator and ask for her to look for ways to pay for a consultant; go to INL and have them read the list and define it; create a committee of Council members to give some clarity on the to-do list and run past directors. Mayor Casper asked if anyone wants to work on a committee. Councilor Francis is supportive of the concept, and it has been done on 2019 Resolution of Carbon Free. Mayor Casper stated that 2 weeks ago the replacement car for her arrived, it is a Ford Escape Hybrid. She has used very little gas and feels good about driving without putting anything out.

There being no further business, the meeting adjourned at 5:52 PM

s/Corrin Wilde

Corrin Wilde, City Clerk

s/Rebecca L. Noah Casper

Rebecca L. Noah Casper, Mayor

# Memorandum

File #: 23-143

City Council Meeting

**FROM:** Duane A Nelson; Fire Chief  
**DATE:** Tuesday, May 2, 2023  
**DEPARTMENT:** Fire Department

## Subject

Hughes Purchase Agreement and PNC Lease Schedule No. 98987736-2 for (3) Pierce Enforcer Pumpers for the Fire Department

## Council Action Desired

- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Accept and approve the Hughes Purchase Agreement through cooperative purchasing contact NPPGov PS20240 with the PNC Lease Schedule for (3) Pierce Enforcer Pumpers for a total of \$3,009,845.05 (or take other action deemed appropriate).

## Description, Background Information & Purpose

This purchase request for additional Fire apparatus is essential to maintain the Idaho Falls Fire Department's compliance with the National Fire Protection Association (NFPA) 1901 Standard for Automotive Fire Apparatus regarding life expectancy for fire apparatus over the next 3-years. With Fire apparatus build times currently between 36-44 months, advanced planning and approval is essential for the Fire department to maintain compliance with NFPA. The approval and purchase of the fire apparatus are to replace a front-line apparatus unit and implement the department's capital plan for an add to fleet for a future station and rotate a current unit to reserve status.

## Alignment with City & Department Planning Objectives



The purchase of the fire apparatus supports the safe and secure community-oriented result by providing reliable equipment for public safety.

## Interdepartmental Coordination

The Municipal Services Department concurs with the planning of this purchase.

**Fiscal Impact**

Funds to purchase the apparatus are planned for within the Fire Departments Municipal Equipment Replacement Fund (MERF).

**Legal Review**

The City Attorney concurs that the Council action desired complies with State Statute 67-2803(7) and the cooperative bid process of NPPGov contract number PS20240, a Public Safety GPO.

## PURCHASE AGREEMENT

This Purchase Agreement (together with all attachments referenced herein, the "Agreement"), made and entered into by and between Hughes Fire Equipment Inc. ("Company"), and City of Idaho Falls, a Municipality ("Customer") is effective as of the date specified in Section 3 hereof.

### 1. Definitions.

- a. **"Product"** means the fire apparatus and any associated equipment manufactured or furnished for the Customer by Company pursuant to the Specifications.
- b. **"Specifications"** means the general specifications, technical specifications, training, and testing requirements for the Product contained in the Company Proposal for the Product prepared in response to the Customer's request for proposal.
- c. **"Company Proposal"** means the proposal provided by Company attached as Exhibit C prepared in response to the Customer's request for proposal.
- d. **"Delivery"** means the date Company is prepared to make physical possession of the Product available to the Customer.
- e. **"Acceptance"** The Customer shall have the opportunity, as described in Section 8(b) below, to inspect the Product for substantial conformance with the material Specifications; unless Company receives a Notice of Defect within the time frame described in Section 8(b), the Product will be deemed to be in conformance with the Specifications and accepted by the Customer.

2. Purpose. This Agreement sets forth the terms and conditions of Company's sale of the Product to the Customer.

3. Term of Agreement. This Agreement will become effective on the date it is signed and approved by both Customer and Company ("Effective Date") and, unless earlier terminated pursuant to the terms of this Agreement, it will terminate upon the Customer's Acceptance and payment in full of the Purchase Price.

4. Purchase and Payment. The Customer agrees to purchase the Product specified on Exhibit A for the total purchase price of \$2,633,084.00 ("Purchase Price"). Prices are in U.S. funds. A credit card convenience fee will be added to the purchase price if the Customer elects to make purchase of the Product in whole, or in part, using a credit card. The cost of the convenience fee will be determined prior to processing credit card.

5. Future Changes. Various state or federal regulatory agencies (e.g. NFPA, DOT, EPA) may require changes to the Specifications and/or the Product and in any such event any resulting cost increases incurred to comply therewith will be added to the Purchase Price to be paid by the Customer. In addition, any future drive train upgrades (engine, transmission, axles, etc.), or any other specification changes have not been calculated into our annual increases and will be provided at additional cost. To the extent practicable, Company will document and itemize any such price increases for the Customer.

6. Agreement Changes. The Customer may request that Company incorporate a change to the Products or the Specifications for the Products by delivering a change order to Company; provided, however, that any such change order must be in writing and include a description of the proposed change sufficient to permit Company to evaluate the feasibility of such change ("Change Order"). Within [seven (7) business days] of receipt of a Change Order, Company will inform the Customer in writing of the feasibility of the Change Order, the earliest possible implementation date for the Change Order, of any increase or decrease in the Purchase Price resulting from such Change Order, and of any effect on production scheduling or Delivery resulting from such Change Order. Company shall not be liable to the Customer for any delay in performance or Delivery arising from any such Change Order. A Change Order is only effective when counter-signed by Company's authorized representative.

7. Cancellation/Termination. In the event this Agreement is cancelled or terminated by a party before completion, Company may charge a cancellation fee. The following charge schedule based on costs incurred may be applied: (a) 10% of the Purchase Price after order is accepted and entered by Company; (b) 20% of the Purchase Price after completion of approval drawings, and; (c) 30% of the Purchase Price upon any material requisition. The cancellation fee will increase accordingly as costs are incurred as the order progresses through engineering and into manufacturing. Company endeavors to mitigate any such costs through the sale of such Product to another purchaser; however, Customer shall remain liable for the difference between the Purchase Price and, if applicable, the sale price obtained by Company upon sale of the Product to another purchaser, plus any costs incurred by Company to conduct any such sale.

8. Delivery, Inspection and Acceptance. (a) Delivery. Delivery of the Product is scheduled to be within 38 to 43 months of the Effective Date of this Agreement, F.O.B. Customer's facility in Idaho Falls, Idaho. Risk of loss shall pass to Customer upon Delivery. Delivery of Product is subject to change pending manufacture's delivery schedule at time of order placement. Notification of change will be sent to Customer's address specified in Section 9 hereof. (b) Inspection and Acceptance. Upon

Delivery, Customer shall have fifteen (15) days within which to inspect the Product for substantial conformance to the material Specifications, and in the event of substantial non-conformance to the material Specifications to furnish Company with written notice sufficient to permit Company to evaluate such non-conformance ("Notice of Defect"). Any Product not in substantial conformance to material Specifications shall be remedied by Company within thirty (30) days from the Notice of Defect. In the event Company does not receive a Notice of Defect within fifteen (15) days of Delivery, Product will be deemed to be in conformance with Specifications and accepted by Customer.

9. Notice. Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier:

Company	<u>City of Idaho Falls</u>
<u>Hughes Fire Equipment Inc.</u>	<u>PO Box 50220</u>
<u>910 Shelley Street</u>	<u>308 Constitution Way</u>
<u>Springfield, Oregon 97477</u>	<u>Idaho Falls, Idaho 83405</u>

Customer

10. Standard Warranty. Any applicable manufacturer warranties are attached hereto as Exhibit B and made a part hereof. Any additional warranties must be expressly approved in writing by Company's authorized representative.

a. Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER COMPANY, ITS PARENT COMPANY, AFFILIATES, SUBSIDIARIES, LICENSORS OR SUPPLIERS, THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES, MAKE ANY EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCTS PROVIDED HEREUNDER OR OTHERWISE REGARDING THIS AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, THE IMPLIED WARRANTY AGAINST INFRINGEMENT, AND THE IMPLIED WARRANTY OR CONDITION OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED AND DISCLAIMED. STATEMENTS MADE BY SALES REPRESENTATIVES OR IN PROMOTIONAL MATERIALS DO NOT CONSTITUTE WARRANTIES.

b. Exclusions of Incidental and Consequential Damages. In no event shall Company be liable for consequential, incidental or punitive damages incurred by Customer or any third party in connection with any matter arising out of or relating to this Agreement, or the breach thereof, regardless of whether such damages arise out of breach of warranty, tort, contract, strict liability, statutory liability, indemnity, whether resulting from non-delivery or from Company's own negligence, or otherwise.

11. Force Majeure. Company shall not be responsible nor deemed to be in default on account of delays in performance due to causes which are beyond Company's control which make Company's performance impracticable, including but not limited to civil wars, insurrections, strikes, riots, fires, storms, floods, other acts of nature, explosions, earthquakes, accidents, any act of government, delays in transportation, inability to obtain necessary labor supplies or manufacturing facilities, allocation regulations or orders affecting materials, equipment, facilities or completed products, failure to obtain any required license or certificates, acts of God or the public enemy or terrorism, failure of transportation, epidemics, pandemics, quarantine restrictions, failure of vendors (due to causes similar to those within the scope of this clause) to perform their contracts or labor troubles causing cessation, slowdown, or interruption of work.

12. Default. The occurrence of one or more of the following shall constitute a default under this Agreement: (a) the Customer fails to pay when due any amounts under this Agreement or to perform any of its obligations under this Agreement; (b) Company fails to perform any of its obligations under this Agreement; (c) either party becomes insolvent or become subject to a bankruptcy or insolvency proceedings; (d) any representation made by either party to induce the other to enter into this Agreement is false in any material respect; (e) the Customer dissolves, merges, consolidates or transfers a substantial portion of its property to another entity; or (f) the Customer is in default or has breached any other contract or agreement with Company.

13. Manufacturer's Statement of Origin. It is agreed that the manufacturer's statement of origin ("MSO") for the Product covered by this Agreement shall remain in the possession of Company until the entire Purchase Price has been paid. If more than one

Product is covered by this Agreement, then the MSO for each individual Product shall remain in the possession of Company until the Purchase Price for that Product has been paid in full. In case of any default in payment, Company may take full possession of the Product, and any payments that have been made shall be applied as payment for the use of the Product up to the date of taking possession.

14. Independent Contractors. The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture of or with the other.

15. Assignment. Neither party may assign its rights and obligations under this Agreement unless it has obtained the prior written approval of the other party.

16. Governing Law; Jurisdiction. Without regard to any conflict of laws provisions, this Agreement is to be governed by and under the laws of the state of Oregon.

17. Facsimile Signatures. The delivery of signatures to this Agreement by facsimile transmission shall be binding as original signatures.

18. Federally Funded Purchases. Company is registered with SAM.gov, is in good standing for purchases utilizing federal funds, and has no past, pending, or threatened litigation that would impact its ability to fulfill the obligations committed herein.

19. Entire Agreement. This Agreement shall be the exclusive agreement between the parties for the Product. Additional or different terms proposed by the Customer shall not be applicable, unless accepted in writing by Company's authorized representative. No change in, modification of, or revision of this Agreement shall be valid unless in writing and signed by Company's authorized representative.

20. Conflict. In the event of a conflict between the Customer Specifications and the Company Proposal, the Company Proposal shall control. In the event there is a conflict between the Company Proposal and this Agreement, the Company Proposal shall control.

Accepted and agreed to:

**COMPANY: Hughes Fire Equipment Inc.**

**CUSTOMER: City of Idaho Falls**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

EXHIBIT A

**PURCHASE DETAIL FORM**  
**Hughes Fire Equipment Inc.**

Date: \_\_\_\_\_

Customer Name: City of Idaho Falls

Quantity	Chassis / Body Type – Description	Price Total
Three (3)	Pierce Enforcer Pumpers KB814	\$2,839,956.00
Less	Chassis progress payment discount	(43,407.00)
Less	Payment upon completion at factory discount	(29,638.00)
Less	100% prepayment with contract discount	(133,827.00)
	<b>TOTAL</b>	<b>\$2,633,084.00</b>

Warranty Period: Standard per HFE Proposal KB814 submitted on April 18, 2023

Training Requirements: Standard per HFE Proposal KB814 submitted on April 18, 2023

Other Matters: (a) A performance bond will be provided after order placement. (b) Due to global supply chain constraints, any delivery date contained herein is a good faith estimate as of the date of this order/contract, and merely an approximation based on current information. Delivery updates will be made available, and a final firm delivery date will be provided as soon as possible.

This contract is available for inter-local and other municipal corporations to utilize with the option of adding or deleting any manufacturer available options, including chassis models. Any addition or deletion may affect the unit price.

Payment Terms: A 100% prepayment in the amount of \$2,633,084.00 is due within 30 days of contract execution, an invoice will be provided. If payment is not made at this time \$206,872.00, or a portion thereof, will be added to the final invoice. Final payment, including any changes made during the manufacturing process, is due upon completion of the apparatus at the factory and prior to the apparatus leaving the factory for delivery.

[NOTE: If deferred payment arrangements are required, the Customer must make such financial arrangements through a financial institution acceptable to Company.] All taxes, excises and levies that Company may be required to pay or collect by reason of any present or future law or by any governmental authority based upon the sale, purchase, delivery, storage, processing, use, consumption, or transportation of the Product sold by Company to the Customer shall be for the account of the Customer and shall be added to the Purchase Price. All delivery prices or prices with freight allowance are based upon prevailing freight rates and, in the event of any increase or decrease in such rates, the prices on all unshipped Product will be increased or decreased accordingly. Delinquent payments shall be subject to a carrying charge of 1.5 percent per month or such lesser amount permitted by law. Company will not be required to accept payment other than as set forth in this Agreement. However, to avoid a late charge assessment in the event of a dispute caused by a substantial nonconformance with material Specifications (other than freight), the Customer may withhold up to five percent (5%) of the Purchase Price until such time that Company substantially remedies the nonconformance with material Specifications, but no longer than sixty (60) days after Delivery. If the disputed amount is the freight charge, the Customer may withhold only the amount of the freight charge until the dispute is settled, but no longer than sixty (60) days after Delivery. Company shall have and retain a purchase money security interest in all goods and products now or hereafter sold to the Customer by Company or any of its affiliated companies to secure payment of the Purchase Price for all such goods and products. In the event of nonpayment by the Customer of any debt, obligation or liability now or hereafter incurred or owing by the Customer to Company, Company shall have and may exercise all rights and remedies of a secured party under Article 9 of the Uniform Commercial Code (UCC) as adopted by the state of Oregon.

THIS PURCHASE DETAIL FORM IS EXPRESSLY SUBJECT TO THE PURCHASE AGREEMENT TERMS AND CONDITIONS DATED AS OF \_\_\_\_\_, 2023 BETWEEN COMPANY AND CITY OF IDAHO FALLS WHICH TERMS AND CONDITIONS ARE HEREBY INCORPORATED IN, AND MADE PART OF, THIS PURCHASE DETAIL FORM AS THOUGH EACH PROVISION WERE SEPARATELY SET FORTH HEREIN, EXCEPT TO THE EXTENT OTHERWISE STATED OR SUPPLEMENTED BY COMPANY HEREIN.



EXHIBIT B  
**WARRANTY**

STANDARD PER HFE PROPOSAL KB814 SUBMITTED ON APRIL 18, 2023

EXHIBIT C

**COMPANY PROPOSAL**

STANDARD PER HFE PROPOSAL KB814 SUBMITTED ON APRIL 18, 2023

Lease-Purchase Agreement  
Between  
City of Idaho Falls and  
PNC Bank, National Association

Document Index

- ☐ Master Lease-Purchase Agreement – On file
- ☐ Lease Schedule with Schedule A-1 – Sign and title
- ☐ Vehicle Schedule Addendum – Sign and title
- ☐ Resolution – The resolution must reflect the title(s) of the individual(s) who have authorization to sign the documents.
- ☐ Incumbency Certificate – List your authorized signor(s) and title(s); have secretary or appropriate trustee attest to the information and signature(s) provided by signing and printing his/her name, title and date. **The person who validates the signatures should not sign the lease documents.** The resolution must reflect the title(s) of the individual(s) who have authorization to sign the documents.
- ☐ Opinion of Counsel Letter – Enclosed is a template. Please ask your attorney to prepare on his/her letterhead, and include all of the items in the template.
- ☐ Titled Vehicle Guidelines – The terms of your contract specify that the Lender be listed as the lienholder and hold the original title during the term of the lease. Please refer to this document to guide you through the transfer of title and vehicle registration process.
- ☐ Insurance Request Form – Fill in your insurer's information and sign. Please contact your insurer, prior to delivery, to obtain a certificate of insurance. Please enclose the certificate with the signed documentation or have the insurer fax the certificate directly to me.
- ☐ Four Party Agreement – Sign and title.
- ☐ Delivery & Acceptance Certificate – **At point of delivery, fill out this form and fax it to me. Please return the original via US Postal Service.**
- ☐ IRS FORM 8038-G – Sign, date, and title
- ☐ Minutes of Governing Body (approving the purchase & finance of equipment) – Please return a copy with the documents.
- ☐ Sales Tax Exemption Certificate – On file
- ☐ Sales Contract or Purchase Order - Please provide a copy of the Sales Contract or a copy of the Purchase Order.
- ☐ Information Request: Billing requirements and contact information

## LEASE SCHEDULE NO. 98987736-2

Dated as of May 12, 2023

This Lease Schedule (this "Schedule") is attached and made a part of the Master Lease-Purchase Agreement referenced below, together with all exhibits, schedules, addenda, and other attachments thereto, executed by Lessee and Lessor (the "Lease"). Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Master Lease. All terms and conditions of the Master Lease are incorporated herein by reference. To the extent that there is any conflict between the terms of the Lease and this Schedule, the terms of this Schedule shall control.

Master Lease-Purchase Agreement dated November 15, 2019

1. **EQUIPMENT DESCRIPTION.** As used in the Lease, "Equipment" means all of the property described in Schedule A-1 attached to this Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.

2. **RENTAL PAYMENTS; LEASE TERM.** The Rental Payments to be paid by the Lessee to Lessor, the commencement date thereof and the lease term of this Lease Schedule are set forth on the Schedule A-1 attached to this Lease Schedule.

3. **ESSENTIAL USE; CURRENT INTENT OF LESSEE.** Lessee represents that the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens and the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority. Lessee currently intends for the full Lease Term: to use the Equipment; to continue this Lease; and (if applicable) to make Rent Payments if funds are appropriated in each fiscal year by its governing body.

4. **ACCEPTANCE OF EQUIPMENT. AS BETWEEN LESSEE AND LESSOR, LESSEE AGREES THAT (A) LESSEE HAS RECEIVED AND INSPECTED ALL EQUIPMENT; (B) ALL EQUIPMENT IS IN GOOD WORKING ORDER AND COMPLIES WITH ALL PURCHASE ORDERS, CONTRACTS AND SPECIFICATIONS; (C) LESSEE ACCEPTS ALL EQUIPMENT FOR PURPOSES OF THE LEASE "AS-IS, WHERE IS"; AND (D) LESSEE WAIVES ANY RIGHT TO REVOKE SUCH ACCEPTANCE.**

5. **BANK QUALIFIED. LESSEE CERTIFIES THAT IT HAS DESIGNATED THIS LEASE AS A QUALIFIED TAX-EXEMPT OBLIGATION IN ACCORDANCE WITH SECTION 265(b)(3) OF THE CODE, THAT IT HAS NOT DESIGNATED MORE THAN \$10,000,000 OF ITS OBLIGATIONS AS QUALIFIED TAX-EXEMPT OBLIGATIONS IN ACCORDANCE WITH SUCH SECTION FOR THE CURRENT CALENDAR YEAR AND THAT IT REASONABLY ANTICIPATES THAT THE TOTAL AMOUNT OF TAX-EXEMPT OBLIGATIONS TO BE ISSUED BY LESSEE DURING THE CURRENT CALENDAR YEAR WILL NOT EXCEED \$10,000,000.**

6. **RE-AFFIRMATION OF THE MASTER LEASE-PURCHASE AGREEMENT.** Lessee hereby re-affirms all of its representations, warranties and obligations under the Master Lease Purchase Agreement (including, without limitation, its obligation to pay all Rental Payments, its disclaimers in Section 7 thereof and its representations in Section 6.1 and 16 thereof).

City of Idaho Falls  
("Lessee")

PNC Bank, National Association  
("Lessor")

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Schedule A-1

### 1. EQUIPMENT LOCATION & DESCRIPTION:

City of Idaho Falls

343 E. Street

Idaho Falls, ID 83402

Bonneville County

(3) Pierce Enforcer Pumpers

VIN# TBD

### 2. LEASE PAYMENT SCHEDULE.

(a)	Accrual Date:	<u>May 12, 2023</u>
(b)	Amount Financed:	
i.	Equipment Purchase Price	\$ <u>2,839,956.00</u>
ii.	Purchase Price Deduction	<u>\$0.00</u>
	Prepay Discounts	<u>\$206,872.00</u>
	Trade In	<u>\$0.00</u>
iii.	Total Amount Financed (Cash Sale Price minus Purchase Price Deductions)	<u>\$2,633,084.00</u>

#### (c) Payment Schedule:

Rent Payment Number	Rent Payment Date	Rent Payment Amount	Interest Portion	Principal Portion	Termination Value
1	05/12/2024	601,969.01	121,911.79	480,057.22	no call
2	05/12/2025	601,969.01	99,685.14	502,283.87	no call
3	05/12/2026	601,969.01	76,429.40	525,539.61	1,158,959.40
4	05/12/2027	601,969.01	52,096.91	549,872.10	592,591.14
5	05/12/2028	601,969.01	26,637.81	575,331.20	1.00

City of Idaho Falls  
("Lessee")

By: \_\_\_\_\_

Title: \_\_\_\_\_

PNC Bank, National Association  
("Lessor")

By: \_\_\_\_\_

Title: \_\_\_\_\_

## VEHICLE SCHEDULE ADDENDUM

Dated as of May 12, 2023

Lease Schedule No. 98987736-2

Dated May 12, 2023

Lessee: City of Idaho Falls

Reference is made to the above Lease Schedule ("Schedule") to the Master Lease-Purchase Agreement identified in the Lease Schedule ("Master Lease") by and between PNC Bank, National Association ("Lessor") and the above Lessee ("Lessee"). This Addendum amends and modifies the terms and conditions of the Schedule and is hereby made a part of the Schedule. Unless otherwise defined herein, capitalized terms defined in the Master Lease shall have the same meaning when used herein.

NOW THEREFORE, as part of the valuable consideration to induce the execution of the Schedule, Lessor and Lessee hereby agree to amend the Schedule as follows:

1. In the event that any unit of Equipment covered by the Schedule is a vehicle or trailer under applicable State law, then the following provisions shall also apply to the Schedule to the extent permitted by law,

(a) each manufacturer's statement of origin and certificate of title shall state that Lessor has the first and sole lien on or security interest in such unit of Equipment;

(b) the public liability and property damage insurance required by the terms of the paragraph titled "Insurance in the Master Lease shall be in an amount not less than \$1,000,000.00 per person insured and \$2,000,000.00 combined single limit per unit per occurrence (provided, that if the unit of Equipment is a bus or other passenger vehicle, then such insurance amount shall be such larger amount as may be reasonably required by Lessor) and \$1,000,000.00 for damage to property of others;

(c) Lessee shall furnish and permit only duly licensed, trained, safe and qualified drivers to operate any such unit of Equipment, and such drivers shall be agents of Lessee and shall not be agents of Lessor; and

(d) Lessee shall cause each such unit of Equipment to be duly registered and licensed as required by applicable State law with Lessor noted as lien holder and Lessee as owner.

2. Except as expressly amended by this Addendum and other modifications signed by Lessor, the Schedule remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the date first referenced above.

City of Idaho Falls  
("Lessee")

PNC Bank, National Association  
("Lessor")

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## RESOLUTION

Municipality/Lessee: City of Idaho Falls

Principal Amount Expected To Be Financed: \$2,633,084.00

WHEREAS, the Municipality is a political subdivision of the State in which Municipality is located (the "State") and is duly organized and existing pursuant to the Constitution and laws of the State.

WHEREAS, pursuant to applicable law, the governing body of the Municipality ("Governing Body") is authorized to acquire, dispose of and encumber real and personal property, including, without limitation, rights and interest in property, leases and easements necessary to the functions or operations of the Municipality.

WHEREAS, the Governing Body hereby finds and determines that the execution of one or more Master Lease-Purchase Agreements ("Leases") in the principal amount not exceeding the amount stated above for the purpose of acquiring the property ("Equipment") to be described in the Leases is appropriate and necessary to the functions and operations of the Municipality.

WHEREAS, PNC Bank, National Association ("Lessor") shall act as Lessor under said Leases.

NOW, THEREFORE, Be It Ordained by the Governing Body of the Municipality:

Section 1. Either one of the \_\_\_\_\_ OR \_\_\_\_\_ (each an "Authorized Representative") acting on behalf of the Municipality, is hereby authorized to negotiate, enter into, execute, and deliver one or more Leases in substantially the form set forth in the document presently before the Governing Body, which document is available for public inspection at the office of the Municipality. Each Authorized Representative acting on behalf of the Municipality is hereby authorized to negotiate, enter into, execute, and deliver such other documents relating to the Lease as the Authorized Representative deems necessary and appropriate. All other related contracts and agreements necessary and incidental to the Leases are hereby authorized.

Section 2. By a written instrument signed by any Authorized Representative, said Authorized Representative may designate specifically identified officers or employees of the Municipality to execute and deliver agreements and documents relating to the Leases on behalf of the Municipality.

Section 3. The aggregate original principal amount of the Leases shall not exceed the amount stated above and shall bear interest as set forth in the Leases and the Leases shall contain such options to purchase by the Municipality as set forth therein.

Section 4. The Municipality's obligations under the Leases shall be subject to annual appropriation or renewal by the Governing Body as set forth in each Lease and the Municipality's obligations under the Leases shall not constitute general obligations of the Municipality or indebtedness under the Constitution or laws of the State.

Section 5. As to each Lease, the Municipality reasonably anticipates to issue not more than \$10,000,000 of tax-exempt obligations (other than "private activity bonds" which are not "qualified 501(c)(3) bonds") during the current calendar year in which each such Lease is issued and hereby designates each Lease as a qualified tax-exempt obligation for purposes of Section 265(b) of the Internal Revenue Code of 1986, as amended.

Section 6. This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED on this \_\_\_\_\_, 2023.

The undersigned Secretary/Clerk of the above-named Municipality hereby certifies and attests that the undersigned has access to the official records of the Governing Body of the Municipality, that the foregoing resolutions were duly adopted by said Governing Body of the Municipality at a meeting of said Governing Body and that such resolutions have not been amended or altered and are in full force and effect on the date stated below.

LESSEE: City of Idaho Falls

\_\_\_\_\_  
Signature of Secretary/Clerk of Municipality

[SEAL]

Print Name: \_\_\_\_\_

Official Title: \_\_\_\_\_

Date: \_\_\_\_\_



**CERTIFICATE OF INCUMBENCY**Lessee: City of Idaho FallsLease Schedule No.: 98987736-2Dated: May 12, 2023

I, the undersigned Secretary/Clerk identified below, do hereby certify that I am the duly elected or appointed and acting Secretary/Clerk of the above Lessee (the "Lessee"), a political subdivision duly organized and existing under the laws of the State where Lessee is located, that I have the title stated below, and that, as of the date hereof, the individuals named below are the duly elected or appointed officers of the Lessee holding the offices set forth opposite their respective names.

[NOTE: Use same titles as Authorized Representatives stated in Resolutions.]

_____ Name	_____ Title	_____ Signature
---------------	----------------	--------------------

_____ Name	_____ Title	_____ Signature
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IN WITNESS WHEREOF, I have duly executed this certificate and affixed the seal of such Lessee as of the date set forth below.

\_\_\_\_\_  
Signature of Secretary/Clerk of Lessee

[SEAL]

Print Name: \_\_\_\_\_

Official Title: \_\_\_\_\_

Date: \_\_\_\_\_

# FORM OF OPINION OF COUNSEL

(To Be Typed on Attorney's Letterhead)

Date: May 12, 2023

Lessee: City of Idaho Falls

Lessor: PNC Bank, National Association

Re: Lease Schedule No. 98987736-2 dated May 12, 2023, together with its Master Lease-Purchase Agreement dated November 15, 2019, by and between the above-named Lessee and the above-named Lessor

Gentlemen:

I have acted as counsel to Lessee with respect to the Lease Schedule, the Master Lease-Purchase Agreement and all other agreements described above or related thereto (collectively, the "Agreements") and various related matters, and in this capacity have reviewed a duplicate original or certified copy of the Agreements and such other documents as I have deemed necessary for the purposes of this opinion.

Based upon the examination of such documents, it is my opinion that:

1. Lessee is a political subdivision of the State of Idaho (the "State") duly organized, existing and operating under the Constitution and laws of the State.
2. Lessee is authorized and has power under State law to enter into all of the Agreements, and to carry out its obligations thereunder and the transactions contemplated thereby.
3. The Agreements and all other documents related thereto have been duly authorized, approved, and executed by and on behalf of Lessee, and each of the Agreements is a valid and binding contract of Lessee enforceable in accordance with its terms, except to the extent limited by State and Federal law affecting creditor's remedies and by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights.
4. The authorization, approval and execution of the Agreements and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable Local, State and Federal laws (including open meeting laws and public bidding and property acquisition laws).
5. To the best of my knowledge, there is no litigation or proceeding pending before any court, administrative agency or governmental body, that challenges: the organization or existence of Lessee; the authority of its officers; the proper authorization; approval and execution of any of the Agreements or any documents relating thereto; the appropriation of monies to make payments under the Agreements for the current fiscal year; or the ability of Lessee otherwise to perform its obligations under the Agreements and the transactions contemplated thereby.
6. Lessee is a political subdivision of the State as referred to in Section 103 of the Internal Revenue Code of 1986, as amended, and the related regulations and rulings thereunder.

Lessor, its Assignee and any of their assigns may rely upon this opinion.

Very truly yours,

Attorney

## INSURANCE COVERAGE DISCLOSURE

PNC Bank, National Association, LESSOR

City of Idaho Falls, LESSEE

RE: INSURANCE COVERAGE REQUIREMENTS

1. In accordance with the Lease Schedule ("Schedule") to the Master Lease-Purchase Agreement identified in the Lease Schedule ("Master Lease"), Lessee certifies that it has instructed the insurance agent named below (please fill in name, address, and telephone number):

---



---



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to issue: (check to indicate coverage)

a. All Risk Physical Damage Insurance on the leased Equipment evidenced by a Certificate of Insurance naming PNC Bank, National Association and/or its assigns as Lender Loss Payee.

Coverage Required: Termination Value Specified

b. Public Liability Insurance evidenced by a Certificate of Insurance naming PNC Bank, National Association and/or its assigns as an Additional Insured.

Minimum Coverage Required:

\$1,000,000.00 per occurrence  
\$2,000,000.00 aggregate bodily injury liability  
\$1,000,000.00 property damage liability

Proof of insurance coverage will be provided to PNC Bank, National Association, Attn: Insurance Dept, 995 Dalton Ave., Cincinnati, OH 45203, prior to the time that the property is delivered to Lessee.

OR

2. Pursuant to the Master Lease, Lessee represents and warrants, in addition to other matters under the Agreement, that it is lawfully self-insured for: (check to indicate coverage)

a. All risk, physical damage in the amount specified in 1(a) above.

b. Public liability for not less than the amounts specified in 1(b) above.

Lessee has attached a signed letter describing self-insurance.

LESSEE: City of Idaho Falls

By: \_\_\_\_\_ Title: \_\_\_\_\_

## INSURANCE INFORMATION

Please provide the following information to your insurance company to help expedite receipt of the necessary coverage:

### ITEMS WHICH NEED TO BE REFLECTED ON INSURANCE CERTIFICATE:

- PNC Bank, National Association must be named Lender Loss Payee and Additional Insured
- 30 Days' Notice of Cancellation
- Not Less than \$2,000,000.00 limits on liability
- Certificate must reflect a short equipment description
- Certificate must reflect an expiration date

### Certificate Holder Information:

PNC Bank, National Association, its successors and/or all assigns  
Attn: Insurance Dept  
995 Dalton Ave.  
Cincinnati, OH 45203

Please send a copy of certificate to Gianna O'Lone at [Gianna.OLone@pnc.com](mailto:Gianna.OLone@pnc.com).

The original should be mailed to the same at:

PNC Bank, National Association  
Attn: Insurance Dept  
995 Dalton Ave.  
Cincinnati, OH 45203

Please call Gianna O'Lone at 513-455-2343, if you have any questions.



May 12, 2023

City of Idaho Falls  
308 Constitution Way  
Idaho Falls, ID 83402  
Attention: Paul Radford

RE: Master Lease-Purchase Agreement dated November 15, 2019, ("Agreement"), Sequence No. 98987736-2 ("Lease") by and between City of Idaho Falls ("Lessee") and PNC Bank, National Association ("Lender").

Dear Paul:

Thank you for choosing **PNC Bank, National Association** for your financing needs. Please refer to the second page, to guide you through the transfer of title and vehicle registration process.

As the Lessee, it is your responsibility that all titled equipment show evidence of Lender, as first and only lienholder on the title, per the contract terms. As Lender, PNC Bank, National Association agrees to give the Borrower 45 days, from the vehicle delivery date to have the titles processed with the respective titling agency with Lender, as ***first and only lienholder***.

We appreciate your business and are available to help you navigate the process. If you have any questions, you may call **855-531-1727** or email your questions to: [PNCEFCollateral@pnc.com](mailto:PNCEFCollateral@pnc.com).

Very truly yours,

**PNC Bank, National Association**

Gianna O'Lone  
Commercial Transaction Coordinator

## ***YOUR NEXT STEP***

### **CUSTOMER'S RESPONSIBILITY TO TITLE AND REGISTER FINANCED EQUIPMENT TO SECURE LOAN**

#### ***FOR OUR LESSEES/BORROWERS***

**If the Lessee/Borrower is completing title work and/or registration:**

- The vendor or prior vehicle owner will provide you with a completed MSO/MCO or Title and Title Application. The Lessee/Borrower is responsible for all additional costs/fees associated with titling and registration. Such payments are not built in to your Lease/Loan.

#### ***FOR VENDORS OR PRIOR VEHICLE OWNERS***

**Proof of Origination/Ownership**

- Please provide PNC Bank, National Association with a copy of the FRONT side of the MSO/MCO or Current Title and Title Application.

**If the Vendor or Prior Owner is completing title work and/or registration:**

- PNC Bank, National Association must receive a copy of the Title Application and reverse side of the Title/MSO/MCO showing Lessee/Borrower as Owner and PNC Bank, National Association as Lienholder prior to releasing funds.

#### ***TITLE INFORMATION***

New title listing **PNC Bank, National Association** should appear as follows (*unless otherwise stated in your Lease/Loan agreement*):

- **Owner:** Lessee/Borrower
- **Lienholder:** "PNC Bank, National Association"

**Original Titles/MSO/MCO**

- All Original Titles (or Lien Statements, when applicable) listing Lessee/Borrower as Owner and **PNC Bank, National Association** as Lienholder must be mailed to **PNC Bank, National Association** within 45 days of registration. **PNC Bank, National Association** will retain all titles subject to the terms of the Lease/Loan. An exception to this would be if your contract states that **PNC Bank, National Association** be named as the "Owner" of the titled equipment, i.e., TRAC lease.

**Mail Title/MSO/MCO(s) to the following address:**

- PNC Bank, National Association  
995 Dalton Avenue  
Cincinnati, OH 45203  
Attn: Collateral Department
- For questions, please call our Client Care Department at **855-531-1727** or email [PNCEFCollateral@pnc.com](mailto:PNCEFCollateral@pnc.com)

# FOUR PARTY AGREEMENT

Dated as of May 12, 2023

"Lessee" means: City of Idaho Falls

"Lease Schedule" means: Lease Schedule No. 98987736-2 dated May 12, 2023, together with its Schedule A-1.

"Pierce" means: Pierce Manufacturing Inc., the manufacturer of the Equipment.

"Supplier" means: Hughes Fire Equipment Inc.

Reference is made to the Lease Schedule ("Lease Schedule") and to the Master Lease-Purchase Agreement ("Master Lease") identified in said Lease Schedule, described above between PNC Bank, National Association ("Lessor") and the Lessee identified above which relates to Equipment described in Schedule A-1 to the Lease Schedule ("Equipment") to be manufactured by Pierce and supplied by Supplier, an authorized dealer of Pierce fire equipment. For good and valuable consideration, receipt of which is hereby acknowledged, Lessee, Lessor, Pierce and Supplier hereby agree as follows:

1. Notwithstanding anything to the contrary in the Lease Schedule, Lessee hereby notifies Lessor that the Equipment has not yet been delivered to Lessee and the Equipment has not yet been accepted by Lessee for purposes of the Lease Schedule. Lessee agrees to execute and deliver to Lessor a Delivery and Acceptance Certificate in the form attached hereto as Exhibit A upon the circumstances set forth in said Certificate.

2. All parties agree that the Purchase Price of the Equipment shall be as set forth below if said Purchase Price is paid on or before the Advance Payment Date set forth below:

Purchase Price:	<u>\$2,839,956.00</u>
Vendor Discounts:	<u>\$206,872.00</u>
Advance Payment Date:	<u>May 12, 2023</u>

3. Upon execution of the Lease Schedule and delivery of all documents required by Lessor, Lessee agrees that it shall pay the Lessee Down Payment stated below and Lessor agrees that it shall pay the balance of the Purchase Price (the "Amount Financed") stated below. Lessee agrees that the Lease Term and Lessee's obligation to pay Rent Payments shall commence on the date set forth in the Lease Schedule notwithstanding the delivery of the Equipment at a later date.

Lessee Down Payment:	<u>\$0.00</u>
Trade In:	<u>\$0.00</u>
Amount Financed:	<u>\$2,633,084.00</u>

4. a) Supplier anticipates that it shall deliver the Equipment to Lessee by the **Anticipated Delivery Date** set forth below.

Anticipated Delivery Date: December 12, 2026

b) Supplier anticipates that it shall deliver the Equipment to Lessee no later than the **Outside Delivery Date** set forth below and that such Equipment shall comply with all specifications and requirements of Lessee and with the terms and conditions of any purchase order/purchase agreement relating thereto.

Outside Delivery Date: February 12, 2027

5. If for any reason whatsoever Supplier fails to deliver the Equipment to Lessee as set forth in **Subparagraph 4(b)** of this Agreement by the Outside Delivery Date for any piece of Equipment (the "Delayed Equipment"), and the Lessee has not agreed to revise the Outside Delivery Date with respect to such Delayed Equipment, then Pierce hereby agrees as follows only for the Delayed Equipment:



- a) On the first business day after the Outside Delivery Date, Pierce shall pay to Lessee the Lessee Down Payment for the Delayed Equipment plus interest at the Prime Rate plus one percent (1%) per annum from the Advance Payment Date to the date of such payment;
- b) On the first business day after the Outside Delivery Date, Pierce shall pay to Lessor for the Delayed Equipment the Amount Financed plus interest at the Prime Rate plus one percent (1%) per annum from the Advance Payment Date to the date of such payment; and
- c) "Prime Rate" means the prime rate of interest as published from time to time in the Wall Street Journal.

If there is more than one piece of Equipment subject to the Lease, and some of the Equipment is delivered in accordance with Subparagraph 4(b) of this Agreement, the payments owed pursuant to the Lease shall be modified to reflect only the obligations due on the Equipment that was delivered pursuant to Subparagraph 4(b). The new payment obligation will be determined based on the amount financed for the Equipment delivered to the Lessee, and based on the interest rate in effect as of the date of Lease commencement.

6. If Pierce makes the payments described in **Paragraph 5** for the Delayed Equipment under the circumstances set forth above and if Lessee has otherwise paid and performed its obligations under the Lease Schedule as of such payment date for the Delayed Equipment, then Lessee and Lessor agree that the Lease Schedule shall terminate as of the date of such payments by Pierce as to the Delayed Equipment only. Lessee's obligations shall continue unabated for the Equipment that was delivered pursuant to subparagraph 4(b). Pierce expressly agrees that the Lease Schedule identified herein shall be a "Lease" as such term is used in the Program Agreement, as amended, between Pierce and Lessor.

7. Supplier agrees that a performance bond (the "Performance Bond") will be issued which names Supplier as Principal, the Lessee as Obligee and the Lessor as Additional Obligee. The Performance Bond will apply solely to the terms and conditions of the purchase order/purchase agreement, including related equipment specifications and warranties, as issued by the Lessee and accepted by Pierce. The "Contract Date" referred to in the Performance Bond shall be the date of this Agreement.

8. Except as expressly set forth herein, the Lease Schedule and terms and conditions of the purchase order/purchase agreement for the Equipment remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the duly authorized officers of the parties set forth below execute this Agreement as of the date first written above.

City of Idaho Falls  
("Lessee")

By: \_\_\_\_\_

Title: \_\_\_\_\_

PNC Bank, National Association  
("Lessor")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Pierce Manufacturing Inc.  
("Pierce")

By: \_\_\_\_\_

Title: \_\_\_\_\_

Hughes Fire Equipment Inc.  
("Supplier")

By: \_\_\_\_\_

Title: \_\_\_\_\_

## DELIVERY & ACCEPTANCE CERTIFICATE

Lease Schedule No. 98987736-2

Reference is made to the above Lease Schedule ("Schedule"), which has been executed and delivered by the undersigned Lessee ("Lessee") and PNC Bank, National Association ("Lessor"). This Certificate amends and supplements the terms and conditions of the Lease Schedule and is hereby made a part of the Lease Schedule. Unless otherwise defined herein, capitalized terms defined in the Master Lease-Purchase Agreement and the Lease Schedule shall have the same meaning when used herein; provided, that "Equipment" shall mean the Equipment described in the Schedule A-1 and in any attachment or exhibit to this Certificate.

Notwithstanding anything to the contrary, expressed or implied, in the Lease Schedule or its Schedule A-1, Lessee agrees as follows:

1. ACCEPTANCE OF EQUIPMENT. As of the Acceptance Date stated below and as between Lessee and Lessor, Lessee hereby agrees that: (a) Lessee has received and inspected all Equipment; (b) all Equipment is in good working order and complies with all purchase orders, contracts and specifications; (c) Lessee accepts all Equipment for purposes of the Lease "as-is, where-is"; and (d) Lessee waives any right to revoke such acceptance.

ACCEPTANCE DATE: \_\_\_\_\_

2. RENT PAYMENTS. Lessee hereby agrees that Lessee will pay the Rent Payments for the Equipment in the amounts and on the dates specified in Schedule A-1 to the Lease Schedule.

City of Idaho Falls  
("Lessee")

By: \_\_\_\_\_

Title: \_\_\_\_\_

## PNC Bank, National Association INFORMATION REQUEST

LESSEE NAME: City of Idaho Falls

FEDERAL TAX I.D. # \_\_\_\_\_

BILLING ADDRESS:

\_\_\_\_\_  
Billing Contact

\_\_\_\_\_  
Street Address or Post Office Box

\_\_\_\_\_  
City, State and Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Email Address

PHYSICAL ADDRESS (IF DIFFERENT):

\_\_\_\_\_  
Street Address or Post Office Box

\_\_\_\_\_  
City, State and Zip

Require Board Approval for Payments? \_\_\_\_\_ Yes \_\_\_\_\_ No

Board Meeting Date? \_\_\_\_\_

Require signed vouchers for payments? \_\_\_\_\_ Yes \_\_\_\_\_ No

We typically mail our invoices 30 days in advance. Taking into account a seven-day mail period, do you foresee any problem that would prevent the payment from being received on or before the due date?

\_\_\_\_\_ Yes \_\_\_\_\_ No

Please list any special instructions below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Memorandum

File #: 23-152

City Council Meeting

**FROM:** Chris H Fredericksen  
**DATE:** Monday, May 1, 2023  
**DEPARTMENT:** Public Works

## Subject

Agreement for Professional Services with Consor North America for the Wastewater Treatment Plant Dewatering Project.

## Council Action Desired

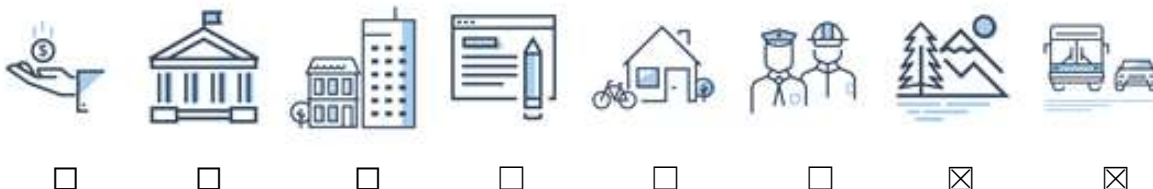
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the Agreement for Professional Services with Consor North America, Inc., and authorize the Mayor and City Clerk to execute the document (or take other action deemed appropriate).

## Description, Background Information & Purpose

The purpose of this Agreement is to establish a contract providing construction administration assistance for the Wastewater Treatment Dewatering project.

## Alignment with City & Department Planning Objectives



This project supports the community-oriented results of environmental sustainability and reliable infrastructure. Project improvements will improve the cost effectiveness of our treatment processes and contributes to being good stewards of the environment through the reduction of fossil fuel usage.

## Interdepartmental Coordination

N/A

## Fiscal Impact

The agreed cost to perform services is a not-to-exceed amount of \$843,581.00. Funding to complete this project will be provided by the Wastewater Fund. Sufficient funding and budget authority exist to complete the work associated with the Agreement.

**Legal Review**

The Agreement was prepared by the City Attorney Department.

2-37-35-1-SWR-2020-15  
2023-034

**AGREEMENT FOR PROFESSIONAL SERVICES FOR WASTEWATER  
DEWATERING PROJECT BETWEEN CONSOR NORTH AMERICA, INC.,  
AND THE CITY OF IDAHO FALLS, IDAHO**

THIS AGREEMENT FOR PROFESSIONAL SERVICES FOR WASTEWATER FOR WASTEWATER DEWATERING PROJECT BETWEEN CONSOR NORTH AMERICA, INC., AND THE CITY OF IDAHO FALLS, IDAHO, (“AGREEMENT”), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, between City of Idaho Falls, Idaho, a municipal corporation, whose address is P.O. Box 50220, Idaho Falls, Idaho 83405 (“CITY”), and Consor North America, Inc., whose address is One SW Columbia Street, Ste. 1700, Portland, Oregon 97204 (“CONSULTANT”).

**W I T N E S S E T H:**

WHEREAS, CITY desires to retain an engineering firm to provide professional engineering services to support the Construction Administration services for the Wastewater Treatment Plant Dewatering Project at CITY's Wastewater Treatment Plant; and

WHEREAS, CONSULTANT does provide professional engineering services; and

WHEREAS, CITY has selected CONSULTANT to provide such professional engineering services.

NOW, THEREFORE, be it agreed, for and in consideration of the mutual covenants and promises between the Parties hereto, as follows:

**SECTION I: SCOPE OF WORK**

This Scope is for professional services between CONSULTANT and CITY to support construction, start-up, and commissioning of improvements to the wastewater treatment system, as described in the “WWTP Dewatering Project No. 2-37-35-1-SWR-2020-15 Contract Documents” (“Project”).

**TASK 1: Project Management**

**1.1. Monthly Invoices/Progress Reporting Meetings.**

Updates on CONSULTANT’s budget shall be provided as part of the monthly invoicing process. Monthly invoices shall include expenditures by task, hours worked by Project personnel, and other direct expenses with the associated backup documentation. Monthly progress reports shall accompany each invoice and include budget status (percent spent and budget remaining), summary of work accomplished, work anticipated in the next invoice, issues encountered, and actions taken for their resolution or that still require Project team action, and discussion of identified potential impacts to CONSULTANT’s Scope or budget.

## **1.2. Project Set-up/Management.**

Work under this Task includes the set-up of systems and processes to communicate, share files, review documents and coordinate overall construction management services between CONSULTANT, CITY, the design team, and the selected contractor and associated subcontractors throughout the duration of construction. CONSULTANT shall use the cloud-based construction management software (PROCORE™), hosted by the Contractor, for construction documents distribution, management, and tracking.

## **1.3. Coordination.**

CONSULTANT shall assist CITY in the management of construction services for the Project and shall be the primary point of contact for construction related issues and tasks. This Task includes general communications and coordination with CITY, Design Engineers, and Contractor during construction not specifically called out in other Tasks. This Task also includes in-house review and quality control. Budget is estimated assuming an average of one and a half (1½ ) manhours of effort each week during eighty-five (85) weeks of construction. Tofor Snider shall act as the primary lead supported by Craig Anderson as a secondary point of contact.

## **1.4. Task Deliverables.**

Monthly invoices with Progress Reports to CITY.

## **TASK 2: General Construction Support.**

Under this Task, engineering design staff shall support CITY during construction of the Project. These services shall be provided from the Contractor's Notice of Award until the final acceptance of the Project. CONSULTANT shall assist CITY during construction and shall provide the following services.

### **2.1. Conformed Documents.**

CONSULTANT shall incorporate the changes made by addenda during the bid period into a "conformed" set of Contract Documents (all five (5) volumes) for the convenience of users of the Contract Documents.

### **2.2. Construction Meetings.**

CONSULTANT's design staff shall attend both the Construction Foreman (assumed bi-weekly) and Monthly Progress contractor led meetings outlined in specification section 01 31 19. The purpose of these meetings is to identify and discuss potential field problems, upcoming work, and any issues regarding the Project, as well as to review the overall Project progress status and schedule. Budget assumptions for this Task are summarized below. Whenever possible, attendance at construction meetings shall be combined with other Tasks to maximize



the efficiency of CONSULTANT's work.

2.2.1. Construction Foreman meeting attendance via telephone/video conference.

2.2.2. Monthly Progress Meeting attendance shall be in-person on-site and shall also include a field review of construction.

2.2.3. Up to forty-five (45) meetings (27 weekly and 18 monthly) shall be attended by an average of one and a half (1½) staff.

### **2.3. Construction Status Monitoring.**

In connection with field observations of Contractor's work provided under Task 3, CONSULTANT's construction services leads shall review the daily field inspection reports prepared by the Resident Project Representative and initiate follow-up conversations and/or site visits by design staff, as needed. For developing a budget for this Scope of Work, one and a half (1½) manhours per week for daily report review and eight (8) man days for supplemental site visits for construction issues that may develop was assumed. CONSULTANT shall endeavor to combine site visits with other Tasks to maximize the efficiency of the work program.

### **2.4. Submittal Reviews.**

CONSULTANT shall review construction submittals and shop drawings for conformance with Project documents and post responses on Pro-Core. Budget is based on an estimate that there shall be no more than ninety (90) technical and administrative submittals (including resubmittals).

### **2.5. Clarifications and Requests for Information.**

CONSULTANT shall assist with issuing clarifications to the Contractor and produce supporting drawing updates, if necessary. It is assumed that CONSULTANT shall respond to up to seventy-five (75) requests for information (RFI) and post responses on Pro-Core.

### **2.6. Change Order Requests.**

CONSULTANT shall provide services related to the development of construction contract changes as required by CITY and/or Contractor. These include preparation of Field Orders and Work Change Directives; development of change order proposal descriptions and justification documentation; assistance with negotiation of the change with the Contractor; making recommendations to CITY regarding any change orders; and assistance processing the formal change order documents.

### **2.7. Application for Payment Assistance.**

CONSULTANT shall review Contractor's monthly requests for progress payments and give recommendations to CITY for payment to the Contractor. Payment recommendations shall be based upon the approved schedule of values breakdown of the Contractor's lump sum contract amount and the associated percentage complete. CITY shall be responsible for review and approval of CONSULTANT's recommendations and processing of all payment requests.

## **2.8. Substantial Completion/Punch List.**

CONSULTANT and their subconsultants shall assist CITY with inspection of Project elements and assist in preparation of a "punch list" of work items remaining to achieve substantial completion. Implementation of the Project shall require phasing of improvements to maintain wastewater treatment throughout construction. This may require elements of the Project to be substantially completed and functional prior to issuing notice to proceed on other Project elements. CONSULTANT shall work with CITY and recommend procedures and timing of acceptance of the Project elements and continuation of work elements. It is estimated that no more than two (2) separate punch lists shall be required.

## **2.9. Final Completion/Punch List.**

After consulting with CITY and Contractor representatives, CONSULTANT and CONSULTANT's subconsultants shall participate in a final inspection to determine if the Contractor's completed work is complete and in accordance with the Contract Documents. Remaining work items identified in the inspection shall be assembled into a "punch list" and distributed to the Contractor.

## **2.10. Task Deliverables.**

- 2.10.1. Conformed documents.
- 2.10.2. Documentation of change order requests and RFIs.
- 2.10.3. Submittal reviews and associated documentation, as tracked and distributed using Contractor's construction management software.
- 2.10.4. Substantial Completion punch list(s).
- 2.10.5. Final Completion punch list.

## **TASK 3: Resident Project Representative.**

Due to the nature of the Project, CONSULTANT shall provide staff to be the Resident Project Representative (RPR) from the start of meaningful construction activities until the final completion of the Project. The RPR shall observe progress and quality of the work, coordinate day-to-day oversight of construction activities, and aid CONSULTANT in providing engineer's certification of Project construction in accordance with the plans and specifications.

Based on the contractor's preliminary draft schedule provided on March 16, 2023, meaningful construction activities are not anticipated until mid-June of 2023. Assuming a construction contractor Notice to Proceed on May 1, 2023 and a final completion date of December 13, 2024, a total of three thousand one hundred three (3,103) man hours is assumed for the RPR.

The duties and responsibilities of the RPR are as detailed in the following Task descriptions.

### **3.1. General.**

RPR is CONSULTANT's representative at the site and shall be tasked with providing and managing observation of the work.

### **3.2. Schedules.**

Review the progress schedule (as updated), schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with CONSULTANT concerning acceptability, concerns, and potential issues.

### **3.3. Conferences and Meetings.**

Attend meetings with Contractor, such as progress meetings, job conferences and other Project-related meetings, and take notes to augment Contractor draft meeting summaries for distribution.

### **3.4. Interpretation of Contract Documents.**

Report to CONSULTANT when clarifications and interpretations of the Contract Documents are needed, and ensure Contractor receives and follows clarifications and interpretations as issued.

### **3.5. Submittals and Shop Drawings.**

Advise CONSULTANT and Contractor of the commencement of any portion of the work requiring a Submittal or Shop Drawing for which RPR believes that the submittal review is not complete or is not in conformance with the reviewed submittal.

### **3.6. Modifications.**

Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to CONSULTANT. Ensure Contractor receives and complies with written decisions as issued.

### **3.7. Review of Work and Rejection of Defective Work.**

Conduct on-site observations of Contractor's work in progress to assist CONSULTANT in determining if the work is generally proceeding in accordance with the Contract Documents. Report to CONSULTANT whenever RPR believes that any part of Contractor's work in progress shall not produce a completed Project that conforms generally to the Contract Documents or shall imperil the integrity of the design concept of the Project as a functioning whole, according to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise CONSULTANT of items of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or which require special testing, inspection, or approval.

### **3.8. Permit Assistance.**

As required by the International Building Code, CITY is required to directly pay for Special Inspections. RPR shall work with the Contractor and CITY to schedule the required building facility special inspections. CITY shall contract and provide the services of an independent testing laboratory to perform the special inspection services identified in the Contract Documents for the new facilities. RPR shall coordinate CITY, but not contract, lead or direct CITY's special inspectors.

This Task also includes reviewing the Stormwater Pollution Prevention Plan (SWPPP) and application package (i.e., Notice of Intent (NOI)) prepared by the Contractor). It is anticipated that CITY shall be identified on the NOI as a co-applicant of the permit. RPR shall monitor the Contractor's implementation of the SWPPP during construction.

### **3.9. Inspections, Tests and Systems Start-ups.**

- 3.9.1. Consult with CONSULTANT and CITY in advance of scheduled inspections, tests, and systems start-ups.
- 3.9.2. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate CITY personnel, and that Contractor maintains adequate records thereof.
- 3.9.3. Observe, record and report to CONSULTANT and CITY appropriate details relative to the test procedures and systems start-ups.
- 3.9.4. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to CONSULTANT and CITY.

### **3.10. Records and Reports.**

- 3.10.1. Maintain records for use in preparing project documentation [record drawings, Time & Material (force account) logs, etc.].

- 3.10.2. Prepare a daily report recording Contractor's work on the site, weather conditions, data relative to Contractor questions, change orders, field orders, work change directives, or changed conditions, site visitors, daily activities, decisions, observations; and distribute copies to CONSULTANT and CITY.
- 3.10.3. Draft and recommend to CONSULTANT proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- 3.10.4. Furnish to CONSULTANT and CITY copies of all inspection, test and system start-up reports.
- 3.10.5. Immediately notify CONSULTANT and CITY of the occurrence of any site accidents, emergencies, acts of God endangering the work, damage to property by fire or other causes, or the discovery of any constituent of concern.

### **3.11. Payment Requests.**

Review applications for payment with Contractor for compliance with the established procedure in the Contract Documents and forward with recommendations to CONSULTANT, noting particularly the relationship of the payment requested relative to the schedule of values, work completed, and materials and equipment delivered at the site, but not incorporated in the work.

### **3.12. Quarterly Construction Status Reporting.**

Prepare up to four (4) construction status reports during construction that covers the following topics:

- 3.12.1. Contractor payment history and status relative to anticipated spending.
- 3.12.2. Contractor schedule analysis.
- 3.12.3. Completed work activities.
- 3.12.4. Upcoming work elements.
- 3.12.5. Summary of executed change orders, pending change orders, and potential cost items (Field Orders, Work Change Directives, unforeseen conditions, etc.).

### **3.13. Completion.**

- 3.13.1. Assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.

- 3.13.2. Participate in a final visit to the Project in the company of CONSULTANT, CITY and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
- 3.13.3. Observe whether all items on the final list have been completed or corrected and make recommendations to CONSULTANT and CITY concerning acceptance.
- 3.13.4. Review for completeness and accuracy the Record Drawing mark-ups completed by Contractor and have corrections made before sent to CONSULTANT for generation of formal Record Drawings.

#### **3.14. Task Deliverables.**

- 3.14.1. Daily Inspection documentation, including photo record of construction progress.
- 3.14.2. Drawing mark-ups for Record Drawing development.
- 3.14.3. Signed Daily Time & Material Work Logs (as required).
- 3.14.4. Quarterly Construction Status Reports.

#### **TASK 4: Start-Up, Commissioning, and Close-Out.**

Under this Task, CONSULTANT shall provide operations support during and after construction to ensure CITY has a fully functional facility, in accordance with the Contract Documents.

##### **4.1. Operation and Maintenance Manual Updates.**

Compile operation and maintenance manuals (O&M) relative to the improvements, that are clear, concise, accurate and functional, including the O&M manual information provided by the Contractor on specific Project components. Work under this Task shall include:

- 4.1.1. Review equipment manuals submitted by the Contractor in conformance with the Contract Documents. These manuals shall include manufacturers' literature identifying all installation, operation, maintenance, handling, storage, assembly and other pertinent equipment information for all equipment, systems, subsystems, appliances, materials, finishes and other material furnished and/or installed on the Project.
- 4.1.2. Update CITY's current WWTP O&M manual to provide a narrative of the operations and operating conditions for the WWTP additions/improvements implemented. Submit updated draft to CITY for review and comments. Revise the manuals based on CITY comments. The draft and final updated WWTP O&M manual shall be provided in electronic PDF format only.



#### **4.2. System Integration.**

Control Engineers, a subconsultant to CONSULTANT, shall provide the following services related to the configuration, calibration, and integration of the Project equipment and SCADA system.

- 4.2.1. Configuration and calibration check of all control panels, network systems, mobile operator HMI, equipment and instruments.
- 4.2.2. Programming for integration of new PLC and HMI for the WWTP additions/improvements implemented.
- 4.2.3. Programming and integration for new systems and alarms in existing SCADA network.

#### **4.3. Start-Up, Testing, and Training.**

Observe and provide technical assistance during the functional testing and startup of the new wastewater treatment plant facilities. Assist CITY, as required, during training sessions with factory representatives.

#### **4.4. Record Drawings.**

Prepare record drawings based on information provided by Contractor, CITY and RPR in both AutoCAD and PDF format. CITY is responsible for submittal to DEQ.

#### **4.5. Task Deliverables.**

- 4.5.1. Draft and final versions of the operations and maintenance manuals in PDF format.
- 4.5.2. System integration programming code for CITY's records.
- 4.5.3. Record Drawings.

#### **4.6. Assumptions.**

CONSULTANT has made the following additional assumptions in the development of this Task order.

- 4.6.1. The duration of the construction services is anticipated run from Contractor's Notice to Proceed date (May 15, 2023) to construction final completion (December 13, 2024).
- 4.6.2. Articles 8 and Article 9 of the Construction Contract Document's General

Conditions and Supplementary General Conditions further defines both CONSULTANT's and CITY's role and responsibilities during construction.

- 4.6.3. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, CONSULTANT shall endeavor to protect CITY from defects and deficiencies in the work. However, CONSULTANT shall not, during such RPR field checks, or as a result of such RPR observations of Contractor's work in progress, supervise, direct or have control over Contractor's work, nor shall CONSULTANT (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected or used by any Contractor, for security or safety at the site, for safety precautions and programs incident to any Contractor's work in progress, or for any failure of a Contractor to comply with laws and regulations applicable to such Contractor's performing and furnishing of its work. CONSULTANT (including RPR) neither guarantees the performance of any Contractor nor assumes responsibility for Contractor's failure to furnish and perform the work in accordance with the Contract Documents.
- 4.6.4. CITY's existing Operation & Maintenance manual shall only be modified to account for changes made as part of this Project and the overall form and function CITY's existing manual shall be maintained.
- 4.6.5. This Scope of Work does not include any CITY staff overall treatment process training or support beyond that provided by the Contractor per the contract documents and the updated O&M manual per subtask 4.1.

## **SECTION II:**

### **A. Independent Contractor.**

The contracting Parties warrant by their signature that no employer/employee relationship is established between CONSULTANT and CITY by the terms of this AGREEMENT. It is understood by the Parties hereto that CONSULTANT is an independent contractor and as such neither it nor its employees, if any, are employees of CITY for purposes of tax, retirement system, or social security (FICA) withholding.

### **B. Fees and Conditions for Professional Services.**

- 1. Payment for all services described in this AGREEMENT is provided in accordance with the cost described in Section II.B.2. of this AGREEMENT.
- 2. The not-to-exceed cost for CONSULTANT's services for Project as described in Section I, Scope of Work, shall be eight hundred forty-three thousand five hundred eighty-one dollars (\$843,581), as described in Exhibit "A" attached hereto.

3. Budget requirements for construction support are dependent on a number of factors outside of CONSULTANT's control (construction duration, unforeseen conditions, etc.). Therefore, the work provided in this Agreement shall be billed on a time and materials basis under estimates of required budget only. The estimated budget breakdown for this work is outlined below. CONSULTANT shall manage the work identified in this Agreement to the aggregate budget amount, which shall not be exceeded without prior written authorization from CITY. When any budget has been increased or follow-on work contracted, CONSULTANT's excess costs expended prior to such an increase shall be allowable to the same extent as if such costs had been incurred after the approved increase.

<b>Item</b>	<b>Total Fee</b>
Task 1: Project Management	\$47,682
Task 2: General Construction Support	\$309,560
Task 3: Resident Project Representative	\$310,106
Task 4: Start-Up and Commissioning	\$176,233
<b>Project Total</b>	<b>\$843,581</b>

C. Project Schedule.

Project is anticipated to commence on May 15, 2023, and shall proceed until its estimated conclusion on December 13, 2024.

**SECTION III:**

A. Termination of Agreement.

Either Party may terminate this AGREEMENT with thirty (30) days' written notice without cause and without further liability to either Party except as designated by this section. In the event of termination, CONSULTANT shall be paid for services performed to termination date, based upon the work completed.

B. Extent of Agreement.

This AGREEMENT may be amended only by written instrument signed by both Parties hereto.

C. CONSULTANT'S Insurance.

In performance of professional services, CONSULTANT shall use that degree of care and skill ordinarily exercised under similar circumstances by members of its profession; and no other warranty, either expressed or implied, is made in connection with rendering CONSULTANT's services.

D. Ownership and Publication of Materials and CITY's Right to Use Delivered Materials.

CITY and CONSULTANT agree that CITY, with this AGREEMENT, acquires the right to use all written materials, including but not limited to reports, information, data, images, diagrams, plans, and any other written documents prepared and delivered to CITY by CONSULTANT pursuant to this AGREEMENT, and CITY shall have the authority to release, publish, or otherwise use any written materials delivered to CITY, in whole or in part. The use of written materials (s) may include, but is not limited to, electronic and print promotion of CITY sponsored programs or functions. Written materials(s) may be provided to other entities, such as newspapers or other publishers, for inclusion in print advertisements, without cost to CITY or payment to CONSULTANT for use of such written materials. Any re-use of written materials shall be at CITY's sole risk and without liability to CONSULTANT.

Nothing in this section shall constrain CONSULTANT from using materials for other trainings or projects with other entities or from using the written materials for CONSULTANT's general reference or enrichment.

Nothing in this section shall be constructed to entitle CITY to any materials owned by CONSULTANT which were not delivered or received by CITY, even if those materials were used by CONSULTANT to produce the written materials delivered to CITY or if the written materials delivered to CITY were used to develop, improve, or add value to anything CONSULTANT does not deliver or release to CITY.

The Parties acknowledge that any written materials received by CITY are subject to public disclosure under the Idaho Public Records Law, Chapter 2 of Title 74 of the Idaho Code.

#### E. Indemnification.

CONSULTANT agrees, to the fullest extent permitted by law, to indemnify and hold harmless CITY against damages, liabilities and costs arising from the negligent acts of CONSULTANT in the performance of professional services under this AGREEMENT, to the extent that CONSULTANT is responsible for such damages, liabilities, and costs on a comparative basis of fault and responsibility between CONSULTANT and CITY. CONSULTANT shall not be obligated to indemnify CITY for CITY's sole negligence.

#### F. Costs and Attorney Fees.

In the event either Party incurs legal expenses to enforce the terms and conditions of this AGREEMENT, the prevailing Party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

#### G. Jurisdiction and Venue.

It is agreed that this AGREEMENT shall be construed under and governed by the laws of

the State of Idaho. In the event of litigation concerning it, it is agreed that proper venue shall be the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville.

H. Binding of Successors.

CITY and CONSULTANT each bind themselves, their partners, successors, assigns, and legal representatives to the other Parties to this AGREEMENT and to the partner, successors, assigns, and legal representatives of such other Parties with respect to all covenants of this AGREEMENT.

I. Modification and Assignability of Agreement.

This AGREEMENT contains the entire agreement between the Parties concerning the professional services, and no statements, promises, or inducements made by either Party, or agents of either Party, are valid or binding unless contained herein. This AGREEMENT may not be enlarged, modified, or altered except upon written agreement signed by the Parties hereto. CONSULTANT may not subcontract or assign its rights (including the right to compensation) or duties arising hereunder without the prior written consent and express authorization of CITY. Any such subcontractor or assignee shall be bound by all of the terms and conditions of this AGREEMENT as if named specifically herein.

J. CITY's Representatives.

CITY shall designate a representative authorized to act in behalf of CITY. The authorized representative shall examine the documents of the work as necessary, and shall render decisions related thereto in a timely manner so as to avoid unreasonable delays.

K. Non-discrimination.

CONSULTANT shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, gender identity/expression, sexual orientation, or national origin.

L. Anti-Boycott Against Israel Act.

Pursuant to Idaho Code section 67-2346, if payments under this AGREEMENT exceed one hundred thousand dollars (\$100,000) and CONSULTANT employs ten (10) or more persons, CONSULTANT certifies that it is not currently engaged in, and shall not for the duration of this AGREEMENT engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Paragraph that are defined in Idaho Code section 67-2346 shall have the meaning defined therein.

IN WITNESS WHEREOF, the Parties hereto have executed the foregoing AGREEMENT as indicated above.

ATTEST:

“CITY”


City of Idaho Falls, Idaho

By \_\_\_\_\_  
Corrin Wilde, City Clerk

By \_\_\_\_\_  
Rebecca L. Noah Casper, Ph.D., Mayor

“CONSULTANT”

Consor North America, Inc.

By  \_\_\_\_\_  
Craig B Anderson, P.E., Principal Engineer

STATE OF IDAHO            )  
  ) ss.  
County of Bonneville        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah Casper, Ph.D, known to me to be the Mayor of the City of Idaho Falls, Idaho, a municipal corporation that executed the foregoing document, and acknowledged to me that they are authorized to execute the same for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Seal)

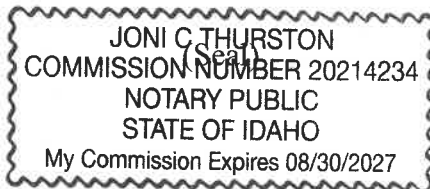
\_\_\_\_\_  
Notary Public of Idaho  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



STATE OF Idaho )  
 ) ss:  
County of Ada )

On this 01 day of May, 2023, before me, the undersigned, a notary public, in and for said State, personally appeared Craig B Anderson, P.E. known or identified to me to be the Principal Engineer for Consor North America, Inc., and whose name is subscribed to the within instrument and acknowledged to me that they are authorized to execute the same for and on behalf of Consor North America, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



[Signature]  
Notary Public of Idaho  
Residing at: Ada county  
My Commission Expires: 8-30-2027

## EXHIBIT “A”

# SCOPE OF WORK

## WWTP DEWATERING PROJECT NO. 2-37-35-1-SWR-2020-15:

### CONSTRUCTION PHASE SERVICES

This Scope is for professional services between Consor North America, Inc. (Conсор) and the City of Idaho Falls, Idaho (City) to support construction, start-up, and commissioning of improvements to the wastewater treatment system, as described in the “WWTP Dewatering Project No. 2-37-35-1-SWR-2020-15 Contract Documents” (Project).

### Scope of Services

The construction phase services are divided into the following major tasks:

- Task 1 - Project Management
- Task 2 – General Construction Support
- Task 3 - Resident Project Representative
- Task 4 - Start-Up and Commissioning

### Task 1 - Project Management

Work under this task includes a number of overall project management activities. Specific areas of work include the following.

#### *1.1 Monthly Invoices/Progress Reports*

Updates on Consor’s budget will be provided as part of the monthly invoicing process. Monthly invoices will include expenditures by task, hours worked by project personnel, and other direct expenses with the associated backup documentation. Monthly progress reports will accompany each invoice and include budget status (percent spent and budget remaining), summary of work accomplished, work anticipated in the next invoice, issues encountered, and actions taken for their resolution or that still require project team action, and discussion of identified potential impacts to Consor’s scope or budget.

#### *1.2 Project Set-Up/Management*

Work under this subtask includes the set-up of systems and processes to communicate, share files, review documents and coordinate overall construction management services between Consor, the City, the design team and the selected contractor and associated subcontractors throughout the duration of construction. Consor will use the cloud-based construction management software (PROCORE™), hosted by the Contractor, for construction documents distribution, management, and tracking.

### *1.3 Coordination*

Conсор will assist the City in the management of construction services for the project and will be the primary point of contact for construction related issues and tasks. This subtask includes general communications and coordination with the City, Design Engineers, and Contractor during construction not specifically called out in other tasks. This task also includes in-house review and quality control. Budget is estimated assuming an average of 1½ manhours of effort each week during 85 weeks of construction. Tofor Snider will act as the primary lead supported by Craig Anderson as a secondary point of contact.

### *Task Deliverables*

- Monthly invoices with Progress Reports to the City

## *Task 2 – General Construction Support*

Under this task, engineering design staff will support the City during construction of the Project. These services will be provided from the Contractor’s Notice of Award until the final acceptance of the project. Consor will assist the City during construction and will provide the following services.

### *2.1 Conformed Documents*

Conсор will incorporate the changes made by addenda during the bid period into a “conformed” set of Contract Documents (all 5 volumes) for the convenience of users of the Contract Documents.

### *2.2 Construction Meetings*

Conсор design staff will attend both the Construction Foreman (assumed bi-weekly) and Monthly Progress contractor led meetings outlined in specification section 01 31 19. The purpose of these meetings is to identify and discuss potential field problems, upcoming work, and any issues regarding the project as well as to review the overall project progress status and schedule. Budget assumptions for this subtask are summarized below. Whenever possible, attendance at construction meetings will be combined with other tasks to maximize the efficiency of Consor’s work.

- Construction Foreman meeting attendance via telephone/video conference
- Monthly Progress Meeting attendance will be in-person on-site and will also include a field review of construction.
- Up to 45 meetings (27 weekly and 18 monthly) will be attended by an average of 1½ staff.

### *2.3 Construction Status Monitoring*

In connection with field observations of Contractor’s work provided under Task 3, Consor’s construction services leads will review the daily field inspection reports prepared by the Resident Project Representative and initiate follow-up conversations and/or site visits by design staff, as needed. For developing a budget for this scope of work, 1½ manhours per week for daily report review and 8 man-days for supplemental site visits for supplemental site visits for construction issues that may develop was assumed. Consor will endeavor to combine site visits with other tasks to maximize the efficiency of the work program.

### *2.4 Submittal Reviews*

Conсор will review construction submittals and shop drawings for conformance with project documents and post responses on Pro-Core. Budget is based on an estimate that there will be no more than ninety (90) technical and administrative submittals (including resubmittals).

## *2.5 Clarifications and Requests for Information*

Conсор will assist with issuing clarifications to the Contractor and produce supporting drawing updates, if necessary. It is assumed that Conсор will respond to up to seventy-five (75) requests for information (RFI) and post responses on Pro-Core.

## *2.6 Change Order Requests*

Conсор will provide services related to the development of construction contract changes as required by the City and/or Contractor. These include preparation of Field Orders and Work Change Directives, development of change order proposal descriptions and justification documentation, assistance with negotiation of the change with the Contractor, making recommendations to the City regarding any change orders, and assistance processing the formal change order documents.

## *2.7 Application for Payment Assistance*

Conсор will review Contractor's monthly requests for progress payments and give recommendations to the City for payment to the Contractor. Payment recommendations will be based upon the approved schedule of values breakdown of the Contractor's lump sum contract amount and the associated percentage complete. The City will be responsible for review and approval of Conсор recommendations and processing of all payment requests.

## *2.8 Substantial Completion/Punch List*

Conсор and their subconsultants will assist the City with inspection of project elements and assist in preparation of a "punch list" of work items remaining to achieve substantial completion. Implementation of the Project will require phasing of improvements to maintain wastewater treatment throughout construction. This may require elements of the project to be substantially completed and functional prior to issuing notice to proceed on other project elements. Conсор will work with the City and recommend procedures and timing of acceptance of the project elements and continuation of work elements. It is estimated that no more than two (2) separate punch lists will be required.

## *2.9 Final Completion/Punch List*

After consulting with City and Contractor representatives, Conсор and their subconsultants shall participate in a final inspection to determine if the Contractor's completed work is complete and in accordance with the Contract Documents. Remaining work items identified in the inspection will be assembled into a "punch list" and distributed to the Contractor.

## **Task Deliverables**

- Conformed documents
- Documentation of change order requests and RFIs
- Submittal reviews and associated documentation, as tracked and distributed using Contractor's construction management software
- Substantial Completion punch list(s)
- Final Completion punch list

## Task 3 – Resident Project Representative

Due to the nature of the Project, Consor will provide staff to be the Resident Project Representative (RPR) from the start of meaningful construction activities until the final completion of the project. The RPR will observe progress and quality of the work, coordinate day-to-day oversight of construction activities, and aid Consor in providing engineer's certification of project construction in accordance with the plans and specifications.

Based on the contractor's preliminary draft schedule provided on March 16, 2023, meaningful construction activities are not anticipated until mid-June of 2023. Assuming a construction contractor Notice to Proceed on May 15, 2023 and a final completion date of December 13, 2024, a total of 3,103 man hours is assumed for the RPR.

The duties and responsibilities of the RPR are as detailed in the following subtask descriptions.

### *3.1 General*

RPR is Consor's representative at the site and will be tasked with providing and managing observation of the work

### *3.2 Schedules*

Review the progress schedule (as updated), schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Consor concerning acceptability, concerns, and potential issues.

### *3.3 Conferences and Meetings*

Attend meetings with Contractor, such as progress meetings, job conferences and other project-related meetings, and take notes to augment Contractor draft meeting summaries for distribution.

### *3.4 Interpretation of Contract Documents*

Report to Consor when clarifications and interpretations of the Contract Documents are needed, and ensure Contractor receives and follows clarifications and interpretations as issued.

### *3.5 Submittals and Shop Drawings*

Advise Consor and Contractor of the commencement of any portion of the Work requiring a Submittal or Shop Drawing for which RPR believes that the submittal review is not complete or is not in conformance with the reviewed submittal.

### *3.6 Modifications*

Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Consor. Ensure Contractor receives and complies with written decisions as issued.

### *3.7 Review of Work and Rejection of Defective Work*

Conduct on-site observations of Contractor's work in progress to assist Consor in determining if the work is generally proceeding in accordance with the Contract Documents. Report to Consor whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms

generally to the Contract Documents or will imperil the integrity of the design concept of the Project as a functioning whole, according to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Consor of items of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or which require special testing, inspection, or approval

### *3.8 Permit Assistance*

As required by the International Building Code, the City is required to directly pay for Special Inspections. RPR will work with the Contractor and the City to schedule the required building facility special inspections. The City shall contract and provide the services of an independent testing laboratory to perform the special inspection services identified in the Contract Documents for the new facilities. RPR will coordinate with City but not contract, lead or direct the City's special inspectors.

This subtask also includes reviewing the Stormwater Pollution Prevention Plan (SWPPP) and application package (i.e., Notice of Intent (NOI)) prepared by the Contractor. It is anticipated that the City will be identified on the NOI as a co-applicant of the permit. RPR will monitor the Contractor's implementation of the SWPPP during construction.

### *3.9 Inspections, Tests and Systems Start-ups*

- Consult with Consor and the City in advance of scheduled inspections, tests, and systems start-ups.
- Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate City personnel, and that Contractor maintains adequate records thereof.
- Observe, record and report to Consor and City appropriate details relative to the test procedures and systems start-ups.
- Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Consor and the City

### *3.10 Records and Reports*

- Maintain records for use in preparing project documentation [record drawings, Time & Material (force account) logs, etc.].
- Prepare a daily report recording Contractor's work on the Site, weather conditions, data relative to Contractor questions, change orders, field orders, work change directives, or changed conditions, site visitors, daily activities, decisions, observations; and distribute copies to Consor and the City.
- Draft and recommend to Consor proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- Furnish to Consor and City copies of all inspection, test and system start-up reports.
- Immediately notify Consor and City of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any constituent of concern



### *3.11 Payment Requests*

Review applications for payment with Contractor for compliance with the established procedure in the Contract Documents and forward with recommendations to Consor, noting particularly the relationship of the payment requested relative to the schedule of values, work completed, and materials and equipment delivered at the site, but not incorporated in the work

### *3.12 Quarterly Construction Status Reporting*

Prepare up to four (4) construction status reports during construction that covers the following topics:

- Contractor payment history and status relative to anticipated spending
- Contractor schedule analysis
- Completed work activities
- Upcoming work elements
- Summary of executed change orders, pending change orders, and potential cost items (Field Orders, Work Change Directives, unforeseen conditions, etc...)

### *3.13 Completion*

- Assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- Participate in a final visit to the project in the company of Consor, City and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
- Observe whether all items on the final list have been completed or corrected and make recommendations to Consor and City concerning acceptance.
- Review for completeness and accuracy the Record Drawing mark-ups completed by Contractor and have corrections made before sent to Consor for generation of formal Record Drawings.

## **Task Deliverables**

- Daily Inspection documentation, including photo record of construction progress
- Drawing mark-ups for Record Drawing development
- Signed Daily Time & Material Work Logs (as required)
- Quarterly Construction Status Reports

## **Task 4 – Start-Up, Commissioning, and Close-Out**

Under this task, Consor will provide operations support during and after construction to ensure the City has a fully functional facility, in accordance with the Contract Documents.

#### *4.1 Operation and Maintenance Manual Updates*

Compile operation and maintenance manuals (O&M) relative to the improvements, that are clear, concise, accurate and functional, including the O&M manual information provided by the Contractor on specific project components. Work under this subtask will include:

- Review equipment manuals submitted by the Contractor in conformance with the Contract Documents. These manuals will include manufacturers' literature identifying all installation, operation, maintenance, handling, storage, assembly and other pertinent equipment information for all equipment, systems, subsystems, appliances, materials, finishes and other material furnished and/or installed on the project.
- Update the City's current WWTP O&M manual to provide a narrative of the operations and operating conditions for the WWTP additions/improvements implemented. Submit updated draft to City for review and comments. Revise the manuals based on City comments. The draft and final updated WWTP O&M manual will be provided in electronic PDF format only.

#### *4.2 System Integration*

Control Engineers, a subconsultant to Consor, will provide the following services related to the configuration, calibration, and integration of the Project equipment and SCADA system.

- Configuration and calibration check of all control panels, network systems, mobile operator HMI, equipment and instruments.
- Programming for integration of new PLC and HMI for the WWTP additions/improvements implemented.
- Programming and integration for new systems and alarms in existing SCADA network.

#### *4.3 Start-Up, Testing, and Training*

Observe and provide technical assistance during the functional testing and startup of the new wastewater treatment plant facilities. Assist the City, as required, during training sessions with factory representatives.

#### *4.4 Record Drawings*

Prepare record drawings based on information provided by Contractor, City and RPR in both AutoCAD and PDF format. City is responsible for submittal to DEQ.

### **Task Deliverables**

- Draft and final versions of the operations and maintenance manuals in PDF format.
- System integration programming code for City's records
- Record Drawings

### **Assumptions**

Consor has made the following additional assumptions in the development of this task order.

1. The duration of the construction services is anticipated run from Contractor's Notice to Proceed date (May 15, 2023) to construction final completion (December 13, 2024).

2. Articles 8 and Article 9 of the Construction Contract Document's General Conditions and Supplementary General Conditions further defines both Consor's and City's role and responsibilities during construction.
3. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Consor shall endeavor to protect the City from defects and deficiencies in the work. However, Consor shall not, during such RPR field checks, or as a result of such RPR observations of Contractor's work in progress, supervise, direct or have control over Contractor's work, nor shall Consor (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected or used by any Contractor, for security or safety at the site, for safety precautions and programs incident to any Contractor's work in progress, or for any failure of a Contractor to comply with laws and regulations applicable to such Contractor's performing and furnishing of its work. Consor (including RPR) neither guarantees the performance of any Contractor nor assumes responsibility for Contractor's failure to furnish and perform the work in accordance with the Contract Documents.
4. The City's existing Operation & Maintenance manual will only be modified to account for changes made as part of this project and the overall form and function the City's existing manual will be maintained.
5. This scope of work does not include any City staff overall treatment process training or support beyond that provided by the Contractor per the contract documents and the updated O&M manual per subtask 4.1.

## Budget

Budget requirements for construction support are dependent on a number of factors outside of Consor's control (construction duration, unforeseen conditions, etc.). Therefore, the work provided in this Task Order will be billed on a time and materials basis under estimates of required budget only. The estimated budget breakdown for this work is outlined in Table 1. Consor will manage the work identified in this Task Order to the aggregate budget amount, which shall not be exceeded without prior written authorization from the City. When any budget has been increased or follow-on work contracted, Consor's excess costs expended prior to such an increase will be allowable to the same extent as if such costs had been incurred after the approved increase.

**Table 1 - Total Project Fee**

<b>Item</b>	<b>Total Fee</b>
Task 1: Project Management	\$47,682
Task 2: General Construction Support	\$309,560
Task 3: Resident Project Representative	\$310,106
Task 4: Start-Up and Commissioning	\$176,233
<b>Project Total</b>	<b>\$843,581</b>

# Memorandum

File #: 23-153

City Council Meeting

**FROM:** Chris H Fredericksen  
**DATE:** Monday, May 1, 2023  
**DEPARTMENT:** Public Works

## Subject

State Local Agreement with the Idaho Transportation Department (ITD) for the US 20/26 (Yellowstone Highway) and Birch Street Railroad Crossing Vehicle Height Detection Project.

## Council Action Desired

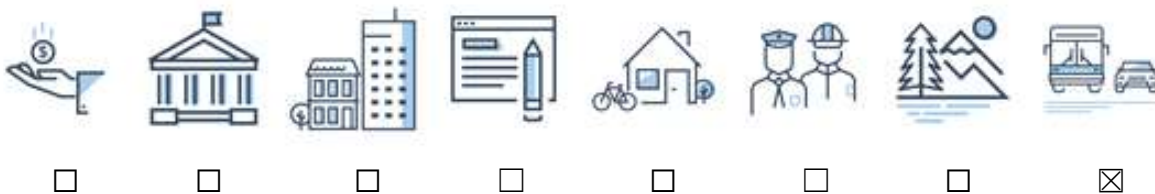
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the State Local Agreement with ITD for US 20/26 (Yellowstone Highway) and Birch Street Railroad Crossing Vehicle Height Detection project and authorize the Mayor and City Clerk to sign the documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

Attached for your consideration is a State Local Agreement to install early warning vehicle height detection equipment to deter and eliminate vehicles from striking and wedging under low clearance Union Pacific Railroad structures on US 20/26 and Birch Street.

## Alignment with City & Department Planning Objectives



This Agreement supports the community-oriented results of reliable public infrastructure and transportation by installing early warning notifications for those vehicles that would otherwise impact low clearance railroad structures.

## Interdepartmental Coordination

Project reviews will be conducted with all necessary city departments to ensure coordination of project activities.

## Fiscal Impact

The Agreement requires that the City purchase and install required equipment for vehicle height detection and that ITD will reimburse approved costs in the not-to-exceed amount of \$600,000. No City match is required as part of this

project.

**Legal Review**

The Agreement has been reviewed by the office of the City Attorney.

2-38-19-2-TRF-2023-22

2023-035

## STATE/LOCAL AGREEMENT

PROJECT NO.: A023(369), KEY NO.: 23369

### US 20/26 (YELLOWSTONE HIGHWAY) & BIRCH STREET RRX VEHICLE HEIGHT DETECTION, IDAHO FALLS BONNEVILLE COUNTY

#### **PARTIES**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Idaho Transportation Department, hereafter called the “State”, and the City of Idaho Falls, hereafter called the “City”.

#### **PURPOSE**

The State has programmed a project in conjunction with the City. The desire is to install early warning, Vehicle Height Detection (VHD) equipment to deter and eliminate vehicles from striking and wedging under low clearance Union Pacific Railroad structures on US 20/26 Business Loop (aka Yellowstone Highway) and Birch Street. It is anticipated that equipment will be installed at approximately seven (7) locations. The exact number and locations are pending project final design. This Agreement sets out the responsibilities of the parties.

Authority for this Agreement is established by Section 40-317, Idaho Code.

It is mutually agreed and understood by the Parties that:

#### **SECTION I** - City Roles

1. The City and/or its consultant shall design the VHD installation exhibits, and order, or cause to order, and install all required equipment per the installation exhibits. The installation shall be completed by the City or a qualified contractor.
2. The City shall provide the State design plans for review and acceptance prior to bidding or initiation of project construction.
3. All construction work and materials must meet approved City standards.
4. To be eligible for reimbursement(s) from the State, the City shall enter and execute this agreement by June 15, 2023. Reimbursement from the State shall not exceed \$600,000.

5. The City is responsible for payment of all invoices related to this project, which may include design efforts, materials, installation/construction, and inspection work. The City shall submit reimbursement requests for costs eligible per Subsection II, Item 3 of this agreement.
6. The City will be the owner of the VHD equipment related to the Birch Street underpass and shall assume responsibility for the maintenance of the VHD equipment for the Birch Street and US 20/26 (Yellowstone Highway).

## **SECTION II** - State Roles

1. The State will complete all Environmental documentation necessary to allow the City to complete this project.
2. The State will review and accept final design plans prior to bidding and construction.
3. The State will be the owner of the VHD equipment related to the US 20/26 (Yellowstone Highway). Refer to Section I, Item 6, above, for maintenance responsibilities. City maintenance costs for US 20/26 (Yellowstone Highway) equipment shall be reimbursable by the State per Signal Maintenance Agreement dated January 26, 2023.
4. The State shall reimburse the City up to \$600,000 for the project. The reimbursement(s) shall be used towards the purchase of VHD equipment and installation of the equipment, including power supply costs. Reimbursement(s) will not be made for design or engineering costs.

## **SECTION III** - Parties Contact Information

City's Contact: Chris Canfield, [CCanfield@idahofalls.gov](mailto:CCanfield@idahofalls.gov), (208) 612-8259

State's Contact: Alecia Johnson, [Alecia.Johnson@itd.idaho.gov](mailto:Alecia.Johnson@itd.idaho.gov), (208) 745-5676

## **SECTION IV** - General Conditions

1. If the date specified in Section I, Item 4, above is not met, the funds will no longer be available for the project.



2. This Agreement shall become effective on the first date mentioned above. It shall remain in full force and effect until amended, replaced upon the mutual consent of the State and the City, or until reimbursement funds are expended.
3. Periodically, and upon project completion, the parties shall meet at the project location to review project progress and verify all requirements have been met.
4. Funds for project construction shall be obligated and available in FY 2023
5. It is understood and agreed that the State is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The State reserves the right to terminate this Agreement if, in its sole judgement, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the State to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.
6. All provisions of this agreement are subject to the laws and regulation of the State of Idaho, including the Idaho Tort Claims Act, and of the United States.
7. Nothing in this agreement shall be construed as expanding the liability of either party. In the event of a liability claim, each party shall defend their own interests. However, the City will indemnify, hold harmless and defend the State from the expenses of and against suits, actions, claims, or losses of every kind, nature and description, including costs, expenses and attorney fees that may be incurred by reason of any negligent act or misconduct of the City or its officers, agents, or employees in the construction and maintenance of the VHD equipment.

**EXECUTION**

This Agreement is executed for the State by its District Engineer, and executed for the City by the Mayor, attested to by the City Clerk, with the imprinted corporate seal of the City of Idaho Falls.

**IDAHO TRANSPORTATION DEPARTMENT**

\_\_\_\_\_  
District 6 Engineer

**ATTEST:**

**CITY OF IDAHO FALLS**

\_\_\_\_\_  
City Clerk

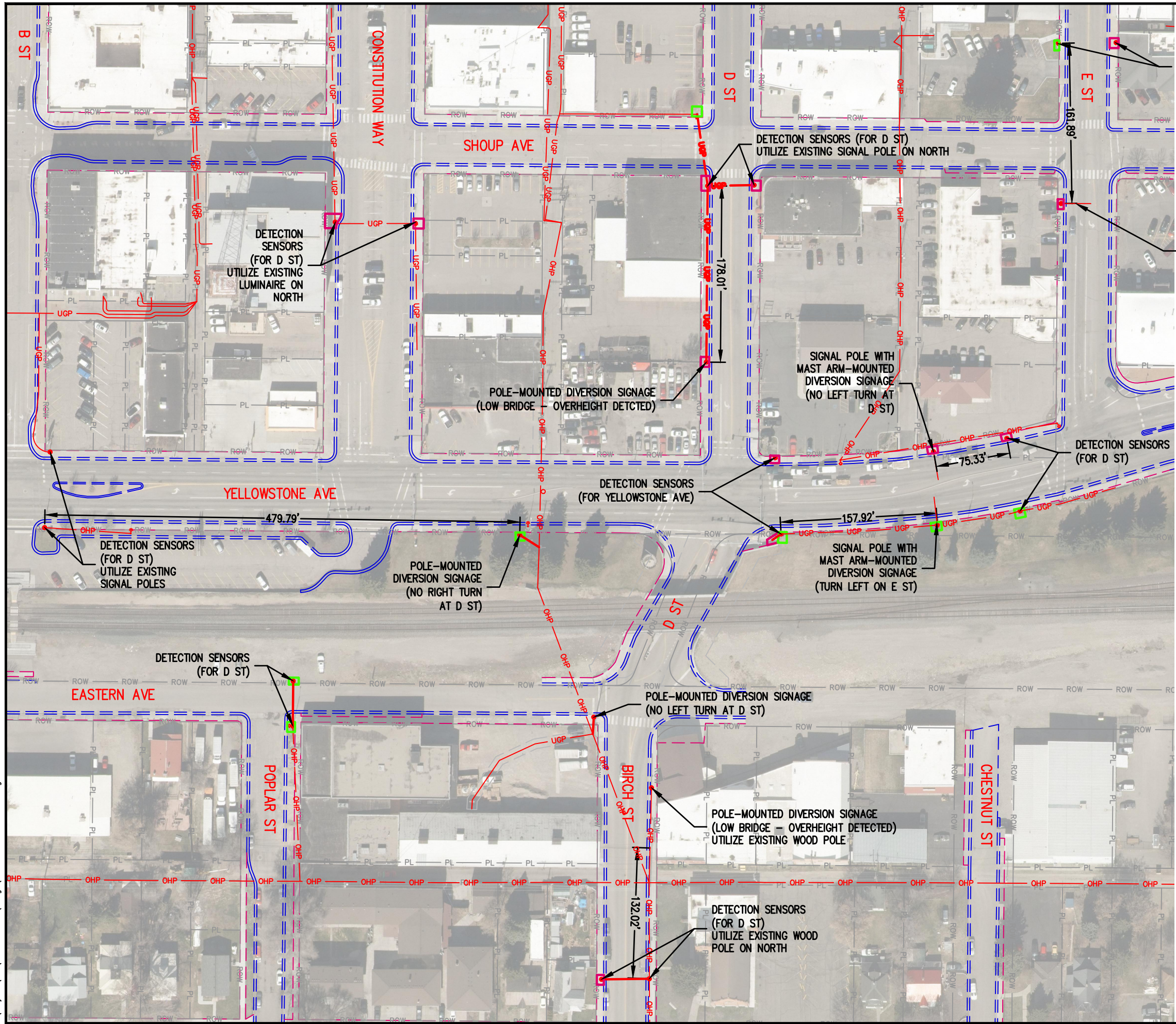
\_\_\_\_\_  
Mayor

(Seal)

By regular/special meeting  
on \_\_\_\_\_

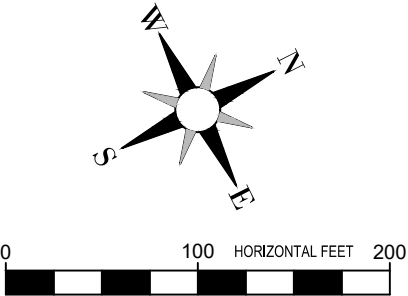


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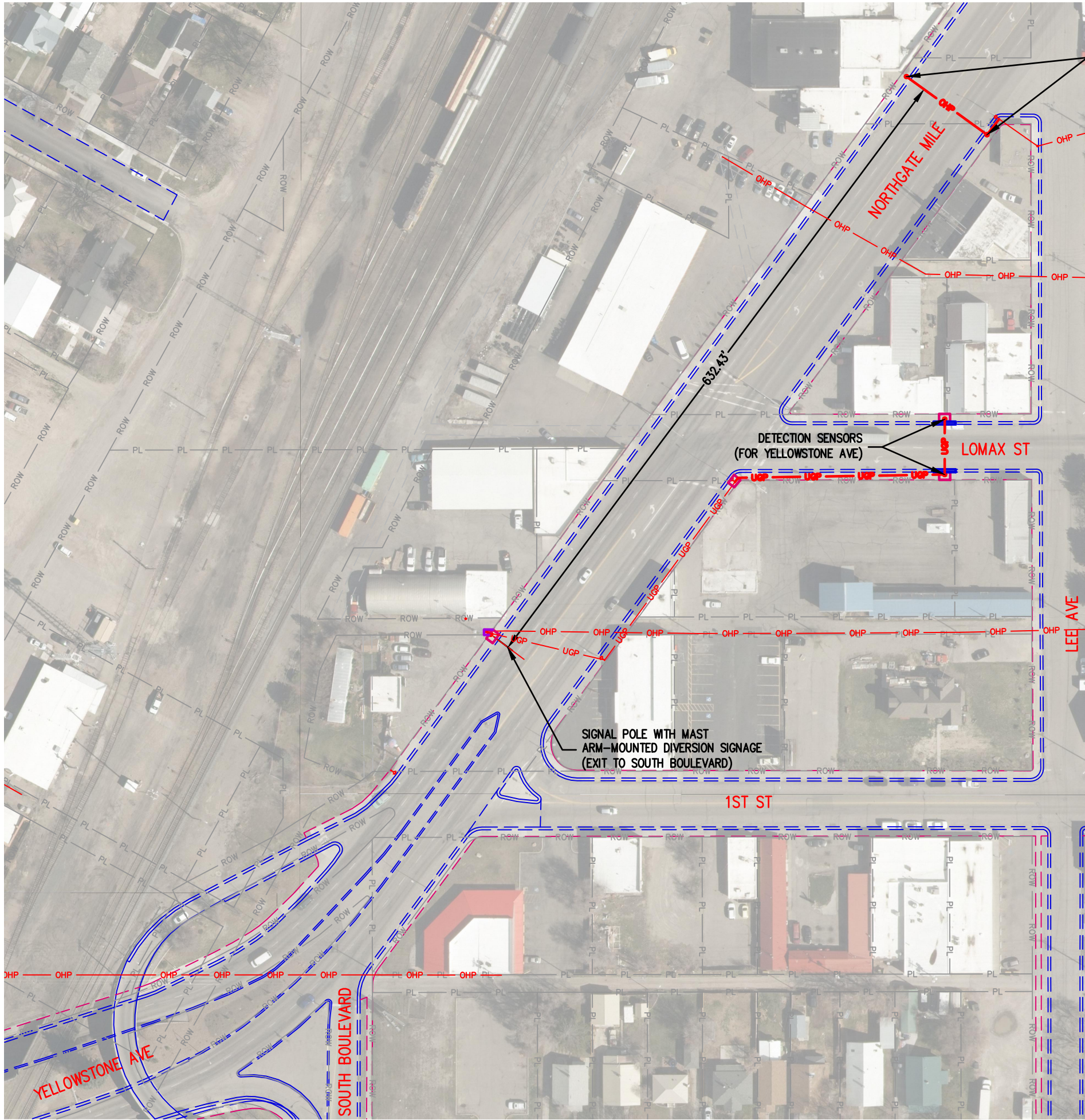
LEGEND		
EXISTING	PROPOSED	DESCRIPTION
		ALIGNMENT
		SIDEWALK
		CURB & GUTTER
		OVERHEAD POWER
		UNDERGROUND POWER
		PAVEMENT
		LANDSCAPE RESTORATION
		PROPERTY LINE
		RIGHT-OF-WAY
		POWER POLE
		STREET LIGHT
		OVDs LOCATION (DETECT/SIGN)

NOTE: THIS IS A PRELIMINARY EXHIBIT DISPLAYING APPROXIMATE LOCATIONS FOR THE OVERHEIGHT VEHICLE DETECTION SYSTEM. SYSTEM SPECIFICS TO BE DETERMINED THROUGH THE DESIGN AND BIDDING PROCESS.



AS BUILT DATE / BY: ____ / ____			
SCALE SHOWN IS FOR SHEET 11 x 17 ONLY			
ENGINEERING DIVISION		<b>VEHICLE HEIGHT DETECTION (VHD) INSTALLATION EXHIBIT</b> SHEET 1 OF 2	
CHECKED BY: KJF	DESIGN TECH: CEP		



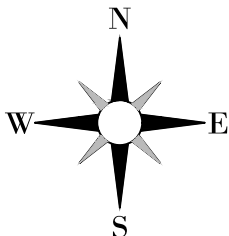


DETECTION SENSORS (FOR YELLOWSTONE AVE) UTILIZE EXISTING WOOD POLES AND OVERHEAD POWER. VERIFY CLEARANCE MEETS IDAHO FALLS POWER SERVICE POLICY REQUIREMENTS. IF HEIGHT IS INSUFFICIENT, REPLACE EXISTING POLES WITH NEW TALLER POLES (GROUND DISTURBANCE TO EXISTING SIDEWALK)

### LEGEND

EXISTING	PROPOSED	DESCRIPTION
		ALIGNMENT
		SIDEWALK
		CURB & GUTTER
		OVERHEAD POWER
		UNDERGROUND POWER
		PAVEMENT
		LANDSCAPE RESTORATION
		PROPERTY LINE
		RIGHT-OF-WAY
		POWER POLE
		STREET LIGHT
		OVDS LOCATION (DETECT/SIGN)

NOTE: THIS IS A PRELIMINARY EXHIBIT DISPLAYING APPROXIMATE LOCATIONS FOR THE OVERHEIGHT VEHICLE DETECTION SYSTEM. SYSTEM SPECIFICS TO BE DETERMINED THROUGH THE DESIGN AND BIDDING PROCESS.



AS BUILT DATE / BY:

SCALE SHOWN IS FOR SHEET 11 x 17 ONLY

ENGINEERING DIVISION



VEHICLE HEIGHT DETECTION (VHD) INSTALLATION EXHIBIT SHEET 2 OF 2

CHECKED BY: KJF

DESIGN TECH: CEP

DATE PLOTTED: 5/1/2023

SHEET NO. 2 OF 2



# Memorandum

File #: 23-154

City Council Meeting

**FROM:** Chris H Fredericksen  
**DATE:** Monday, May 1, 2023  
**DEPARTMENT:** Public Works

## Subject

Agreement to Purchase Water Right from Idaho Water Company, LLC.

## Council Action Desired

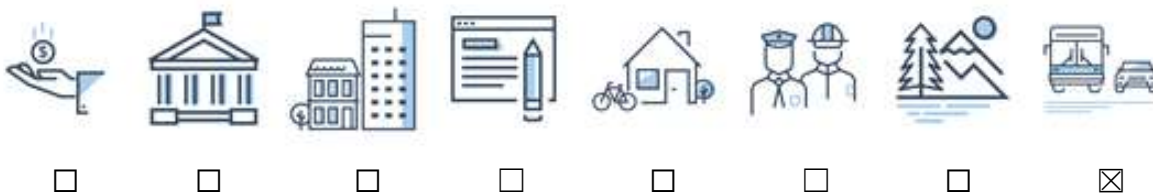
- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the Agreement to Purchase Water Right from the Idaho Water Company, LLC, and authorize the Mayor and City Clerk to execute the document (or take other action deemed appropriate).

## Description, Background Information & Purpose

The purpose of the Agreement is to purchase a water right with a priority date of May 3, 1971, a diversion rate of 0.76 cubic feet per second, and an annual volumetric limit of 182 acre-feet.

## Alignment with City & Department Planning Objectives



This project supports the community-oriented result of reliable public infrastructure by securing additional water rights to allow for a growing community.

## Interdepartmental Coordination

N/A

## Fiscal Impact

The cost to purchase the water right is \$6,000 per purchased water right per acre, for 52 acres, amounting to \$312,000. Cost allocation for this purchase will come from the Water Division and sufficient funding and budget authority exist to complete the purchase.

## Legal Review

The Agreement was prepared by the City's Water Attorney, Rob Harris, and reviewed by the City Attorney.

2023-036

# AGREEMENT TO PURCHASE WATER RIGHT

## 1.0 EFFECTIVE DATE

This Agreement to Purchase Water Right (the “Agreement”) is effective April 25, 2023 (the “Effective Date”).

## 2.0 PARTIES

The parties to this Agreement are **Idaho Water Company, LLC** an Idaho limited liability company, (the “Seller”) and the **City of Idaho Falls, Idaho**, a municipal corporation of the State of Idaho (the “Buyer”). Buyer and Seller may be referred to herein collectively as the “Parties” or individually as a “Party.”

## 3.0 DESCRIPTION OF WATER RIGHT

Seller holds an Option to Purchase Idaho Water Right No. 27-7017 (the “Water Right”), as it is described in the records of the Idaho Department of Water Resources (hereafter “IDWR” or the “Department”). Seller desires to sell to Buyer, and Buyer agrees to purchase from Seller, the following described *portion* of the Water Right to be used by Seller for municipal purposes on the terms and conditions described in this Agreement:

Source:	Groundwater
Purpose:	Irrigation
Priority Date:	May 3, 1971
Quantity (Diversion Rate):	0.76 cfs of the total authorized 4.12 cfs
Quantity (Volume):	182 acre-feet per annum
Place of Use (Acreage):	52 acres of the 281 authorized acres

The above-described portion of the Water Right is referred to hereafter as the “Purchased Water Right.”

## 4.0 PURCHASE PRICE AND EARNEST MONEY DEPOSIT

The purchase price for the Purchased Water Right is Six Thousand Dollars (\$6,000.00) per Purchased Water Right acre for a total of Three Hundred Twelve Thousand Dollars (\$312,000.00) (the “Purchase Price”). Contemporaneous with the execution of this Agreement, Buyer shall deliver to Seller earnest money in the amount of Fifteen Thousand Six Hundred Dollars (\$15,600.00) (the “Earnest Money”). The Earnest Money shall be applied towards the Purchase Price at closing or otherwise disposed of as provided herein. It is anticipated that IDWR will reduce the volume authorized under the Purchased Water Right as part of the conversion (or “transfer”) of the Purchased Water Right from irrigation to municipal use (as described in paragraph 5.0 below) and, in such event, there shall be no reduction in the Purchase Price. However, if IDWR approves the transferred Purchased Water Right for less than the 0.76 cfs of the Purchased Water Right, then the Purchase Price shall be reduced by Six Thousand Dollars (\$6,000.00) for each reduction of 0.0146 cfs<sup>1</sup> or portion thereof in the order from IDWR approving the transfer application described in paragraph 5.0 below.

## 5.0 TRANSFER APPLICATION

Within 30 days after both Parties sign this Agreement, Buyer will file with IDWR an *Application for Transfer of Water Right* (the “Transfer”) to amend and move the Purchased Water Right to Buyer’s desired location(s) and amend the nature of use of the Purchased Water Right from irrigation to municipal use in accordance with current IDWR policy. The Buyer’s selected Point of Diversion (hereinafter “POD”) and Place of Use (hereinafter “POU”) will be listed as the “TO” POD and POU in the Transfer prepared by Seller. The Parties will cooperate in obtaining IDWR approval of the Transfer and will provide and execute any necessary documents requested by IDWR. Seller will be responsible

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<sup>1</sup> This value is calculated by dividing 0.76 cfs by 52 acres to arrive at a diversion rate per acre of 0.0146 cfs. The diversion rate element of the Purchased Water Right is the critical water right element for Buyer and, as such, a loss of diversion rate equivalent to the diversion rate per acre will result in a reduction in the purchase price of the price per acre to buy the Purchased Water Right (at \$6,000.00 per acre).



for the costs to file the Transfer, including its own attorney fees, consultant fees, and filing fees associated with preparation of the Transfer. In the event this Agreement is terminated pursuant to paragraph 7 of this Agreement, Buyer shall at its sole expense take such action as may be required to void or reverse the Transfer to return the Purchased Water Right to the condition they existed on the Effective Date. Buyer will participate in reviewing the Transfer, support Seller in any protest hearings that may occur related to the IDWR transfer application, and not unnecessarily delay or hinder approval of any changes necessary to the Transfer that Seller may propose.

## **6.0      TRANSFER COSTS**

Seller agrees to pay the costs and expenses associated with the Transfer, including without limitation its own consultant fees, mitigation costs and related fees, and its own attorney fees in the case of protests and hearings related to the Transfer. If the Transfer is protested and Buyer decides to pursue the administrative contested case to hearing, Buyer shall be responsible for its own attorney fees and costs associated with the contested case. Title to the Purchased Water Right will remain with either Idaho Water Company, LLC, or the current water right owner, until Seller executes the Special Warranty Deed on the Closing date. Should Buyer choose to be represented by legal counsel in this matter, including during the course of any protests, administrative proceedings or other hearings, Buyer will be responsible for its own attorney fees and costs associated with accomplishing the Transfer.

## **7.0      CONTINGENCIES**

If the Transfer is protested, Buyer may terminate this Agreement and the Parties will have no further obligation to each other. In such a case, the Earnest Money will be retained by the Seller for costs associated with preparing the Transfer and facilitating the application through hearings and other proceedings, including, but not limited to, its costs for engineering, consulting, and attorney fees. In the event IDWR issues a final order denying the Transfer or in the case IDWR approves the Transfer but with adjustments to the diversion rate or imposes conditions that materially devalue the Purchased Water Right for Buyer's intended purposes (in either case, no matter whether the final order results from a contested case or not), then Buyer, in its sole discretion and upon written notice to Seller, may terminate this Agreement and the Parties will have no further obligation to each other. In such a case, the Earnest Money will be retained by the Seller for costs associated with preparing the Transfer and facilitating the application through hearings and other proceedings, including, but not limited to, its costs for engineering, consulting, and attorney fees. Notwithstanding the foregoing, either Party may appeal any order by IDWR concerning the transfer of the Purchased Water Right through the Idaho court system at such Party's sole cost and expense, until there is a final unappealable decision issued by an Idaho court. Buyer shall have fourteen (14) days after the issuance date of a final unappealable decision issued by an Idaho court to terminate this Agreement. If Buyer elects not to terminate this Agreement within the fourteen (14) day period, the Parties shall proceed to close the Agreement within twenty-eight (28) days of the issuance date of a final unappealable decision issued by an Idaho court.

## **8.0      CLOSING**

Closing of the Purchased Water Right (the "Closing") shall occur at the offices of Holden, Kidwell, Hahn & Crapo, P.L.L.C, or at another location mutually agreed by the Parties. At Closing, Buyer and Seller shall execute (with acknowledgements, as needed) and/or deliver all instruments, documents, and the Purchase Price (less the Earnest Money) for the Purchased Water Right. The documents Seller shall deliver to Buyer at closing include: (i) a Special Warranty Deed (the "Deed") for the Purchased Water Right<sup>2</sup> substantially in the form attached to this Agreement as **Exhibit 1**; and (ii) any lien release or other documents reasonably requested to confirm the conveyance of the Purchased Water Right free and clear of encumbrances. The cost of recording the Deed shall be paid by Buyer. All other expenses not specifically referenced in this Agreement with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

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<sup>2</sup> The Parties understand that once the IDWR transfer of the Purchased Water Right is complete, the transferred Purchased Water Right will be given new water right numbers and those numbers will be included on the Special Warranty Deed.

**9.0**      **SELLER'S WARRANTIES**

Seller warrants that:

- A.        The Purchased Water Right is not subject to past forfeiture or abandonment; and
- B.        Seller has not sold the Purchased Water Right contemplated for transfer to any other person or entities.

**10.0**     **OBLIGATION TO AVOID FORFEITURE**

While this Agreement is in effect, the Party in possession shall continue use and/or protection of the Purchased Water Right in a manner to avoid forfeiture.

**11.0**     **NO BROKER OR AGENT**

Del Kohtz, member of Idaho Water Company, LLC, discloses that he is a licensed real estate agent acting for his own account and does not represent Buyer or Seller as an Agent under this Agreement.

**12.0**     **BENEFITS**

The covenants, conditions and terms of this Agreement shall extend to and be binding upon the inure to the benefit of the heirs, administrators, executors, and assigns to the Parties hereto.

**13.0**     **CONSTRUCTION**

The Parties acknowledge that each has had opportunity to have this Agreement reviewed by an attorney and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement or any amendments or exhibits and this Agreement shall be construed according to its fair meaning and not strictly for or against either Party.

**14.0**     **COUNTERPARTS**

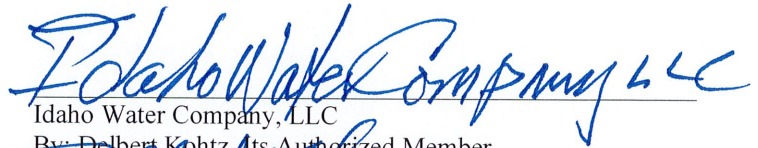
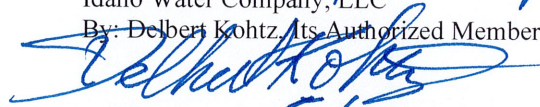
This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A PDF or other electronic signature will be considered an original.

**15.0**     **ENTIRE CONTRACT**

This Agreement constitutes the entire understanding between the Parties with respect to the Water Right and shall supersede and take the place of any other oral or written agreement of the Parties relating to the Water Right.

IN WITNESS WHEREOF, the Parties have hereunto executed this document consisting of four pages and one exhibit, in duplicate, on the day and year written below.

SELLER:

  
Idaho Water Company, LLC  
By: Delbert Kohtz, Its Authorized Member  
  
DATE: 5/3/2023

BUYER:

\_\_\_\_\_  
City of Idaho Falls

By: \_\_\_\_\_, Its Authorized Officer  
(print name)

DATE \_\_\_\_\_/\_\_\_\_\_/2023

ATTEST

\_\_\_\_\_  
Jasmine Marroquin  
City Clerk, City of Idaho Falls

## EXHIBIT 1 - FORM OF DEED

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When Recorded return to:

(Space above line for Recorder's use only)

### SPECIAL WARRANTY DEED FOR WATER RIGHT

Idaho Water Company LLC, an Idaho limited liability company, whose address is 1135 Valley Rd. South, Eden, Idaho 83325 ("Grantor"), does hereby grant, bargain, sell, assign, and convey unto \_\_\_\_\_ (the "Grantee"), whose address is \_\_\_\_\_, \_\_\_\_\_, Idaho, and to Grantee's heirs, successors, and assigns forever, that portion of Water Right No. \_\_\_\_\_ and Water Right No. \_\_\_\_\_ that had been appurtenant to the \_\_\_\_\_ County, State of Idaho, real property described as \_\_\_\_\_ Boise, Meridian (the "**Water Right**"), and subsequently severed therefrom by Idaho Department of Water Resources transfer # \_\_\_\_\_.

Grantor assigns to Seller any other interest it may have in the Water Right including any claim, permit, license, or shares of stock evidencing, claiming, or representing such Water Right.

To the extent the water Right, if any of them, are represented by a permit or other property not conveyable by deed, this deed shall be deemed and shall operate as a Bill of Sale therefore.

Grantor hereby covenants and warrants to Grantee as follows:

that Grantor is the owner in fee simple of the Water Right; and

Grantor has the authority to convey the Water Right to Grantee; and

that Grantor has not conveyed any of the identified portions of the Water Right to anyone other than Grantee; and

the Water Right are free from all liens, claims, or encumbrances.

Grantor makes no other covenants or warranties as to the Water Right.

Grantor retains no reversionary interest in the Water Right.

*(End of Text, Signature Page Follows)*

IN WITNESS, WHEREOF, the undersigned authorized Member of Grantor, acting on behalf of Grantor, has caused his name to be hereunto subscribed on the date shown below.

Grantor: IDAHO WATER COMPANY, LLC

Dated: \_\_\_\_\_

By: // FORM DOCUMENT DO NOT SIGN//

Name: Delbert G. Kohtz

Title: Member, Idaho Water Company, LLC

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Delbert G. Kohtz, known and identified by me to be a Member of Idaho Water Company, LLC, an Idaho limited liability company, that executed this instrument or the person who executed this instrument on behalf of said limited liability company, and acknowledged to me that such limited liability 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.

(SEAL)

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_, Idaho  
Commission expires: \_\_\_\_\_

# Memorandum

**File #:** 23-148

**City Council Meeting**

**FROM:** Wade Sanner, Director  
**DATE:** Thursday, April 27, 2023  
**DEPARTMENT:** Community Development Services

## Subject

A vacation of a portion of the right-of-way of Tara Street and public utility easements associated with Freeway Commercial Center Division No. 4.

## Council Action Desired

☒ Ordinance ☐ Resolution ☐ Public Hearing  
☐ Other Action (Approval, Authorization, Ratification, etc.)

Approve the ordinance vacating of a portion of the right-of-way of the Tara Street and public utility easements under a suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary (or consider the Ordinance on the first reading, reject the ordinance, or take other action deemed appropriate).

## Description, Background Information & Purpose

A vacation of a portion of Tara Street located in a portion of the SW ¼ of Section 24, Township 2 North, Range 37 East, a Vacation of a portion of a public utility easement located in a portion of the SW ¼ of Section 24, Township 2 North, Range 37 East, and a Vacation of a public utility easement and a public storm pond easement located in a portion of the SW ¼ of Section 24, Township 2 North, Range 37 East. The vacations must occur prior to the approval of the plat for the Freeway Commercial Center Division No. 4. Staff recommends approval of the ordinance for vacations.

## Alignment with City & Department Planning Objectives



Vacations support the community-oriented result of well-planned growth and development.

## Interdepartmental Coordination

Public Works and Planning have reviewed this Ordinance and approve the Right-of-Way and Public Utility Vacations.

## Fiscal Impact



N/A

**Legal Review**

This Ordinance was reviewed by the City Attorney's Office.

## **ORDINANCE NO. 2023-**

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR THE VACATIONS OF RIGHT-OF-WAY LOCATED WITHIN THE CITY OF IDAHO FALLS AND LEGALLY DESCRIBED IN SECTION 1 OF THIS ORDINANCE; PROVIDING THAT TITLE TO SAID VACATED RIGHT-OF-WAY SHALL VEST AS SPECIFIED IN SECTION 3 OF THIS ORDINANCE; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the underlying property is being replatted as Freeway Commercial Center Division No. 4 and has requested the vacation of a portion of Tara Street and portions of two (2) platted easements to better facilitate the development of the property; and

WHEREAS, the City of Idaho Falls Public Works Department has reviewed the request and recommend the request be approved; and

WHEREAS, the utilities have agreed to the vacation as long as the redevelopment of the property dedicates street and grants easements that encompasses their existing utilities; and

WHEREAS, the developer will dedicate a street and grant the needed easements in the new plat.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, AS FOLLOWS:

### **SECTION 1. Vacation.**

- A. A vacation of a portion of Tara Street located in portion of SW 1/4 of Section 24, T 2 N, R 37E, City of Idaho Falls, Bonneville County, Idaho, as more particularly described in Exhibit "A".
- B. A vacation of a portion of a public utility easement located in portion of SW 1/4 of Section 24, T 2 N, R 37E, City of Idaho Falls, Bonneville County, Idaho, as more particularly described in Exhibit "B".
- C. A vacation of a public utility easement and a public storm pond easement located in portion of SW 1/4 of Section 24, T 2 N, R 37E, City of Idaho Falls, Bonneville County, Idaho, as more particularly described in Exhibit "C".

**SECTION 2. Exceptions from Vacation.** Vacation of property described in Section 1 of this Ordinance shall not include any other easements, public right-of-way, or any franchise rights that are not described in Section 1 above.

**SECTION 3. Right-of-Way Vacation.** Council deems it expedient for the public good and to be in

the best interests of the adjoining properties that the property described in Section 1 of this Ordinance be and the same is hereby vacated in its entirety to DJT Properties LLC., whose mailing address is P.O. Box 516, Rexburg ID 83440-0516.

**SECTION 4.** Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

**SECTION 5.** Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

**SECTION 6.** Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST:

\_\_\_\_\_  
Corrin Wilde, City Clerk

\_\_\_\_\_  
Rebecca L. Noah Casper, Ph.D., Mayor

(SEAL)

STATE OF IDAHO                     )  
  ) ss:  
County of Bonneville                )

I, CORRIN WILDE, CITY CLERK OF THE CITY OF IDAHO FALLS,  
IDAHO, DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance  
entitled: "AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A  
MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR  
THE VACATIONS OF RIGHT-OF-WAY LOCATED WITHIN THE CITY OF  
IDAHO FALLS AND LEGALLY DESCRIBED IN SECTION 1 OF THIS  
ORDINANCE; PROVIDING THAT TITLE TO SAID VACATED RIGHT-OF-  
WAY SHALL VEST AS SPECIFIED IN SECTION 3 OF THIS ORDINANCE;  
PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND  
EFFECT FROM AND AFTER PASSAGE, APPROVAL, AND PUBLICATION  
ACCORDING TO LAW."

(SEAL)

\_\_\_\_\_  
Corrin Wilde, City Clerk





## Exhibit "A"

### LEGAL DESCRIPTION (Page 1 of 1)

A vacation of a portion of Tara Street located in portion of SW 1/4 of Section 24, T 2 N, R 37E, City of Idaho Falls, Bonneville County, Idaho.

Commencing at the West 1/4 Corner of said Section 24 from which the SW Corner of said Section 24 bears S00°12'14"E, 2636.52 feet, the Basis of Bearing of this description, run thence N88°30'17"E along the northerly line of said SW 1/4 of said Section 24, 836.47 feet; thence leaving said northerly line S01°29'34"E, 473.59 feet to a point on the northerly right-of-way curve of Tara Street said point being the Point of Beginning.

Thence along a curve to the right 68.68 feet having a radius of 50.00 feet, a central angle of 78°41'47" having a chord of N84°12'59"W, 63.40 feet to a point of reverse curve;

Thence along a curve to the left 197.77 feet having a radius of 50.00 feet, a central angle of 226°37'38" having a chord of S21°49'06"W, 91.84 feet;

Thence N88°30'17"E, 9.92 feet to a point of curve;

Thence along a curve to the left 140.68 feet having a radius of 227.48 feet, a central angle of 35°25'59" having a chord of N71°22'32"E, 138.45 feet;

Thence N51°55'33"W, 55.77 feet to the Point of Beginning.

Parcel contains 0.293 Acres.

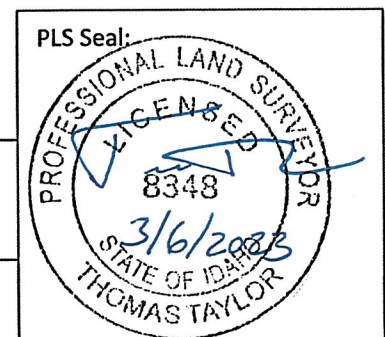
Submitted by:

Firm Name: Keller Associates

Contact Name: Thomas Taylor

Phone Number: (208) 542-6120

Email: TTaylor@KellerAssociates.com



Overall Document Page Range: 1 of 1

Overall Document Page Range: 1 of 1





## Exhibit "B"

### LEGAL DESCRIPTION (Page 1 of 1)

A vacation of a portion of a public utility easement located in portion of SW 1/4 of Section 24, T 2 N, R 37E, City of Idaho Falls, Bonneville County, Idaho.

Commencing at the West 1/4 Corner of said Section 24 from which the SW Corner of said Section 24 bears S00°12'14"E, 2636.52 feet, the Basis of Bearing of this description, run thence N88°30'17"E along the northerly line of said SW 1/4 of said Section 24, 836.47 feet; thence leaving said northerly line S01°29'34"E, 473.59 feet to a point on the northerly right-of-way curve of Tara Street said point being the Point of Beginning.

Thence continuing along said right-of-way the following courses:

Along a curve to the right 68.68 feet having a radius of 50.00 feet, a central angle of 78°41'47" having a chord of N84°12'59"W, 63.40 feet to a point of reverse curve; thence along a curve to the left 124.23 feet having a radius of 50.00 feet, a central angle of 142°21'24" having a chord of S63°57'13"W, 94.65 feet;

Thence leaving said right-of-way S88°30'17"W, 15.06 feet to a point of curve;

Thence along a curve to the right 160.00 feet having a radius of 65.00 feet, a central angle of 141°01'53" having a chord of N64°36'58"E, 122.56 feet to a point of reverse curve;

Thence along a curve to the left 48.07 feet having a radius of 35.00 feet, a central angle of 78°41'47" having a chord of S84°12'59"E, 44.38 feet;

Thence S33°33'52"E, 15.00 feet to the point of Beginning.

Parcel contains 0.069 Acres.

Submitted by:

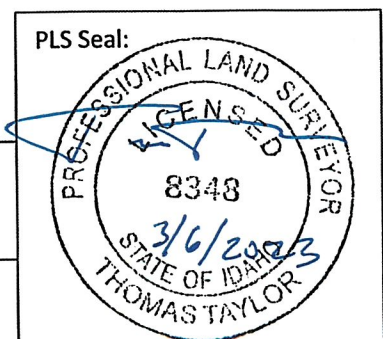
Firm Name: Keller Associates

Contact Name: Thomas Taylor

Phone Number: (208) 542-6120

Email: TTaylor@KellerAssociates.com

Overall Document Page Range: 1 of 1







## Exhibit "C"

### LEGAL DESCRIPTION (Page 1 of 1)

A vacation of A public storm pond easement located in portion of SW 1/4 of Section 24, T 2 N, R 37E, City of Idaho Falls, Bonneville County, Idaho.

Commencing at the West 1/4 Corner of said Section 24 from which the SW Corner of said Section 24 bears S00°12'14"E, 2636.52 feet, the Basis of Bearing of this description, run thence N88°30'17"E along the northerly line of said SW 1/4 of said Section 24, 836.47 feet; thence leaving said northerly line S01°29'34"E, 473.59 feet to a point on the northerly right-of-way curve of Tara Street; thence leaving said northerly right-of-way S51°55'33"E, 55.77 feet to a point on the southerly right-of-way curve of Tara Street said point being the Point of Beginning.

Thence leaving said right-of-way S53°38'51"W, 240.76 feet;

Thence N14°45'28"W, 104.62 feet;

Thence N88°30'17"E, 57.52 feet to a point on the right-of-way curve of Tara Street;

Thence along said right-of-way the following courses:

Thence along a curve to the left 22.57 feet having a radius of 50.00 feet, a central angle of 25°51'51" having a chord of S78°33'47"E, 22.38 feet; thence N88°30'17"E, 9.92 feet to a point of curve; thence along a curve to the left 140.68 feet having a radius of 227.48 feet, a central angle of 35°25'59" having a chord of N71°22'32"E, 138.45 feet to the Point of Beginning.

Parcel contains 0.199 Acres.

Submitted by:

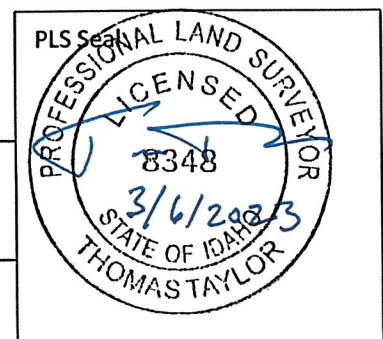
Firm Name: Keller Associates

Contact Name: Tom Taylor

Phone Number: (208) 542-6120

Email: TTaylor@KellerAssociates.com

Overall Document Page Range: 1 of 1



# Memorandum

File #: 23-147

City Council Meeting

**FROM:** Wade Sanner, Director  
**DATE:** Thursday, April 27, 2023  
**DEPARTMENT:** Community Development Services

## Subject

Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Freeway Commercial Center Division No. 4

## Council Action Desired

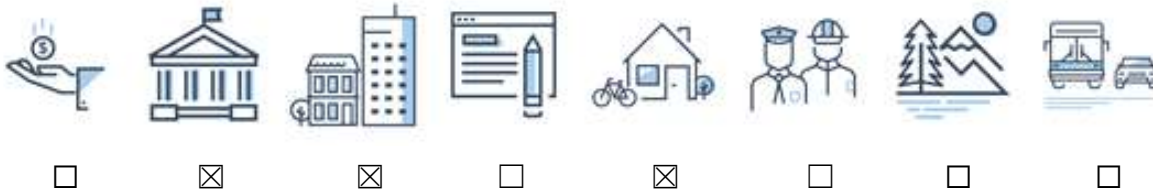
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

1. Approve the Development Agreement for the Final Plat for Freeway Commercial Center Division No. 4 and give authorization for the Mayor and City Clerk to sign said agreement (or take other action deemed appropriate).
2. Accept or Approve the Final Plat for Freeway Commercial Center Division No. 4 and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat (or take other action deemed appropriate).
3. Approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Freeway Commercial Center Division No. 4 and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

Attached is the application for the Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Freeway Commercial Center Division No. 4. The Planning and Zoning Commission considered this item at its December 6, 2022, meeting and unanimously voted to recommend approval for the final plat as presented. Staff concurs with this recommendation.

## Alignment with City & Department Planning Objectives



A successful Plat should be consistent with the Comprehensive Plan and Zoning Ordinance, which includes policies and goals related to Growth, Sustainability, Transportation, and Livable Communities.

**Interdepartmental Coordination**

The Final Plat was reviewed by staff from Fire, Idaho Falls Power, BMPO, Water, Planning, Sewer, and Engineering, Survey.

**Fiscal Impact**

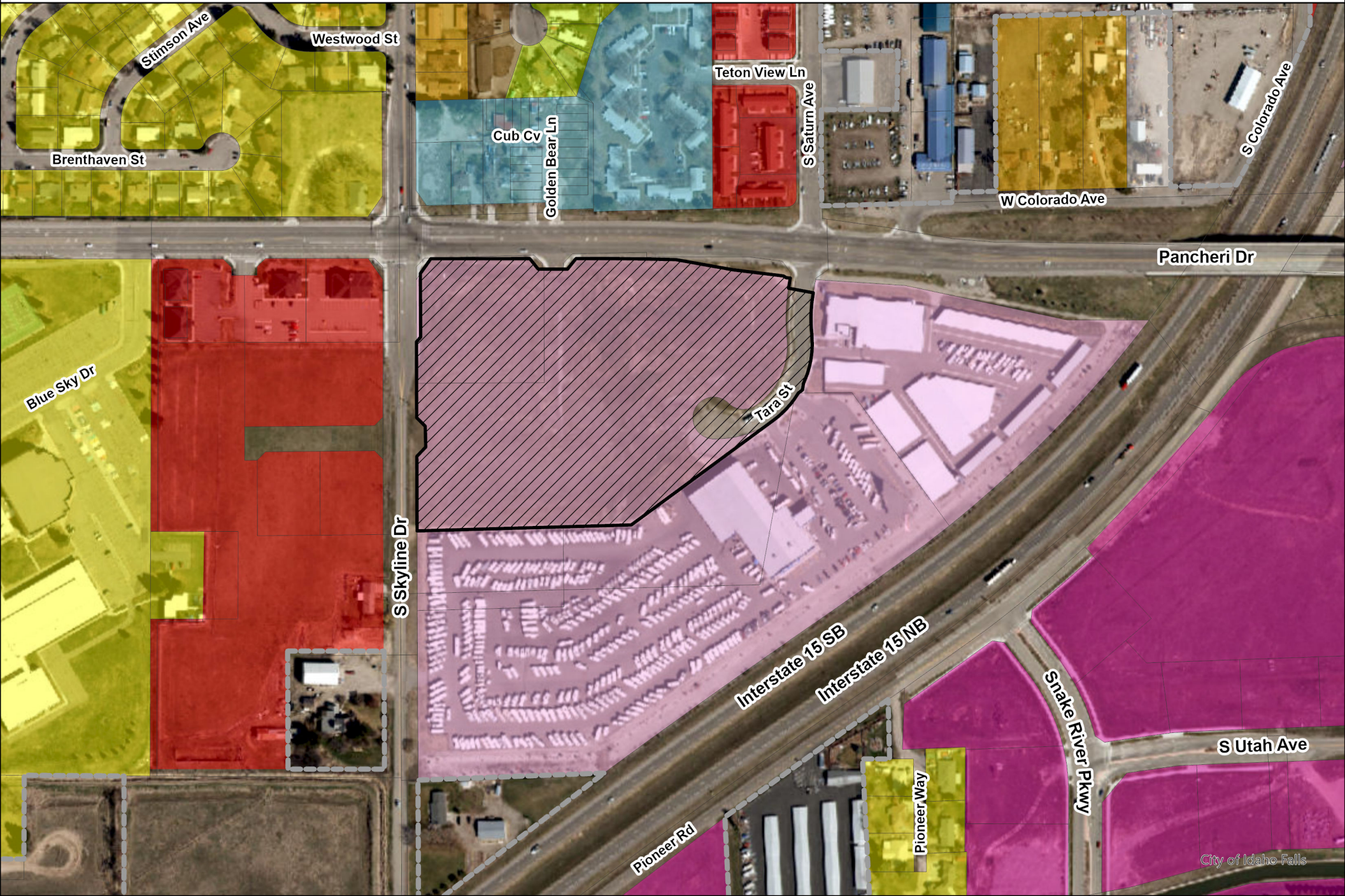
NA

**Legal Review**

This application has been reviewed by the City Attorney's Office and is consistent with applicable law.



RE	R1	TN	R3	PB	LC	R&D	I&M
RP	R2	RMH	R3A	CC	HC	LM	P



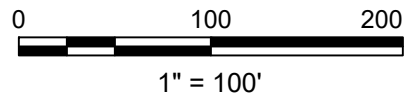
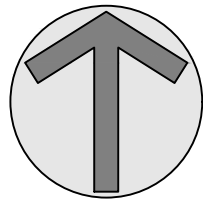






# FREEWAY COMMERCIAL CENTER DIVISION NO. 4

A SUBDIVISION OF THE CITY OF IDAHO FALLS, BONNEVILLE COUNTY, IDAHO  
ALSO BEING A REPLAT OF PORTIONS OF FREEWAY COMMERCIAL CENTER DIVISIONS NUMBERS 1, 2 AND 3.  
PART OF THE SW 1/4 OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 37 EAST, B.M., IDAHO



## LEGEND

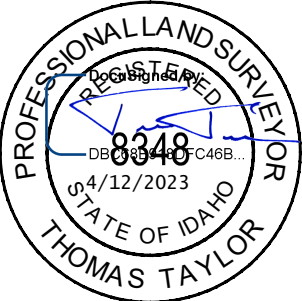
	FOUND 5/8" IRON ROD AS NOTED
	FOUND 1" BRASS CAP AS NOTED
	FOUND ALUMINUM CAP LS 8797
	SET 5/8" X 24" IRON ROD LS 8348
	SET 1/2" X 24" IRON ROD LS 8348
	CALCULATED POINT ( NOTHING FOUND OR SET)
	PUBLIC UTILITIES EASEMENT
	PLSS QUARTER SECTION - FOUND
	PLSS SECTION CORNER - FOUND
	ADJOINER LINES
	DEDICATED RIGHT OF WAY LINES
	EXISTING RIGHT OF WAY LINES
	CENTERLINE OF ROAD
	SECTION LINES
	15' P.U.E. EASEMENT UNLESS OTHERWISE NOTED
	E.A.E. - EMERGENCY ACCESS EASEMENT
	C.A.E. - PRIVATE CROSS ACCESS EASEMENT (GRANTED PURSUANT TO THE EXECUTION OF THIS DOCUMENT)

## REFERENCE DOCUMENTS

- RECORD OF SURVEY - INSTRUMENT NO. 1552050, DATED 5/03/2017
- RIGHT-OF-WAY PLAT TARA STREET CUL-DE-SAC - INSTRUMENT NO. 1552044, DATED 05/03/2017
- PLAT - FREEWAY COMMERCIAL CENTER DIVISION NO. 3 - INSTRUMENT NO. 1484603, DATED 10/30/2014
- RECORD OF SURVEY - INSTRUMENT NO. 1442849, DATED 04/04/2013
- RECORD OF SURVEY - INSTRUMENT NO. 1442850, DATED 04/04/2013
- LOT LINE ADJUSTMENT - INSTRUMENT NO. 1493580, DATED 03/24/2015
- RECORD OF SURVEY INSTRUMENT NO. 1690515, DATED 06/25/2021
- PLAT - FREEWAY COMMERCIAL CENTER DIVISION NO. 1, INSTRUMENT NO. 854079, DATED 07/02/1993
- PLAT - FREEWAY COMMERCIAL CENTER DIVISION NO. 2, INSTRUMENT NO. 992260, DATED 03/24/1999
- PLAT - SAFARI 66 DIVISION NO. 1 - INSTRUMENT NO. 1470313, DATED 04/07/2014
- PLAT - SAFARI 66 DIVISION NO. 2 - INSTRUMENT NO. 990475, DATED 03/02/1999
- WARRANTY DEED'S INSTRUMENT NUMBER 1400330 AND 1400774

## BASIS OF BEARING

THE BEARING ALONG THE WEST LINE OF SECTION 24 BETWEEN FOUND MONUMENTS SHOWN HEREON IS THE BASIS OF BEARING FOR ALL OTHER BEARINGS LISTED ON THIS SURVEY. THIS WAS AN ACTUAL MEASUREMENT OF THOSE MONUMENTS. THE NORTH LINE OF THE SE 1/4 OF SECTION 24 IS N 88°30'17"E, 2640.80 FEET, THIS BEARING RELATES DIRECTLY TO THE "CITY OF IDAHO FALLS COORDINATE SYSTEM OF 2004". WHICH IS DERIVED FROM THE IDAHO STATE PLANE COORDINATE SYSTEM (EAST ZONE 1101) US SURVEY FEET AND USING A COMBINED SCALE FACTOR OF 1.000277265 FOR A GRID TO GROUND CONVERSION, (REFERENCE FRAME NAD\_83(2011), EPOCH 2010.0000). THE SYSTEM ORIENTATION IS BASED ON GRID NORTH ALONG THE EAST ZONE CENTRAL MERIDIAN. NO CONVERSION ANGLE HAS BEEN APPLIED.

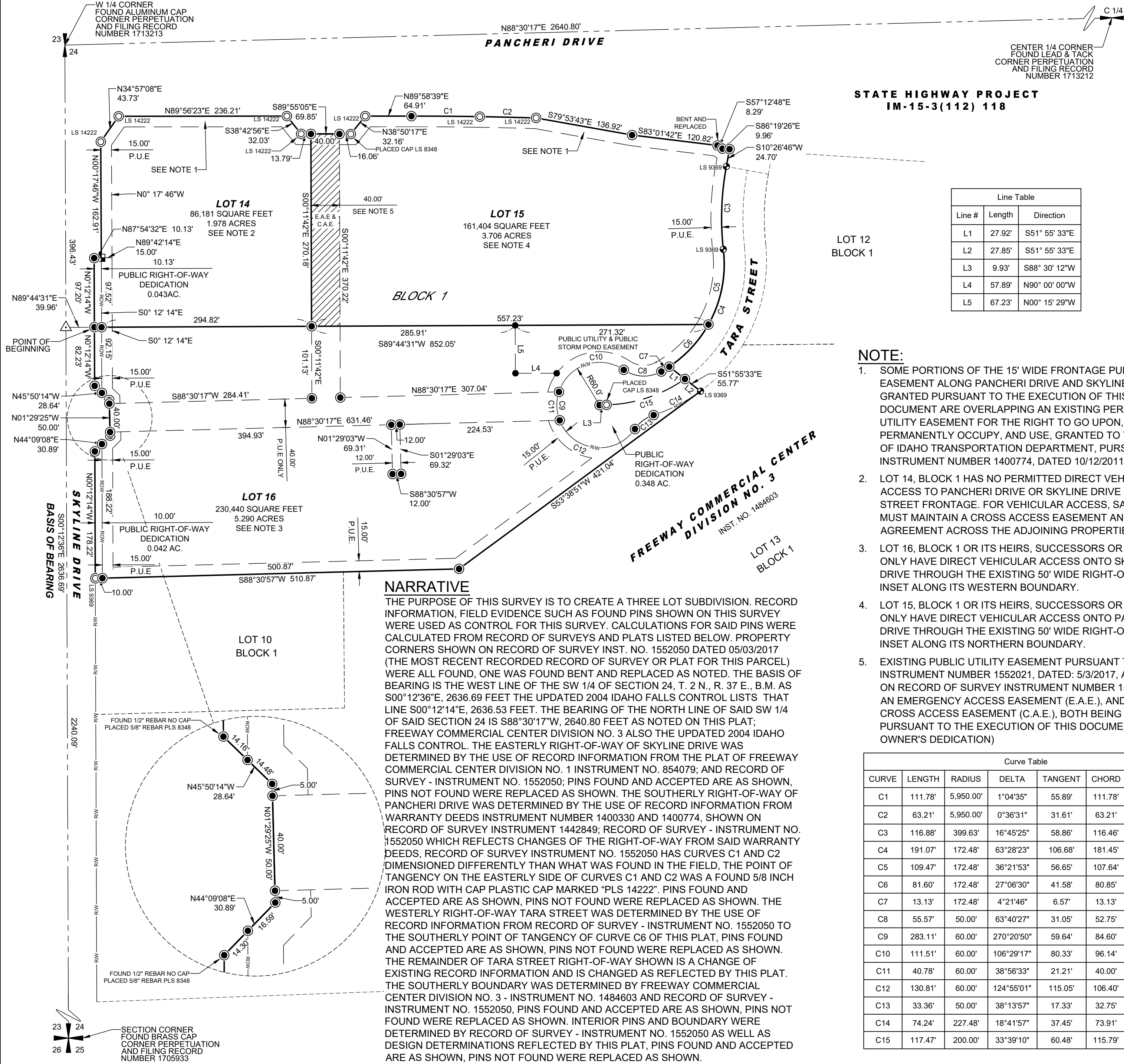


## FREEWAY COMMERCIAL CENTER DIVISION NO. 4

SCALE: PER BARSSCALE	DRAWN: ALH	JOB #: 221238
DATE: April 12, 2023	CHECKED: TT	SHEET: 1 OF 2
DRAWING FILE: S:\PROJECTS\2021\221238 CAMPING WORLDSURVEY WORKING\CADD - FREEWAY COMMERCIAL NO 4 FP.DWG		

**KELLER**  
ASSOCIATES

3153 McNeil Drive  
Idaho Falls, Idaho 83402  
(208) 542-6120





OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS: that the undersigned DJT PROPERTIES LLC a Idaho Limited Liability Company, is the lawful OWNER of the tract of land included within the boundary description shown hereon and has caused the same to be platted and divided into blocks, lots, and streets, which plat shall hereafter be known as FREEWAY COMMERCIAL CENTER DIVISION NO. 4 a subdivision of the City of Idaho Falls, Idaho, Bonneville County, Idaho.

BE IT FURTHER KNOWN that OWNER does hereby dedicate grant and convey to the public, all streets and rights-of-way shown hereon, that OWNER also does hereby grant and convey to the City of Idaho Falls all public easements forever as irrevocable permanent non-exclusive public easements as shown and described hereon.

OWNER does hereby grant and convey to Lots 14 and 16 of Block 1, a private cross-access easement as shown and described hereon and labeled as C.A.E., said private cross-access easement is granted by the mutual consent and agreement between the parties, the adequacy and receipt of which is hereby acknowledged, that the OWNER also does hereby grant, bargain, and convey to the owners of said lots hereafter referred to as, BENEFITED C.A.E. HOLDERS, their licensees, invitees, agents, successors, and assigns, the full and free right for said BENEFITED C.A.E. HOLDERS and said BENEFITED C.A.E. HOLDERS' tenants, invitees, licensees, and visitors to the private cross-access agreements described herein in common with all persons designated to have a like right at all times hereafter, for ingress and egress and vehicular access, and a perpetual easement for roadway purposes, on and across the property, except for parking. OWNER does hereby grant and convey to the City of Idaho Falls forever a non-exclusive irrevocable easement for right-of-way for emergency vehicles and emergency responders, across the emergency access easement labeled hereon as E.A.E., and hereafter referred to as E.A.E.

OWNER or its successors or assigns, agree they will construct no permanent structure within or upon any public easement shown hereon, and the City of Idaho Falls and its successors, assigns, permittees or licensees shall also have the right to remove, cut or trim any trees, brush, ornamental shrubbery or plant which may injure or interfere with the use thereof for its intended purposes, and City of Idaho Falls shall have the right, to remove any obstructions on said EAE which may injure or interfere with the City of Idaho Fall's use thereof, such right of removal may be exercised without prior notice to OWNER or its heirs, successors, or assigns.

OWNER or its heirs, successors or assigns further agree that they shall not plant any trees, brush, ornamental shrubbery or plants which may hinder the safe and efficient utilization of said easements.

OWNER or its heirs, successors or assigns, further agree that they shall construct no structures or maintain any obstructions on said EAE including but not limited to gates, barriers, or vehicles of any type.

OWNER or its heirs, successors or assigns, further agree to maintain the said EAE and to remove snow pursuant to the requirements of the International Fire Code §503 as it is amended from time to time, and as adopted by the City of Idaho Falls, Idaho.

OWNER or its heirs, successors or assigns hereby releases the City of Idaho Falls and its successors, assigns, permittees or licensees from any claim for damages, based upon concealed or undisclosed private improvements constructed or permitted to be constructed by OWNER or its successors or assigns within any public easements, subsequent to recording this subdivision, that may be incurred as a result of the City of Idaho Falls and its successors, assigns, permittees or licensees ordinary use of the public easements with due care.

OWNER or its heirs, successors or assigns do hereby warrant and shall defend such dedication and conveyances in the quiet and peaceful possession of the public or the City of Idaho Falls, or each lot owner as the case may be, against said OWNER and its heirs and assigns, and against every person whomsoever who lawfully holds or who later claims to have lawfully held any rights in said estate as of the date hereof.

IN WITNESS WHEREOF, OWNER has hereunto subscribed its seal and signature  
this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

DJT PROPERTIES, LLC, AN IDAHO LIMITED LIABILITY CORPORATION.

DAVID J. THUESON, MANAGING MEMBER \_\_\_\_\_.

BOUNDARY DESCRIPTION

A portion of SW 1/4 of Section 24, T. 2 N., R. 37 E., City of Idaho Falls, Bonneville County, Idaho, more particularly described as follows:

Commencing at the West 1/4 Corner of said Section 24 from which the SW Corner of said Section 24 bears S00°12'36"E, 2636.69 feet, the Basis of Bearing of this description, run thence S00°12'36"E along the westerly line of said Section 24, 396.43 feet; thence leaving said westerly line N89°44'31"E, 39.96 feet to a found 5/8" iron rod with a plastic cap marked "P.L.S. 8348" on the eastern right-of-way of Skyline Drive said Point being the Point of Beginning;

Thence along said easterly right-of-way the following courses:  
N00°12'14"W, 97.20 FEET; N87°54'32"E, 10.13 FEET; N00°17'46"W, 162.91 FEET; N34°57'08"E, 43.73 feet to a point on the southerly right-of-way of Pancheri Drive;  
Thence along said southerly right-of-way the following courses:  
N89°56'23"E, 236.21 feet; S38°42'56"E, 32.03 feet; S89°55'05"E, 69.85 feet; N38°50'17"E, 32.16 feet; N89°58'39"E, 64.91 feet to a point on a non- tangent curve from which the radius bears S00°00'04"E, 5950.00 feet; thence along said non-tangent curve to the right a distance of 111.78 feet, having a central angle of 01°04'35" having a chord of S89°27'46"E, 111.78 feet to a found 5/8" iron rod with a plastic cap marked "PLS 14222"; thence continuing along said curve to the right 63.21 feet, having a central angle of 00°36'31" having a chord of S88°37'13"E, 63.21 feet; S79°53'43"E, 136.92 feet; S83°01'42"E, 120.82 feet; S57°12'48"E, 8.29 feet to a found bent 5/8" iron rod, replaced with a 5/8" iron rod with a plastic cap marked "KA PLS 8348"; S86°19'26"E, 9.96 feet to a point on the westerly right-of-way of Tara Street;

Thence along said westerly right-of-way of Tara Street the following courses:  
S10°26'46"W, 24.70 feet to a point on a non-tangent curve; thence along said curve to the left 116.88 feet having a radius of 399.63 feet, a central angle of 16°45'25" having a chord of S02°07'07"W, 116.46 feet to a point of reverse curve; thence along said curve to the right 191.07 feet having a radius of 172.48 feet, a central angle of 63°28'23" having a chord of S24°41'56"W, 181.45 feet;  
Thence leaving said right-of-way S51°55'33"E, 55.77 feet to a point on the southerly right-of-way of Tara Street;  
Thence leaving said right-of-way S53°38'51"W, 421.04 feet;  
Thence S88°30'57"W, 510.87 feet to a point on the easterly right-of-way of Skyline Drive;  
Thence along the said easterly right-of-way the following courses:  
N00°12'14"W, 178.22 feet; N44°09'08"E, 30.89 feet; N01°29'25"W, 50.00 feet; N45°50'14"W, 28.64 feet;  
N00°12'14"W, 82.23 feet to the Point of Beginning.  
Said parcel contains 11.407 acres.

FREEWAY COMMERCIAL CENTER DIVISION NO. 4

A SUBDIVISION OF THE CITY OF IDAHO FALLS, BONNEVILLE COUNTY, IDAHO  
ALSO BEING A REPLAT OF PORTIONS OF  
FREEWAY COMMERCIAL CENTER DIVISIONS NUMBERS 1, 2 AND 3.  
PART OF THE SW 1/4 OF SECTION 24, TOWNSHIP 2 NORTH, RANGE 37 EAST, B.M., IDAHO

DRINKING WATER SYSTEM CERTIFICATE

Pursuant to I.C. §50-1334, the OWNER does hereby, certify that all lots shown on this plat are eligible to receive water from the City of Idaho Falls municipal water system, and said City has agreed in writing to provide culinary water service to said lots pursuant to the provisions of Title 8, Chapter 4 of the Idaho Falls City Code, as amended from time to time.

IN WITNESS WHEREOF, OWNER has hereunto set its signature this  
\_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

DAVID J. THUESON, MANAGING MEMBER OF DJT PROPERTIES, LLC

HEALTH DEPARTMENT CERTIFICATE OF APPROVAL

Sanitary restrictions as required by I.C. §50-1326 have been satisfied based on the Department of Environmental Quality (DEQ) approval of the design plans and specifications and the conditions imposed on the developer for continued satisfaction of the sanitary restrictions. Buyer is cautioned that at the time of this approval, no drinking water or sewer/septic facilities were constructed. Building construction can be allowed with appropriate building permits if drinking water or sewer facilities have since been constructed or if the developer is simultaneously constructing those facilities. If the developer fails to construct facilities or meet the other conditions of DEQ, then sanitary restrictions may be reimposed, in accordance with I.C. §50-1326, by the issuance of a certificate of disapproval, and no construction of any building or shelter requiring drinking water or sewer/septic facilities shall be allowed.

EASTERN IDAHO PUBLIC HEALTH DISTRICT

ENVIRONMENTAL HEALTH SPECIALIST, REHS \_\_\_\_\_ DATE \_\_\_\_\_

TREASURER'S CERTIFICATE

I, the undersigned County Treasurer in and for the County of Bonneville, State of Idaho, pursuant to the requirements of I.C. § 50-1308, do hereby certify that all County property taxes due for the property included in the Boundary Description shown hereon are current.

BONNEVILLE COUNTY TREASURER \_\_\_\_\_ DATE \_\_\_\_\_

IRRIGATION WATER RIGHTS RELEASE

The property included in this plat has petitioned for and been removed from all future irrigation water rights.

08-07-2014 \_\_\_\_\_ 1478789  
DATE \_\_\_\_\_ INSTRUMENT NO. \_\_\_\_\_

COUNTY SURVEYOR'S VERIFICATION

I certify that I am a Licensed Professional Land Surveyor in and for the State of Idaho and that I have examined this plat and find that it complies with I.C. § 50-1305.

DATE \_\_\_\_\_ BONNEVILLE COUNTY SURVEYOR, DAVID D. ROMRELL P.L.S. No. 12223

CITY'S ACCEPTANCE

The accompanying plat was duly accepted and approved and the grants and dedications are hereby accepted by the City Council of Idaho Falls adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

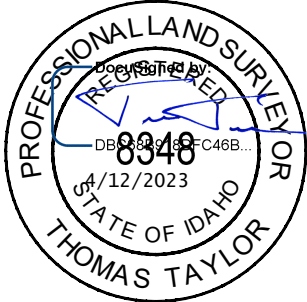
MAYOR \_\_\_\_\_ CITY CLERK \_\_\_\_\_

CITY ENGINEER \_\_\_\_\_ CITY SURVEYOR \_\_\_\_\_  
KENT J. FUGAL, PE 9247 KENNETH BALDWIN ROBERTS, PLS 9755

SURVEYOR'S CERTIFICATE

I, Thomas Taylor, a licensed professional land surveyor in the State of Idaho, do hereby certify that the survey of this subdivision, designated as FREEWAY COMMERCIAL CENTER DIVISION 4, was made under my direction, and that said subdivision is truly and correctly surveyed and staked as provided by law and in accordance with the accompanying plat as described hereon.

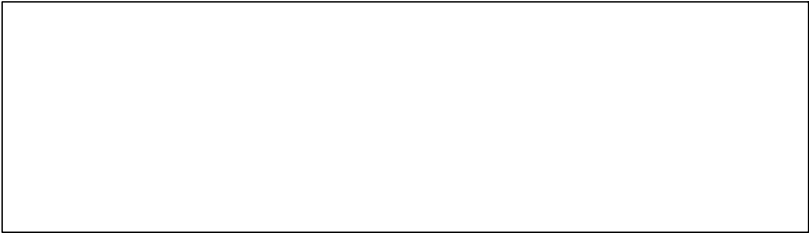
\_\_\_\_\_, P.L.S.8348



RECORDER'S CERTIFICATE

I hereby certify the the foregoing subdivision plat FREEWAY COMMERCIAL CENTER, Division No. 4, was filed in the office of the Recorder of Bonneville County, Idaho.

BONNEVILLE COUNTY RECORDER \_\_\_\_\_ DATE \_\_\_\_\_




ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_, before me, a notary public in and for said state, personally appeared DAVID J. THUESON, known or identified to me, to be a managing member of the limited liability company of DJT PROPERTIES LLC, and the person who subscribed said limited liability company's name to the foregoing OWNER'S DEDICATION and DRINKING WATER SYSTEM CERTIFICATE and acknowledged to me that he executed the same in said limited liability company's name as a person authorized to bind such limited liability company.

In witness whereof, I have hereunto set my hand and affixed my official seal this day and year in this certificate first above.

Notary Public for the State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
Commission Expiration Date: \_\_\_\_\_

FREEWAY COMMERCIAL CENTER DIVISION NO. 4		
SCALE: PER BARSCALE	DRAWN: ALH	JOB #: 221238
DATE: December 15, 2022	CHECKED: TT	SHEET: 2 OF 2
DRAWING FILE: S:\PROJECTS\2021\221238 CAMPING WORLD\SURVEY WORKING\CADD - FREEWAY COMMERCIAL NO 4 FP.DWG		
		3153 McNeil Drive Idaho Falls, Idaho 83402 (208) 542-6120

**STAFF REPORT**  
**Final Plat Freeway Commercial Center Division No. 4**  
**May 11, 2023**



Community  
Development  
Services

**Applicant:** Phillip Lewis  
Engineering

**Project Manager:** Naysha  
Foster

**Location:** Generally located  
north of W 17<sup>th</sup> St, east of S  
Skyline Dr, south of Pancheri  
Dr, west of Interstate 15

**Size:** Approx. 11.059 acres  
**Total Lots:** 3  
**Buildable Lots:** 3  
**Common Lots:** 0

**Existing Zoning:** HC  
 North: R3A  
 South: HC & CC  
 East: CC  
 West: LC

**Existing Land Uses:**  
 Site: Vacant  
 North: Residential  
 South: Commercial  
 East: Commercial  
 West: Residential/Commercial

**Future Land Use Map:**  
 Suburban and Mixed-Use  
 Centers and Corridors

**Attachments:**

1. Subdivision and Zoning  
Ordinance Requirements
2. Comprehensive Plan  
Policies
3. Maps and aerial photos
4. Final Plat

**Requested Action:** To approve the final plat for Freeway  
Commercial Center Division No. 4

**History:** This property was annexed in May of 1993 and platted the  
same year. In 2014, a Comprehensive Plan Map amendment was  
approved to change the designation from high density residential to  
commercial and the zone was changed to C-1 and HC-1 in 2013. In  
2018 the zone changed to LC with the City initiated zone change. A  
lot line adjustment was done with a record of survey to reduce the  
number of lots. In December of 2020 the property owner initiated a  
zone change from LC to HC.

**Staff Comments:** The final plat application was submitted on  
October 27, 2022. The plat consists of 3 total lots. All 3 lots would  
be buildable. The lots have frontage on Pancheri Dr and S Skyline,  
both are minor arterials. Tara street will also serve lots 2 and 3. Lot  
1 will need a cross access easement through lot 2, as it can't have  
direct access to the arterial streets. Lot 1 is 1.978 acres, lot 2 is  
3.706 acres and lot 3 is 5.290 acres. All lots conform to the HC  
zoning district as there is no minimum or maximum lot size.

**Staff Recommendation:** Staff has reviewed the plat and finds that  
it complies with the subdivision ordinance and the development  
standards of the HC zone. Staff and the Planning and Zoning  
Commission recommend approval.

10-1-5: GENERAL SUBDIVISION STANDARDS:

(I) Cross Sections:

(1) Final geometric design of street sections shall be approved at the time improvement drawings are submitted for approval by the City. Traffic counts and traffic impact studies, when required, shall be performed by the developer and submitted to the City for review and approval.

A traffic study is not required for this final plat as it does not meet the threshold to conduct one.

**Subdivision Ordinance:** Boxes with an “X” indicated compliance with the ordinance

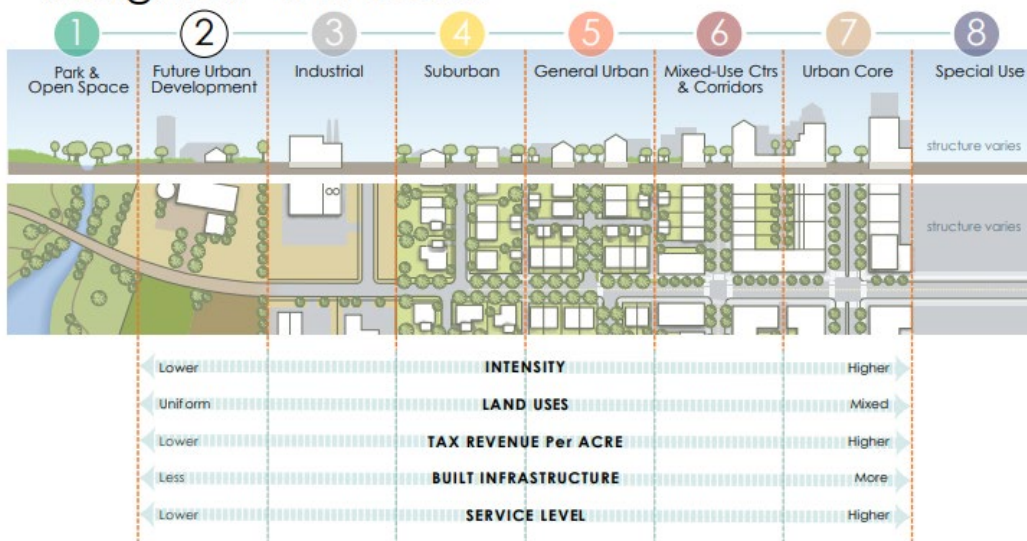
REQUIREMENTS	Staff Review
Requirements listed in Section 10-1:	
Building envelopes sufficient to construct a building.	X
Lot dimensions conform to the minimum standards of Zoning Ordinance.	X
Lots have full frontage on, and access to, a dedicated street.	X
Residential lots do not have direct access to arterial streets.	N/A
Direct access to arterial streets from commercial or industrial lots shall be permitted only where it can be demonstrated that: 1) The direct access will not impede the flow of traffic on the arterial or otherwise create an unsafe condition; 2) There is no reasonable alternative for access to the arterial via a collector street; 3) There is sufficient sight distance along the arterial from the proposed point of access; 4) The proposed access is located so as not to interfere with the safe and efficient functioning of any intersection; and 5) The developer or owner agrees to provide all improvements, such as turning lanes or signals, necessitated for the safe and efficient uses of the proposed access.	X
Adequate provisions shall be made for soil preservation, drainage patterns, and debris and waste disposal and collection.	X
Sidelines of lots shall be at, or near, right angles or radial to the street lines. All corner lots shall have a minimum radius of twenty feet on the property line.	X
All property within the subdivision shall be included within a lot or area dedicated for public use.	X
All corner lots zoned RP through R-3, inclusive, shall be a minimum of ten percent larger in area than the average area of all similarly zoned lots in the plat or subdivision under consideration.	N/A
All major streets in subdivision must conform to the major street plan of the City, as set forth in Comprehensive Plan.	N/A
The alignment and width of previously platted streets shall be preserved unless topographical conditions or existing buildings or structures required otherwise.	X
Residential lots adjoining arterial streets shall comply with: 1) Such lots shall have reverse frontage on the arterial streets, 2) such lots shall be buffered from the arterial street by any effective combination of the following: lot depth, earth berms, vegetation, walls or fences, and structural soundproofing, 3) Minimum lot depth shall be 150 ft except where the use of berms, vegetation, and structures can be demonstrated to constitute an effective buffer, 4) Whenever practical, existing roadside trees shall be saved and used in the arterial buffer, 5) Parking areas shall be used as part of the arterial buffer for high density residential uses, 6) Annexation and	N/A



development agreement shall include provisions for installation and continued maintenance of arterial buffers.	
Planning Director to classify street on basis of zoning, traffic volume, function, growth, vehicular & pedestrian safety, and population density.	Local Street

## Comprehensive Plan:

### Imagine!F Transects



4

#### Suburban



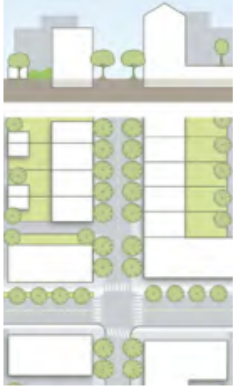
#### 4. Suburban

**Snapshot:** The Suburban Transect denotes existing or planned residential areas in close proximity to or with easy vehicular access to regional commercial service areas that provide daily household needs. These areas contain various housing types, generally including detached and attached single-unit dwellings, accessory dwelling units, duplexes and triplex and fourplex units at a house scale. Residential development should include a mix of housing types, price points and sizes and should not be exclusively detached single-dwelling units. These areas could also include parks, schools, churches and small commercial nodes adjacent to major roadways. Curvilinear streets and cul-de-sacs are common. Although existing road patterns and lot sizes have created low levels of connectivity and convenience to services, opportunities to increase these features should be identified and planned for.

**Local examples:** Silverleaf, Mill Run, Fairway Estates, Ivan's Acres, Shamrock Park, Home Ranch, Stonebrook, Brookside and Southpoint Subdivisions

# 6

## Mixed Use Ctrs & Corridors



### 6. Mixed-Use Centers & Corridors

Snapshot: The Mixed-Use Centers and Corridors Transect denotes areas where people tend to shop, eat and gather. These areas include all housing types but generally at a more intense scale than other areas. These areas also include mixed-use buildings, recreation centers and commercial uses. Mixed-Use Centers and corridors may vary in scale from large, regional commercial centers with supportive housing to smaller commercial pockets called walkable centers that support a well-connected, walkable neighborhood.

Local examples: Northgate Mile and 1<sup>st</sup> Street corridors, Intersection of 65<sup>th</sup> South and 5<sup>th</sup> West, Intersection of Skyline and Broadway, Snake River Landing

### Zoning Ordinance:

#### 11-3-5: PURPOSE OF COMMERCIAL ZONES

(D) HC Highway and General Commercial Zone. This zone provides a commercial zone for retail and service uses serving the traveling public. Characteristics of the Zone are buildings set back from the right-of-way line to promote safety on the highway and maintain maximum use of highway right-of-way for travel purposes, and a wide variety of architectural forms and shapes. This Zone should be located at specific locations along highways leading into the City.

**Table 11-3-5: Dimensional Standards for Commercial Zones**

	CC	PB	LC	HC
Site width at front setback - Minimum in ft.		50	*	50
<b>Setbacks – Minimum in ft.</b>				
Front		20	20*	20
Side			*	
Rear			*	
Landscape buffer contiguous to street* in ft.	7*	15	20*	20*
Landscape buffer contiguous to a residential Zones* in ft.	10	10	20/10	30/10
Building height – Maximum in ft.		*	*	
Lot Coverage- Maximum in %		80	80	

\*See explanations, exceptions and qualifications that follow in Section 11-3-6A (1-3) of this Zoning Code.

December 6, 2022

7:00 p.m.

Planning Department

City Annex Building

**MEMBERS PRESENT:** Commissioners Joanne Denney, George Morrison, Kristi Brower, Margaret Wimborne, Glen Ogden, Arnold Cantu, Lindsey Romankiw.

**MEMBERS ABSENT:** Brent Dixon

**ALSO PRESENT:** Planning Director, Brad Cramer, Assistant Planning Director Kerry Beutler; planner Naysha Foster, David Peterson; and interested citizens.

**CALL TO ORDER:** Joanne Denney called the meeting to order at 7:00 p.m.

**CHANGES TO AGENDA:**

**MINUTES:** Cantu moved to accept the minutes of November 6, 2022, Morrison seconded the motion. The motion passed unanimously.

**Business:**

**6. PLAT 22-039: FINAL PLAT. Final Plat Freeway Commercial Center Division No. 4.**

**Applicant: Phillip Lewis, Little Rock, Arkansas.** They are replatting the existing subdivision consisting of 6 acres next to Camping World. They are proposing 3 lots, and the existing cross access will be maintained, and the access to this will and the existing curb cut access on Skyline will be maintained, and a cul-de-sac will be on Tara Lane with a gated access for fire emergencies. They are replatting the location of the cul-de-sac on Tara Lane to match where it is constructed and will be upgraded during construction. There is a small easement parcel south of the cul-de-sac.

Wimborne asked for clarification on the gate on Tara. Lewis stated that the entirety of the inventory lot services facility will go in here and will be fenced, so there will be a double gate wide enough for fire department access on Tara. Wimborne clarified Access on Tara is to the existing Camping World, or through the gate on Tara for the Fire Department, otherwise access to this property is off Pancheri or off Skyline. Lewis stated that the access will be primarily from Skyline or the existing dealership property.

Foster presented the staff report, a part of the record.

**Ogden moved to recommend to the Mayor and City Council approval of the Final Plat for Freeway Commercial Center Division No. 4, Wimborne seconded the motion. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

## **REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS**

### **APPROVAL OF THE FINAL PLAT OF FREEWAY COMMERCIAL CENTER DIVISION NO. 4 GENERALLY LOCATED NORTH OF W 17<sup>TH</sup> S, EAST OF S SKYLINE DR, SOUTH PANCHERI DR, WEST OF INTERSTATE 15**

**WHEREAS**, the applicant filed an application for a final plat on October 27, 2022; and

**WHEREAS**, this matter came before the Idaho Falls Planning and Zoning Commission during a duly noticed public meeting on December 6, 2022; and

**WHEREAS**, this matter came before the Idaho Falls City Council during a duly noticed public meeting on May 11, 2023; and

**WHEREAS**, having reviewed the application, including all exhibits entered and having considered the issues presented:

#### **I. RELEVANT CRITERIA AND STANDARDS**

1. The Planning and Zoning Commission considered the request pursuant to the City of Idaho Falls Comprehensive Plan, the City of Idaho Falls Zoning Ordinance, the City of Idaho Falls Subdivision Ordinance, the Local Land Use Planning Act, and other applicable development regulations.
2. The property is an approximate 11.059-acre property located generally north of W 17<sup>th</sup> S, east of S Skyline Dr, south of Pancheri Dr, west of Interstate 15.
3. The property is zoned HC, Highway Commercial.
4. The Final Plat includes 3 buildable lots.
5. Access to the subdivision will come from Pancheri Dr and S Skyline, both minor arterials.
6. Tara street will also serve lots 2 and 3. Lot 1 will need a cross access easement through lot 2.
7. The plat complies with all requirements of the Subdivision Ordinance and Zoning Ordinance.
8. The proposed development is consistent with the principles of the City's Comprehensive Plan.

#### **II. DECISION**

Based on the above Reasoned Statement of Relevant Criteria, the City Council of the City of Idaho Falls approved the Final Plat.

PASSED BY THE CITY COUNCIL OF THE CITY OF IDAHO FALLS

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023

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Rebecca L. Noah Casper, Mayor

DEVELOPMENT AGREEMENT  
FREEWAY COMMERCIAL CENTER DIVISION NO. 4

This DEVELOPMENT AGREEMENT FREEWAY COMMERCIAL CENTER DIVISION NO. 4 (“AGREEMENT”), made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, (“CITY”), whose mailing address is P.O. Box 50220, Idaho Falls, Idaho 83405, and CAMPING WORLD RV SALES, LLC, a limited liability company, (“DEVELOPER”), whose mailing address is 250 Parkway Drive, Suite 270, Lincolnshire, Illinois 60069.

W I T N E S S E T H:

WHEREAS, DEVELOPER is the sole owner, in law or equity, of a certain tract of land in the County of Bonneville, State of Idaho, which land (hereafter referred to as “Subdivision”), is more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof; and,

WHEREAS, DEVELOPER desires to develop the Subdivision within CITY and has submitted a plat bearing the Subdivision name described in the caption of this AGREEMENT; and,

WHEREAS, City Engineer, and the Idaho Falls Planning and Zoning Commission, have recommended such development be allowed, subject to certain requirements and obligations on the part of DEVELOPER; and

WHEREAS, CITY is willing to allow the development of the Subdivision within City of Idaho Falls, Idaho, subject to the terms and conditions of this AGREEMENT and the Special Conditions attached hereto; and

WHEREAS, CITY has authority to approve Subdivision plats and the construction of streets, utility lines and other public improvements within CITY; and

WHEREAS, DEVELOPER specifically waives DEVELOPER’s right to protest development requirements described in this AGREEMENT, including DEVELOPER’s right of judicial review contained in Chapter 52, Title 67, Idaho Code, and pursuant to the standards set forth in § 67-5279, Idaho Code; and,

WHEREAS, DEVELOPER understands that the public improvements required herein are standards required pursuant to Idaho Falls City Code, Title 10, Chapter 1, and are authorized by Idaho Code §§ 67-6513 and 67-6518; and,



WHEREAS, DEVELOPER and CITY believe that without the public improvements required herein, CITY would not be able to otherwise provide for mitigation of the effects of the Subdivision development on the ability of CITY to deliver services without compromising quality of such service delivery to current CITY residents, or without imposing substantial additional costs upon current CITY residents to accommodate the proposed Subdivision; and,

WHEREAS, CITY desires to ensure that public improvements consisting of those described in this AGREEMENT, including Special Conditions for the Subdivision, are constructed; and,

WHEREAS, DEVELOPER understands that a waiver of public improvements is available pursuant to Idaho Falls City Code, but DEVELOPER specifically does not wish to request such a waiver and wishes to enter into this AGREEMENT; and,

WHEREAS, DEVELOPER enters into this AGREEMENT of DEVELOPER's own free will and accord, without coercion and without inducement and at DEVELOPER's request; and,

WHEREAS, DEVELOPER has read this AGREEMENT, has understood it, and has had the opportunity to avail itself of legal and other counsel prior to entering into this AGREEMENT and prior to signing it; and,

WHEREAS, DEVELOPER has submitted a preliminary plat bearing the Subdivision name described in the caption of this AGREEMENT; and,

WHEREAS, City Engineer and City Planning and Zoning Commission have recommended such Subdivision be approved subject to certain requirements and obligations on the part of DEVELOPER; and,

WHEREAS, CITY is willing to approve the Subdivision to CITY, subject to the terms and conditions of this AGREEMENT and the Special Conditions attached hereto;

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

1. Approval of Subdivision. CITY hereby approves the Subdivision plat as described in Exhibit "A" attached hereto and made a part to this AGREEMENT by reference, and agrees that upon DEVELOPER's full and complete performance of the terms and conditions hereto, it will accept and maintain the property dedicated to CITY on the Subdivision plat and all public facilities and improvements shown in the Improvement Plans for the Subdivision.

2. Improvement, Preliminary, and Final Improvement Plans. "Improvement Plans," used in this AGREEMENT, are engineer-designed plans showing all streets, sewer lines, water lines, storm drains, street signs, traffic control devices, barricades, other public utilities (telephone, gas, electricity, fiber optic and irrigation facilities) and other public improvements contemplated within the Subdivision. "Preliminary Improvement Plans" as used in this AGREEMENT, are those Improvement Plans submitted and considered for the Subdivision development prior to the approval of City Engineer, and not yet approved for construction. "Final Improvement Plans" as used in this AGREEMENT, are those Improvement Plans submitted, considered and approved by City Engineer for the Subdivision development.

DEVELOPER anticipates that development of the entire Subdivision will occur in phases or divisions. DEVELOPER has filed, and City Engineer has approved, Improvement Plans for the public improvements to be constructed within public rights-of-way exterior to the Subdivision, (hereafter referred to as the "Exterior Improvement Plans") showing the width, location and alignment of all streets, sewer lines and water lines within the Subdivision and the size and materials specifications for such water and sewer lines. Prior to the commencement of any construction or development within any phase or division of the Subdivision, DEVELOPER shall also file with, and obtain the approval of, City Engineer Improvement Plans (hereafter the "Interior Improvement Plans") for all streets, sewer lines, water lines, storm drainage facilities, street signs, traffic control devices, barricades and other public improvements contemplated within such phase or division of the Subdivision. The filed Improvement Plans shall also show the proposed location of other public utilities (telephone, gas and electricity), and irrigation facilities affected by the development of such phase or division of the Subdivision. Preliminary Improvement Plans are incorporated herein by reference as though set out in full, and the Final Improvement Plans shall also, upon approval by City Engineer, be deemed to be incorporated herein by reference.

3. Construction of Public Improvements. Unless otherwise agreed in the Special Conditions, DEVELOPER shall, at its expense, design and construct all public improvements shown in the Exterior Improvement Plans and Interior Improvement Plans. Unless otherwise agreed in writing by City Engineer, DEVELOPER shall construct all required public improvements within such Improvement Plans in strict accordance with the approved Preliminary and Final Improvement Plans and CITY Standard Engineering Drawings and Specifications (hereafter referred to as the "Standard Specifications") in effect at the time the construction is accomplished. The Standard Specifications are incorporated herein by reference as though set out in full and compliance to the Standard Specifications is a condition of this AGREEMENT.

4. Permits. DEVELOPER shall obtain all right-of-way, excavation and/or other permits required by local ordinance and comply with all requirements therein with respect to the

timely performance of the work governed by such permits.

5. Inspection. DEVELOPER shall retain a professional engineer (hereafter referred to as the "Project Engineer") licensed within the State of Idaho to supervise, inspect and test the construction of all public improvements within the Subdivision in order to ensure such improvements are constructed in accordance with this AGREEMENT, the Improvement Plans and the Standard Specifications. DEVELOPER shall not materially deviate from the Improvement Plans or Standard Specifications without the express written approval of the City Engineer.

6. Corrected Improvement Plans. Prior to acceptance of any phase or division of the Subdivision, DEVELOPER will file "As Constructed"/ "As Built" Improvement Plans (hereafter referred to as the "Corrected Improvement Plans") with City Engineer. Such Corrected Improvement Plans shall be prepared by the Project Engineer and shall show the actual constructed location of all public improvements within the Subdivision including the horizontal and vertical location of all water, sewer and storm drain lines, individual building service lines curb and gutter alignment and street grades. Such Corrected Improvement Plans shall also specifically show all changes between the Final Improvement Plans and the public improvements as actually constructed. The Project Engineer shall also certify upon the Corrected Improvement Plans that such Corrected Improvement Plans correctly show all public improvements as actually constructed and that such public improvements have been constructed in accordance with the Standard Specifications in effect at the time such construction was accomplished. The Project Engineer shall also deliver to City Engineer all compaction reports, daily construction logs, reports, written tests, analysis and other data as may be necessary to verify or support the certification of the Project Engineer.

7. Acceptance of Subdivision. Upon satisfactory completion of such public improvements and facilities, DEVELOPER's delivery of Corrected Improvement Plans and the filing and approval by CITY of a final plat, CITY will accept that portion of the Subdivision for which a final plat has been approved. Such acceptance shall not be valid unless expressly acknowledged in writing by City Engineer. Except as otherwise expressly provided in the Special Conditions, upon acceptance of any phase or division within the Subdivision, CITY shall assume ownership and control of all public facilities within any dedicated street or public utility right-of-way within the Subdivision and shall execute and record an instrument documenting such acceptance and that also references the recording information for this AGREEMENT and thereby releasing the Subdivision, or the accepted portion thereof, from the encumbrances of this AGREEMENT. Acceptance of the Subdivision Improvements and recording the acceptance instrument shall not be deemed as a waiver of DEVELOPER's agreement herein to fully and completely perform the terms and conditions of this AGREEMENT, or as a waiver or release of the warranty set forth below in this AGREEMENT.

8.      **Warranty.** DEVELOPER warrants that the materials and workmanship employed in the construction of all public improvements within the Subdivision shall be good and sound, and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of any phase or division of the Subdivision within which such improvements are located, by CITY, provided nothing herein shall limit the time within which CITY may bring an action against DEVELOPER on account of DEVELOPER's failure to construct such improvements in accordance with this AGREEMENT, the Improvement Plans or the Standard Specifications. DEVELOPER, and DEVELOPER's heirs, successors and assigns, shall and do hereby respectively warrant and agree, to defend the quiet and peaceful possession of CITY in all easements, rights-of-way, street dedications or other estates conveyed pursuant to the terms of this AGREEMENT or pursuant to the subdivision plat which is the subject hereof, from and against all claims against DEVELOPER and DEVELOPER's successors or assigns, respectively, and against every person whomsoever who lawfully holds, or who later lawfully claims to have held, rights in the premises by or through DEVELOPER and DEVELOPER's successors or assigns, respectively, as of the date of this AGREEMENT.

9.      **Water and Sewer Main Connection Charges.** DEVELOPER agrees to pay to CITY at the time any separate sanitary sewer service or culinary water service connection to CITY sanitary sewer system or culinary water system is requested, all connection fees, main connection charges, and main charges as set forth in the City Code in effect at the time such request for service is made.

10.     **Failure to Pay Fees.** In the event DEVELOPER fails or refuses to pay any of the fees, charges or costs set forth herein, CITY may disannex any property owned by DEVELOPER within the Subdivision or declare the entire unpaid balance immediately due and payable and collect such sums in the manner provided by law, or may pursue any other remedy set forth herein or as may be available at law or in equity. All such remedies shall be cumulative and CITY may pursue the same separately or simultaneously as it deems necessary or appropriate. In the event of such acceleration, all sums due shall bear interest at the rate established by law for judgments entered in the State of Idaho, commencing on the date the unpaid amount is declared immediately due and written demand therefor is delivered to DEVELOPER.

11.     **Participation by CITY.** The parties agree that those portions of the water main, the sanitary sewer line, storm drains and street section work (hereafter collectively referred to as the "Shared Work"), the cost of which CITY has expressly agreed to pay pursuant to the Special Conditions, including any water or sewer line or storm line extensions, increased line size or capacity and road width or thickness, are required because of future service needs originating from properties not owned by DEVELOPER and located within the vicinity of the Subdivision, and that sound planning requires construction thereof at the present time in order to accommodate future expansion and development. In recognition of the cost savings which can be accomplished by

construction of such excess capacity and improvements concurrently with the facilities to be constructed for DEVELOPER's purposes, and the impracticality or impossibility of constructing such excess capacity and improvements separately or at a later time, DEVELOPER agrees to design and construct such facilities subject to CITY's agreement to reimburse DEVELOPER for a portion of such costs, all as set forth in the Special Conditions. Prior to the commencement of the Shared Work, DEVELOPER shall obtain and deliver to CITY three (3) independent bona fide bids for the performance of such work from qualified and responsible contractors. Such bids shall be solicited and itemized in a manner which allows clear and specific identification of that portion of the construction work for which CITY is responsible. CITY shall have no obligation to pay for any portion of the costs of the Shared work unless prior to the commencement of the work, the parties have expressly agreed in writing to a specific amount for which CITY will reimburse the DEVELOPER. Payment of such costs by CITY shall be due within thirty (30) days from acceptance of the Subdivision by CITY and delivery of an itemized statement to CITY setting forth in detail the total amount of the costs for which CITY is responsible.

12. Special Conditions. In recognition of the unique circumstances relative to this Subdivision the parties agree to the Special Conditions attached hereto as Exhibit "B" and by this reference made a part hereof.

13. Irrigation Facilities. DEVELOPER shall relocate or reconstruct, at DEVELOPER's expense, all ditches, headgate structures, culverts, siphons, drywells or other similar appurtenant structures that will be impaired or otherwise disturbed by the construction of this Subdivision. DEVELOPER shall also obtain the consent of all persons or entities who have any water right or control over such structures. DEVELOPER shall also indemnify and hold CITY harmless from any action, claim, demand or cost of any kind, including attorney's fees and court costs, arising from the relocation or reconstruction of such facilities or DEVELOPER's failure to properly relocate or reconstruct such facilities.

14. Relocation of Power Lines. DEVELOPER shall relocate at its expense, all existing electric utility poles or other utility lines or fixtures necessary to construct the public improvements within this Subdivision as shown on the Improvement Drawings.

15. Construction Schedule Change. Any modification to the public improvements shown in the Improvement Drawings or to the construction phase limits shall be approved by City Engineer. Prior to said approval, revised Improvement Drawings shall be resubmitted to City Engineering Department showing the proposed changes.

16. Taxes and Assessments. DEVELOPER shall pay all real property taxes and assessments levied or assessed against any interest in real property which DEVELOPER has agreed to convey to CITY pursuant to this AGREEMENT up to the date the final Subdivision plat



for this Subdivision is recorded. Such taxes and assessments shall be paid prior to the acceptance by CITY of the public improvements within any phase or division of the Subdivision.

17. Occupancy. No building or structure within the Subdivision shall be used or occupied for any purpose other than for the construction of such building or structure, unless a final plat has been filed and approved and all public improvements within the plat have been completed and accepted by City Engineer. CITY may withhold Certificates of Occupancy until all such work has been completed. Nothing herein shall prevent the use of a model building for the purpose of DEVELOPER's sales promotional efforts provided the building is not occupied for any other commercial or industrial purposes.

18. Default. In the event DEVELOPER fails to comply with the terms and conditions hereof in any material respect, CITY may, without further notice to DEVELOPER, exercise any or all of the following remedies:

- A. Withhold the issuance of any building permit or certificate of occupancy for any structure located within any phase or division of the Subdivision affected by such default;
- B. Withhold the connection of water, sewer or electric service to any property located within any phase or division of the Subdivision affected by such default;
- C. Refuse to accept public ownership and maintenance of public improvements within any phase or division of the Subdivision affected by such default and record a notice of such action with the Bonneville County Recorder's office;
- D. Issue a stop work order for any building under construction within any phase or division of the Subdivision affected by such default;
- E. Withhold reimbursement of Subdivision inspection fees collected pursuant to the Idaho Falls City Code; and
- F. Bring an action for damages, injunctive relief, specific performance or any other remedy available at law or in equity.

19. Notices. Any notice required by this AGREEMENT shall be mailed to the receiving party at the address set forth above or such other address as may be delivered to the sending party in writing. Such notice shall be mailed by certified mail, return receipt requested, postage prepaid and addressed as set forth above and shall be deemed received upon its deposit in the United States mail in such manner.

20. Recording and Recording Fees. CITY may record this AGREEMENT with the

Bonneville County Recorder's office and prior to the execution and approval of this AGREEMENT, DEVELOPER shall pay to CITY all recording fees necessary to record this AGREEMENT with the Bonneville County Recorder's office. Prior to the approval of any final plat within the Subdivision, DEVELOPER shall pay to CITY all recording fees necessary to record such final plat with the Bonneville County Recorder's office.

21. Irrigation District Release. Prior to the approval of the Subdivision plat, DEVELOPER shall: (i) include a statement on the Subdivision plat that the property subject to this AGREEMENT has been excluded from the applicable irrigation district and reference the district's exclusion order by recording date and instrument number; or (ii) obtain a certification upon the Subdivision plat signed by any irrigation district, canal company, ditch association or other similar water delivery entity who provides or delivers water to any property located within the Subdivision. This certification shall contain a statement certifying that the property subject to this AGREEMENT has been excluded from the irrigation district, canal company, ditch association or other similar water delivery entity who provides or delivers water to any property located within the Subdivision or the water rights for all property within the Subdivision have been transferred from such property and that all liens and assessments of such water delivery entity have been satisfied and released.

22. Compliance With Applicable Law and Regulation. DEVELOPER agrees to comply with all applicable rules, regulations, Ordinances, Resolutions, statutes or administrative laws having applicability to development to this Subdivision and or phase of this Subdivision including, of those of CITY, Bonneville County, the State of Idaho, the United States of America, or any agency or political subdivisions thereof having jurisdiction over the Subdivision and to obtain any permits, licenses, permissions, authorizations, etc., that are required for such development.

23. Conflict With Standard Specifications. In the event of any conflict between the terms of this AGREEMENT or the Improvement Plans and the Standard Specifications, the terms of this AGREEMENT or the Improvement Plans shall prevail over any contrary provision of the Standard Specifications. In the event of any conflict between the terms of this AGREEMENT and the Improvement Plans, the terms of this AGREEMENT shall prevail.

24. Covenants Appurtenant to the Land. All covenants and conditions set forth herein shall be appurtenant to and run with the Subdivision and shall be binding upon DEVELOPER's heirs, successors or assigns.

25. Governing Law. This AGREEMENT shall be governed by the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County or in the United

States District Court for the District of Idaho.

26. Anti-Boycott Against Israel Act. Pursuant to Idaho Code section 67-2346, if payments under this AGREEMENT exceed one hundred thousand dollars (\$100,000) and DEVELOPER employs ten (10) or more persons, DEVELOPER certifies that it is not currently engaged in, and will not for the duration of this AGREEMENT engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Paragraph that are defined in Idaho Code section 67-2346 shall have the meaning defined therein.

27. Non-Discrimination. DEVELOPER shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, gender identity/expression, sexual orientation, or national origin.

28. Entire Agreement. This writing evidences the final and complete agreement between the parties and no other prior statement, representation or understanding shall be binding upon the parties unless expressly set forth herein.

29. Effective Date. This AGREEMENT shall become valid and binding only upon its approval by CITY Council of CITY and upon its execution by the Mayor.

INWITNESS WHEREOF, the parties have hereunto set their hands and seals this day and year first above written.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

\_\_\_\_\_  
Corrin Wilde, City Clerk

By \_\_\_\_\_  
Rebecca L. Noah Casper, Ph.D., Mayor

CAMPING WORLD RV SALES, LLC

By  \_\_\_\_\_  
Brent Moody, President

STATE OF IDAHO )  
 ) ss.  
County of Bonneville )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah Casper, known to me to be the Mayor of the City of Idaho Falls, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that they are authorized to execute the same for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

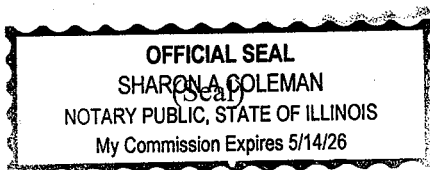
(Seal)

\_\_\_\_\_  
Notary Public of Idaho  
Residing at: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Illinois  
STATE OF ~~IDAHO~~ )  
 ) ss:  
County of LAKE )

On this 20<sup>th</sup> day of April, 2023, before me, the undersigned, a notary public, in and for said State, personally appeared Brent Moody, known or identified to me to be an authorized signator of Camping World RV Sales, LLC., and whose name is subscribed to the within instrument and acknowledged to me that they are authorized to execute the same for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Sharon A. Coleman  
Notary Public of ~~Idaho~~ Illinois  
Residing at: \_\_\_\_\_  
My Commission Expires: 5-14-26

**EXHIBIT "A"**  
**PROPERTY**

**LEGAL DESCRIPTION**

**FREEWAY COMMERCIAL CENTER DIVISION NO. 4**

A portion of SW 1/4 of Section 24, T 2 N, R 37 E, City of Idaho Falls, Bonneville County, Idaho, more particularly described as follows:

Commencing at the West 1/4 Corner of said Section 24 from which the SW Corner of said Section 24 bears S00°12'36"E, 2636.69 feet, the Basis of Bearing of this description, run thence S00°12'36"E along the westerly line of said Section 24, 396.43 feet; thence leaving said westerly line N89°44'31"E, 39.96 feet to a found 5/8" iron rod with a plastic cap marked "P.L.S. 8348" on the eastern right-of-way of Skyline Drive said Point being the Point of Beginning:

Thence along said easterly right-of-way the following courses:

N00°12'14"W, 97.20 FEET; N87°54'32"E, 10.13 FEET; N00°17'46"W, 162.91 FEET; N34°57'08"E, 43.73 feet to a point on the southerly right-of-way of Pancheri Drive;

Thence along said southerly right-of-way the following courses:

N89°56'23"E, 236.21 feet; S38°42'56"E, 32.03 feet; S89°55'05"E, 69.85 feet; N38°50'17"E, 32.16 feet; N89°58'39"E, 64.90 feet to a point on a tangent curve; thence along said curve to the right 95.92 feet having a radius of 5948.62 feet, a central angle of 00°55'26" having a chord of S89°33'38"E, 95.92 feet; thence along a compound curve to the right 79.08 feet having a radius of 5950.00 feet, a central angle of 00°45'41" having a chord of S88°40'15"E, 79.08 feet; S79°53'43"E, 136.92 feet; S83°01'42"E, 120.82 feet; S57°12'48"E, 8.29 feet to a found bent 5/8" iron rod, replaced with a 5/8" iron rod with a plastic cap marked "KA PLS 8348"; S86°19'26"E, 9.96 feet to a point on the westerly right-of-way of Tara Street;

Thence along said right-of-way of Tara Street the following courses:

S10°26'46"W, 24.70 feet to a point on a non-tangent curve; thence along said curve to the left 116.88 feet having a radius of 399.63 feet, a central angle of 16°45'25" having a chord of S02°07'07"W, 116.46 feet to a point of reverse curve; thence along said curve to the right 191.07 feet having a radius of 172.48 feet, a central angle of 63°28'23" having a chord of S24°41'56"W, 181.50 feet;

Thence leaving said right-of-way S51°55'33"E, 55.77 feet;

Thence leaving said right-of-way S53°38'51"W, 421.04 feet;

Thence S88°30'57"W, 510.87 feet to a point on the easterly right-of-way of Skyline Drive;

Thence along the said easterly right-of-way the following courses:

N00°12'14"W, 178.22 feet; N44°09'08"E, 30.89 feet; N01°29'25"W, 50.00 feet; N45°50'14"W, 28.64 feet; N00°12'14"W, 82.23 feet to the Point of Beginning.

Said parcel contains 11.407 acres.

**EXHIBIT "B"**  
**SPECIAL CONDITIONS**

**FREEWAY COMMERCIAL CENTER DIVISION NO. 4**

**S.C. 1.00 Access.** Access shall be in accordance with the Bonneville Metropolitan Planning Organization Access Management Plan.

**S.C. 2.00 Street Section Improvements for Skyline Drive.** DEVELOPER shall design and construct roadway improvements for Skyline Drive in accordance with CITY's Approved Improvement Drawings. DEVELOPER shall be reimbursed for such improvements pursuant to Paragraph 11 of this AGREEMENT. Reimbursement schedule is also subject to CITY's ability to collect impact fees and final acceptance of the roadway improvements. DEVELOPER shall also provide for the landscaping in the park strip between the curb and the sidewalk. Maintenance of the landscape buffer shall be the responsibility of DEVELOPER or DEVELOPER'S heirs, successors, or assigns.

It is acknowledged that the parcel West of this Subdivision has applied to develop Skyline Drive. In the event that this neighboring development constructs Skyline Drive prior to Freeway Commercial Center Division No. 4, then the developer that constructs Skyline Drive shall be reimbursed accordingly.

**S.C. 3.00 Existing Infrastructure.** When it is necessary to move or remove existing infrastructure not belonging to CITY and not within CITY right-of-way, DEVELOPER shall coordinate such activities with the applicable owner, (e.g., poles owned by PacifiCorp, dba Rocky Mountain Power). Any existing electrical infrastructure owned by PacifiCorp, dba Rocky Mountain Power, will require a buy-out from DEVELOPER prior to receipt of electrical service from CITY. Request for the buy-out, if any, is to be initiated by DEVELOPER following annexation.

**S.C. 4.00 Storm Drainage.** Storm Drainage shall be designed and constructed to accommodate drainage of the lots within the Subdivision by DEVELOPER. The storm drainage system shall meet CITY's Storm Drainage Policy. The storm pond shall be constructed as shown on the CITY-approved Improvement Drawings. DEVELOPER shall provide for the installation of grass and an irrigation system, at DEVELOPER's sole expense, to serve this Subdivision. Maintenance of the storm pond shall be the responsibility of DEVELOPER or DEVELOPER's heirs, successors, or assigns.

**S.C. 5.00 Construction of Water Lines.** DEVELOPER shall, at DEVELOPER's sole expense, design and construct One Thousand Twenty-Five feet (1,025') of twelve-inch (12") diameter water main line in Skyline Drive, as shown on the Improvement Plans approved by and on file with CITY Engineer. CITY acknowledges that an eight-inch (8") water main line is adequate to serve this Subdivision; however, sound planning and economy of scale requires construction of a twelve-inch (12") diameter water main line to serve properties adjacent to and/or near this Subdivision. DEVELOPER shall design and construct, at DEVELOPER's sole expense, all water mains and



appurtenances within the Subdivision in accordance with CITY Standard Drawings and Engineering Specifications and as shown on the Improvement Drawings filed with and approved by CITY Engineer, and upon completion thereof, DEVELOPER shall furnish CITY with a certificate signed by a licensed professional engineer, certifying that the water mains and appurtenances have been constructed in accordance with such Specifications. CITY agrees to reimburse DEVELOPER that portion of the costs of materials for the twelve-inch (12") water main line which exceeds the costs of materials for an eight-inch (8") water main line, subject to the limitations and bid procurement requirements of this AGREEMENT.

**S.C. 6.00 Reimbursement of Water Main Charges.** Upon connection of water service to any property owned by any person other than DEVELOPER and fronting upon that portion of Skyline Drive right-of-way in which DEVELOPER has constructed, CITY shall, to the extent permitted by law, and upon written request of DEVELOPER, pay to DEVELOPER all water main connection charges collected by CITY from the owners of such property, pursuant to Section 8-4-14(C), City Code, as the same currently exists or may be amended hereafter. Such right to reimbursement shall terminate with respect to any water main charge collected by CITY after the expiration of ten (10) years from the date of this AGREEMENT.

# Memorandum

File #: 23-149

City Council Meeting

**FROM:** Wade Sanner, Director  
**DATE:** Tuesday, May 2, 2023  
**DEPARTMENT:** Community Development Services

## Subject

Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Maverik Idaho Falls Subdivision

## Council Action Desired

- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing
 ☒ Other Action (Approval, Authorization, Ratification, etc.)

1. Approve the Development Agreement for the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor and City Clerk to sign said agreement (or take other action deemed appropriate).
2. Accept or Accept the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat (or take other action deemed appropriate).
3. Approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

Attached is the application for the Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Maverik Idaho Falls Subdivision. The Planning and Zoning Commission considered this item at its December 6, 2022, meeting and unanimously voted to recommend approval for the final plat to the Mayor and City Council as presented. Staff concurs with this recommendation.

## Alignment with City & Department Planning Objectives



A successful Plat should be consistent with the Comprehensive Plan and Zoning Ordinance, which includes policies and goals related to Growth, Sustainability, Transportation, and Livable Communities.

## Interdepartmental Coordination

The Final Plat was reviewed by staff from Fire, Idaho Falls Power, BMPO, Water, Planning, Sewer, Engineering, Survey, and Parks and Rec.

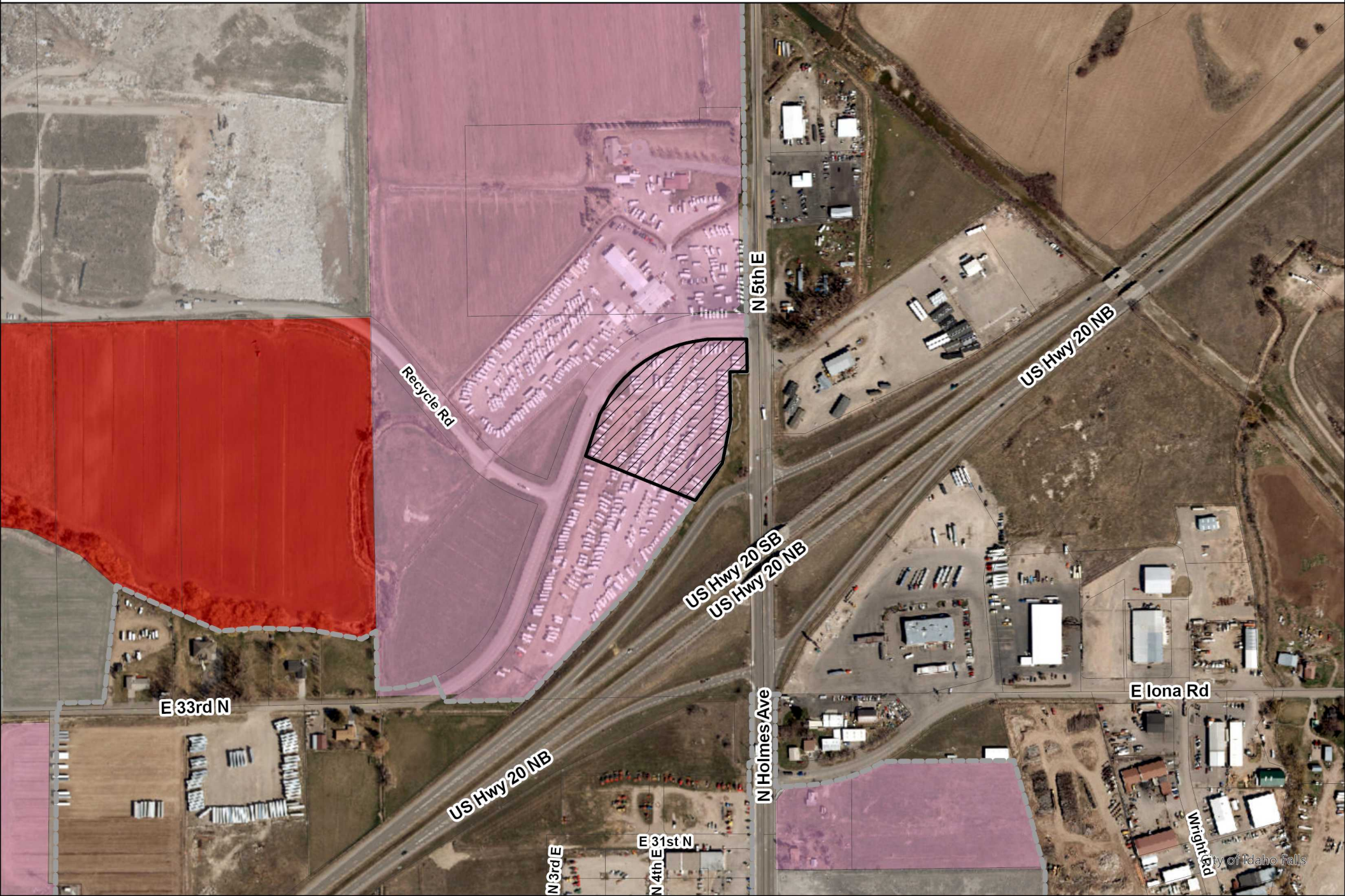
**Fiscal Impact**

NA

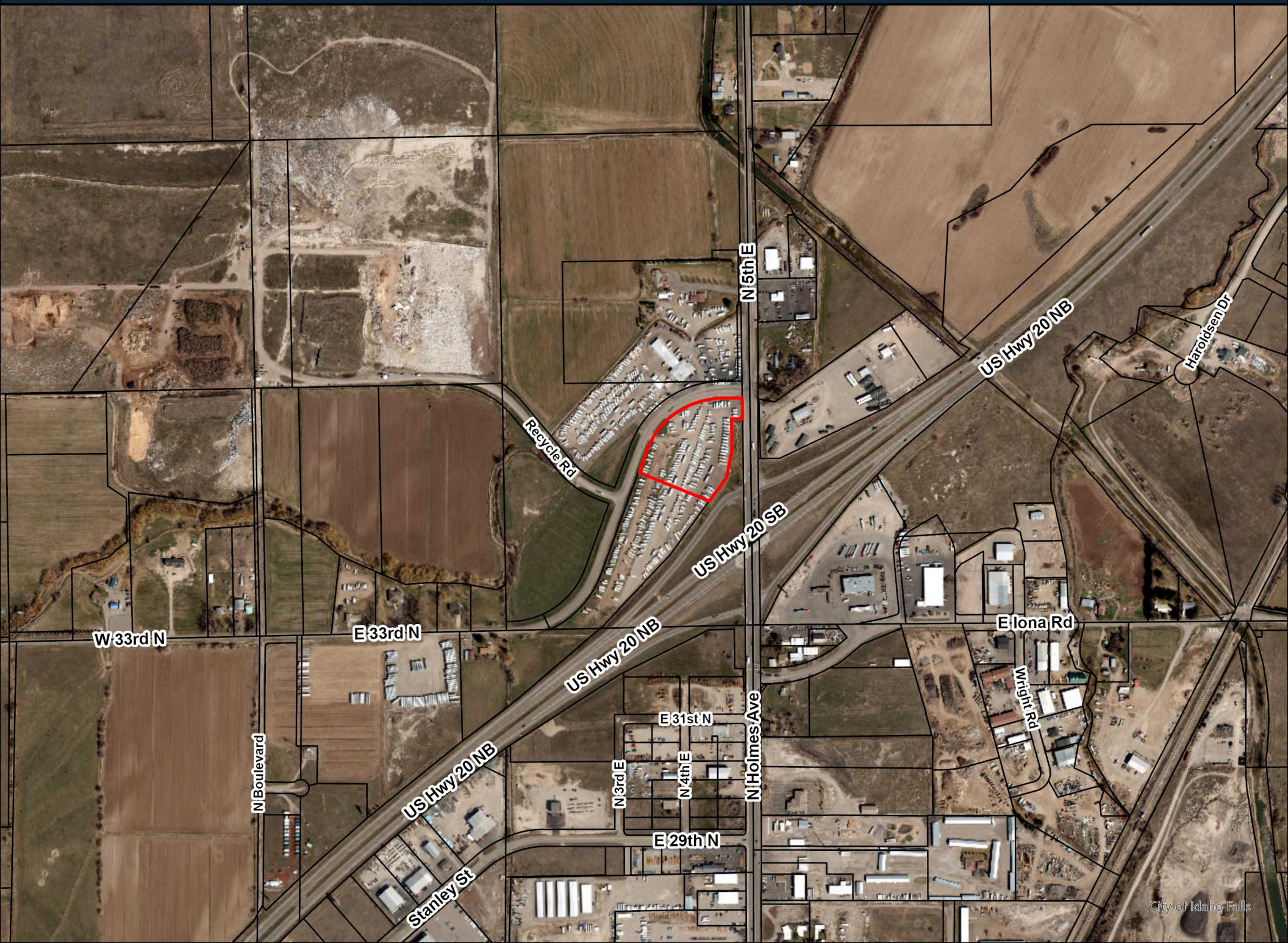
**Legal Review**

This application has been reviewed by the City Attorney's Office and is consistent with applicable law.











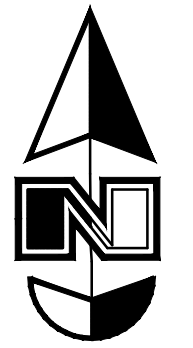
# Maverik Idaho Falls Subdivision

A Subdivision of the City of Idaho Falls, Bonneville County, Idaho  
A part of the Southeast Quarter of Section 6, Township 2 North, Range 38 East, Boise Meridian  
2023

Bish's RV Subdivision  
Lot 1, Block 1  
Storm Master Funding XX LLC

East Quarter Corner Section 6,  
T2N, R38E, BM, U.S. Survey  
(Found Brass Cap Monument  
in vault, 0.7' under surface of road)  
CP&F No. 1636820

Scale: 1" = 60'



## Narrative

This Subdivision was requested by the DRH Company, LLC, a Utah Limited Liability Company to establish a Lot and a Right-of-Way Dedication.

Field measurements were collected on the NAD83 Idaho East Zone State Plane Datum, US Survey Feet, using a combined scale factor within tolerance to the City of Idaho Falls published factor of 1.000277265 for a grid to ground conversion, [reference frame NAD\_83(2011), epoch 2010.0000]. The system orientation is based on grid North along the East Zone Central Meridian. No convergence angle has been applied.

A line between monuments found for the East Quarter Corner and Southeast Corner of Section 6 was assigned the VRS derived bearing of South 0°47'05" East as the Basis of Bearings which is within tolerance to the published City of Idaho Falls 2004 Coordinate System and matches the Basis of Bearings of Bish's RV Subdivision to the North.

Several ambiguities and discrepancies were discovered between Highway Warranty Deeds Instrument No.'s 389476 and 618258 and Highway plans for Project No.'s F-FG-6471(62), F-6471(27)(32), & S-US-6715(1) provided from Idaho Transportation Department (ITD). Recovered Right-of-way markers were held as best evidence of the intended Rights-of-Way on the ground. 3 additional Right-of-Way markers were recovered to the Southwest of this site along the North boundary of Highway 20 which aided in retracing record documents. 2 additional Right-of-Way markers were recovered along both sides of 33rd North to the Southwest.

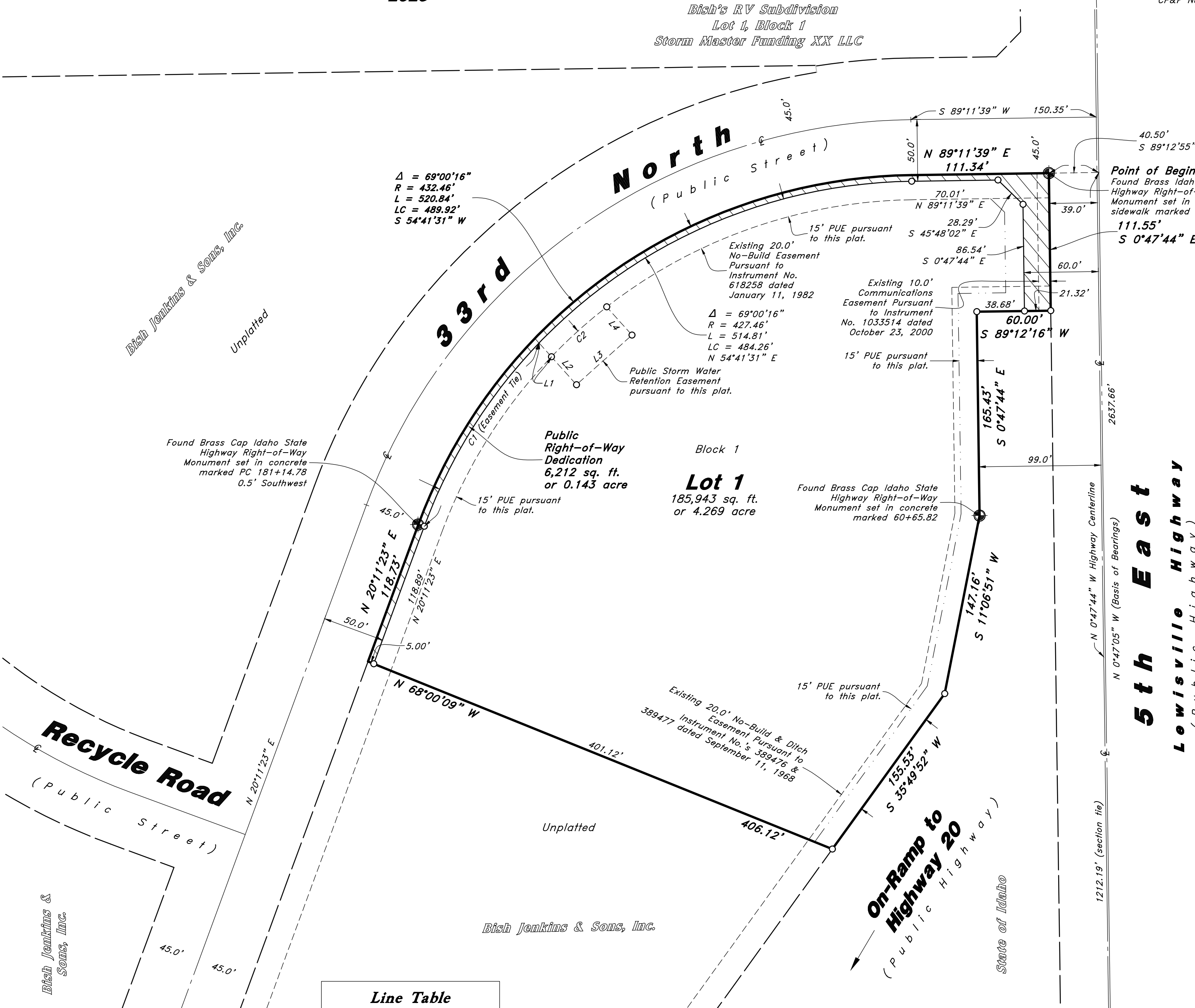
Property Corners will be placed as shown hereon.

## Utility Companies

Sewer: City of Idaho Falls  
Power: Idaho Falls Power  
Gas: Intermountain Gas  
Irrigation Water: Idaho Irrigation District  
Water: City of Idaho Falls municipal water system

## Legend

- Subdivision Boundary Line
- Existing Easement Line
- Public Utility Easement Line (PUE)
- Adjoiner Line
- Section Line
- Center Line
- Monument as noted
- PLSS Section Corner
- Set 5/8" rebar with Aluminum cap stamped AWA PLS No. 16975
- CP&F Corner Perpetuation and Filing Record



Line Table

Line #	Bearing	Length
L1	S 41°50'08" E	15.04'
L2	S 41°50'08" E	30.44'
L3	N 48°09'52" E	60.39'
L4	N 41°50'08" W	30.71'

Curve Table

Curve	Delta	Radius	Length	Chord Data
C1	23°40'43"	427.46'	176.66'	N 32°01'45" E 175.40'
C2	8°23'46"	412.46'	60.44'	S 47°54'36" W 60.39'



Southeast Corner Section 6,  
T2N, R38E, BM, U.S. Survey  
(Found Brass Cap Monument in Vault)  
CP&F No. 1598059



1 May, 2023

Sheet No. 1 of 2



STAFF REPORT  
**Final Plat Maverik Idaho Falls Subdivision**  
**May 11, 2023**



Community  
Development  
Services

**Applicant:** AWA Engineering

**Project Manager:** David Peterson

**Location:** Generally located north of US Hwy 20, south of E 33<sup>rd</sup> N, west of N 5<sup>th</sup> E

**Size:** Approx. 4.269 acres

**Total Lots:** 1

**Buildable Lots:** 1

**Common Lots:** 0

**Existing Zoning:** HC

North: HC

South: HC

East: County C-2

West: HC

**Existing Land Uses:**

Site: Commercial

North: Commercial

South: Commercial

East: Commercial

West: Vacant

**Future Land Use Map:**

Mixed Use Centers and Corridors

**Attachments:**

1. Subdivision and Zoning Ordinance Requirements
2. Comprehensive Plan Policies
3. Maps and aerial photos
4. Final Plat

**Requested Action:** To approve the final plat for Maverik Idaho Falls Subdivision by the Mayor and City Council.

**History:** This property was annexed in June 2020 with an initial zoning of HC, Highway Commercial. The final plat was presented to the Planning and Zoning Commission on December 06, 2022, where it was recommended for approval.

**Staff Comments:** The final plat application was submitted on October 26, 2022. The plat comprises one lot consisting of approximately 4.269 acres. The lot will access E 33<sup>rd</sup> N, a minor arterial. The lot will have no direct access to 5<sup>th</sup> East or Highway 20.

The Comprehensive Plan identifies this area as Mixed-Use Centers and Corridors. The designated HC Zone provides a commercial zone for retail and service uses serving the traveling public. There are no density or lot size requirements for this zone. The proposed final plat is consistent with the Mixed-Use Centers and Corridors Transect and the existing HC Zone.

**Staff Recommendation:** Staff has reviewed the plat and finds that it complies with the subdivision ordinance and the development standards of the HC zone and recommends approval.

## Subdivision Ordinance

### 10-1-5: GENERAL SUBDIVISION STANDARDS:

#### (I) Cross Sections:

(1) Final geometric design of street sections shall be approved at the time improvement drawings are submitted for approval by the City. Traffic counts and traffic impact studies, when required, shall be performed by the developer, and submitted to the City for review and approval.

A traffic study was completed and reviewed by Public Works.

Boxes with an "X" indicate compliance with the ordinance.

REQUIREMENTS	Staff Review
Requirements listed in Section 10-1:	
Building envelopes sufficient to construct a building.	X
Lot dimensions conform to the minimum standards of Zoning Ordinance.	X
Lots have full frontage on, and access to, a dedicated street.	X
Residential lots do not have direct access to arterial streets.	N/A
Direct access to arterial streets from commercial or industrial lots shall be permitted only where it can be demonstrated that: 1) The direct access will not impede the flow of traffic on the arterial or otherwise create an unsafe condition; 2) There is no reasonable alternative for access to the arterial via a collector street; 3) There is sufficient sight distance along the arterial from the proposed point of access; 4) The proposed access is located so as not to interfere with the safe and efficient functioning of any intersection; and 5) The developer or owner agrees to provide all improvements, such as turning lanes or signals, necessitated for the safe and efficient uses of the proposed access.	X
Adequate provisions shall be made for soil preservation, drainage patterns, and debris and waste disposal and collection.	X
Sidelines of lots shall be at, or near, right angles or radial to the street lines. All corner lots shall have a minimum radius of twenty feet on the property line.	X
All property within the subdivision shall be included within a lot or area dedicated for public use.	X
All corner lots zoned RP through R3, inclusive, shall be a minimum of ten percent larger in area than the average area of all similarly zoned lots in the plat or subdivision under consideration.	N/A
All major streets in subdivision must conform to the major street plan of the City, as set forth in Comprehensive Plan.	X
The alignment and width of previously platted streets shall be preserved unless topographical conditions or existing buildings or structures required otherwise.	X

Residential lots adjoining arterial streets shall comply with: 1) Such lots shall have reverse frontage on the arterial streets, 2) such lots shall be buffered from the arterial street by any effective combination of the following: lot depth, earth berms, vegetation, walls or fences, and structural soundproofing, 3) Minimum lot depth shall be 150 ft except where the use of berms, vegetation, and structures can be demonstrated to constitute an effective buffer, 4) Whenever practical, existing roadside trees shall be saved and used in the arterial buffer, 5) Parking areas shall be used as part of the arterial buffer for high density residential uses, 6) Annexation and development agreement shall include provisions for installation and continued maintenance of arterial buffers.	N/A
Planning Director to classify street on basis of zoning, traffic volume, function, growth, vehicular & pedestrian safety, and population density.	No new streets

### **Zoning Ordinance:**

#### **11-3-5: PURPOSE OF COMMERCIAL ZONES**

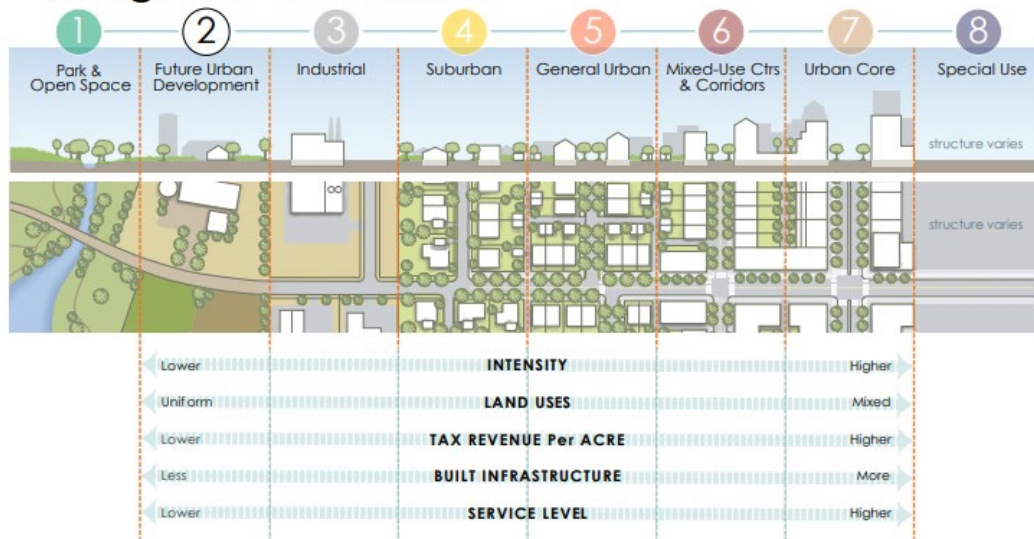
(D) HC Highway and General Commercial Zone. This zone provides a commercial zone for retail and service uses serving the traveling public. Characteristics of the Zone are buildings set back from the right-of-way line to promote safety on the highway and maintain maximum use of highway right-of-way for travel purposes, and a wide variety of architectural forms and shapes. This Zone should be located at specific locations along highways leading into the City.

**Table 11-3-5: Dimensional Standards for Commercial Zones**

	<b>CC</b>	<b>PB</b>	<b>LC</b>	<b>HC</b>
Site width at front setback - Minimum in ft.		50	*	50
<b>Setbacks – Minimum in ft.</b>				
Front		20	20*	20
Side			*	
Rear			*	
Landscape buffer contiguous to street* in ft.	7*	15	20*	20*
Landscape buffer contiguous to a residential Zones* in ft.	10	10	20/10	30/10
Building height – Maximum in ft.		*	*	
Lot Coverage- Maximum in %		80	80	
*See explanations, exceptions and qualifications that follow in Section 11-3-6A (1-3) of this Zoning Code.				

## Comprehensive Plan:

### ImagineIT Transects



#### 6. Mixed-Use Centers & Corridors

**Snapshot:** The Mixed-Use Centers and Corridors Transect denotes areas where people tend to shop, eat and gather. These areas include all housing types but generally at a more intense scale than other areas. These areas also include mixed-use buildings, recreation centers and commercial uses. Mixed-Use Centers and corridors may vary in scale from large, regional commercial centers with supportive housing to smaller commercial pockets called walkable centers that support a well-connected, walkable neighborhood.

**Local examples:** Northgate Mile and 1<sup>st</sup> Street corridors, Intersection of 65<sup>th</sup> South and 5<sup>th</sup> West, Intersection of Skyline and Broadway, Snake River Landing

**MEMBERS PRESENT:** Commissioners Joanne Denney, George Morrison, Kristi Brower, Margaret Wimborne, Glen Ogden, Arnold Cantu, Lindsey Romankiw.

**MEMBERS ABSENT:** Brent Dixon

**ALSO PRESENT:** Planning Director, Brad Cramer, Assistant Planning Director Kerry Beutler; planner Naysha Foster, David Peterson; and interested citizens.

**CALL TO ORDER:** Joanne Denney called the meeting to order at 7:00 p.m.

**CHANGES TO AGENDA:**

**MINUTES:** Cantu moved to accept the minutes of November 6, 2022, Morrison seconded the motion. The motion passed unanimously.

**Business:**

**1. PLAT 22-035: FINAL PLAT. Final Plat for East River Townhomes Division No. 1.**

**Applicant: Barry Bane, Connect Engineering, 2295 N. Yellowstone, Suite 6, Idaho Falls, Idaho.** Bane presented a final plat on the north end of town near the corner of East River and 33<sup>rd</sup>. Bane stated that the plat consists of 2 lots, lot 1 is buildable, lot 2 is storm water, and the pond will grow as the rest of the area is platted, and that is the reason lot 2 is so far away. Bane will be dedicating additional right of way on East River and Iona Road that will be improved. Cove Fort will go through the property to the north (airport property) and will connect to the subdivision to the north.

Peterson presented the staff report, a part of the record.

Wimborne asked if access to the lot off W is 33<sup>rd</sup> N, and no access on N 5<sup>th</sup> West. Peterson stated that there is another road that will be developed on the north side called Millard Road that will connect to 5<sup>th</sup> West, and it will connect Cove Fort Drive to 5<sup>th</sup> West, but is not specifically part of this plat.

**Morrison moved to recommend to the Mayor and City Council approval of the Final Plat for East River Townhomes Division No. 1, Ogden seconded the motion. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

**2. PLAT 22-036: FINAL PLAT: Final Plat for Hidden Bridge Subdivision.**

**Applicant: Barry Bane, Connect Engineering, 2295 N. Yellowstone, Suite 6, Idaho Falls, Idaho.** Bane presented a plat west of Home Depot. The property is zoned TN and has been brought forward with a plat in the past, that did not get finalized, and a new company has now brought this plat forward. Bane stated that it consists of townhome lots, with a dedicated public street throughout the middle of the lots. Bane stated that there is alley way on the south side of the south road, which will be incorporated into the full width of the public street, and they are working with City Engineering to maintain rear access for the homes on the south with a possible rolled curb instead of a high back curb, so they can go in and out of the backs of the homes.

Bane stated that there are 2 lots that are non-buildable, with one a storm pond and one up against a canal. Bane stated that all the road improvements along with a bridge going across the knuckle on the northeast corner will be built.

Morrison asked if the south edge of the property has an alley. Bane agreed that is currently an alley and it will be incorporated into a new road and on the far-right side, the alley way will be kept in place so the last lot that has access to the alley will have access to that alley.

Wimborne asked about the bridge location. Bane showed that the car bridge will be for access into the property.

Foster presented the staff report, a part of the record.

No discussion.

**Wimborne moved to recommend to the Mayor and City Council approval of the Final Plat for Hidden Bridge Subdivision, Brower seconded the motion. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

### **3. PLAT 22-037: FINAL PLAT. Final Plat Southbridge Subdivision.**

**Applicant: Brad Brown, 719 W 4350 South, Riverdale, UT.** Brown is presenting a final plat consisting of 11 acres by Holmes and 49<sup>th</sup>. Brown stated that they will be dedicating right of way on Holmes for a connection and on the west side of Allie Rose Lane they have entered into an agreement and are helping pay for construction of that road and working with the County to widen Holmes in this area. Property was annexed earlier with R2 zoning. Brown is excited about the project.

Ogden asked what they are expecting to build. Brown stated that it will be similar to what is surrounding, but a bit different, and it will be a townhome product.

Foster presented the staff report, a part of the record.

Wimborne wanted to clarify that access is off Holmes and then onto Allie Rose Lane. Foster stated that primary access will be from Holmes, but once 30 units have been built, they will need the second access to meet fire code.

**Ogden moved to recommend to the Mayor and City Council approval of the Final Plat for Southbridge Subdivision, Morrison seconded the motion. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

### **4. PLAT: 22-038: FINAL PLAT. Final Plat Snake River West**

**Applicant: Brad Brown, 719 W 4350 South Riverdale, UT.** Brown presented this property near the Mountain America Event Center. This is a single lot plat that was recently annexed along with the streets surrounding it. Brown stated this has been complicated and they had to do a lot of engineering to do right of way and where the dedication would be, and they are going to have to bury the Bradford Canal and move power lines. Brown stated that White Water Drive is projected to cross on a bridge, and they are trying to figure that out. Brown is proposing multi-family development.



Stevens presented the staff report, a part of the record.

Ogden asked if it is approved with the requests does it hold it up to going to City Council. Stevens stated that prior to going to City Council they will have a clean plat and those improvement drawings will be shown in those documents, but it is a good thing to make sure it is covered in the motion, as Planning and Zoning will not see this plat before it goes to City Council. Ogden asked why they wouldn't have those improvements done before approving the final plat. Stevens stated that the City Staff is behind, and the applicant has come, and they have presented the documents, and Stevens feels that P&Z is providing recommendations and if the things are covered the applicant will meet those prior to City Council.

**Wimborne moved to recommend to the Mayor and City Council approval of the Final Plat for Snake River West contingent on final review of the right of ways for Pioneer and White Water Drive, including the bridge, Cantu seconded the motion. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

##### **5. PLAT: FINAL PLAT. Final Plat Maverik Idaho Falls Subdivision.**

**Applicant: James Copeland.** Copeland explained that the project is located north of Highway 20, west of Holmes and 5<sup>th</sup> East. The property is the norther portion of the exiting piece of Bish's RV. Bish's RV is being redeveloped to the north of 33<sup>rd</sup> North, and his company has been hired to do a build to suit a Maverik convenient store and fuel station in that area. This project hinged on access to the site. Maverik is proposing both an automobile fuel canopy and also a commercial canopy for Semi trucks, but not a truck stop with overnight parking. At Jack Jenkins Road (Recycle Road) T's into 33<sup>rd</sup>, and due to some internal circulation and trying to separate trucks and passenger vehicles, there will be a cross access with the remainder parcel to the south for trucks to enter off the intersection. No access to 5<sup>th</sup> E or Highway 20, no ITD right of way encroachment.

Peterson presented the staff report, a part of the record.,

Ogden asked if they access off 33<sup>rd</sup> N. for egress into the property. Peterson agreed that access is from 33<sup>rd</sup> North. Ogden asked if the Highway 20/I15 redevelopment will impact this intersection. Peterson stated that no traffic study was required.

The applicant indicated that he has the Agenda packet and has a question. There was a traffic study submitted, as it was suggested by staff, because the cross access to the south and egress only access on 33<sup>rd</sup> N to help separate for safety. There was a traffic study submitted, and the statement that one wasn't required caught them off guard. The applicant stated that the property was annexed in June 2020 and wanted to confirm that it is zoned HC. Peterson stated the property was annexed in June 2020, and zoned HC. Applicant asked if they need to coordinate with Transportation and City Staff on the traffic study issue. Peterson stated that will be reviewed by the City Engineer and Public Works.

The applicant stated that the Agenda Packet indicated that the plat and the submittal complies with all ordinances, and applicant confirmed that there are no issues. Peterson stated that the review comments will be returned to the applicant once all the staff has reviewed the submittal, and the recommendation is for the subdivision ordinance specifically and the development standards of the HC Zone and doesn't address the technical details of the plat submittal.

**Morrison moved to recommend to the Mayor and City Council approval of the Final Plat for Maverik Idaho Falls Subdivision, Romankiw seconded. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

**6. PLAT 22-039: FINAL PLAT. Final Plat Freeway Commercial Center Division No. 4.**

**Applicant: Phillip Lewis, Little Rock, Arkansas.** They are replatting the existing subdivision consisting of 6 acres next to Camping World. They are proposing 3 lots, and the existing cross access will be maintained, and the access to this will and the existing curb cut access on Skyline will be maintained, and a cul-de-sac will be on Tara Lane with a gated access for fire emergencies. They are replatting the location of the cul-de-sac on Tara Lane to match where it is constructed and will be upgraded during construction. There is a small easement parcel south of the cul-de-sac.

Wimborne asked for clarification on the gate on Tara. Lewis stated that the entirety of the inventory lot services facility will go in here and will be fenced, so there will be a double gate wide enough for fire department access on Tara. Wimborne clarified Access on Tara is to the existing Camping World, or through the gate on Tara for the Fire Department, otherwise access to this property is off Pancheri or off Skyline. Lewis stated that the access will be primarily from Skyline or the existing dealership property.

Foster presented the staff report, a part of the record.

**Ogden moved to recommend to the Mayor and City Council approval of the Final Plat for Freeway Commercial Center Division No. 4, Wimborne seconded the motion. Denney called for roll call vote: Morrison, yes; Brower, yes; Wimborne, yes; Ogden, yes; Cantu, yes; Romankiw, yes. The motion passed unanimously.**

**7. Presentation of Planning Commission Service Plaques for Brent Dixon, Joanne Denney, George Morrison, Lindsey Romankiw.**

Cramer stated that it is sad to see members go and move on at the end of the terms. Cramer wants the spotlight on the members retiring as volunteers for the City. Cramer submitted his resignation yesterday, and this is his last meeting as well, and he is going out with the retiring members. Cramer has been amazed that they are willing to come as volunteers and take the abuse from public. Cramer is amazed that out of all community service, they chose to come here to make the City a better place. The hours go unnoticed in the community except by those who are angry. Cramer asked them to remember the people not in the room that appreciated the service, even if they didn't know it was them. Enjoy the unsaid thankyou.

Cramer handed plaques shortest to longest: Lindsey Romankiw 2016 – 2022; Joanne Denney 2015 – 2022; George Morrison 2010-2022; Brent Dixon 1999-2022. Cramer stated that they had an overwhelming response when they asked for volunteers and they had more people apply than they had seats for and so given the response, and the number of years on the Commission, they decided not to reappoint Brent Dixon. 23 years is an incredible amount of service. Cramer stated that when he was brand new, Cramer would prepare for presentations based on what Dixon might ask.

Denney thanked Brad for his service to the Commissioners.

Morrison thanked the staff for their work and time, and it was a pleasure to watch the City grow and be a part of the growth.

Beutler stated the next meeting is January 3, 2023, with a full commission of 5 new appointments. January 3, 2023, has one item, and will have some training, and elections for chair and officers.

**Next Meeting January 3, 2023.**

**Adjourn at 8:00 pm**

**Respectfully Submitted**

**Beckie Thompson, Recorder**

## **REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS**

### **THE FINAL PLAT FOR MAVERIK IDAHO FALLS SUBDIVISION LOCATED GENERALLY NORTH OF US HWY 20, EAST OF E 33<sup>RD</sup> N, SOUTH OF E 33<sup>RD</sup> N, WEST OF N 5<sup>TH</sup> E**

**WHEREAS**, the applicant filed an application for a final plat on October 26, 2022; and

**WHEREAS**, this matter came before the Idaho Falls Planning and Zoning Commission during a duly noticed public meeting on December 6, 2022; and

**WHEREAS**, this matter came before the Idaho Falls City Council during a duly noticed public meeting on May 11, 2023; and

**WHEREAS**, having reviewed the application, including all exhibits entered and having considered the issues presented:

#### **I. RELEVANT CRITERIA AND STANDARDS**

1. The Planning and Zoning Commission considered the request pursuant to the City of Idaho Falls Comprehensive Plan, the City of Idaho Falls Zoning Ordinance, the City of Idaho Falls Subdivision Ordinance, the Local Land Use Planning Act, and other applicable development regulations.
2. This is an approximate 4.269-acre property located generally north of US Hwy 20, east of E 33rdN, south of E 33<sup>rd</sup> N, west of N 5<sup>th</sup> E.
3. The property is zoned HC, Highway Commercial.
4. The Final Plat includes one (1) buildable lot.
5. Access to the subdivision will come from E 33<sup>rd</sup> N, a minor arterial street.
6. The plat complies with all requirements of the Subdivision Ordinance and Zoning Ordinance.
7. The proposed development is consistent with the principles of the City's Comprehensive Plan.

#### **II. DECISION**

Based on the above Reasoned Statement of Relevant Criteria, the City Council of the City of Idaho Falls approved the Final Plat.

PASSED BY THE CITY COUNCIL OF THE CITY OF IDAHO FALLS

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023

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Rebecca L. Noah Casper, Mayor

DEVELOPMENT AGREEMENT  
MAVERIK IDAHO FALLS SUBDIVISION

This DEVELOPMENT AGREEMENT MAVERIK IDAHO FALLS SUBDIVISION (“AGREEMENT”), made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, (“CITY”), whose mailing address is P.O. Box 50220, Idaho Falls, Idaho 83405, and DRH PROPERTIES, LLC. (“DEVELOPER”), whose mailing address is 2265 E. Murray Holladay Road, Salt Lake City, Utah 84417.

W I T N E S S E T H:

WHEREAS, DEVELOPER is the sole owner, in law or equity, of a certain tract of land in the County of Bonneville, State of Idaho, which land (hereafter referred to as “Subdivision”), is more particularly described in Exhibit “A” attached hereto and by this reference made a part hereof; and,

WHEREAS, DEVELOPER desires to develop the Subdivision within CITY and has submitted a plat bearing the Subdivision name described in the caption of this AGREEMENT; and,

WHEREAS, City Engineer, and the Idaho Falls Planning and Zoning Commission, have recommended such development be allowed, subject to certain requirements and obligations on the part of DEVELOPER; and

WHEREAS, CITY is willing to allow the development of the Subdivision within City of Idaho Falls, Idaho, subject to the terms and conditions of this AGREEMENT and the Special Conditions attached hereto; and

WHEREAS, CITY has authority to approve Subdivision plats and the construction of streets, utility lines and other public improvements within CITY; and

WHEREAS, DEVELOPER specifically waives DEVELOPER’s right to protest development requirements described in this AGREEMENT, including DEVELOPER’s right of judicial review contained in Chapter 52, Title 67, Idaho Code, and pursuant to the standards set forth in § 67-5279, Idaho Code; and,

WHEREAS, DEVELOPER understands that the public improvements required herein are standards required pursuant to Idaho Falls City Code, Title 10, Chapter 1, and are authorized by Idaho Code §§ 67-6513 and 67-6518; and,



WHEREAS, DEVELOPER and CITY believe that without the public improvements required herein, CITY would not be able to otherwise provide for mitigation of the effects of the Subdivision development on the ability of CITY to deliver services without compromising quality of such service delivery to current CITY residents, or without imposing substantial additional costs upon current CITY residents to accommodate the proposed Subdivision; and,

WHEREAS, CITY desires to ensure that public improvements consisting of those described in this AGREEMENT, including Special Conditions for the Subdivision, are constructed; and,

WHEREAS, DEVELOPER understands that a waiver of public improvements is available pursuant to Idaho Falls City Code, but DEVELOPER specifically does not wish to request such a waiver and wishes to enter into this AGREEMENT; and,

WHEREAS, DEVELOPER enters into this AGREEMENT of DEVELOPER's own free will and accord, without coercion and without inducement and at DEVELOPER's request; and,

WHEREAS, DEVELOPER has read this AGREEMENT, has understood it, and has had the opportunity to avail itself of legal and other counsel prior to entering into this AGREEMENT and prior to signing it; and,

WHEREAS, DEVELOPER has submitted a preliminary plat bearing the Subdivision name described in the caption of this AGREEMENT; and,

WHEREAS, City Engineer and City Planning and Zoning Commission have recommended such Subdivision be approved subject to certain requirements and obligations on the part of DEVELOPER; and,

WHEREAS, CITY is willing to approve the Subdivision to CITY, subject to the terms and conditions of this AGREEMENT and the Special Conditions attached hereto;

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

1. Approval of Subdivision. CITY hereby approves the Subdivision plat as described in Exhibit "A" attached hereto and made a part to this AGREEMENT by reference, and agrees that upon DEVELOPER's full and complete performance of the terms and conditions hereto, it will accept and maintain the property dedicated to CITY on the Subdivision plat and all public facilities and improvements shown in the Improvement Plans for the Subdivision.

2. Improvement, Preliminary, and Final Improvement Plans. "Improvement Plans," used in this AGREEMENT, are engineer-designed plans showing all streets, sewer lines, water lines, storm drains, street signs, traffic control devices, barricades, other public utilities (telephone, gas, electricity, fiber optic and irrigation facilities) and other public improvements contemplated within the Subdivision. "Preliminary Improvement Plans" as used in this AGREEMENT, are those Improvement Plans submitted and considered for the Subdivision development prior to the approval of City Engineer, and not yet approved for construction. "Final Improvement Plans" as used in this AGREEMENT, are those Improvement Plans submitted, considered and approved by City Engineer for the Subdivision development.

DEVELOPER anticipates that development of the entire Subdivision will occur in phases or divisions. DEVELOPER has filed, and City Engineer has approved, Improvement Plans for the public improvements to be constructed within public rights-of-way exterior to the Subdivision, (hereafter referred to as the "Exterior Improvement Plans") showing the width, location and alignment of all streets, sewer lines and water lines within the Subdivision and the size and materials specifications for such water and sewer lines. Prior to the commencement of any construction or development within any phase or division of the Subdivision, DEVELOPER shall also file with, and obtain the approval of, City Engineer Improvement Plans (hereafter the "Interior Improvement Plans") for all streets, sewer lines, water lines, storm drainage facilities, street signs, traffic control devices, barricades and other public improvements contemplated within such phase or division of the Subdivision. The filed Improvement Plans shall also show the proposed location of other public utilities (telephone, gas and electricity), and irrigation facilities affected by the development of such phase or division of the Subdivision. Preliminary Improvement Plans are incorporated herein by reference as though set out in full, and the Final Improvement Plans shall also, upon approval by City Engineer, be deemed to be incorporated herein by reference.

3. Construction of Public Improvements. Unless otherwise agreed in the Special Conditions, DEVELOPER shall, at its expense, design and construct all public improvements shown in the Exterior Improvement Plans and Interior Improvement Plans. Unless otherwise agreed in writing by City Engineer, DEVELOPER shall construct all required public improvements within such Improvement Plans in strict accordance with the approved Preliminary and Final Improvement Plans and CITY Standard Engineering Drawings and Specifications (hereafter referred to as the "Standard Specifications") in effect at the time the construction is accomplished. The Standard Specifications are incorporated herein by reference as though set out in full and compliance to the Standard Specifications is a condition of this AGREEMENT.

4. Permits. DEVELOPER shall obtain all right-of-way, excavation and/or other permits required by local ordinance and comply with all requirements therein with respect to the

timely performance of the work governed by such permits.

5.     **Inspection.** DEVELOPER shall retain a professional engineer (hereafter referred to as the "Project Engineer") licensed within the State of Idaho to supervise, inspect and test the construction of all public improvements within the Subdivision in order to ensure such improvements are constructed in accordance with this AGREEMENT, the Improvement Plans and the Standard Specifications. DEVELOPER shall not materially deviate from the Improvement Plans or Standard Specifications without the express written approval of the City Engineer.

6.     **Corrected Improvement Plans.** Prior to acceptance of any phase or division of the Subdivision, DEVELOPER will file "As Constructed"/ "As Built" Improvement Plans (hereafter referred to as the "Corrected Improvement Plans") with City Engineer. Such Corrected Improvement Plans shall be prepared by the Project Engineer and shall show the actual constructed location of all public improvements within the Subdivision including the horizontal and vertical location of all water, sewer and storm drain lines, individual building service lines curb and gutter alignment and street grades. Such Corrected Improvement Plans shall also specifically show all changes between the Final Improvement Plans and the public improvements as actually constructed. The Project Engineer shall also certify upon the Corrected Improvement Plans that such Corrected Improvement Plans correctly show all public improvements as actually constructed and that such public improvements have been constructed in accordance with the Standard Specifications in effect at the time such construction was accomplished. The Project Engineer shall also deliver to City Engineer all compaction reports, daily construction logs, reports, written tests, analysis and other data as may be necessary to verify or support the certification of the Project Engineer.

7.     **Acceptance of Subdivision.** Upon satisfactory completion of such public improvements and facilities, DEVELOPER's delivery of Corrected Improvement Plans and the filing and approval by CITY of a final plat, CITY will accept that portion of the Subdivision for which a final plat has been approved. Such acceptance shall not be valid unless expressly acknowledged in writing by City Engineer. Except as otherwise expressly provided in the Special Conditions, upon acceptance of any phase or division within the Subdivision, CITY shall assume ownership and control of all public facilities within any dedicated street or public utility right-of-way within the Subdivision and shall execute and record an instrument documenting such acceptance and that also references the recording information for this AGREEMENT and thereby releasing the Subdivision, or the accepted portion thereof, from the encumbrances of this AGREEMENT. Acceptance of the Subdivision Improvements and recording the acceptance instrument shall not be deemed as a waiver of DEVELOPER's agreement herein to fully and completely perform the terms and conditions of this AGREEMENT, or as a waiver or release of the warranty set forth below in this AGREEMENT.



8.      **Warranty.** DEVELOPER warrants that the materials and workmanship employed in the construction of all public improvements within the Subdivision shall be good and sound, and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of any phase or division of the Subdivision within which such improvements are located, by CITY, provided nothing herein shall limit the time within which CITY may bring an action against DEVELOPER on account of DEVELOPER's failure to construct such improvements in accordance with this AGREEMENT, the Improvement Plans or the Standard Specifications. DEVELOPER, and DEVELOPER's heirs, successors and assigns, shall and do hereby respectively warrant and agree, to defend the quiet and peaceful possession of CITY in all easements, rights-of-way, street dedications or other estates conveyed pursuant to the terms of this AGREEMENT or pursuant to the subdivision plat which is the subject hereof, from and against all claims against DEVELOPER and DEVELOPER's successors or assigns, respectively, and against every person whomsoever who lawfully holds, or who later lawfully claims to have held, rights in the premises by or through DEVELOPER and DEVELOPER's successors or assigns, respectively, as of the date of this AGREEMENT.

9.      **Water and Sewer Main Connection Charges.** DEVELOPER agrees to pay to CITY at the time any separate sanitary sewer service or culinary water service connection to CITY sanitary sewer system or culinary water system is requested, all connection fees, main connection charges, and main charges as set forth in the City Code in effect at the time such request for service is made.

10.     **Failure to Pay Fees.** In the event DEVELOPER fails or refuses to pay any of the fees, charges or costs set forth herein, CITY may disannex any property owned by DEVELOPER within the Subdivision or declare the entire unpaid balance immediately due and payable and collect such sums in the manner provided by law, or may pursue any other remedy set forth herein or as may be available at law or in equity. All such remedies shall be cumulative and CITY may pursue the same separately or simultaneously as it deems necessary or appropriate. In the event of such acceleration, all sums due shall bear interest at the rate established by law for judgments entered in the State of Idaho, commencing on the date the unpaid amount is declared immediately due and written demand therefor is delivered to DEVELOPER.

11.     **Participation by CITY.** The parties agree that those portions of the water main, the sanitary sewer line, storm drains and street section work (hereafter collectively referred to as the "Shared Work"), the cost of which CITY has expressly agreed to pay pursuant to the Special Conditions, including any water or sewer line or storm line extensions, increased line size or capacity and road width or thickness, are required because of future service needs originating from properties not owned by DEVELOPER and located within the vicinity of the Subdivision, and that sound planning requires construction thereof at the present time in order to accommodate future expansion and development. In recognition of the cost savings which can be accomplished by

construction of such excess capacity and improvements concurrently with the facilities to be constructed for DEVELOPER's purposes, and the impracticality or impossibility of constructing such excess capacity and improvements separately or at a later time, DEVELOPER agrees to design and construct such facilities subject to CITY's agreement to reimburse DEVELOPER for a portion of such costs, all as set forth in the Special Conditions. Prior to the commencement of the Shared Work, DEVELOPER shall obtain and deliver to CITY three (3) independent bona fide bids for the performance of such work from qualified and responsible contractors. Such bids shall be solicited and itemized in a manner which allows clear and specific identification of that portion of the construction work for which CITY is responsible. CITY shall have no obligation to pay for any portion of the costs of the Shared work unless prior to the commencement of the work, the parties have expressly agreed in writing to a specific amount for which CITY will reimburse the DEVELOPER. Payment of such costs by CITY shall be due within thirty (30) days from acceptance of the Subdivision by CITY and delivery of an itemized statement to CITY setting forth in detail the total amount of the costs for which CITY is responsible.

12. Special Conditions. In recognition of the unique circumstances relative to this Subdivision the parties agree to the Special Conditions attached hereto as Exhibit "B" and by this reference made a part hereof.

13. Irrigation Facilities. DEVELOPER shall relocate or reconstruct, at DEVELOPER's expense, all ditches, headgate structures, culverts, siphons, drywells or other similar appurtenant structures that will be impaired or otherwise disturbed by the construction of this Subdivision. DEVELOPER shall also obtain the consent of all persons or entities who have any water right or control over such structures. DEVELOPER shall also indemnify and hold CITY harmless from any action, claim, demand or cost of any kind, including attorney's fees and court costs, arising from the relocation or reconstruction of such facilities or DEVELOPER's failure to properly relocate or reconstruct such facilities.

14. Relocation of Power Lines. DEVELOPER shall relocate at its expense, all existing electric utility poles or other utility lines or fixtures necessary to construct the public improvements within this Subdivision as shown on the Improvement Drawings.

15. Construction Schedule Change. Any modification to the public improvements shown in the Improvement Drawings or to the construction phase limits shall be approved by City Engineer. Prior to said approval, revised Improvement Drawings shall be resubmitted to City Engineering Department showing the proposed changes.

16. Taxes and Assessments. DEVELOPER shall pay all real property taxes and assessments levied or assessed against any interest in real property which DEVELOPER has agreed to convey to CITY pursuant to this AGREEMENT up to the date the final Subdivision plat

for this Subdivision is recorded. Such taxes and assessments shall be paid prior to the acceptance by CITY of the public improvements within any phase or division of the Subdivision.

17. Occupancy. No building or structure within the Subdivision shall be used or occupied for any purpose other than for the construction of such building or structure, unless a final plat has been filed and approved and all public improvements within the plat have been completed and accepted by City Engineer. CITY may withhold Certificates of Occupancy until all such work has been completed. Nothing herein shall prevent the use of a model building for the purpose of DEVELOPER's sales promotional efforts provided the building is not occupied for any other commercial or industrial purposes.

18. Default. In the event DEVELOPER fails to comply with the terms and conditions hereof in any material respect, CITY may, without further notice to DEVELOPER, exercise any or all of the following remedies:

- A. Withhold the issuance of any building permit or certificate of occupancy for any structure located within any phase or division of the Subdivision affected by such default;
- B. Withhold the connection of water, sewer or electric service to any property located within any phase or division of the Subdivision affected by such default;
- C. Refuse to accept public ownership and maintenance of public improvements within any phase or division of the Subdivision affected by such default and record a notice of such action with the Bonneville County Recorder's office;
- D. Issue a stop work order for any building under construction within any phase or division of the Subdivision affected by such default;
- E. Withhold reimbursement of Subdivision inspection fees collected pursuant to the Idaho Falls City Code; and
- F. Bring an action for damages, injunctive relief, specific performance or any other remedy available at law or in equity.

19. Notices. Any notice required by this AGREEMENT shall be mailed to the receiving party at the address set forth above or such other address as may be delivered to the sending party in writing. Such notice shall be mailed by certified mail, return receipt requested, postage prepaid and addressed as set forth above and shall be deemed received upon its deposit in the United States mail in such manner.

20. Recording and Recording Fees. CITY may record this AGREEMENT with the



Bonneville County Recorder's office and prior to the execution and approval of this AGREEMENT, DEVELOPER shall pay to CITY all recording fees necessary to record this AGREEMENT with the Bonneville County Recorder's office. Prior to the approval of any final plat within the Subdivision, DEVELOPER shall pay to CITY all recording fees necessary to record such final plat with the Bonneville County Recorder's office.

21. Irrigation District Release. Prior to the approval of the Subdivision plat, DEVELOPER shall: (i) include a statement on the Subdivision plat that the property subject to this AGREEMENT has been excluded from the applicable irrigation district and reference the district's exclusion order by recording date and instrument number; or (ii) obtain a certification upon the Subdivision plat signed by any irrigation district, canal company, ditch association or other similar water delivery entity who provides or delivers water to any property located within the Subdivision. This certification shall contain a statement certifying that the property subject to this AGREEMENT has been excluded from the irrigation district, canal company, ditch association or other similar water delivery entity who provides or delivers water to any property located within the Subdivision or the water rights for all property within the Subdivision have been transferred from such property and that all liens and assessments of such water delivery entity have been satisfied and released.

22. Compliance With Applicable Law and Regulation. DEVELOPER agrees to comply with all applicable rules, regulations, Ordinances, Resolutions, statutes or administrative laws having applicability to development to this Subdivision and or phase of this Subdivision including, of those of CITY, Bonneville County, the State of Idaho, the United States of America, or any agency or political subdivisions thereof having jurisdiction over the Subdivision and to obtain any permits, licenses, permissions, authorizations, etc., that are required for such development.

23. Conflict With Standard Specifications. In the event of any conflict between the terms of this AGREEMENT or the Improvement Plans and the Standard Specifications, the terms of this AGREEMENT or the Improvement Plans shall prevail over any contrary provision of the Standard Specifications. In the event of any conflict between the terms of this AGREEMENT and the Improvement Plans, the terms of this AGREEMENT shall prevail.

24. Covenants Appurtenant to the Land. All covenants and conditions set forth herein shall be appurtenant to and run with the Subdivision and shall be binding upon DEVELOPER's heirs, successors or assigns.

25. Governing Law. This AGREEMENT shall be governed by the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County or in the United

States District Court for the District of Idaho.

26. Anti-Boycott Against Israel Act. Pursuant to Idaho Code section 67-2346, if payments under this AGREEMENT exceed one hundred thousand dollars (\$100,000) and DEVELOPER employs ten (10) or more persons, DEVELOPER certifies that it is not currently engaged in, and will not for the duration of this AGREEMENT engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Paragraph that are defined in Idaho Code section 67-2346 shall have the meaning defined therein.

27. Non-Discrimination. DEVELOPER shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, gender identity/expression, sexual orientation, or national origin.

28. Entire Agreement. This writing evidences the final and complete agreement between the parties and no other prior statement, representation or understanding shall be binding upon the parties unless expressly set forth herein.

29. Effective Date. This AGREEMENT shall become valid and binding only upon its approval by CITY Council of CITY and upon its execution by the Mayor.

INWITNESS WHEREOF, the parties have hereunto set their hands and seals this day and year first above written.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

\_\_\_\_\_  
Corrin Wilde, City Clerk

By \_\_\_\_\_  
Rebecca L. Noah Casper, Ph.D., Mayor

DRH PROPERTIES, LLC

By  \_\_\_\_\_  
Dee Hansen, Manager

STATE OF IDAHO )  
 ) ss.  
County of Bonneville )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah Casper, known to me to be the Mayor of the City of Idaho Falls, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that they are authorized to execute the same for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Seal)

\_\_\_\_\_  
Notary Public of Idaho

Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Utah  
STATE OF ~~IDAHO~~ )  
 ) ss:  
County of Salt Lake )

On this 1st day of May, 2023, before me, the undersigned, a notary public, in and for said State, personally appeared Dee Hansen, known or identified to me to be an authorized signator of DRH Properties, LLC., and whose name is subscribed to the within instrument and acknowledged to me that they are authorized to execute the same for and on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



(Seal)

Katie Saichek  
\_\_\_\_\_  
Notary Public of Idaho Utah  
Residing at: Salt Lake County  
My Commission Expires: 9/10/2025

COMMISSION # 719816

**EXHIBIT "A"**  
**PROPERTY**

**LEGAL DESCRIPTION**

**MAVERIK IDAHO FALLS SUBDIVISION**

A part of the Southeast Quarter of Section 6, Township 2 North, Range 38 East, Boise Meridian, in Bonneville County, Idaho:

Beginning at an existing Right-of-way Monument marking the South Line of 33rd North Street on the West Line of 5th East Street located 1212.19 feet North  $0^{\circ}47'05''$  West along the Section Line, and 40.50 feet South  $89^{\circ}12'55''$  West from a Brass Cap Monument in a vault found marking the Southeast Corner of said Section 6; and running thence along the Highway Right-of-way Lines the following five courses: South  $0^{\circ}47'44''$  East 111.55 feet; South  $89^{\circ}12'16''$  West 60.00 feet; South  $0^{\circ}47'44''$  East 165.43 feet to an existing Right-of-way Monument set in concrete; South  $11^{\circ}06'51''$  West 147.16 feet; and South  $35^{\circ}49'52''$  West 155.53 feet; thence North  $68^{\circ}00'09''$  West 406.12 feet to a point on the Southeasterly Right-of-Way Line of 33rd North Street; thence along said Southeasterly Right-of-Way Line the following three courses: North  $20^{\circ}11'23''$  East 118.73 feet to a point of curvature; Northeasterly along the arc of a 432.46 foot radius curve to the right a distance of 520.84 feet (Central Angle equals  $69^{\circ}00'16''$  and Long Chord bears North  $54^{\circ}41'31''$  East 489.92 feet) to a point of tangency; and North  $89^{\circ}11'39''$  East 111.34 feet to the point of beginning.



**EXHIBIT "B"**  
**SPECIAL CONDITIONS**

**MAVERIK IDAHO FALLS SUBDIVISION**

**S.C. 1.00 Access to 33<sup>rd</sup> North.** Access to 33<sup>rd</sup> North shall be in accordance with the Bonneville Metropolitan Planning Organization Access Management Plan.

**S.C. 2.00 Street Section Improvements 33<sup>rd</sup> North.** DEVELOPER shall design and construct roadway improvements in 33<sup>rd</sup> North (approximately 940 ft) in accordance with CITY's Approved Improvement Drawings. DEVELOPER shall be reimbursed for such improvements pursuant to Paragraph 11 of this AGREEMENT. Reimbursement schedule is also subject to CITY's ability to collect impact fees and final acceptance of the roadway improvements. DEVELOPER shall also provide for the landscaping in the park strip between the curb and the sidewalk. Maintenance of the landscape buffer shall be the responsibility of DEVELOPER or DEVELOPER'S heirs, successors, or assigns.

**S.C. 3.00 Existing Infrastructure.** When it is necessary to move or remove existing infrastructure not belonging to CITY and not within CITY right-of-way, DEVELOPER shall coordinate such activities with the applicable owner, (e.g., poles owned by PacifiCorp, dba Rocky Mountain Power). Any existing electrical infrastructure owned by PacifiCorp, dba Rocky Mountain Power, will require a buy-out from DEVELOPER prior to receipt of electrical service from CITY. Request for the buy-out, if any, is to be initiated by DEVELOPER following annexation.

**S.C. 4.00 Storm Drainage.** Storm Drainage shall be designed and constructed to accommodate drainage of the lots within the Subdivision by DEVELOPER. The storm drainage system shall meet CITY's Storm Drainage Policy. The storm pond shall be constructed as shown on the CITY-approved Improvement Drawings. DEVELOPER shall provide for the installation of grass and an irrigation system, at DEVELOPER's sole expense, to serve this Subdivision. Maintenance of the storm pond shall be the responsibility of DEVELOPER or DEVELOPER's heirs, successors, or assigns.

**S.C. 5.00 Construction of Water Lines.** DEVELOPER shall, at DEVELOPER's sole expense, design and construct Eight Hundred Sixty feet (860') of twelve-inch (12") water main line starting approximately 160 feet West from the intersection of 5th E and 33rd N and continuing to and across the entire frontage of this Subdivision, as shown on the Improvement Drawings approved by and on file with CITY Engineer. CITY acknowledges that an eight inch (8") water main line is adequate to serve this Subdivision; however, sound planning and economy of scale requires construction of a sixteen inch (16") diameter water main line to serve properties adjacent to and/or near this Subdivision. DEVELOPER shall design and construct, at DEVELOPER's sole expense, all water mains and appurtenances within the Subdivision in accordance with CITY Standard Drawings

and Engineering Specifications and as shown on the Improvement Drawings filed with and approved by CITY Engineer, and upon completion thereof, DEVELOPER shall furnish CITY with a certificate signed by a licensed professional engineer, certifying that the water mains and appurtenances have been constructed in accordance with such Specifications. CITY agrees to reimburse DEVELOPER that portion of the costs of materials for the twelve inch (12") water main line which exceeds the costs of materials for an eight inch (8") water main line, subject to the limitations and bid procurement requirements of this AGREEMENT.

**S.C. 6.00 Reimbursement of Water Main Charges.** Upon connection of water service to any property owned by any person other than DEVELOPER and fronting upon that portion of the waterline which DEVELOPER has constructed, CITY shall, to the extent permitted by law, and upon written request of DEVELOPER, pay to DEVELOPER all water main connection charges collected by CITY from the owners of such property, pursuant to Section 8-4-14(C), City Code, as the same currently exists or may be amended hereafter. Such right to reimbursement shall terminate with respect to any water main charge collected by CITY after the expiration of ten (10) years from the date of this AGREEMENT.

**S.C. 7.00 Water Line Connection in 5th East.** CITY agrees to allow DEVELOPER to connect to the water main, subject to DEVELOPER's payment of the water main connection fees in the amount of Nineteen Thousand Four Hundred Ninety-one dollars and Sixty Cents (\$19,491.60; 444 ft currently at \$43.90 per foot), upon execution of this AGREEMENT, pursuant to Section 8-4-14 (C) of Idaho Falls City Code. Pursuant to section 8-4-14 (B) of the City Code, DEVELOPER or DEVELOPER's heirs or assigns shall also pay individual water system connection fees each time an individual water service line is connected to CITY water systems. Such fees shall be paid in the amounts and manner set forth in such Code Sections.

**S.C. 8.00 Construction of Sanitary Sewer Lines.** DEVELOPER shall, at DEVELOPER's sole expense, design and construct Seven Hundred and Ninety feet (790') of Eight inch (8") sanitary sewer main line starting approximately 160 feet west from the intersection of 5th E and 33rd N and continuing to and across the entire frontage of this Subdivision, as shown on the Improvement Drawings approved by and on file with CITY Engineer. DEVELOPER shall design and construct, at DEVELOPER's sole expense, all sewer mains and appurtenances within the Subdivision in accordance with CITY Standard Drawings and Engineering Specifications and as shown on the Improvement Drawings filed with and approved by CITY Engineer, and upon completion thereof, DEVELOPER shall furnish CITY with a certificate signed by a licensed professional engineer, certifying that the sewer mains and appurtenances have been constructed in accordance with such Specifications. CITY agrees to reimburse DEVELOPER that portion of the costs of materials for the twelve inch (12") main line which exceeds the costs of materials for an eight inch (8") sewer main line, subject to the limitations and bid procurement requirements of this AGREEMENT.

**S.C. 9.00 Reimbursement of Sanitary Sewer Lines.** Upon connection of sanitary sewer



service to any property owned by any person other than DEVELOPER and fronting upon that portion of sanitary sewer which DEVELOPER has constructed outside of this Subdivision, CITY shall, to the extent permitted by law, and upon written request of DEVELOPER, pay to DEVELOPER all sewer main connection charges collected by CITY from the owners of such property, pursuant to Section 8-7-15(C), City Code, as the same currently exists or may be amended hereafter. Such right to reimbursement shall terminate with respect to any sewer main charge collected by CITY after the expiration of Ten (10) years from the date of this AGREEMENT.

**S.C. 10.00 Sewer Main Connection Fee 5<sup>th</sup> East.** CITY agrees to allow DEVELOPER to connect to the sewer previously constructed within the Subdivision, subject to DEVELOPER's payment of the sewer main connection charge pursuant to section 8-1-23(C) of the City Code in the amount of Eleven Thousand Four Hundred Ten Dollars and Eighty Cents (\$11,410.80); 444 feet; currently at \$25.70 per foot). Mainline connection fee costs shall be adjusted accordingly in the event that the connections are not made at time when CITY Fee Resolution reflects the rate referenced herein. Pursuant to section 8-1-23(B) of the City Code, DEVELOPER or DEVELOPER's heirs or assigns shall also pay individual sewer connection fees each time an individual sewer service line is connected to CITY sewer system. Such fees shall be paid in the amounts and manner set forth in such Code Section.