



# City Council Agenda

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City of Idaho Falls  
Regular Council Meeting  
680 Park Avenue

**Thursday**  
**August 10, 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, proper 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, August 10, 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. **Municipal Services**

- 1) Annual Renewal of Customer Information System (CIS) Support and Maintenance **23-220**

**Attachments:** Cayenta Renewal 2023-2024

- 2) Idaho Falls Civic Center for the Performing Arts Gala Orchestra Pit Lift Repair **23-221**

**Attachments:** Gala Pit Lift Repair

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

- 1) IFP 21-38 Fiber Optic Cable Installation Services with Wheeler Electric, Inc. **23-224**

**Attachments:** IFP 21-38 Additional Spending for Fiber Optic Cable - Wheeler.pdf

- 2) IF 21-37, Additional Spending Request for Fiber Micro duct Deep-Drop Installation Services **23-225**

**Attachments:** IF 21-37 Additional Spending for Fiber Microduct - B Jackson.pdf

- 3) IFP 23-25 Paine South Feeders Construction **23-226**

**Attachments:** Legistar Memo.pdf

#### C. **Office of the City Clerk**

- 1) Minutes from Council Meetings 23-228

**Action Item:**

Approve the minutes from July 13, 2023 City Council Meeting and May 11, 2023 City Council Meeting, April 13, 2023 City Council Meeting.

**Attachments:** 2023 0413 City Council Unapproved  
2023 0511 City Council-Unapproved  
2023 0713 City Council - Unapproved

- 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. Community Development Services

- 1) Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Southbridge Division NO. 1 23-227

Attached is the application for the Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards for Southbridge Division NO. 1. 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 Southbridge Division NO. 1 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 Southbridge Division NO 1 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 Southbridge Subdivision NO. 1 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

B. Parks & Recreation



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1) Resolution to Waive Certain 2023 Fourth of July Celebration Fees 23-219

This annual Resolution waving Fourth of July fees was not included with the prior approval of the Indemnification Agreement at City Council on June 29, 2023. It should be approved to provide support for the Community's 2023 Fourth of July Celebration and to document proper fee accounting in the budget.

**Action Item:**

Approve the Resolution to waive certain 2023 Fourth of July fees for services performed by the City of Idaho Falls to assist in the free, public Fourth of July activities and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

**Attachments:** 2023 Fourth of July Fees Resolution 7.25.23

**C. Municipal Services:**

1) Public Hearing for the Tentative 2023/24 Fiscal Year Budget 23-222

Pursuant to Idaho Code §50-1002, the Notice of Public Hearings for the 2023/24 fiscal year budget was published on Saturday, July 29, 2023, and Saturday, August 5, 2023.

**Action Item:**

Municipal Services respectfully requests that the Mayor and Council conduct a public hearing for the 2023/24 fiscal year budget. The Public Hearing has been scheduled for Thursday, August 10, 2023, at 7:30 pm in the City Council Chambers of the City Annex Building located at 680 Park Avenue, Idaho Falls, Idaho.

2) Public Hearing for the Proposed Fees for Fiscal Year 2023/24 23-223

Due to the Post Register's inability to post the Notice of Public Hearings for the 2023/24 fiscal year proposed fee schedule as submitted within the deadline on Saturday, July 29, 2023, the Post Register has published the Notice of Public Hearing for the proposed fees in print on Tuesday, August 1, 2023, and Saturday, August 5, 2023, and electronically on Saturday, July 29, 2023, and Saturday, August 5, 2023. Pursuant to Idaho Code §60-106A(5), "if the state of Idaho or any political subdivision thereof properly submits a legal notice, advertisement, or publication to a newspaper for publishing and such governmental entity has otherwise met all statutory publication requirements and deadlines, it shall not be liable for failing to comply with publication deadlines provided by law or administrative rule in the even that a newspaper fails to correctly publish such legal notice, advertisement or publication...."

**Action Item:**

Municipal Services respectfully requests that the Mayor and Council conduct a public hearing for the proposed 2023/24 fee schedule. The Public Hearing has been scheduled for Thursday, August 10, 2023, at 7:30 pm in the City Council Chambers of the City Annex Building located at 680 Park Avenue, Idaho Falls, Idaho.

6. Announcements.

7. Adjournment.

# Memorandum

File #: 23-220

City Council Meeting

**FROM:** Pam Alexander, Municipal Services Director  
**DATE:** Wednesday, July 26, 2023  
**DEPARTMENT:** Municipal Services

## Subject

Annual Renewal of Customer Information System (CIS) Support and Maintenance

## Council Action Desired

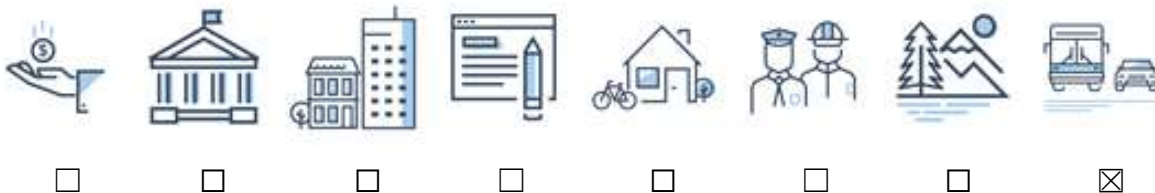
- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing
 ☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the annual renewal of the Cayenta Customer Information System and GIS Connector maintenance support services for a total of \$82,722.76 (or take other action deemed appropriate).

## Description, Background Information & Purpose

This request is to renew the Cayenta Customer Information System (CIS) and GIS Connector maintenance support service for the period of October 1, 2023 - September 30, 2024.

## Alignment with City & Department Planning Objectives



This request supports the reliable public infrastructure community-oriented result by maintaining professional support services for the city's utility customer information system (CIS).

## Interdepartmental Coordination

This request has been reviewed with all necessary departments.

## Fiscal Impact

Funds for the renewal are budgeted in the 2023/24 Municipal Services Department Information Technology budget.

## Legal Review

The City Attorney has reviewed the terms of the agreement and concurs that the desired Council action is within State Statute.



Remit To: N. Harris Computer Corporation  
62133 Collections Center Drive  
Chicago, IL 60693-0621

Invoice **MN00139890**  
Date **7/21/2023**  
Page **1 of 1**

**Bill to**

City Of Idaho Falls  
Attn: Joseph Nilsson  
Chief Information Technology Officer  
308 Constitution Way  
Idaho Falls, ID 83402  
USA

City Of Idaho Falls  
Attn: Joseph Nilsson  
Chief Information Technology Officer  
308 Constitution Way  
Idaho Falls, ID 83402  
USA

PO Number	Customer No.	Salesperson ID	Shipping Method	Payment Terms
	IDAH		LOCAL DELIVERY	MN OCT

Ordered	Item Number	Description	Unit Price	Ext Price
1.00	CAY - MAINT	Customer Information System: 10/1/2023 to 9/30/2024	US\$ 79,202.64	US\$ 79,202.64
1.00	CAY - MAINT	Cayenta GIS Connector: 10/1/2023 to 9/30/2024	US\$ 3,520.12	US\$ 3,520.12
<p>Payment is due before the maintenance period start date. Therefore, please allow at least 10 business days prior to the due date to mail your payment. Failure to make payment by maintenance period start date may result in inability to receive support and product updates / upgrades.</p> <p>Invoice Questions? Please call Danieh Massalkhi at 778-900-3242 OR e-mail <a href="mailto:dmassalkhi@harriscomputer.com">dmassalkhi@harriscomputer.com</a></p>			Subtotal	US\$ 82,722.76
			Misc	US\$ 0.00
			Tax	US\$ 0.00
			Freight	US\$ 0.00
			Trade Discount	US\$ 0.00
			Total	US\$ 82,722.76

# Memorandum

File #: 23-221

City Council Meeting

**FROM:** Pam Alexander, Municipal Services Director  
**DATE:** Monday, July 31, 2023  
**DEPARTMENT:** Municipal Services

## Subject

Idaho Falls Civic Center for the Performing Arts Gala Orchestra Pit Lift Repair

## Council Action Desired

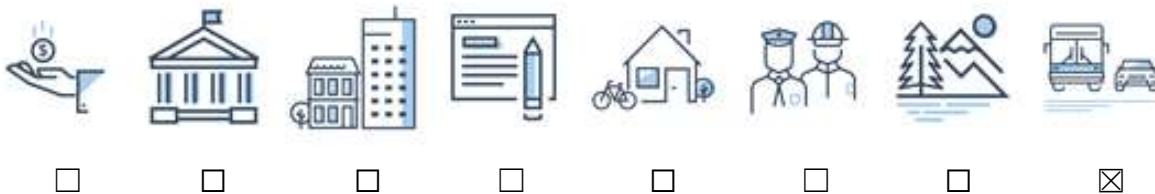
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the quote received from Gala Systems, Inc. to repair the Gala Orchestra Pit Lift for a total of \$232,000.00 (or take other action deemed appropriate).

## Description, Background Information & Purpose

The Gala Orchestra Pit Lift was donated by the William J. & Shirley A. Maeck Family Foundation as part of the Idaho Falls Civic Center for the Performing Arts renovation on September 10, 2018. The Gala Orchestra Pit lift was purchased and installed by Gala Systems, Inc. On May 23, 2023, a rare and significant storm occurred and flooded the basement and the Gala Orchestra Pit Lift, condemning the use of the equipment until repairs can be made. A claim for the damaged was submitted to the city's insurance company, ICRMP and was denied as an act of God and not covered through insurance.

## Alignment with City & Department Planning Objectives



The repair of the Gala Orchestra Pit Lift supports the reliable public infrastructure community-oriented result by providing repairs to city assets.

## Interdepartmental Coordination

This City's Risk Management committee concurred with the recommendation to use risk management funds to repair the equipment.

## Fiscal Impact

Funds to repair the equipment are available within the fiscal year 2022/23 Risk Management budget.

**Legal Review**

The City Attorney concurs that the desired Council action is within State Statute.

**GALA SYSTEMS INC.****Chris Shaw**

Sales Director, North America &amp; Asia

Phone: (760) 738-5555 • Fax: (760) 738-5511

Email: [cshaw@galasystems.com](mailto:cshaw@galasystems.com)**Canadian Office**

3185 First Street, Saint-Hubert, Quebec

Canada J3Y 8Y6

Phone: (450) 678-7226 • Fax: (450) 676-4732



<b>TO:</b>	<b>FROM:</b>
	<b>Jean-François Mongeau</b>
<b>COMPANY:</b>	<b>DATE:</b>
	<b>2023-07-20</b>
<b>FAX NUMBER:</b>	<b>TOTAL AMOUNT OF PAGES:</b>
	<b>6 pages</b>
<b>PHONE NUMBER:</b>	<b>REFERENCE:</b>
	<b>Proposal 101-12967A</b>
<b>PROJECT:</b>	
<b>Stage lift renovation Civic Auditorium, Idaho Falls, Idaho</b>	

Dear Sir,

Thank you for the opportunity to provide this proposal for the replacement of the stage lift equipment damaged by the flooding for the project in Idaho Falls, Idaho, USA.

**REFERENCE DOCUMENT(S)**

Gala's drawings 101-10742

**NOTE(S)**

- Equipment that has not entered in direct contact with water is assumed to be in good operating condition.
  - GALA strongly recommends replacing all site wiring (high voltage and low voltage) between the MCP to the terminal boxes on the pit floor. If it is decided to keep the same wiring and only replace the connections, GALA will void any according warranties.
  - This proposal is based on the information communicated that the lift is currently stopped at the audience level and that there is a working height of 5 ft under the deck.
-

## LIFTING SYSTEM

### GENERAL SPECIFICATIONS

SPECIFICATIONS	STAGE LIFT LEFT (1 REQUIRED)	STAGE LIFT RIGHT (1 REQUIRED)
Approx. area (ft <sup>2</sup> )	248	303
Travel (ft)	8.3	8.3
Approx. speed (ft/min.)	Fixed at 6	Fixed at 6
Static capacity (lbs/ft <sup>2</sup> )	150	150
Lifting capacity (lbs/ft <sup>2</sup> )	50	50
Approx. dead load (lbs/ft <sup>2</sup> )	30	30
Guiding Mechanism	Captured guide rails (existing)	Captured guide rails (existing)
Power (to be confirmed)	2 motors of 5 hp (10 hp total) 480 V / 3 ph / 60 Hz	2 motors of 5 hp (10 hp total) 480 V / 3 ph / 60 Hz
Spiralift quantity and model	4 x HD9	4 x HD9

#### **Non-performance system**

*The use of the lift system in a performance situation has not been indicated to us. We therefore have excluded low rpm motors, structural isolation, sound barrier boxes and additional sound absorption which would be supplied if a performance lifting system was indicated. If this assumption is incorrect, please advise us of the requirement so that Gala may modify the proposal accordingly.*

#### **No rider system**

*The system proposed is considered as "non-rider". It therefore excludes additional components and design considerations that would normally be included and used.*

## PROPOSED PRELIMINARY SCHEDULE

Regarding a potential delivery date, please note the following preliminary schedule:

Purchase order - award of contract:	to be determined
Engineering drawings for Spiralifts & drives:	1 to 2 months from award of contract
Spiralifts & drives production:	2 to 4 months from award of contract
Installation, training:	5 months from award of contract
Completion, sign-off:	approximately 6 months from award of contract

It shall be noted that this proposed preliminary schedule is valid at the time of issuance of this document and is subject to be revised depending on our actual book order at the time of confirmed order.



## ITEMS PROVIDED BY GALA

- IN1 Lifting Mechanism:**  
New GALA's Spiralift will be supplied as the lifting mechanism.
- IN2 Motors & Transmission System:**  
GALA will provide a system of motors, reducers, sprockets and chains to drive the Spiralift.
- IN3 Drive Shafts:**  
GALA will provide appropriately sized drive shafts to mechanically couple all motor / reducer assemblies for each lift.
- IN4 Control system:**  
GALA will replace the control equipment located on the pit floor and damaged by the flooding. This includes the MCP, DSW, TB2, LJB, cable from TB2 to LJB and cable basket.
- IN5 Encoder:**  
GALA will supply and couple one (1) incremental encoder per lift for position tracking.
- IN6 Travel / over travel limit switches:**  
GALA will provide two (2) double pole limit switches per lift, attachment brackets and adjustable strike cams to provide detection of the top and bottom travel and over travel limits.
- IN7 Protective covers:**  
Protective covers will be replaced to cover rotating chains and sprockets.
- IN8 Safety equipment:**  
The following safety equipment will be supplied as described:
- ▶ **Low load detection**  
Low load limit switch at the top plate of every Spiralift.
  - ▶ **Shear edge protection**  
Astragal sensor located at the underside of the lift's perimeter and the underside of the floor to cover all shear edge locations. There is an allowance to supply 140 linear feet of astragals.
- IN9 Engineering visit:**  
GALA has an allowance for one (1) engineering site visit by our personnel to ascertain and confirm current site conditions and dimensions.
- IN10 Installation:**  
GALA will provide the mechanical installation of all included systems, as described in this document. We base this installation on the full availability, during the installation schedule, of the site's locations where the systems are to be installed. Work on-site is based on normal workdays of 8 hours at 5 days/week. We assume that the site is not union and GALA's team will install this project.
- IN11 Demolition of current system:**  
GALA will remove the damaged equipment from the pit, but disposal is the owner's responsibility.
- IN12 Shoring of lift platform:**  
The shoring of the existing lift platform above the pit floor is included in GALA's scope of work.
- IN13 Commissioning and training:**  
The commissioning and training of all mechanical components to owner and end users will be supplied by GALA. The commissioning and training will be done immediately following the completed installation.
- IN14 Handling and packing:**  
The equipment will be prepared and crated as per our usual standards for shipment to the site.

**IN15 Shipping to job site:**

GALA will ship all equipment included herein, DDP to the job site in Idaho Falls, Idaho, USA.

**IN16 Factory Acceptance Procedure (FAP):**

A Factory Acceptance Procedure will be performed in our shop per GALA's usual standards.

**IN17 Owner's manual:**

GALA will provide, at final acceptance, complete maintenance manuals in PDF format that will include detailed cut sheets of all components and as-built drawings. These manuals will be prepared in English.

**IN18 Emergency service:**

GALA will provide 24-hour access to an emergency service line #1-800-463-7226 to reach a GALA technician for telephone support or to arrange for an emergency visit.

**IN19 Warranty:**

GALA will provide a 12-month warranty on all mechanical systems provided as described in this document if the site wiring between the MCP and the pit floor terminal boxes have been replaced in its entirety. The warranty will begin at the earliest of:

- signature of practical completion or
- six (6) months following shipping from GALA's factory.

**ITEMS NOT PROVIDED BY GALA  
BUT REQUIRED FOR A COMPLETE WORKING SYSTEM**

**EX1 Site wiring:**

Any modification or replacement of site wiring is by other.

**EX1 Other components:**

The supply of components not mentioned above will be provided by others. These include, but are not limited to:

- Any safety equipment not mentioned above
- Any drive shaft covers

**EX2 Legal pit:**

An appropriate pit with the provision of any holes, openings or chase areas. Proper support for the Spiralift and guiding system (either structural building concrete or structural steel members) which can support all loads as indicated by GALA). The pit shall be clean and free of debris, properly illuminated and ventilated. The construction of the pit shall be properly framed with all dimensions held within 1/4" (6 mm) of measurements shown on the drawings. The pit should be waterproofed with adequate drainage.

**EX3 Guide System(s) for the Lift(s):**

The existing guide system will be reused.

**EX4 Disposal of old equipment**

Disposal of old equipment removed during the drive replacement is at Owner's responsibility.

**EX5 Condition for proper installation:**

At the time of installation, the pit and its surroundings, the anchor or lifting points, the pathway from unloading point to pit and unloading area should be cleared and free from debris or other trades. The access should be adequate to handle 6 x 4ft – 2000lbs components. We assume that sufficient working and storage space for our operations will be provided. We also assume that access near the pit's edge can be done with a regular forklift or the like. Perimeter protection of the installation will be by others.

**EX6 Storage of equipment:**

In the event the equipment provided by GALA cannot be installed per established and agreed upon schedule, sufficient storage area will have to be available on-site. At the client's request and at his expense, GALA can arrange to store the equipment off its premises. Fees and rates are on a case-by-case basis and provided upon request.

**EX7 Construction / trade permits:**

GALA excludes any general construction and trade permits to suit the installation.

**EX8 Load test:**

GALA excludes any site load tests. Any required tests will be provided by others.

**EX9 Spare parts:**

The provision of spare parts is not included.

**EX10 Maintenance and service:**

GALA has no allowance for any maintenance visits following the installation.

**EX11 Warranty:**

In the case where the site wiring between the MCP and the pit floor terminal boxed has not been replaced and new connections were made by cutting the end of the wires, GALA cannot provide a warranty on the system.

## TERMS AND CONDITIONS OF PAYMENT

- 20% at production completion in factory and before delivery of equipment
- 70% at the delivery of equipment on-site.
- 10% following the installation but not to exceed six months following the delivery of the equipment.

## PRICING OF PROJECT

Following each of the above-mentioned comments, we are pleased to propose for your requirements, a customized system with Spiralift tubular thrust screws for the total sum of:

**\*\*\* \$ 232,000.00 USD \*\*\***

**UNLESS SPECIFICALLY MENTIONED ABOVE, ALL AMOUNTS DO NOT INCLUDE ANY FEDERAL, PROVINCIAL/STATE OR LOCAL TAXES, DUTIES, BONDS, FEES OR PERMIT THAT MAY BE APPLICABLE.**

## NOTICE

1. Please note that this offer is based upon the information we have received at the time of this proposal. *We would reserve the right to revise our proposal shall a change occur in the technical or contractual parameters.*
2. This proposal is based on a delivery of Gala's equipment during the year 2023-2024. If, for reasons out of Gala's control, the delivery schedule should go beyond June 30th, 2024, Gala reserves the right to readjust the price of the proposal as a function of inflation for each shipment of equipment after its planned delivery date.

3. All equipment supplied by Gala Systems Inc. is the sole property of Gala Systems Inc. until payment in full is received.
4. This pricing proposal is valid for a period of 60 days starting at the date of this offer.
5. Payment terms above are subject to credit approval.

If you have any queries, please do not hesitate to contact us.

Best regards,

*Jean-François Mongeau*

**Jean-François Mongeau**

Service department

Phone: +1 450 678 7226

e-mail: [jfmongeau@galasystems.com](mailto:jfmongeau@galasystems.com)

# Memorandum

File #: 23-224

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Monday, July 31, 2023  
**DEPARTMENT:** Idaho Falls Power

## Subject

IFP 21-38 Fiber Optic Cable Installation Services with Wheeler Electric, Inc.

## Council Action Desired

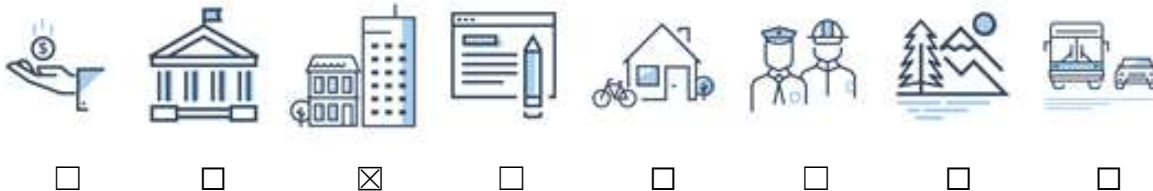
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Idaho Falls Fiber (IFF) requests an additional \$1,200,000 spending authority under the original Wheeler Electric, Inc. contract approved September 23, 2021, for a contract total of \$3,256,000 including previously approved spending (or take other action deemed appropriate).

## Description, Background Information & Purpose

City Council approved Wheeler Electric, Inc.'s contract to provide new customers in-home fiber connection installation for an original amount of \$456,000 on Sept. 23, 2021. An additional \$600,000 of spending authority was approved on Nov. 10, 2021 and \$1,000,000 on January 12, 2023. Wheeler was the only bidder on the original competitive bid. Wheeler has offered to continue working under the existing contract per installation price from 2021. IFF requests this spending authorization to keep up with new customer connection demand that is exceeding projections.

## Alignment with City & Department Planning Objectives



This action supports our readiness for managed, well-planned growth and development by expanding fiber optic services and ensuring reliable community connectivity. This action also supports the growth element of the IFP Strategic Plan.

## Interdepartmental Coordination

City Attorney Department

## Fiscal Impact

Budgeted in the 2022/23 CIP budget.

**Legal Review**

The City Attorney Department agrees that this action is within state statute.

File #: 21-765

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Wednesday, January 4, 2023  
**DEPARTMENT:** Idaho Falls Power

## Subject

IFP 21-38 Fiber Optic Cable Installation Services with Wheeler Electric, Inc.

## Council Action Desired

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

Idaho Falls Fiber (IFF) requests an additional \$1,000,000 spending authority under the original Wheeler Electric, Inc. contract approved September 23, 2021, for a contract total of \$2,056,000 including previously approved spending, (or take other action deemed appropriate).

## Description, Background Information & Purpose

City Council approved Wheeler Electric, Inc.'s contract to provide new customers in-home fiber connection installation for an original amount of \$456,000 on Sept. 23, 2021. An additional \$600,000 of spending authority was approved on Nov. 10, 2021. Wheeler was the only bidder on the original competitive bid. Wheeler has offered to continue working under the existing contract per the installation price from 2021 if additional funding is authorized through FY 2023. Idaho Falls Fiber requests this spending increase to keep up with new customer connection demand that is exceeding projections.

## Alignment with City & Department Planning Objectives



- ☐ ☐ ☒ ☐ ☐ ☐ ☐ ☐

This action supports our readiness for managed, well-planned growth and development by expanding fiber optic services and ensuring reliable community connectivity.

## Interdepartmental Coordination

IFF worked with the City Attorney Department.

## Fiscal Impact

Budgeted in the 2022/23 CIP budget.



**Legal Review**

The City Attorney Department agrees that this action is within state statute.



January 10, 2023

City of Idaho Falls Fiber:

Wheeler Electric is willing to extend our per unit pricing from the September 23, 2021 contract bid award in order to continue working under the same terms and conditions, if Idaho Falls Fiber is willing to give additional spending authorization under the purchase order.

This extension of existing pricing is good through September of 2023.

Thank you,

Jennifer Moulton

Controller

EM: [jenniferm@wheelerelectric.com](mailto:jenniferm@wheelerelectric.com)

P.O. BOX 2173 • IDAHO FALLS, ID • 83403 • PH 208-522-1906 • FAX 208-522-5927

Physical address: 469 W. 16<sup>th</sup> Street, Idaho Falls, ID 83402

[www.wheelerelectric.com](http://www.wheelerelectric.com)

*An equal employment opportunity employer*

# Memorandum

File #: 21-304

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Tuesday, November 2, 2021  
**DEPARTMENT:** Idaho Falls Power

## Subject

IFP 21-38, Additional Spending Request for Fiber Optic Cable Installation Services

## Council Action Desired

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

Idaho Falls Fiber (IFF) requests authorization for additional spending authority on Wheeler Electric, Inc.'s original contract for a not-to-exceed amount of \$600,000.00, (or take other action deemed appropriate).

## Description, Background Information & Purpose

City Council approved Wheeler Electric, Inc.'s original contract to provide the fiber connection and optical network transmitter installation inside customers' homes for an amount of \$456,000.00 on September 23, 2021. Due to the popularity and high demand for fiber, additional budget authority is required. IFF requests additional spending authority on Wheeler's original contract and pricing for \$600,000.00.

## Alignment with City & Department Planning Objectives



This action supports our readiness for managed, well-planned growth and development by expanding fiber optic services and ensuring reliable community connectivity. This action also supports the growth element of the IFP Strategic Plan.

## Interdepartmental Coordination

The City Attorney and Idaho Falls Fiber worked together on this request.

## Fiscal Impact

The expense was budgeted for in the 2021/22 budget.

**Legal Review**

The City Attorney has reviewed and give approval for the requested action.

# Memorandum

File #: 21-242

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Friday, September 10, 2021  
**DEPARTMENT:** Idaho Falls Power

## Subject

IFP 21-38 Fiber Optic Cable Installation Services

## Council Action Desired

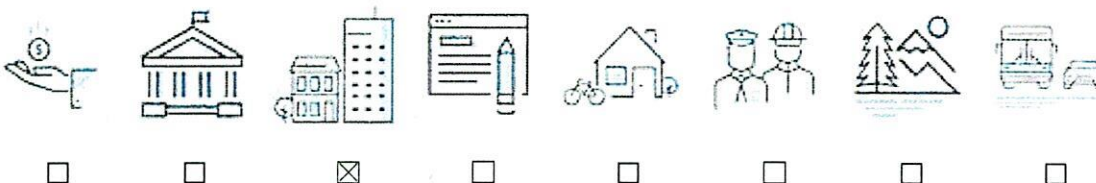
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve this bid award to Wheeler Electric, Inc. of Idaho Falls, Idaho for the unit prices shown as bid, for a not-to-exceed amount of \$456,000.00 and give authorization to the Mayor and City Clerk to execute the necessary documents, (or take other action deemed appropriate).

## Description, Background Information & Purpose

Idaho Falls Power solicited bids from qualified contractors to install the fiber network service inside our new customers' homes. Wheeler Electric, Inc. was the only responsive, responsible bidder. Based on the quantities installed in the first two years of the fiber project and the per unit bid prices, the value is estimated to be \$456,000.00.

## Alignment with City & Department Planning Objectives



SEPTEMBER 23, 2021  
 APPROVED 50

This action supports our readiness for managed, well-planned growth and development by expanding fiber optic services and ensuring reliable community connectivity. This action also supports the growth element of the IFP Strategic Plan.

**Interdepartmental Coordination**

Legal Services and Idaho Falls Fiber.

**Fiscal Impact**

Budgeted in the 2021/22 budget.

**Legal Review**

Legal has reviewed and approves.



# CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Idaho Falls Fiber (Owner) and  
Wheeler Electric, Idaho Falls, Idaho (Contractor).

Owner and Contractor hereby agree as follows:

## ARTICLE 1 - THE WORK

### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  - 1. Project No. IFP 21-38 – Idaho Falls Fiber - Fiber Residential Installation, which includes installing a fiber cable from the lot corner to the residence, splicing the fiber, installing an ONT and providing power to the ONT.
  - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located at **various areas inside the City of Idaho Falls.**

## ARTICLE 2 - CONTRACT DOCUMENTS

### 2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.



## 2.02 Contract Documents Defined

### A. The Contract Documents consist of the following documents:

1. This Contract.
- ~~2. Performance bond.~~
- ~~3. Payment bond.~~
- ~~4. Drawings as listed on the Drawing Sheet Index.~~
- ~~5. Addenda.~~
6. The following which may be delivered or issued on or after the Effective Date of the Contract:
  - a. Work Change Directives (EJCDC C-940).
  - b. Change Orders (EJCDC C-941).
  - c. Field Orders.
7. Section 00820 – Special Provisions
  - a. Specifications included in this section.

## ARTICLE 3 - ENGINEER

### 3.01 Engineer

- A. The Engineer for this Project is **Idaho Falls Fiber**.

## ARTICLE 4 - CONTRACT TIMES

### 4.01 Contract Times

- A. The term of this Contract shall commence from the date of execution by all parties and shall terminate on September 30, 2024
- B. Contractor agrees to complete the work within the time specified herein and to accept as full payment for all work, materials or services rendered on or delivered to the Project, an amount determined by the unit price method set forth in the Contract Documents and the Proposal, or the lump sum amount set forth in the Proposal. All work contemplated in the Proposal and the Contract Documents shall be completed by September 30, 2024.

### ~~4.02 Liquidated Damages~~

## ARTICLE 5 - CONTRACT PRICE

### 5.01 Payment

- A. Owner shall pay Contractor in accordance with the Contract Documents at the unit prices for each unit of Work completed submitted in the bid form 00410, dated XX August 2021.

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Engineer.

## ARTICLE 6 - BONDS AND INSURANCE

### 6.01 — Bonds

- A. ~~Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.~~

### 6.02 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:
1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:
    - a. Automobile Insurance and Statutory Workmen's Compensation Insurance coverage.
    - b. Employer's Liability, and Comprehensive General Liability Insurance coverage.
      - 1) The Comprehensive General Liability Insurance shall have a minimum limit of Five Hundred Thousand Dollars (\$500,000) per claim
      - 2) One Million Dollars (\$1,000,000) aggregate
      - 3) CONTRACTOR shall cause CITY to be named as an additional insured under said policy.
- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and



4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
  1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.

- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

#### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

#### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

#### 7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

#### 7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.



- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

#### 7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

#### 7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.

- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

#### 7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.



## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Owner's Responsibilities**

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## **ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION**

### **9.01 Engineer's Status**

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and



Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **~~11.01 Differing Conditions Process~~**

- ~~A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.~~
- ~~B. After receipt of written notice, Engineer will promptly:~~
  - ~~1. Review the subsurface or physical condition in question;~~
  - ~~2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;~~

- ~~3. Determine whether the condition falls within the differing site condition as stated herein;~~
  - ~~4. Obtain any pertinent cost or schedule information from Contractor;~~
  - ~~5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and~~
  - ~~6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.~~
- ~~C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.~~

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 Tests and Inspections**

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.



### 13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR

### 14.01 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.

### ~~14.02 Retainage~~

- ~~A. The Owner shall retain [Percentage of Contract Price to be Held as Retainage] % of each progress payment until the Work is substantially complete.~~

### 14.03 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

### 14.04 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title

defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 14.05 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### 14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.07 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

#### 14.08 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.



- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

## **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

### **15.01 Owner May Suspend Work**

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

### **15.02 Owner May Terminate for Cause**

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

### **15.03 Owner May Terminate for Convenience**

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in

connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

### ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

#### 16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:
1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
    - a. The cost, progress, and performance of the Work;
    - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
    - c. Contractor's safety precautions and programs.
  5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.



7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Cumulative Remedies**

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.02 Limitation of Damages**

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### **17.03 No Waiver**

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

### **17.04 Survival of Obligations**

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### **17.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

### **17.06 Controlling Law**

- A. This Contract is to be governed by the law of the state in which the Project is located.

### **17.07 Dispute Resolution and Attorneys' Fees**

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration



panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

17.08 Non-discrimination

- A. Contractor 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, veteran's status, or national origin. Nothing in this Paragraph shall require Contractor to exceed the reasonable accommodation requirements established by the Americans With Disabilities Act.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

City of Idaho Falls

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

Title: Mayor

CONTRACTOR:

Wheeler Electric

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

Title: VICE PRESIDENT

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_

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

Address for giving notices:

469 W. 16<sup>th</sup>

, Idaho Falls, ID

License No.: \_\_\_\_\_

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)

**NOTE TO USER:** Use in those states or other jurisdictions where applicable or required.



Attest: \_\_\_\_\_

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

Address for giving notices:

Idaho Falls Power

P.O. Box 50220

Idaho Falls, ID 83405-0220

**File #:** 23-225

**City Council Meeting**

**FROM:** Bear Prairie, General Manager  
**DATE:** Monday, July 31, 2023  
**DEPARTMENT:** Idaho Falls Power

## Subject

IF 21-37, Additional Spending Request for Fiber Micro duct Deep-Drop Installation Services

## Council Action Desired

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

Idaho Falls Fiber (IFF) requests an additional \$600,000 spending authority under the original B. Jackson Construction, Inc.'s deep drop installation contract approved June 24, 2021, for a contract total of \$1,340,593, including previously approved spending.

## Description, Background Information & Purpose

City Council approved B. Jackson Construction, Inc.'s contract to provide deep-drop micro duct installation services for \$140,593 on June 24, 2021. An additional \$600,000 of spending authority was approved on Nov. 10, 2021. IFF bid this on a per unit price in order to complete the initial project construction phase through 2024 with the successful bidder. B Jackson will continue to work under the existing contract pricing from 2021.

## Alignment with City & Department Planning Objectives



This action supports our readiness for managed, well-planned growth and development, by expanding residential fiber services and supports the growth element of the IFP Strategic Plan.

## Interdepartmental Coordination

The City Attorney Department coordinated this request.

## Fiscal Impact

Budgeted in the 2022/23 CIP Budget and the 2023/24 CIP Budget also.

**Legal Review**

The City Attorney Department agrees that this action is within state statute.

# Memorandum

File #: 21-309

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Wednesday, November 3, 2021  
**DEPARTMENT:** Idaho Falls Power

## Subject

IF 21-37, Additional Spending Request for Fiber Microduct Deep-Drop Installation Services

## Council Action Desired

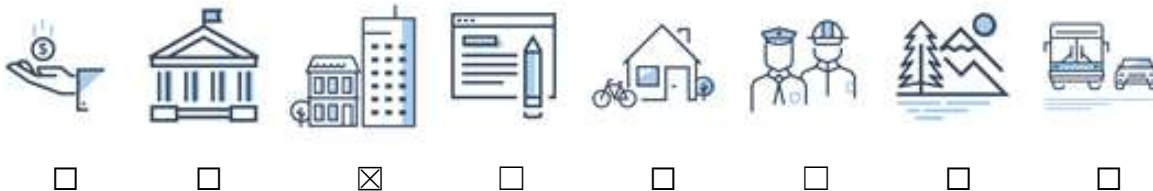
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Idaho Falls Fiber (IFF) requests authorization for additional spending authority on B. Jackson Construction, Inc.'s deep drop installation contract for a not-to-exceed amount of \$600,000.00, (or take other action deemed appropriate).

## Description, Background Information & Purpose

City Council approved B. Jackson Construction, Inc.'s contract to provide deep-drop microduct installation services for an amount of \$140,593.00 on June 24, 2021. Due to the high demand for fiber in areas requiring conduit installation from the fiber backbone to their individual home, additional spending authority is required. To continue to meet the connection requests by customers in these areas, IFF is requesting additional spending authority on B. Jackson's original contract and pricing terms for \$600,000.00.

## Alignment with City & Department Planning Objectives



This action supports our readiness for managed, well-planned growth and development, by expanding residential fiber services and supports the growth element of the IFP Strategic Plan.

## Interdepartmental Coordination

Legal Services and Idaho Falls Fiber coordinated on this request

## Fiscal Impact

The request is budgeted for in the 2021/22 Fiber budget.

**Legal Review**

The City Attorney has reviewed and approved the requested action.

# Memorandum

File #: 21-162

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Friday, June 18, 2021  
**DEPARTMENT:** Idaho Falls Power

## Subject

IF21-37 Fiber Microduct Installation Services Agreement - Deep

## Council Action Desired

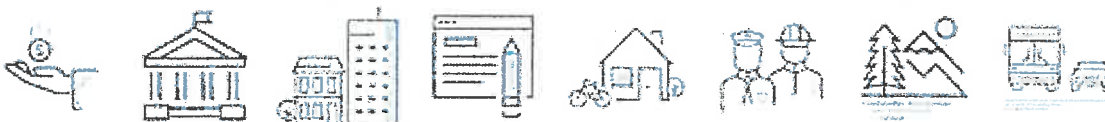
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve this construction agreement with B. Jackson Construction of West Jordan, Utah for deep fiber microduct installation services at a not-to-exceed amount of \$140,593.00 and give authorization to the Mayor and City Clerk to execute the necessary documents, or take other action deemed appropriate.

## Description, Background Information & Purpose

Idaho Falls Fiber (IFF) solicited bids from qualified contractors to provide microduct installation services with deep drops, generally at a minimum of 18 inches. This installation method allows IFF to install microduct under sprinkler systems, driveways, sheds, etc., minimal surface disruption thereby minimizing damage and other costs. IFF received four quotes/bids with B. Jackson Construction being the lowest responsive, responsible bidder. The base bid was \$127,812.00, plus a ten percent (10%) contingency of \$12,781.00.

## Alignment with City & Department Planning Objectives



JUNE 24, 2021  
 APPROVED 60



This action supports our readiness for managed, well-planned growth and development, by expanding residential fiber services and also supports the growth element of the IFP Strategic Plan.

**Interdepartmental Coordination**

Municipal Services and Legal Services.

**Fiscal Impact**

These services are budgeted for in the 2020/21 budget.

**Legal Review**

Legal has reviewed and approved this agreement.



## CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Idaho Falls Fiber (Owner) and  
B Jackson Construction (Contractor).

Owner and Contractor hereby agree as follows:

### ARTICLE 1 - THE WORK

#### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  - 1. IF 21-37 – Idaho Falls Fiber Micro duct Drop Installation Services Deep which includes installing a future path micro to residences for the Idaho Falls Fiber network.
  - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located various areas inside the City of Idaho Falls.

### ARTICLE 2 - CONTRACT DOCUMENTS

#### 2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

#### 2.02 Contract Documents Defined

- A. The Contract Documents consist of the following documents:

2020 ISPWC 00522

Modified from EJCDC® C-522, Contract for Construction of a Small Project.  
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 and American Society of Civil Engineers. All rights reserved. Page 1 of 16

1. This Contract.
- ~~2. Performance bond.~~
- ~~3. Payment bond.~~
- ~~4. Specifications listed in the Table of Contents.~~
- ~~5. Drawings as listed on the Drawing Sheet Index.~~
- ~~6. Addenda.~~
7. The following which may be delivered or issued on or after the Effective Date of the Contract:
  - a. Work Change Directives (EJCDC C-940).
  - b. Change Orders (EJCDC C-941).
  - c. Field Orders.
8. Section 00820 – Special Provisions

### **ARTICLE 3 - ENGINEER**

#### **3.01 Engineer**

- A. The Engineer for this Project is **Idaho Falls Fiber**.

### **ARTICLE 4 - CONTRACT TIMES**

#### **4.01 Contract Times**

- A. The term of this Contract shall commence from the date of execution by all parties and shall terminate on September 30, 2022
- B. Contractor agrees to complete the work within the time specified herein and to accept as full payment for all work, materials or services rendered on or delivered to the Project, an amount determined by the unit price method set forth in the Contract Documents and the Proposal, or the lump sum amount set forth in the Proposal. All work contemplated in the Proposal and the Contract Documents shall be completed by September 30, 2022.

#### ~~4.02 Liquidated Damages~~

### **ARTICLE 5 - CONTRACT PRICE**

#### **5.01 Payment**

- A. Owner shall pay Contractor in accordance with the Contract Documents at the unit prices for each unit of Work completed submitted in the bid form 00410, dated 18 June 2021.

Payment will be made in an amount equal to the total of all extended prices for actual Work completed. The extended price is determined by multiplying the unit price times the actual quantity of that Work item completed. Actual quantities installed will be determined by the Engineer.

## ARTICLE 6 - BONDS AND INSURANCE

### 6.01 — Bonds

- ~~A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.~~

### 6.02 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:
1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:
    - a. Automobile Insurance and Statutory Workmen's Compensation Insurance coverage.
    - b. Employer's Liability, and Comprehensive General Liability Insurance coverage.
      - 1) The Comprehensive General Liability Insurance shall have a minimum limit of Five Hundred Thousand Dollars (\$500,000) per claim
      - 2) One Million Dollars (\$1,000,000) aggregate
      - 3) CONTRACTOR shall cause CITY to be named as an additional Insured under said policy.
- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.
- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and

4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
  1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## **ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES**

### **7.01 Supervision and Superintendence**

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.

- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

#### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

#### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

#### 7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

#### 7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

#### 7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.
- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.

- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

#### 7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

#### 7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.

- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.

#### 7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.



## **ARTICLE 8 - OWNER'S RESPONSIBILITIES**

### **8.01 Owner's Responsibilities**

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## **ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION**

### **9.01 Engineer's Status**

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.
- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and

Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **11.01 Differing Conditions Process**

- ~~A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.~~
- ~~B. After receipt of written notice, Engineer will promptly:
  - 1. Review the subsurface or physical condition in question;
  - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;~~

- ~~3. Determine whether the condition falls within the differing site condition as stated herein;~~
  - ~~4. Obtain any pertinent cost or schedule information from Contractor;~~
  - ~~5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and~~
  - ~~6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.~~
- ~~C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.~~

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.
- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 Tests and Inspections**

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

### 13.02 Defective Work

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## ARTICLE 14 - PAYMENTS TO CONTRACTOR

### 14.01 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.

### ~~14.02 Retainage~~

- ~~A. The Owner shall retain [Percentage of Contract Price to be Held as Retainage] % of each progress payment until the Work is substantially complete.~~

### 14.03 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

### 14.04 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title

defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### **14.05 Substantial Completion**

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### **14.06 Final Inspection**

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### **14.07 Final Payment**

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

#### **14.08 Waiver of Claims**

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.



- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

## **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

### **15.01 Owner May Suspend Work**

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

### **15.02 Owner May Terminate for Cause**

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.
- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

### **15.03 Owner May Terminate for Convenience**

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in

connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

### ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS

#### 16.01 Contractor Representations

- A. Contractor makes the following representations when entering into this Contract:

1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
  - a. The cost, progress, and performance of the Work;
  - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
  - c. Contractor's safety precautions and programs.
5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Cumulative Remedies**

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

### **17.02 Limitation of Damages**

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### **17.03 No Waiver**

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

### **17.04 Survival of Obligations**

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### **17.05 Contractor's Certifications**

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

### **17.06 Controlling Law**

- A. This Contract is to be governed by the law of the state in which the Project is located.

### **17.07 Dispute Resolution and Attorneys' Fees**

- A. For any matter subject to final resolution under this Article, the prevailing party shall be entitled to an award of its attorneys' fees incurred in the final resolution proceedings, in an equitable amount to be determined in the discretion of the court, arbitrator, arbitration

panel, or other arbiter of the matter subject to final resolution, taking into account the parties' initial demand or defense positions in comparison with the final result.

**17.08 Non-discrimination**

- A. Contractor 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, veteran's status, or national origin. Nothing in this Paragraph shall require Contractor to exceed the reasonable accommodation requirements established by the Americans With Disabilities Act.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

**OWNER:**

City of Idaho Falls

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

Mayor



Attest: \_\_\_\_\_

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

Address for giving notices:

Idaho Falls Power

P.O. Box 50220

Idaho Falls, ID 83405-0220

*(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Contract.)*

**CONTRACTOR:**

B Jackson Construction

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

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

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

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

Address for giving notices:

7022 SOUTH AIRPORT ROAD

WEST JORDAN, UTAH 84084

License No.: \_\_\_\_\_

004875-UNLIMITED-1-4  
(where applicable)

**NOTE TO USER:** Use in those states or other jurisdictions where applicable or required.

# Memorandum

File #: 23-226

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Wednesday, August 2, 2023  
**DEPARTMENT:** Idaho Falls Power

## Subject

IFP 23-25 Paine South Feeders Construction

## Council Action Desired

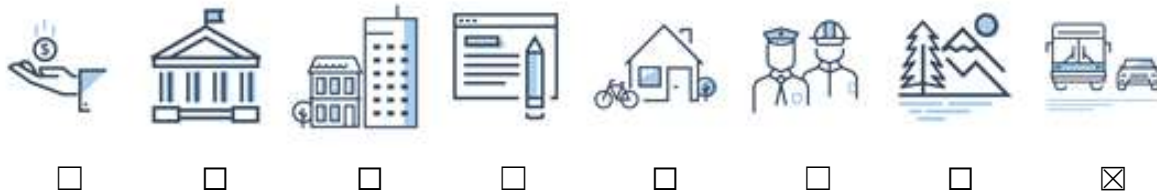
- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing
 ☒ Other Action (Approval, Authorization, Ratification, etc.)

Accept and approve the bid to construct underground electric distribution lines connecting the new Paine Substation to the bulk City electric system from Sunroc-Depatco of Idaho Falls, for a not-to-exceed total of \$1,398,896.40 and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

Six bids were received with Sunroc-Depatco being the lowest responsive, responsible bidder. The base amount is \$946,724.00, the Rock Adder is \$325,000.00 plus a 10% contingency of \$127,172.40 for a total of \$1,398,896.40.

## Alignment with City & Department Planning Objectives



This action supports our readiness to improve public infrastructure, ensuring long-term reliability. This action also supports the threat to aging infrastructure element of the IFP Strategic Plan.

## Interdepartmental Coordination

City Attorney's Office

## Fiscal Impact

Planned and budgeted amount in the 2022/23 capital improvement plan and budget.

## Legal Review

The City Attorney's office concurs that this action is within state statute.

Idaho Falls Power													
Bid Tabulation													
Project: 2023 Paine South Feeders Construction						Number: IFP 23-25							
Submitted: Nikki Bradford, IFP Administration Assistant						Date: August 1, 2023							
		Bidder		Bidder		Bidder		Bidder		Bidder		Bidder	
		Bluelake Utility		Crown Utilities		Sunroc/Depatco		3H Construction		HK construction		Knife River	
		Total Amount	\$1,250,553.00	Total Amount	\$2,315,104.70	Total Amount	\$946,724.00	Total Amount	\$1,265,991.00	Total Amount	\$1,438,589.00	Total Amount	\$1,119,919.00
		Rock Adder	\$293,000.00	Rock Adder	\$110,500.00	Rock Adder	\$325,000.00	Rock Adder	\$549,050.00	Rock Adder	\$517,000.00	Rock Adder	\$548,250.00
	Acknowledgement of Addendums 1 and 2 Yes/No	yes		yes		yes		yes		yes		yes	
	Bid Bond	yes		yes		yes		yes		yes		yes	
	Project: IFP 23-25												
\$ -													

Present at Bid Opening  
Nikki Bradford  
Krista Thornton  
Alan Cunningham  
Nate Anderson  
Stephen Boorman



# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

## **2023 PAINE TO OLD BUTTE SOUTH FEEDERS PROJECT NO. IFP 23-25**

This Agreement is by and between **Idaho Falls Power** ("Owner") and SUNROC CORP. DBA Depatco ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

### **ARTICLE 1—WORK**

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: Installation of conduit for electrical and fiber systems and installation of fiber optic cable as specified.

### **ARTICLE 2—THE PROJECT**

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Installation of conduit for electrical and fiber systems and installation of fiber optic cable as shown on the design drawings.

### **ARTICLE 3—ENGINEER**

- 3.01 The Owner is also the ("Engineer") IFP will designate an employee to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract for this project concurrent with the notice to proceed.

### **ARTICLE 4—CONTRACT TIMES**

#### **4.01 *Time is of the Essence***

- A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

#### **4.02 *Contract Times: Days***

- A. The Work will be substantially complete within **80** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **80** days after the date when the Contract Times commence to run.

#### 4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion*: Contractor shall pay Owner \$1,000 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
  2. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

#### 4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

### ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
- A. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment)  
**\$ 946,724.00**.
- B. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## Article 6—**PAYMENT PROCEDURES**

### 6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### 6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the 10th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
  - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
    - a. **90** percent of the value of the Work completed (with the balance being retainage).
      - 1) If 50 percent or more of the Work has been completed, as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
    - b. **90** percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
  - 2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **100** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **200** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

### 6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

## **ARTICLE 7—6.05            CONTRACT DOCUMENTS**

### **7.01    *Contents***

- A. The Contract Documents consist of all of the following:
  - 1. This Agreement.
  - 2. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  - 3. General Conditions.
  - 4. Supplementary Conditions.
  - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
  - 6. Drawings listed on the attached sheet index.
  - 7. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
    - a. Notice to Proceed.
    - b. Work Change Directives.
    - c. Change Orders.
    - d. Field Orders.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01    *Contractor's Representations***

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.

4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.
12. The Contractor is an appropriately licensed public works contractor per Idaho Code Section 54-1902.
13. Contractor shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.



## 8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

## 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are ISPWC Division 100 ~~EJCDC® C-700~~, Standard General Conditions for the Construction Contract ~~(2018)~~, published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

## **ARTICLE 9—NON-DISCRIMINATION**

CONTRACTOR 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.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on date of signature (which is the Effective Date of the Contract).

Owner:

Idaho Falls Power

*(typed or printed name of organization)*

By:

*(individual's signature)*

Date:

*(date signed)*

Name: Rebecca L. Noah Casper

*(typed or printed)*

Title: Mayor

*(typed or printed)*

Attest:

*(individual's signature)*

Title:

*(typed or printed)*

Address for giving notices:

P.O. Box 50220

140 S. Capital

Idaho Falls, ID 83405

Designated Representative:

Name: Stephen Boorman, PE

*(typed or printed)*

Title: AGM

*(typed or printed)*

Address:

P.O. Box 50220

140 S. Capital

Idaho Falls, ID 83405

Phone: 208-612-8444

Email: sboorman@ifpower.org

*(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Contractor:

SUNROC CORP. DBA Depatco

*(typed or printed name of organization)*

By:

*(individual's signature)*

Date:

*(date signed)*

Name: Brent Turpin

*(typed or printed)*

Title: Division Manager

*(typed or printed)*

*(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest:

*(individual's signature)*

Title:

*(typed or printed)*

Address for giving notices:

910 Pier View Drive

Suite 201

Idaho Falls, ID 83402

Designated Representative:

Name: Chad Huntsman

*(typed or printed)*

Title: Estimator

*(typed or printed)*

Address:

910 Pier View Drive

Suite 201

Idaho Falls, ID 83402

Phone: 208-458-4000

Email: chuntsman@depatco.com

License No.: PWC-C-17452-UNLIMITED-1-2-4  
*(where applicable)*

State: Idaho

# Memorandum

File #: 23-228

City Council Meeting

**FROM:** Corrin Wilde, City Clerk  
**DATE:** Wednesday, August 2, 2023  
**DEPARTMENT:** Mayor's Office

## Subject

Minutes from Council Meetings

## Council Action Desired

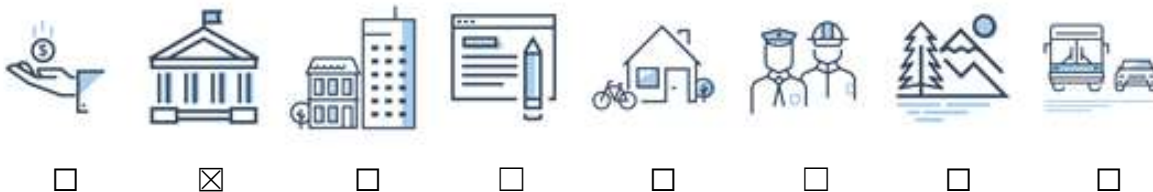
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the minutes from July 13, 2023 City Council Meeting and May 11, 2023 City Council Meeting, April 13, 2023 City Council Meeting.

## Description, Background Information & Purpose

July 13, 2023 City Council Meeting and May 11, 2023 City Council Meeting, April 13, 2023 City Council Meeting.

## 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, April 13, 2023,**

**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 Hally, Councilor Freeman, Councilor Francis; and Councilor Burtenshaw

Absent: Councilor Radford

### **Also present:**

All available Department Directors  
Randy Fife, City Attorney  
Corrin Wilde, City Clerk

## **2. Pledge of Allegiance**

Councilor Freeman led those present in the Pledge of Allegiance.

## **3. Public Comment**

No one appeared for public comment.

## **4. Consent Agenda**

### **A. Municipal Services**

- 1)** Bid IF-23-08, Haul and Spread Liquid Wastewater Biosolids for Public Works
- 2)** Treasurer's Report for February 2023

### **B. Public Works**

- 1)** Bid Award - Thermoplastic Citywide 2023
- 2)** Cooperative Agreement for Sewage Treatment with Golden Valley Natural, LLC

### **D. Office of the City Clerk**

- 1)** Minutes from Council Meetings as listed on the agenda
- 2)** License Applications, all carrying the required approvals

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, Burtenshaw, Francis, Freeman, Hally. Nay - None

## **5. Regular Agenda**

### **A. Police Department**

#### **1) Ordinance Prohibiting Certain Dog and Cat Sales in Retail Stores and Public Places**

Chief Johnson appeared. He stated this Ordinance is intended to protect the animals, protect the dogs, protect the cats, and prevent the disease from being spread to hopefully make a better community for the pets that we love so much. He stated that the animal control staff has had a chance to review this Ordinance and they feel it moves forward with their desire to keep the animals safe.

Council Francis stated what we are trying to do here is protect not just the animals because this is a way of spreading a very deadly disease among the animals that spread suddenly and people don't even know by having it on their hand and petting another animal and becomes fatal to some puppies. This is also a way of protecting families that are interested in adopting animals and making sure they have animals that have gone through the process of the shelter putting a chip in, so the animal is identifiable and returnable if lost, and also the vaccines and spay and neutering that happens at the shelter. This doesn't mean that retail stores can't put dogs and cats out for people to adopt but those cats and dogs that they put out would all come from shelter reviews and if people want to adopt privately, they still can do it out of their homes but that way the person doing the adopting can investigate the atmosphere and decide whether they want to adopt that particular dog or cat from that home. This ordinance will serve the community in many different respects. Councilor Burtenshaw agreed with Councilor Francis.

Council President Dingman stated that her full-time job is the executive director at the Snake River Animal Shelter and has a lot of experience and a lot to say. Over four hundred cities throughout the country and several full states have banned the public sales of animals so we are not treading new ground here but that's ok we are doing something we are doing something now and I think that is important. A couple of cities including Ammon have banned the public sale of animals with a similar ordinance recently and Boise. We have a lot of cities that see that overpopulation is very serious and the spread of disease and the potential spread of disease. I know that I could have brought many stories and photos. You see a lot in the shelters that give a new perspective on this and the number of animals in our facility and every shelter in our area that is facing the same thing that was intentionally breed and could not be sold and is then dropped off at shelters and that is the reality. Councilor Dingman stated at Snake River Animal Shelter they have over 100 dogs on the waiting list waiting to get in. Councilor Dingman thanked the staff at the Idaho Falls Animal Shelter for their collaboration and support and to Police Chief Johnson and Animal Shelter manager Tobin Bird as well as Carissa Hernandez and the animal control officer for their support in this. They are doubling and tripling kennels right now because that's how bad the overpopulation is in our community and something must be done. Councilor Dingman stated we talked about preventing disease, parvo can live in the grass for up to two years so when you put a bunch of animals together unvaccinated it does kill animals and they take those diseases home and it kills more animals. This does allow for individuals in their private spaces to breed animals



and sell them. Councilor Dingman stated she does think that will offer prevention of the spread of disease throughout the community a little bit, but it does something that I think will provide a huge benefit to the community.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to approve the Ordinance regulating the sale of certain dogs and cats in retail stores and public places under suspension of the rules requiring three complete and separate readings and request that it be read by title only and published by summary. The motion carried by the following vote: Aye- Councilors Francis, Dingman, Freeman, Hally, Burtenshaw. Nay – None

#### ORDINANCE NO. 3509

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING EXISTING ANIMAL REGULATIONS TO PROHIBIT THE SALE OF DOGS AND CATS IN RETAIL STORES; PROHIBITING THE SALE OF ANIMALS IN PUBLIC PLACES; AND PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

### **B. Community Development Services**

#### **1) Public Hearing-Community Development Block Grant (CDBG) FY-2023 Annual Action Plan**

Mayor Casper opened the public hearing and required all testimony received and all documents, photos, and slides we may see tonight to become part of the official record.

Lisa Farris, Federal Grants Coordinator appeared. She welcomed everyone to the public hearing 2023 Community Development Block Grant annual action plan that is brought to us by Housing and Urban Development. Ms. Farris presents a little history of the program. In 2004, we became an entitlement community which enables us to file directly to HUD for annual CDBG funds. We are in our fourth five-year consolidated plan and 2023 is our third year in that plan. This is our 20<sup>th</sup> year participating in the program. The 2023 Draft CDBG Annual Action Plan is due to HUD before August 16<sup>th</sup>. Our plan year runs from April 1<sup>st</sup> to March 31<sup>st</sup> and for the year of 2023, we will be receiving \$433,380. Ms. Farris stated we have received eleven applications this year totaling \$726,985.70. Ms. Farris noted between 2004 to 2023 we received over 7.9 million in total HUD/CDBG dollars. This amount does not include our CARES Act funds of \$507,657 for COVID-19 (CDBG CV1/CV3). Ms. Farris listed many benefits from the program for the city and local service providers including assisting the City in funding projects and programs not funded with general funds and assisting local service providers with filling a gap in service. It assists City and local service providers in leveraging additional funds. Ms. Farris stated all the programs and activities must meet CDBG program and HUD (Housing and Urban Development) Criteria.

Slide - 5 CDBG Program and HUD Criteria.

Slide - 6 Project/Activities must fit into 1 of 4 HUD Priorities including Community Development Priority, Economic Development Priority, Housing Development Priority, and Public Service Priority.

Slide – 7 Map of LMI Neighborhood Census Tracts These are the three census Tracts to which funding is allocated towards.

Slide – 8 (before improvements) and slide - 9 (after improvements) are photos of an example of Community Development Priority/Public Infrastructure. Curb, Gutter, and sidewalk improvement.

Slide – 10 and Slide- 11 are examples of housing development priority. Habitat for Humanity LMI single Unit Rehab Triplex at Science Center and Elmore.

Slide-12 and Slide- 13 examples of Economic developments with Façade improvement programs. Photo of Page Insurance 365 Parks Ave before and after improvements.

Slide-14 and Slide–15 before and after photo of Single Unit ADA rehab located at 575 I St.

Slide -15 Examples of Public Service Activities.

James McLain appeared and introduced himself as the Executive Director of the BHCC (Behavioral Health Community Crisis Center). Slide – 17 Mr. McLain talks about what the BHCC deals with in the community including homelessness, domestic violence, abuse, incarceration, law enforcement, hospital, severe poverty levels, substance use, suicidality and so much more. Mr. McLain stated BHCC is a non-profit organization and is funded by local entities as well as at the state level and for sustainability we bill Medicaid services to those individuals that have Medicaid. With no questions asked an individual can come to the Crisis Center in crisis and be seen and supported for 24 hours and then re-evaluated every 24 hours to make sure they are stable enough to be referred to outpatient services or inpatient service if extremely suicidal or in danger. Mr. McLain stated they have two goals primarily and that is diversion from incarceration and diversion from hospitalization. Individuals struggling in our community don't quite need inpatient services and they don't need to go to jail they can be referred to the Crisis Center either by those organizations or they can walk-in. Mr. McLain noted to date BHCC just for the last quarter was over 2 million dollars of diversion that the community doesn't have to provide and around 3000 individuals diverted. Mr. McLain stated they are nonprofit and cannot compete with hospitals and as inflation has gone up the support staff, medical staff, and the paraprofessionals staff provide their services not because they make money, but because they do it because they love our community. For us to be competitive we have used some of the grant money to supplement some of the income.

Historically, Idaho Falls has provided CBDG funding to the Crisis center for multiple years. Mr. McLain stated the funding has paid for renovation so that the Crisis Center can meet the needs better for the community, it has paid for during COVID to keep things clean, it pays for washers and dryers so when someone's house burns down and they have nothing, they can come to the Crisis Center be evaluated for crisis and we might be able to wash some of their stuff. The Crisis Center is the flagship for all seven crisis centers in the state of Idaho, it sees the most population and at any given time there are two to three individuals referred by law enforcement in the center and two to three individuals referred by five hospitals in our community. Mr. McLain thanked the Mayor and Council for their time and for reviewing their application.

Director Catherine Smith appeared representing IFDDC – Ms. Smith stated that this has been a long-time source of funding for economic development for Downtown Idaho Falls and almost every downtown business has been touched by this funding, whether it's a grant that is a five hundred dollar matching fund that we provide to those businesses so they can improve their signage outside and have those fun signs that stick out on the sidewalk or if it's a full façade renovation like what you find in the Kress building the home of Channel Blend all that glass and beautiful restoration and is a perfect example of a successful façade improvement grant. Funds have been used very wisely with the care of Lisa Farris. It is a complicated process, and it is wonderful to work with our downtown business owners and board of

directors to execute that. Ms. Smith stated there are many opportunities when buildings are for sale and we have inquiries into the office to find out about what historical preservation grants or façade improvement grants are available we have seen it truly turn into economic development for those investors that are looking at purchasing buildings and renovation in downtown because they know that there are some matching funds available and the façade improvement grant is cool because it is up to thirty thousand dollars per building per side street facing so it's all external and there are matching funds required so seventy-five percent funding source through the façade grant with a twenty-five percent match from the property owner. This year IFDDC has applied for fifty-five thousand dollars Ms. Smith stated it is always difficult to make the request knowing that there are so many additional funds that are requested by very valid and important work that is being done in our community. Ms. Smith stated she is very passionate these funds have changed what downtown looks like and how it feels and how important it is to the economic vibrancy of downtown Idaho Falls. Ms. Smith thanked members of the Council and offered to provide any other information upon request.

Public Works Director Fredericksen appeared and presented a handout, an aerial view of the North Highland Park subdivision, representing the progression of five phases to increase walkability in the Highland Park subdivision. Director Fredericksen stated about four or five years ago most of the subdivision had gravel streets and no sidewalks. As we have pursued grant funding not only from CDBG but also the Governor's discretionary funding we have had the opportunity to pave the streets and continue to supply sidewalks to increase walkability. Director Fredericksen stated our application is a continuation to complete this five-year plan. Director Fredericksen stated that will address the area that is shown in yellow so the sidewalk can be installed along those streets, and that is the intent of this application.

Donovan Stokes appeared representing the YMCA. He stated the YMCA is about 75 years old in this community and has been put in play for youth development and healthy living and social responsibility. Mr. Stokes stated because of the age of the building in need of some help and some upkeep and maintenance. Mr. Stokes stated one thing that is needed is our front entryway which is experiencing some erosion and we would like to replace our glass doors towards our learning center and make it safer for our children. Mr. Stokes stated they do have a learning center for toddlers through 6<sup>th</sup> grade before and after school programs, we also have youth sports, fitness memberships, and a resident's camp. CDBG grant will help toward replacing our steps to our main facility and in our childcare area. Mr. Stokes noted we also have built a new playground, and everyone is happy. However, because we had to take out some trees while installing the playground we are now in need of shade and would like to install a permanent shade structure to protect the little ones from the sun. Mr. Stokes also stated they have some heating and cooling issues and would like to replace the heating and cooling unit so we can have better conditions in the summer months and in the winter months as well.

McKayla Matlack, President/CEO, of DWI (Development Workshop) appeared. Ms. Matlack thanked the Mayor and Council for last year's grant. Hopefully, you have seen the pictures on social media of our brand-new parking lot and new windows and front entry to the door on the admin building. Ms. Matlack shared that her favorite part is if you could see the pictures of our individual watching the construction going on. It was almost difficult to get them to be productive during the day because they think big tractors and dump trucks are amazing. We are excited and appreciative of the safety protocols and the longevity of our parking lot that you have provided.

Madison Messenger, a development specialist for DWI appeared. Ms. Messenger stated that she had the opportunity to write this grant for CDBG grant and for this year we are looking for some help. Ms. Messenger stated they have three different buildings on the DWI property, the admin building, the Griffith building, and the Whitaker building. The Whitaker building was purchased in 1972 and has not had any major repairs since then. There is also a warehouse that is attached to it which is experiencing the most damage. The roof has been leaking during the winter and rain. That is where we keep all our supplies and inventory. The Whitaker building is where our work floor for our clients with developmental disabilities can have their jobs and do different work services but the warehouse leaking its causing damage to our inventory and creating problems. We also want to make sure it's a safe place for our clients to work free from hazards. With repairs to that building, it would be very beneficial to the clients and the staff and help us in the long term.

Ms. Farris appeared. slide-19 referencing the schedule for CDBG Annual Action Plan. Ms. Farris stated they began this process in March with the Invitation to Apply and there was a two-week window for the applications to come in and did receive 11 applications. Between March and April, the Grant Administrator looked at the application and reviewed it for eligibility. Ms. Farris stated tonight is our public hearing and we will go into our 30-day public comment after this time. On May 22, 2023, we will recommend projects for Mayor and Council approval. Ms. Farris stated May 25, 2023, there will be our Council meeting and resolution to adopt the 2023 CDBG Annual Action Plan. We plan to submit this to HUD on or before June 15, 2023 (Slide – 20) HUD has 45 days to approve the Plan. Upon HUD approval, allocation can be made to the City. Ms. Farris stated sometime in August or September 2023 funding will be committed to the approved applicants/projects once City completes: Environmental review and signed Agreement. Ms. Farris stated the Projects are not retroactive the program year runs from April 1, 2023, to March 31, 2024, and the start date begins upon a signed agreement between City and the responsible entity. Slide-21 Contact information for Grant Administrator and CDBG webpage.

### **C. Municipal Services**

#### **1) Public Hearing to Amend Title 1, Chapter 3 and Title 10, Chapter 8 of the City's Impact Fee Ordinance.**

Mayor Casper declared the hearing to be open and ordered that all testimony received as well as photos and slides be a part of the official record and ordered that Director Alexander's testimony be placed into the official hearing record.

Director Alexander appeared and presented amendments to Title 1, Chapter 3, and Title 10, Chapter 8 of the City's Impact Fee Ordinance. Director Alexander provided a recap as follows. The original Ordinance was effective June 1, 2022, the experience with the Ordinance and the receipt of suggestions to improve the clarity and the definition started a conversation about things we can do with this Ordinance to clarify some of the elements of it. Ms. Alexander stated the amended language includes clarification of the Ordinance language itself, expanded definitions, clarity and definition of a complete application, and the addition of the impact fees from the City's fee Resolution and list of city codes, City Ordinance. We had our first discussion about these amendments on Monday, March 27<sup>th</sup> at our Work session. Ms. Alexander stated we Published this evening's Public Hearing in the legal section of the Post Register on Wednesday, March 22<sup>nd</sup>. We had the first reading of the amended Ordinance that occurred on Thursday,

March 30<sup>th</sup> City Council meeting. Ms. Alexander stated during the March 30<sup>th</sup> meeting authorization was given to have this public hearing this evening. The second reading of the amended Ordinance was this past Monday, April 10<sup>th</sup> at City Council Work Session. In your packet of information as well as what was posted on the agenda for this evening all the clarifications, all the amendments that were requested, and the more recent ones that were discussed on Monday, April 10<sup>th</sup> were to sections 10-8-9 discussed on Monday, April 10<sup>th</sup>. Director Alexander stated that everything is a full packet and is ready for discussion in this evening's public hearing.

Mayor Casper stated at this time anybody that would like to comment about these amendments to the Ordinance regarding impact fees to come forward.

Grant Lament, from Rexburg, Idaho appeared. Mr. Lament stated he has a business in Idaho Falls. Mr. Lament stated tonight I'm here as a request on behalf of the larger building and development communities here in eastern Idaho many of which have been involved in impact fee discussions and committees including the Eastern Idaho Builders Association. Mr. Lament stated we feel strongly that the very merits to be here tonight to discuss an amendment to the Ordinance suggests that this was just done wrong. Mr. Lament stated after reviewing the City's several work sessions there have been comments made in the development community is quiet that we have settled and that we are ok with this. That is not the case, we are not, we are very prepared to be very loud and very vocal in protest of both the amendment and the Impact Fee Ordinance.

Mr. Lament stated our plea tonight is that if you continue in this direction, we have tried every avenue that we can and negotiated with fair faith. We met with the city attorney. Several of the builders have pursued appeals and met with Council people we've sent letters to the Council people, elected officials, in addition to that we have met with city staff, and city attorneys to discuss the damages that these impact fees have caused and, in that discussion, came about what you guys are calling a recommendation to amend the ordinance. Mr. Lament stated that was not a recommendation it was an argument in the faith of negotiating for a better path forward against these impact fees from several lawyers present regarding development fees and the Resolution out of the fee schedule not being attached to the Ordinance. Mr. Lament stated we have several other legal arguments that have been presented to the City, describing what we feel are valid legal arguments that this is not a legal and statutory compliant passing of impact fees. Mr. Lament stated in every instance the development community as a larger pull has felt that we've been gaslighted and we've been stonewalled, and enforcement of the entitlement process being delayed and these impact fees been subrogated across the development community and so my three main points tonight that are if you proceed with this tonight that you were going to drive the growth out of the city. Mr. Lament stated we are currently aware of our example of a development firm that is no longer willing to take projects in the city of Falls because this takes our ability away to develop good communities and use products that drive better value. Mr. Lament stated Impact Fees and the Ordinance that you are suggesting to amend puts us in a box where the types of products must be built cheaper they have to build smaller they have to be built to higher density which does not meet the demographics of the people who live in Idaho Falls. Mr. Lament stated furthermore, the development community is somewhat disenfranchised about the passing of this Ordinance and particularly the mechanisms by which it was passed, and many have, will, and are continuing to decide whether the future takes their products and their developments in two cities outside of the City of Idaho Falls. Our current firm has two projects within the city limits and during the process of this, we have successfully titled almost over two thousand doors in other cities in



eastern Idaho where we have been met with challenges like any development process has but met with good faith dealings.

Mr. Lament stated if you proceed with this agenda to impose these impact fees on developers, you will lose the type of development and good faith relationships that have been here for decades with many of the developers and many of the builders that have long-standing family names of family businesses that have been actively involved in community. Mr. Lament stated the second point is that you are going to damage public relationships these include those developers these include these individuals who have businesses who are builders including any users who are also being burdened by the impact of these developments. Mr. Lament stated we believe it is an illegal tax that's being used and the actual implication of the impact buckets that these fees would be signed to don't accurately represent the true impact of our developments and growth in the city. We're not against the problems that the city has fundraising we don't oppose the impact fee in its entirety. Mr. Lament stated the development community has negotiated and asked and has appealed for a better path forward. We are to this day willing to work in hand with the city to find a better path forward. Mr. Lament stated our plea is that you will repeal the impact fee Ordinance. Start over and listen to the development community we are not quiet we are tired of being ignored. Mr. Lament stated you have put together committees where you've heard the vocalization of some of the stronger and bigger firms in the area. You represented Ball Ventures here in the meeting when impact fees were passed through the Ordinance and advocated strongly against the fee Ordinance. Mr. Lament stated we have not been heard. If you proceed with this the public will know that we have tried every reasonable negotiable avenue to work in good faith in different avenues, we have been met with bad faith feelings from the City and its disingenuous interest in the development of the people who are here to help you build and grow the city.

Mr. Lament stated that leads to my third Point. If you continue with this path and do not rectify the wrongs that have been done with this impact fee Ordinance. Mr. Lament stated you will be met with a class action lawsuit that is currently being structured and has the full force of the weight of the larger building and development community including the Eastern Idaho Home Builders Association where we will pursue legal action. Mr. Lament stated we do not want to be in that box we have tried every other avenue to negotiate with you. we are trying to appeal to city staff we have tried to deal with the attorneys we have some letters to City Council in many cases the builders who have unsuccessfully appealed and gone through litigation means arbitration needs were met with the same frustration and all the other builders that we've met with and documented that have been faced with which is that there is no concession, and its take it or leave it attitude from the city and that puts us in one box to restore what we believe is our rights as builders and developers to protect our interests which is to pursue legal action. Mr. Lament stated if you move forward with this course of action, we will be levying a class action lawsuit against the city. Mr. Lament stated if you have questions members of the Eastern Idaho Home Builders' Association are here and I am prepared to answer any of those questions.

Mr. Lament stated if nothing else states more clearly my point tonight is this. The fact that you have to amend the ordinance spells in clarity that this was done wrong. It was done outside of state and statutory compliance. It damages your development community and we are pleading with you to work in good faith where we are as a larger community willing to participate in costs, willing to negotiate in a way that represents mutually beneficial interests. This is not that. Mr. Lament stated this is forcing the development community to arbitrarily compress methods of impact fees that we do not see value in and that do not appropriately represent the impacts of our involvement. Thank you for your time.

Mayor Casper asked for any other testimony. No one appeared. Mayor Casper then closed the hearing.

Council President Dingman stated that a lot of Council members represent as liaisons and have experience as we make these decisions related to the impact fee Ordinance. Councilor Dingman stated it would be unwise to refine any ordinance or resolution within the city when we see that we can offer further clarification and that what this represents today is as we began this process there is the daily coming and going on the operation side of impact fees and there a collection that I think our ordinance could make more clear and that is why we are making some changes to the Ordinance.

Councilor Burtenshaw stated we have the Ordinance, and we have the impact fee study and that is what I refer to because the study is what measured the impact of growth. Taking what services were currently being provided for the city and then projected them out and was based on population, and number of doors. Taking current services and providing what will be needed to meet those services. There is a capital improvement that comes from the roads and the tax dollars into perpetuity that supports the services for those amenities. Councilor Burtenshaw stated for me it is that study that says this is how growth impacts a community, a neighborhood. She noted I do recognize that it is new to this community so my understanding in this Ordinance is as we worked through this in the last several months that these are some of the issues that the building and development community has needed clarification on, and that is why we are amending so we can add clarity. For example, adding the fees into the Ordinance, unlike our other Ordinances where the fee is outside the Ordinance and referenced. That was something for clarification purposes inside the Ordinance the preference. Councilor Burtenshaw stated she does take the accusations seriously, but it comes back to why we adopted the impact fees in the first place, and this is not an increase to the fees this is just to add clarity to those fees already decided.

Councilor Francis stated looking back two years ago and the thought that has gone into our Council approving this concept and the background study. This is not the time to start over. Councilor Francis stated what he has heard over the past 9 months we are addressing right here tonight. He noted there was confusion about whether some entity would be excused from it. We addressed the issue of affordable housing to make it much clearer than it was when we started. Councilor Francis stated from his perspective he has been hearing about things that needed to be clarified or fleshed out and is right here in these amendments. Councilor Francis stated if more issues need to be addressed, I need to hear them in a way that we can see how it might work but not tonight. This is about amendments that directly address issues that have come to us.

Councilor Freeman stated the fact that this is the first he has heard about repealing the impact fees from anyone since they have been put in place. Freeman stated he has not been contacted by anyone and has not heard from any of the builders and has no intention to repeal the impact fees. Councilor Freeman stated we have followed the state statute to the letter and have worked very diligently to write this in a fair manner and in good faith. Tonight, we are here to tweak this a little bit because there has been some issues and we are trying to address those with this, and I am fully supportive.

Councilor Hally stated the bottom line is the fees are intended to stabilize the budget so we can have growth.

It was moved by Council President Dingman, seconded by Councilor Francis to amend Title 1, Chapter 3 and Title 10, Chapter 8 of the City's Impact Fee Ordinance, consider and pass the proposed amendments on the third reading, and request that the ordinance be read by title only, and published by summary to be effective 30-days from the passage of today's date April 13, 2023. The motion carried by the following vote: Aye – Councilors Burtenshaw, Hally, Dingman, Freeman, Francis. Nay – None.

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

**ORDINANCE NO. 3510**

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 1 CHAPTER 3 DEFINITIONS RELATED TO APPLICATIONS; AMENDING TITLE 10, CHAPTER 8 BY UPDATING, CLARIFYING, AND ADJUSTING IMPACT FEE ORDINANCE REQUIREMENTS RELATED TO APPLICATIONS, APPEALS, AND FEES; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

**D. City Attorney**

**1) Public Hearing for the adoption of new and changing fees, including Sanitation and Parks Fees, to the April 2023 Fee Schedule**

City Attorney Randall Fife appeared. Mr. Fife stated state code says that when a fee is going to be increased by the city by five percent or more a public hearing is needed so the public can weigh in on that and be apprized to what that change is. Mr. Fife explains that we try to collect all the fees that the city charges so that everybody can look at all the fees every time. This was noticed in the newspaper and tonight is an opportunity for anybody who wants to speak about the increase in fees.

Mayor Casper noted that for the fees in sanitation we have included current county fees charged to the city.

Mayor Casper opened the public hearing on the proposed fee Resolution and invited anyone here to comment upon the Sanitation fees, Parks and Recreation, or Transit Division fees.

No one appeared and Mayor Casper closed the public hearing.

Council President Dingman stated this fee schedule is something that is part of the course of law. We cannot charge or collect fees without publishing and going through this public hearing process to get feedback from the community about them. Councilor Dingman noted the changes tonight are benign and that is why there is not any real testimony. Councilor Dingman stated I concur that placing these fees like tire disposal fees and things like that as whatever the current county fee is. We are just passing along the cost to us and it makes sense. Councilor Dingman stated the GIFT after-hours transportation fee is due to the increase in requests for the service of GIFT for private events and entities that want to utilize the transit service after our regular public hours and because we do not have a fee in place, we have declined those requests. Councilor Dingman stated we wanted to get something in the fee resolution for those events and entities that could benefit from affordable transit services.

Councilor Francis pointed out that we do not charge more fees than the actual cost for service. He noted we are not allowed to do that, and it would not make sense and we would not do that.

Councilor Burtenshaw wanted to draw attention to the micro-transit user fee. Councilor Burtenshaw stated this is one program that has benefited this community immensely. This after-hour fee is reasonable and adds to another level of service in the City of Idaho Falls.

It was moved by Council President Dingman, seconded by Councilor Francis to Approve the April 2023 fee resolution and give authorization for the Mayor and City Clerk to execute the necessary documents. The motion carried by the following vote: Aye – Councilors Hally, Francis, Dingman, Burtenshaw, Freeman. Nay – None

#### RESOLUTION NO. 2023-09

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ADOPTING A SCHEDULE OF REVISED FEES FOR SERVICES PROVIDED AND REGULARLY CHARGED AS SPECIFIED BY CITY CODE; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

#### **E. Human Resources**

##### 1) Title I, Chapters 5 and 6: Mayor and Council Compensation

Director Tew appeared. Mr. Tew gave an introduction as follows. Mr. Tew stated in 2015 the city did a survey of compensation and benefits for mayors and city council members in other comparable cities in Idaho and found that we were comparable in what we pay. Mr. Tew stated a survey was done again this year and found that we have fallen well behind in the compensation that is provided to the mayor and city council members. Mr. Tew stated it has been since 2017 since an increase has been provided. Mr. Tew is requesting salaries for the Mayor to be increased to one hundred thousand dollars a year and for the Council members increased to fifteen thousand dollars a year starting in January of 2024. That will then be increased each year for the following six years for a total of 2.2 percent which is the same cost of living increase on average a regular employee received for the last five years. Mr. Fife Esq. stated it might be helpful to point out that these are prospective and that councils cannot give themselves an increase. The state code allows increases prospectively and is not tied to an individual in that seat. Mayor Casper noted there is an election this November and 3 seats will be up for election and the Council will then re-organize and create a new government next January.

Hally stated it does not impact me but has been on the council since 2004 and stated we are way behind the cost of being on the Council. Elections come up and we are involved with a lot of different organizations and make donations and you pay taxes on the money like anyone else. Councilor Hally stated we do not want to preclude anyone from being on the City Council or running for Mayor and that you have to be on the higher end of income to be able to afford it. We are a very complex city we have our water and waste and sanitation; we do it all. You spend a lot of time and spend a lot of time and decision making. All this takes time, and it takes a lot of effort to have the community grow and provides the city to be a part of education this is a very reasonable rate, and I am in favor of this.

Councilor Burtenshaw stated that the Mayor's salary for the amount of work that she puts into the city is woefully inadequate. Councilor Burtenshaw stated with this salary while it does not compensate her does set an expectation of what the Mayor in the City of Idaho Falls has to do and must be willing to do to be the Mayor and this is one salary, I am happy to see go up reflect the hard work that is put in.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to approve modifications to ordinance to Title I, Chapters 5 and 6 to reflect more appropriate wages for the Mayor and Council 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 Freeman, Burtenshaw, Francis, Dingman, Hally Nay – None

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

ORDINANCE NO. 3511

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 1, CHAPTERS 5 AND 6 TO ADJUST THE MAYOR'S AND COUNCIL MEMBER'S COMPENSATION; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

## 6. Announcements

Mayor Casper stated GIFT has a board meeting on Tuesday at 10 am in the Council Chambers.  
Bonneville metropolitan planning organization meeting on Wednesday at 3:30 in the Council Chambers.  
Budget Kick-off meeting on April 21<sup>st</sup> at CEI and back in the council chambers for City Council Work Session on the 24<sup>th</sup>.

Idaho Falls Airport Board Meeting on April 25<sup>th</sup>.

City Council meeting on April 27<sup>th</sup>.

Saturday, April 29<sup>th</sup> City employees along with others from the community will be commemorating a Workers Memorial Day at Freeman Park.

Friday Chamber of Commerce is sponsoring a lunch-in with local legislators.

National Laboratory has a net zero fair this coming Monday. This will be highlighting all the things they are doing to drastically reduce the carbon output.

Earth day is celebrated on Saturday the 22<sup>nd</sup> at Tautphaus Park in the ice arena.

The Zoo will be open on April 26<sup>th</sup>.

There is an Idaho Falls pre-check going on at the airport.

## 7. Adjourned

There being no further business, the meeting adjourned at 8:58 PM

s/ Corrin Wilde  
Corrin Wilde, City Clerk

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





# City Council Meeting Minutes - Draft

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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## **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  
Corrin Wilde, City Clerk

## **2. Pledge of Allegiance**

Mayor Casper led those present in the Pledge of Allegiance.

### **Public Comment**

No one appeared.

### **Consent Agenda**

#### **A. Office of the Mayor**

- 1) Appointments to City Boards, Committees, and Commissions

#### **B. Public Works**

- 1) Bid Award - Sewer Dig and Point Repairs 2023

#### **C. Idaho Falls Power**

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

#### **D. Office of the City Clerk**

- 1) Minutes from Council Meetings
- 2) 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 Francis, Dingman, Freeman, Hally, Radford, Burtenshaw. Nay – None

## 5. Regular Agenda

### A. Fire Department

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

Fire Chief Duane Nelson appeared.

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 are 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. Chief Nelson stated a year ago we purchased a piece of property to the north with plans and the need as the City continues to grow to the north and response times extending there. He said the capital planning for that station to be built on St. Leon in the future and one of these apparatuses will be housed there. Chief Nelson stated we should be able to use impact fees to offset the cost as those come in depending on when these apparatuses arrive. Chief Nelson stated these are within the budget so they can be maintained under our equipment replacement fund and plan for their replacement in 25 years.

It was moved by Councilor Freeman, seconded by Councilor Dingman to 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. The motion carried by the following vote: Aye – Councilors Freeman, Francis, Hally, Radford, Burtenshaw, Dingman Nay – None

### B. Public Works

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

Director Fredericksen stated this consultant was selected to do the design and is best suited to continue in that role for supporting construction. He said the agreed cost to perform services is not to exceed the amount of \$843,581, this is a large project and will extend through December 2024.

It was moved by Councilor Burtenshaw, seconded by Councilor Hally to approve the Agreement for Professional Services with Consor North America, Inc., and authorize the Mayor and City Clerk to execute the document. The motion carried by the following vote: Aye – Councilors Dingman, Radford, Francis, Burtenshaw, Hally, Freeman. Nay -None.

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

The project is intended to install early warning detection to over-height vehicles that would otherwise come in contact with the railroad structures over US 26 (Yellowstone Highway) and Birch Street the total anticipated cost of this project is \$600,000 of which no match is required from the City. Director Fredrickson stated we are working together with ITD to enhance the static signs that warn about the



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height restrictions associated with those two bridges and hopefully minimized those contacts that we experience.

It was moved by Councilor Hally, seconded by Councilor Freeman to 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. The motion carried by the following vote: Aye – Councilors Radford, Freeman, Burtenshaw, Francis, Dingman, Hally. Nay -None.

### **3) Agreement to Purchase Water Rights from Idaho Water Company, LLC.**

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. Director Fredericksen stated the total cost to purchase the water right is \$312,000 which is associated with around 6,000 dollars per irrigated acre.

It was moved by Councilor Burtenshaw, seconded by Councilor Hally to approve the Agreement to Purchase Water Right from the Idaho Water Company, LLC, and authorize the Mayor and City Clerk to execute the document. The motion carried by the following vote: Aye – Councilors Hally, Burtenshaw, Dingman, Freeman, Francis, Radford. Nay - None.

## **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**

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 before the approval of the plat for the Freeway Commercial Center Division No. 4. Staff recommends approval of the ordinance for vacations.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to approve the ordinance vacating 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. The motion carried by the following vote: Aye – Councilors Burtenshaw, Hally, Radford, Dingman, Freeman, Francis. Nay - None.

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

### **ORDINANCE NO. 3515**

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

# City Council Meeting

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ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

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

Councilor Francis pointed out that in the notes from planning and zoning, there is a reference to some kind of gated access. He stated the gate is only for security for Camping World and does not cut off the turnaround for emergency vehicles. He noted the turnaround will be accessible as needed.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to 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. The motion carried by the following vote: Aye – Councilors Dingman, Burtenshaw, Francis, Freeman, Hally, Radford. Nay - None.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to 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. The motion carried by the following vote: Aye – Councilors Francis, Dingman, Freeman, Hally, Radford, Burtenshaw. Nay - None.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis 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. The motion carried by the following vote: Aye – Councilors Burtenshaw, Hally, Dingman, Radford, Freeman, Francis. Nay - None.

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

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to 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. The motion carried by the following vote: Aye – Councilors Hally, Francis, Radford, Dingman, Burtenshaw, Freeman. Nay - None.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to approve the Final Plat for Maverik Idaho Falls Subdivision and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. The motion carried by the following vote: Aye – Freeman, Radford, Burtenshaw, Francis, Dingman, Hally. Nay - None.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to 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. The motion carried by the following vote: Aye – Councilors Hally, Radford, Francis, Dingman, Burtenshaw, Freeman. Nay - None.



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## 3. Announcements

Mayor Casper announced our next City Council meeting is on May 24<sup>th</sup>. Councilor Francis stated Tuesday, May 16<sup>th</sup> is an election for Dist.91 plant facility levy there is also a Dist. 93 levy and auditorium District Board member, May 16<sup>th</sup> for issues on the ballot. Mayor Casper said on May 18<sup>th</sup> there will be a speaker at City Club to talk about the water issues that were mentioned tonight as we did business associated with the water right. She said Matt Weaver is the speaker and will be there from 12 pm to 1:30 pm. Councilor Radford stated on May 20<sup>th</sup> there will be a resource fair at CEI (College of Eastern Idaho) for the Hispanic community for resources around community services from 11 am to 1pm. Councilor Freeman wanted to wish everyone a Happy Mother's Day this Sunday.

## 4. Adjournment.

There being no further business, the meeting adjourned at 7:59 PM

s/ Corrin Wilde  
Corrin Wilde, City Clerk

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



# City Council Meeting Minutes - Draft

501 S Holmes Ave  
Idaho Falls, ID 83402

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**Thursday, July 13, 2023,**

**7:30 PM**

**Idaho Falls Civic Center**

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## **1. Call to Order**

**Present:** Councilor Radford, Councilor Hally, Councilor Freeman, Councilor Francis; and Councilor Burtenshaw

### **Also present:**

All available Department Directors  
Randy Fife, City Attorney  
Corrin Wilde, City Clerk

### **Absent:**

Council President Dingman

## **2. Pledge of Allegiance**

Councilor Freeman led those present in the Pledge of Allegiance.

### **Public Comment**

Kathy Wells lives in Idaho Falls. Ms. Wells wanted to talk about 2 items. She said the first item is the drag racing down 17<sup>th</sup> and over to Boulevard, over to Sunnyside, and down Holmes and around in a circle. Ms. Wells lives on 12<sup>th</sup> Street and says she can hardly have a conversation in her backyard. Ms. Wells stated that she has called dispatch and has received kind, and courteous service but does not seem that anything has changed. Ms. Wells stated why not use cameras to capture the vehicle's license plates. Ms. Wells also suggested commissioning a citizen volunteer to get license plates. She feels that if people get caught and it hurts their pocketbook the word will spread and the racing will stop. Ms. Wells said the racing has been going on since she moved here seven years ago. She said she was excited about moving to Idaho Falls because we have a Police Department. She said she lived in Alaska and only had three state troopers. Ms. Wells would just like to encourage the city to do a little more to stop drag racing. The second item that Ms. Wells would like to talk about is the Fire Works. Ms. Wells said this year she heard mortars and upon investigation, they found they were coming from 11<sup>th</sup> St. Ms. Wells said she called dispatch and spoke to a lieutenant and he told her that fireworks are allowed every day of the year. She said she read the Ordinance and felt it was confusing and suggested looking at that to make it clearer. Ms. Wells stated the only times she is aware of is June 23<sup>rd</sup> to July 5<sup>th</sup> and that is only referring to the time that people are allowed to sell fireworks. Ms. Wells feels that there will come a time in the future when the city will say no more fireworks period. She said to do a big display or another option is to allow fireworks on the Fourth of July within a time frame (not after 10 pm) and on New Year's Eve. Ms. Wells stated that she will follow up with Madam Mayor and Councilor Francis and everyone else on the Council to see if they can help alter some of these things. Ms. Wells stated that she has talked to





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some neighbors and they feel that when they talk to you folks nothing changes and she says she will not give up.

Allison Harris lives in Idaho Falls and wanted to put a reminder in that they would love to have another pool and city recreation center here in Idaho Falls. She said the sport of swimming is growing as well as the general population and feels that a city our size could use it.

Marshall Harris lives in Idaho Falls and is 8 years old. Mr. Harris said he has been swimming for about three years and would like to have another aquatic center because the current pool is always crowded and full all the time.

Weston Harris lives in Idaho Falls and he agreed with his brother Marshall. He said the pool is always cramped because there are eight high school teams and six middle school teams that swim there and the aquatic center does not have quite enough room for that. Mr. Harris said there is almost no time for open swimming because of all the swim teams that are there and use up the afternoon. Mr. Harris said one of the middle school teams has 50 people on it and for a middle school swim team they are only allowed to have six lanes. He stated that it would be a good idea for the city to get another swimming pool.

## **Consent Agenda**

### **A. Municipal Services**

- 1) Renewal of Server Backup Storage Software and Subscription Services for Information Technology
- 2) Treasurer's Report for April 2023
- 3) Treasurer's Report for May 2023

### **B. Public Works**

- 1) Iona Bonneville Sewer District (IBSD) - Request for Sewer Service Area Expansion

### **C. Idaho Falls Power**

- 1) 23-192 Downtown Alley Upgrade Project - Rogers - Portion I
- 2) Idaho Falls Power Board Meeting Minutes as listed on the agenda

### **D. Office of the City Clerk**

- 1) License Applications

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

## **5. Regular Agenda**

# City Council Meeting Minutes - Draft

## **A. Public Works**

### **1) Microtransit Professional Services Agreement Renewal with Idaho Falls Downtowner LLC**

Director Fredericksen appeared. He stated the item for consideration is a renewal agreement with Idaho Falls Downtowner to provide Microtransit services within city limits for another year. He said the previous agreement was established to automatically renew unless either party submitted notification before February 28. Director Fredericksen stated that upon consultation with the legal department, we felt that bringing this back to the Council would make sense and provide better transparency, especially for an expenditure of this size. He said this agreement establishes a not to exceed amount of 1,627,828 dollars all of which will be reimbursed to the city with no required financial match. Director Fredericksen stated that the microtransit service provided by Downtowner since its inception has been well managed, well received, and has provided excellent customer service to the public. He said ridership has risen from over six thousand rides per month to nearly nine thousand rides this June. Director Fredericksen thanked our transit coordinator Kade Marquez for the work that he has done to bring this to a successful first year. He also thanked the GIFT board and the Idaho Falls City Council for the foresight and willingness to take on this project that he feels the public has benefited from. Councilor Burtenshaw stated that this is a continuation of the contract and nothing is changing.

It was moved by Councilor Burtenshaw, seconded by Councilor Hally to approve the proposed Professional Services Agreement between the City of Idaho Falls and Idaho Falls Downtowner LLC and give authorization for the Mayor and City Clerk to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Hally, Burtenshaw, Freeman, Francis, Radford. Nay – None

## **B. Municipal Services**

### **1) Comprehensive Annual Financial Audit Services for Fiscal Year Ending September 30, 2023.**

Director Pam Alexander appeared. She stated that the item before you this evening is next year's financial audit services for the fiscal year ending this September 30, 2023. Director Alexander stated that they usually start their audit in November. Director Alexander stated that it is a comprehensive audit and includes the governmental side as well as the enterprise side and includes our single audit that is required for federal grants. She said the contract is not to exceed the amount of 150 thousand dollars. Director Alexander explained that this includes increased rates of approximately 15% for audit work performed after January 1, 2024.

It was moved by Councilor Freeman, seconded by Councilor Burtenshaw to accept, and approve a professional services contract with Eide Bailly for comprehensive annual financial audit services for an estimated amount of \$150,000. The motion was carried by the following vote: Aye- Councilors Burtenshaw, Hally, Radford, Freeman, Francis. Nay - None

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## C. City Attorney

### 1) Approval of CM/GC Contract for Airport Terminal Expansion and Renovation Project - Clayco, Inc.

Director Rick Cloutier appeared and presented the following:

As part of the Airport's ongoing efforts to expand and improve the Airport's terminal, the city sought requests for proposals to select the best-qualified Construction Manager - General Contractor ("CM/GC") to perform pre-construction services-including developing the expansion project design, optimizing material and construction costs, and coordinating construction scheduling and phasing-and construction services. Clayco, Inc., was selected as the most qualified proposer and, pursuant to Idaho Code § 67-2320, City staff negotiated the proposed agreement.

Councilor Francis wanted clarification on the timeline. He stated that we have designers and that is Alliance and asked if they are the architects for this. Director Cloutier agreed. He said Alliance is the architect and has produced construction design and construction documents completed by Alliance and now the Clayco contract that you have in front of you, will take those documents complete as the contract manager at risk. He said the pre-construction services for bidding and all the contracting with sub-contractors until completion. He stated that at that time we will bring forth another contract for construction services. Councilor Francis asked because they have not seen a final Alliance piece yet. Director Cloutier agreed, he said you will see that on Tuesday and agreed that Alliance and the contract management company will be involved throughout the process. Director Cloutier agreed. Councilor Freeman stated that they plan to have weekly meetings between the contractors and the architects and that was in the contract. Mayor Casper asked if certain aspects of the project lend themselves to Value Engineering that are not straightforward and that you wanted this kind of a model. Director Cloutier agreed he said they chose this kind of a model because it works well for the other projects around the state especially Airport projects so you normally end up getting a better project at a cost-effective price because of Value Engineering. Councilor Francis pointed out on page 3 of the contract refers to the owner deciding whether to have a sustainable objective for the project, he asked what does that mean? Director Cloutier stated that each part of the project is going to be a sustainable objective and we have five different phases so each phase as we go forward will have its objective phase.

It was moved by Councilor Freeman, seconded by Councilor Francis to approve the Construction Manager/General contractor Contract with Clayco, Inc., and direct the Mayor and staff to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Burtenshaw, Francis, Freeman, Hally, Radford. Nay- None

### 2) Ordinance Restructuring Title 3 and Rescinding Code Section 3-2-9 regulating ambulance operations

City Attorney Randy Fife appeared.

Title 3, governing the City's various Departments, has been rewritten to be more consistent across Departments, to promote flexibility based upon City and Department needs, and to clarify duties and responsibilities. In addition, the Ordinance rescinds City regulation of ambulances because State licensure and regulation adequately addresses ambulance activities.

# City Council Meeting Minutes - Draft

Councilor Francis thanked the legal department. He stated that this was a big process for our legal department to get to this point. He said it was well reviewed by the departments and also the Council.

It was moved by Councilor Freeman, seconded by Council Francis to approve the Ordinance restructuring Title 3 and rescinding Code Section 3-2-9 regulating ambulance operations under a suspension of the rules requiring three complete and separate readings, request that it be read by title and published by summary. The motion was carried by the following vote: Aye – Councilors Francis, Freeman, Hally, Radford, Burtenshaw. Nay- None

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

ORDINANCE NO. 3523

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 3, STANDARDIZING AND SIMPLIFYING LANGUAGE AND INTERNAL CITY DEPARTMENTAL STRUCTURE; DELETION OF SECTION 3-2-9 REGULATING THE LICENSING OF AMBULANCE SERVICES; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

## **D. Community Development Services**

- 1) Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Hidden Bridge Subdivision.**

Councilor Francis stated that Hidden Bridge Subdivision is located West of Home Depot across Holmes across the canal. He stated that it is a little bit of a complex layout of land so it took some time to get it right and now is all worked out with the Planning Department.

It was moved by Councilor Francis, seconded by Council Burtenshaw to approve the Development Agreement for the Final Plat for Hidden Bridge Subdivision and give authorization for the Mayor and City Clerk to sign said agreement. The motion was carried by the following vote: Aye – Councilors Hally, Radford, Francis, Burtenshaw, Freeman. Nay- None

It was moved by Councilor Francis, seconded by Council Burtenshaw to accept the Final Plat for Hidden Bridge Subdivision, and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. The motion was carried by the following vote: Aye – Councilors Burtenshaw, Hally, Radford, Freeman, Francis. Nay- None

It was moved by Councilor Francis, seconded by Council Burtenshaw to approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Hidden Bridge Subdivision and give authorization for the Mayor to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Freeman, Radford, Burtenshaw, Francis, Hally. Nay- None

- 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 1.703 acres of Part of the SE ¼ of Section 9, Township 2 North, Range 38 East.**

# City Council Meeting Minutes - Draft

- 3) Legislative Public Hearing-Part 2 of 2 of the Annexation and Initial Zoning of HC, Highway Commercial, Initial Zoning Ordinance and Reasoned Statement of Relevant Criteria and Standards for 1.703 acres of Part of the SE ¼ of Section 9, Township 2 North, Range 38 East.

Mayor Casper opened the public hearing. She invites all items presented and all testimony given today to be part of the official record.

Applicant Barry Bame with Connect Engineering 2295 N Yellowstone suite 6, Idaho Falls.

Mr. Bame stated that this property is directly West of Costco and is a small piece of property that is surrounded by already annexed property on all sides except to the North of it which is still County property and at this time will remain County property. Mr. Bame stated that the whole property all the way North had recently had a preliminary plat recently approved by the planning commission last month. He said this portion that we are looking to annex is about 1.7 acres and the reason that we are only annexing this property is because this and South will be division 1 final plat of that preliminary plat. He said to final plat this and everything South this piece has to be annexed first. Mr. Bame stated that this is a category A annexation and has been requested by the property owner to do the commercial final plat. Mr. Bame stated the comprehensive plan designates this area as a mixed-use center and we are seeking HC for the zone which is inside the area of impact.

Director Sanner appeared. He stated that this annexation is straightforward and as the applicant mentioned this is an area for our future land use plan it is showing a mixed-use corridor and follows the future land use map. Director Sanner says the applicant is proposing HC (Highway Commercial zone) Director Sanner stated that the planning commission reviewed this on June 6<sup>th</sup> and at that time the planning commission recommend a positive recommendation to the Council.

Mayor Casper requested any public comment. No one appeared. Mayor Casper closed the public hearing.

It was moved by Councilor Francis, seconded by Councilor Burtenshaw to approve the Ordinance annexing 1.703 acres of Part of the SE ¼ of Section 9, Township 2 North, Range 38 East and assign a Comprehensive Plan Designation of "Mixed Use Centers and Corridors" and 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 was carried by the following vote: Aye – Councilors Hally, Francis, Radford, Burtenshaw, Freeman. Nay- None

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

## ORDINANCE NO.3524

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 1.703 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.

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It was moved by Councilor Francis, seconded by Councilor Burtenshaw to approve the Reasoned Statement of Relevant Criteria and Standards for the annexation of 1.703 acres of Part of the SE ¼ of Section 9, Township 2 North, Range 38 East and give authorization for the Mayor to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Burtenshaw, Francis, Freeman, Hally, Radford. Nay- None

It was moved by Councilor Francis, seconded by Councilor Burtenshaw to approve the Ordinance establishing the initial zoning for HC, Highway Commercial 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 Francis, Freeman, Hally, Radford, Burtenshaw. Nay- None

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

## ORDINANCE NO.3526

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE INITIAL ZONING OF APPROXIMATELY 1.703 ACRES DESCRIBED IN EXHIBIT A OF THIS ORDINANCE AS HC ZONE; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilor Francis, seconded by Councilor Burtenshaw to approve the Reasoned Statement of Relevant Criteria and Standards for the initial zoning of HC, Highway Commercial, and give authorization for the Mayor to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Burtenshaw, Hally, Radford, Freeman, Francis. Nay- None

**4) Legislative Public Hearing-Part 1 of 2 of the Annexation and Initial Zoning-Annexation Ordinance and Reasoned Statement of Relevant Criteria and Standards for 169.043 acres in the SE ¼ of Section 6, Township 2 North, Range 38 East.**

**5) Legislative Public Hearing-Part 2 of 2 of the Annexation and Initial Zoning of HC, Highway Commercial, LC, Limited Commercial, R3A, Residential Mixed Use, and the Controlled Development Airport Overlay Zone, Initial Zoning Ordinance and Reasoned Statement of Relevant Criteria and Standards for 169.043 acres in the SE ¼ of Section 6, Township 2 North, Range 38 East.**

Mayor Casper opened the public hearing and ordered all items presented to be entered into the record.

Applicant Steve Ellsworth, Ellsworth & Associates, 253 1<sup>st</sup> Street, Idaho Falls Idaho.

Mr. Ellsworth stated that he is representing Steele Land Holdings request for a 169-acre annexation East of Fairway estates East of 5<sup>th</sup> E, North of 49<sup>th</sup> North. Requesting an initial zone of R3A for the northerly 68 acres and LC for the middle 44 acres and HC zone on the Southerly 44 acres.

Director Sanner provided a staff report. Director Sanner stated that the Planning Commission did recommend approval of this application however staff did recommend denial of the application but the



# City Council Meeting

## Minutes - Draft

planning commission did not agree with our analysis. Director Sanner explained why the staff recommended denying the application. Slide 1 and aerial view of the property lines. Director Sanner stated that the property is currently zoned A1 (Agricultural and Bonneville County) Slide 2 shows the future land use map. He pointed out the separation between the orange and the red on the south part of the property and the east side of the property. The property is completely encompassed in general urban land use and is generally used to help guide toward residential uses and commercial use that help support the residential uses. Director Sanner stated that the red on the map is mixed-use center and corridors. Director Sanner stated that when staff recommended denial it was not so much the annexation. The concern was more the designation of the zone districts. Looking at the future land use plan staff felt that whatever was proposed in terms of zoning should be residential use or supports residential component. Director Sanner stated that the planning commission did not see a conflict with the proposed zoning.

Mayor Casper requested any public comment.

Applicant Steve Ellsworth offered more information in response to Director Sanner's report. Mr. Ellsworth stated that the designations of the zones were a recommendation from the planning commission during a sit-down meeting. He said this was before it was determined that this was the preferred ITD method for the interchange but wanted the Council to know that these zones were recommended by the Planning Commission. Mr. Ellsworth said they do have about 18 division rights that could be utilized by the County. He feels that if this property is annexed into the city the city will have control of the development that happens on this property.

Councilor Francis stated in terms of development we recently authorized Highway Commercial along that Lewisville Highway for a Maverick division. Councilor Francis wanted to know if it was HC (Highway Commercial) zone on that highway coming north based on that decision this Spring. Director Sanner agreed and identified the road as North 5th East.

Kathy Wells a resident in Idaho Falls appeared. She stated that having been involved in the planning world she discovered that most developers want to move within a city limit that has some planning and zoning. She stated that the state of Alaska doesn't have a whole lot of planning and zoning some of the towns and the city do and for their protection, they move within the boundaries and want to be annexed so that people can't come back later and protest and complain. She said the government body has the potential to oversee things and control them. Ms. Wells feels it's a good thing and thinks that's why Mr. Ellsworth wants to be annexed.

Mayor Casper closed the public hearing.

Councilor Burtenshaw is in support of annexing this land. She stated it is not in the area of impact but it does impact our city and how our city grows and develops. Councilor Burtenshaw stated that although it doesn't quite match the comprehensive plan, she feels the broad brush strokes do apply she said we are encroaching upon this land as a city both to the north and the south and thinks the gap in jurisdiction puts the city at risk to not be able to develop in an orderly fashion and is glad to see this coming into the



# City Council Meeting Minutes - Draft

501 S Holmes Ave  
Idaho Falls, ID 83402

city and is ok with the HC (Highway Commercial) zone. Councilor Francis is fully supportive of this annexation. He feels the zoning of the 3 categories (HC, LC, R3A) is acceptable. Councilor Hally is in favor of the annexation and feels these fits well and appreciates the ask to be annexed. Councilor Radford is supportive of the annexation.

It was moved by Councilor Burtenshaw, seconded by Councilor Francis to approve the Ordinance annexing 169.043 acres in the SE ¼ of Section 6, Township 2 North, Range 38 East, assign a Comprehensive Plan Designation of "General Urban", and under a suspension of the rules requiring three complete and separate readings, request that it be read by title and published by summary. The motion was carried by the following vote: Aye – Councilors Hally, Francis, Radford, Burtenshaw, Freeman. Nay- None

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

## ORDINANCE NO. 3525

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE ANNEXATION OF APPROXIMATELY 169.043 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 Councilor Burtenshaw, seconded by Councilor Francis to approve the Reasoned Statement of Relevant Criteria and Standards for the annexation of 169.043 acres in the SE ¼ of Section 6, Township 2 North, Range 38 East and give authorization for the Mayor to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Freeman, Radford, Burtenshaw, Francis, Hally. Nay- None

It was moved by Councilor Burtenshaw, seconded by Council Francis to approve the Ordinance establishing the initial zoning for HC, Highway Commercial, LC, Limited Commercial, R3A, Residential Mixed-use, and the Controlled Development Airport Overlay Zone 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, an 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, Radford, Francis, Burtenshaw. Nay - Freeman

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

## ORDINANCE NO. 3527

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE INITIAL ZONING OF APPROXIMATELY 169.043 ACRES DESCRIBED IN EXHIBIT A OF THIS ORDINANCE AS HC, HIGHWAY COMMERCIAL, LC, LIMITED COMMERCIAL, R3A, RESIDENTIAL



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501 S Holmes Ave  
Idaho Falls, ID 83402

MIXED USE, INCLUDING THE CONTROLLED DEVELOPMENT AIPORT OVERLAY ZONE; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilor Francis, seconded by Council Burtenshaw to approve the Reasoned Statement of Relevant Criteria and Standards for the initial zoning of HC, Highway Commercial, LC, Limited Commercial, R3A, Residential Mixed Use, and the Controlled Development Airport Overlay Zone and give authorization for the Mayor to execute the necessary documents. The motion was carried by the following vote: Aye – Councilors Francis, Freeman, Hally, Radford, Burtenshaw. Nay- None

### **3. Announcements**

Mayor Casper stated that we are going to have some hot weather this weekend and encouraged everyone to look out for others and make sure everyone survives the hot weather.

Monday there is a social for the Council members and city leaders. The Idaho Consumer Owned Utilities meeting is next week on Thursday and Friday.

Friday is The Great Race at the Hero Arena - Fundraiser supporting education.  
Rodeo tickets are on sale.

### **4. Adjournment.**

There being no further business, the meeting adjourned at 8:33 PM

s/ Corrin Wilde  
Corrin Wilde, City Clerk

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

# Memorandum

File #: 23-227

City Council Meeting

**FROM:** Wade Sanner, Director  
**DATE:** Wednesday, August 2, 2023  
**DEPARTMENT:** Community Development Services

## Subject

Final Plat, Development Agreement, and Reasoned Statement of Relevant Criteria and Standards, Southbridge Division NO. 1

## Council Action Desired

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

1. Approve the Development Agreement for the Final Plat for Southbridge Division NO. 1 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 Southbridge Division NO 1 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 Southbridge Subdivision NO. 1 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 Southbridge Division NO. 1. 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, and Engineering,

Survey.

**Fiscal Impact**

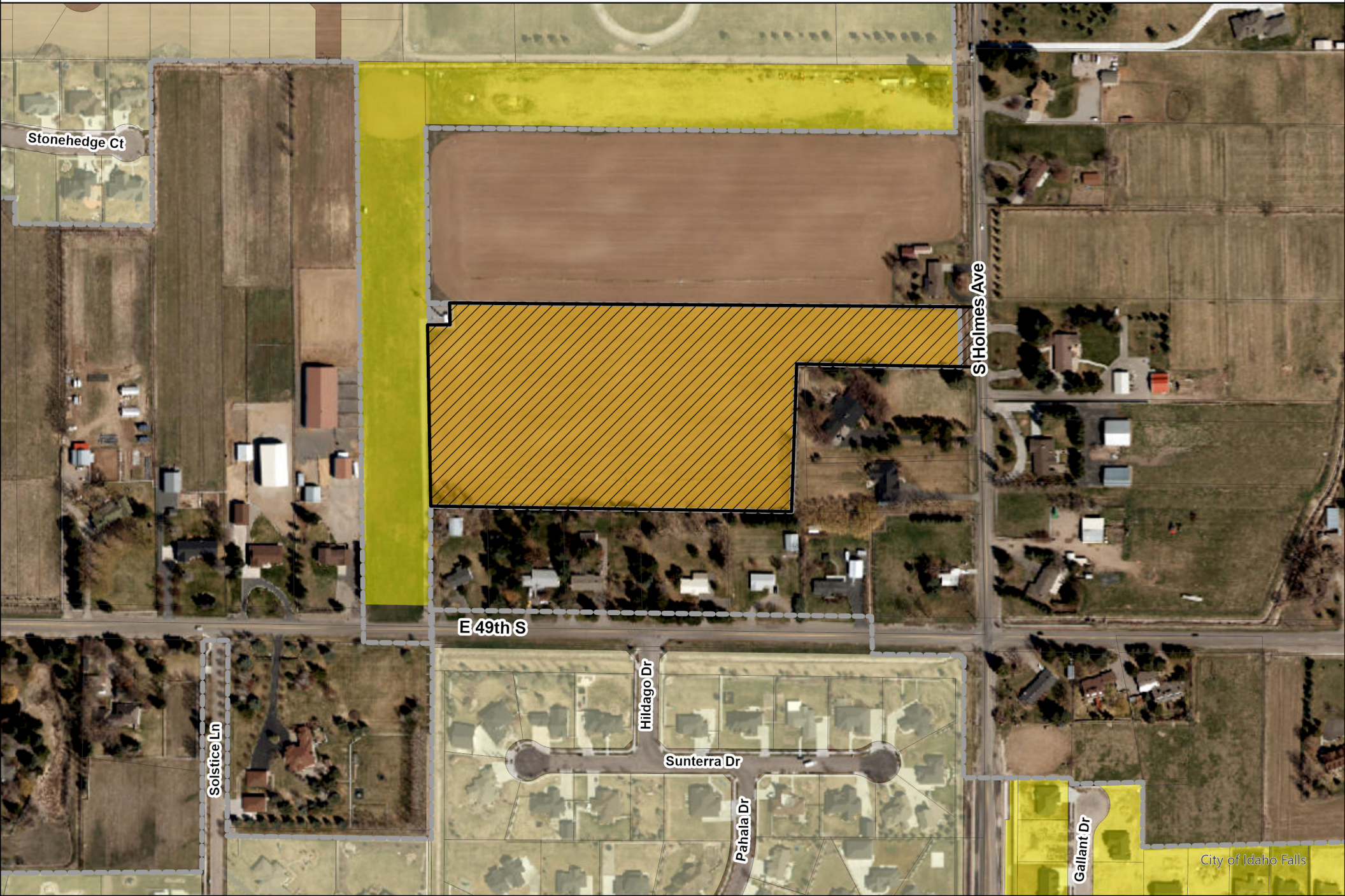
NA

**Legal Review**

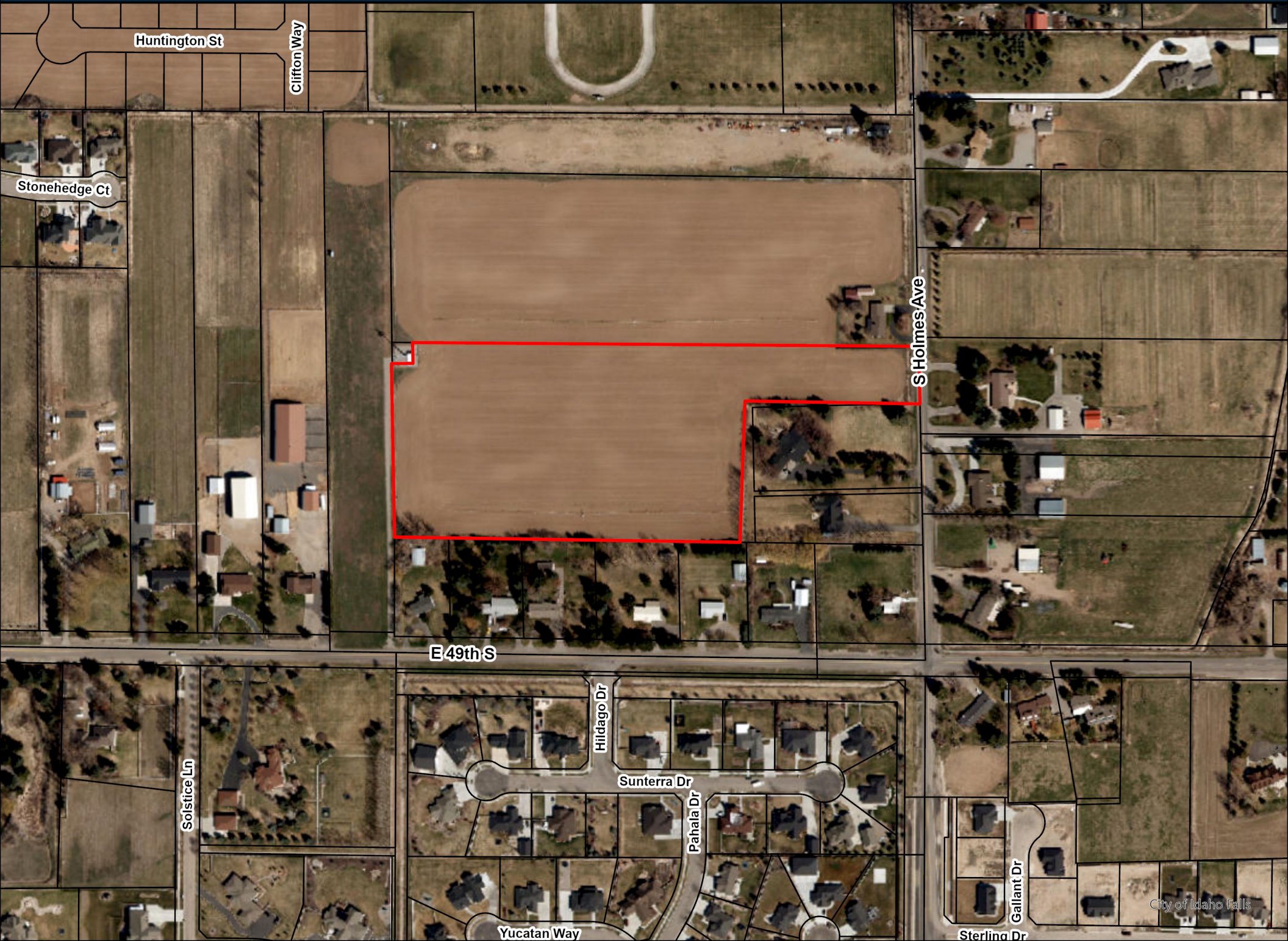
This application has been reviewed by the City Attorney's Office and is consistent with applicable law.



<div></div> RE	<div></div> R1	<div></div> TN	<div></div> R3	<div></div> PB	<div></div> LC	<div></div> R&D	<div></div> I&M
<div></div> RP	<div></div> R2	<div></div> RMH	<div></div> R3A	<div></div> CC	<div></div> HC	<div></div> LM	<div></div> P







Huntington St

Clifton Way

Stonehedge Ct

S Holmes Ave

E 49th S

Solstice Ln

Hildago Dr

Sunterra Dr

Pahala Dr

Yucatan Way

Gallant Dr

Sterling Dr

City of Idaho Falls



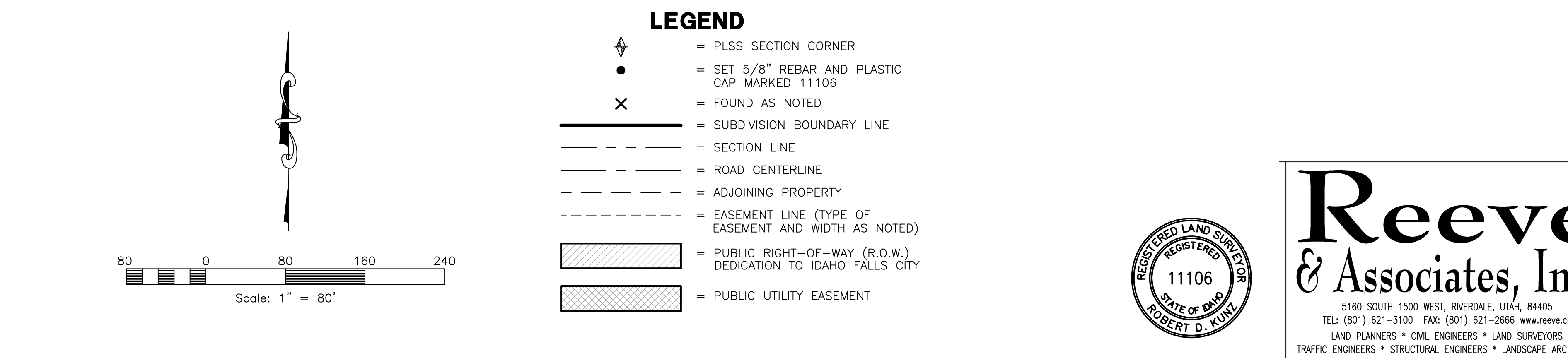
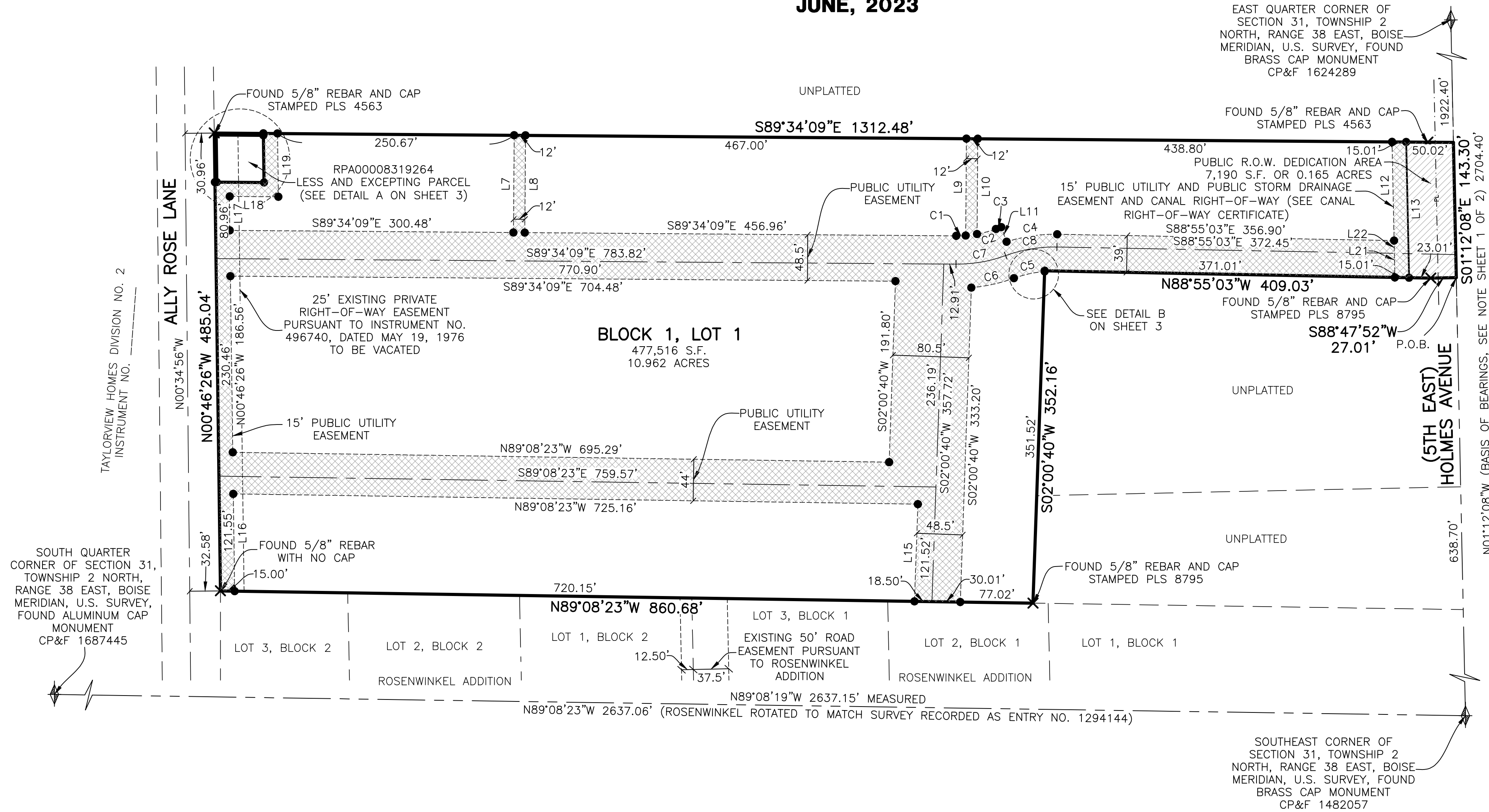


# SOUTHBRIDGE DIVISION NO. 1

A SUBDIVISION OF THE CITY OF IDAHO FALLS, BONNEVILLE COUNTY, IDAHO

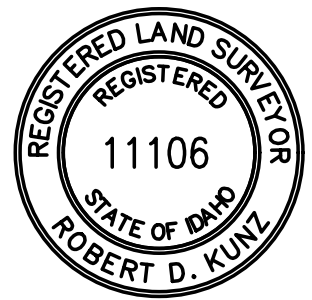
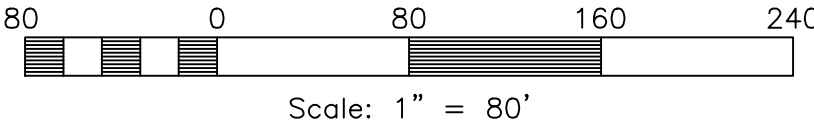
PART OF THE SOUTHEAST QUARTER OF OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 38 EAST, BOISE MERIDIAN, U.S. SURVEY

JUNE, 2023



## LEGEND

- ◆ = PLSS SECTION CORNER
- = SET 5/8" REBAR AND PLASTIC CAP MARKED 11106
- ✕ = FOUND AS NOTED
- = SUBDIVISION BOUNDARY LINE
- - - = SECTION LINE
- - - = ROAD CENTERLINE
- - - = ADJOINING PROPERTY
- - - = EASEMENT LINE (TYPE OF EASEMENT AND WIDTH AS NOTED)
- ▨ = PUBLIC RIGHT-OF-WAY (R.O.W.) DEDICATION TO IDAHO FALLS CITY
- ▤ = PUBLIC UTILITY EASEMENT



# Reeve & Associates, Inc.

5160 SOUTH 1500 WEST, RIVERDALE, UTAH, 84405  
TEL: (801) 621-3100 FAX: (801) 621-2666 www.reeve.co  
LAND PLANNERS \* CIVIL ENGINEERS \* LAND SURVEYORS  
TRAFFIC ENGINEERS \* STRUCTURAL ENGINEERS \* LANDSCAPE ARCHITECTS

## SHEET 2 OF 3

PROJECT INFO:
Surveyor: R. KUNZ
Designer: N. ANDERSON
Begin Date: 10-24-2022
Name: SOUTHBRIDGE
Scale: 1"=80'
Number: 7152-12



**STAFF REPORT**  
**Final Plat Southbridge Division NO. 1**  
**August 10, 2023**



Community  
Development  
Services

**Applicant:** Reeve and Associates

**Project Manager:** Naysha Foster

**Location:** Generally, north of E 49<sup>th</sup> St, east of Victorian Way, south of Castlerock Ln, west of S Holmes

**Size:** Approx. 10.962 acres

**Total Lots:** 1

**Buildable Lots:** 1

**Common Lots:** 0

**Existing Zoning:** R2

North: County A-1

South: County A-1

East: R1

West: County A-1

**Existing Land Uses:**

Site: Ag

North: Ag

South: Residential

East: Residential

West: Residential

**Future Land Use Map:**

General Urban

**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 Southbridge Division NO. 1

**History:** This property was annexed in April of 2022 and zoned R2, Mixed Residential. Prior to annexation it was zoned County A-1.

**Staff Comments:** The final plat application was submitted on October 26, 2022. The plat consists of one lot consisting of 10.962 acres. The lot will access S Holmes, a principle arterial to the east. A future access be from Ally Rose Lane, a platted local street once constructed.

A Traffic Impact Study has been completed.

The minimum lot size in the R2 zone is 6,000 square feet. The block is approximately 1,175 feet which does not exceed the maximum of 1,300 nor is less than minimum standard of 400 feet. This plat is not in the airport land use overlay zone.

**Staff Recommendation:** Staff has reviewed the plat and finds that it complies with the subdivision ordinance and the development standards of the R2 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.

**Subdivision Ordinance:** Boxes with an “X” indicated compliance with the ordinance

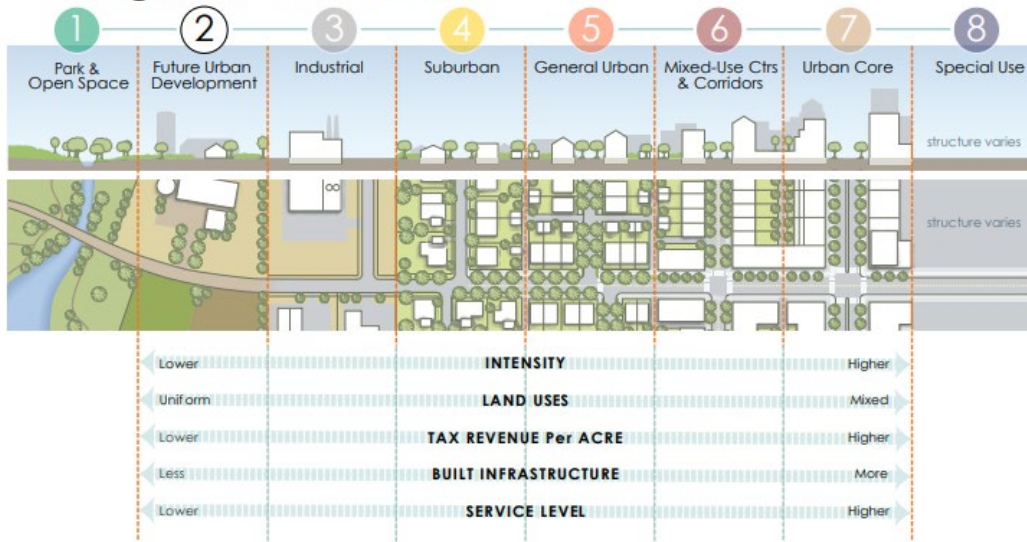
REQUIREMENTS	Staff Review
Requirements listed in Section 10-1:	
Building envelopes sufficient to construct a building.	X
Lot dimensions conform to the minimum standards of Zoning Ordinance.	X
Lots have full frontage on, and access to, a dedicated street.	X
Residential lots do not have direct access to arterial streets.	X
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.	N/A
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 development agreement shall include provisions for installation and continued maintenance of arterial buffers.	X



Planning Director to classify street on basis of zoning, traffic volume, function, growth, vehicular & pedestrian safety, and population density.	N/A
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## Comprehensive Plan:

### ImagineIT Transects



#### 7. Urban Core

**Snapshot:** The Urban Core Transect denotes the central area which functions as the City core and areas within or in close proximity to Downtown and South Downtown. The Urban Core also includes legacy residential subdivisions platted in a traditional grid pattern. These subdivisions tend to be characterized by taller structures, mixed-use buildings, pedestrian-oriented movement of people, commercial and entertainment enterprises. All housing types, civic buildings, town squares and transit stations are typical, but vary between neighborhoods.

**Local examples:** Downtown, Original Townsite, Highland Park Addition, Crows Addition, Brodbeck's Addition, Riverside Addition

## Zoning Ordinance:

### 11-3-3: PURPOSE OF RESIDENTIAL ZONES

(D) R2 Mixed Residential Zone. This zone provides a residential zone characterized by smaller lots and dwellings, more compact and denser residential development; and higher volumes of vehicular and pedestrian traffic than are characteristic of the RE, RP and R1 Zones. The principal uses permitted in the

R2 Zone shall be one (1), two (2), three (3), and four (4) dwelling units. This zone is also generally located near limited commercial services that provide daily household needs.

#### 11-3-4: DIMENSIONAL STANDARDS FOR RESIDENTIAL ZONES.

Table 11-3-1: Standards for Residential Zones

	RE	RP	R1	R2	TN	R3	R3A	RMH
<b>Lot Area</b>								
Lot Area Minimum in ft <sup>2</sup>	1 acre*	12,000	7,000	6,000*	3,000*	5,000*	5,000	3,000
Lot Area Maximum in ft <sup>2</sup>			13,500*					
<b>Site Width</b>								
Site Width at Front Setback, Minimum in ft.	150	60	50	50	25	50	50	25
<b>Setbacks, Minimum in ft.</b>								
Front	40	30*	25*	20*	15*	15	15	15
Front Maximum in ft.					20*			
Side	20	7.5/10*	6	6	5	6	6	5
Rear	40	25	25	25	10	25*	25*	10
<b>Lot Coverage, Building Height, and Density</b>								
Maximum Lot Coverage in %	30	40	40	80	50	80	80	50
Maximum Building Height in ft*	24	24	24	36	*			24
Maximum Density in net units/acre	1	4	6	17	15	35	35	35
*See explanations, exceptions and qualifications in Section 11-3-4A,B,C 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:**

**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.**

## **REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS**

### **APPROVAL OF THE FINAL PLAT OF SOUTHBRIDGE DIVISION NO. 1, LOCATED GENERALLY NORTH OF E 49<sup>TH</sup> S, EAST OF VICTORIAN WAY, SOUTH CASTLE ROCK LN, WEST OF S HOLMES AVE**

**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 August 10, 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 10.962 acre property located generally north of E 49<sup>th</sup> S, east of Victorian Way, south of Castle Rock Ln, west of S Holmes.
3. The property is zoned R2, Mixed Residential.
4. The Final Plat includes one (1) lot.
5. Access to the subdivision will come from S Holmes Avenue a principal arterial and Ally Rose Lane, a platted local 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  
SOUTHBRIDGE DIVISION NO. 1

This DEVELOPMENT AGREEMENT SOUTHBRIDGE DIVISION NO. 1 (“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 STEWARD LAND COMPANY, LLC. (“DEVELOPER”), whose mailing address is 1708 E. 5550 S., Suite 18, Ogden, Utah 84403.

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. Certification of No Chinese Ownership. Pursuant to Idaho Code 67-2359, DEVELOPER certifies that DEVELOPER is not currently owned or operated by the government of the People's Republic of China and will not, for the duration of this AGREEMENT, be owned or operated by the government of the People's Republic China.

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.

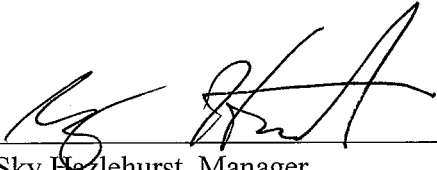
ATTEST:

CITY OF IDAHO FALLS, IDAHO

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

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

STEWARD LAND COMPANY, LLC.

By  \_\_\_\_\_  
Sky Hazlehurst, 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

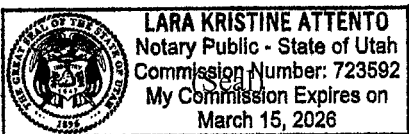
Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

STATE OF ~~IDAHO~~ <sup>UTAH</sup> )  
 ) ss:  
County of Weber )

On this 21<sup>st</sup> day of July, 2023, before me, the undersigned, a notary public, in and for said State, personally appeared Sky Hazlehurst, known or identified to me to be an authorized signator of Steward Land Company, 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.



Lara Kristine Attento  
Notary Public of ~~Idaho~~ <sup>UTAH</sup>  
Residing at: Ogden, Utah  
My Commission Expires: 3-15-2026

**EXHIBIT "A"**  
**PROPERTY**

**LEGAL DESCRIPTION**

**SOUTHBRIDGE DIVISION NO. 1**

PART OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 2 NORTH, RANGE 38 EAST, BOISE MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, SAID POINT BEING N01°12'08"W 638.70 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 31; THENCE S88°47'52"W 27.01 FEET; THENCE N88°55'03"W 409.03 FEET; THENCE S02°00'40"W 352.16 FEET TO THE NORTHERLY LINE OF ROSENWINKEL ADDITION; THENCE N89°08'23"W ALONG SAID NORTHERLY LINE, 860.68 FEET TO THE EASTERLY RIGHT OF WAY LINE OF ALLY ROSE LANE; THENCE N00°46'26"W ALONG SAID EASTERLY RIGHT OF WAY LINE, 485.04 FEET; THENCE S89°34'09"E 1312.48 FEET; THENCE S01°12'08"E 143.30 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THE FOLLOWING:

BEGINNING AT A POINT, SAID POINT BEING N01°12'08"W 739.45 FEET AND WEST 1260.66 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 31; THENCE N89°34'15"W 50.00 FEET; THENCE N00°46'31"W 50.00 FEET; THENCE S89°34'15"E 50.00 FEET; THENCE S00°46'34"E 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 484,706 S.F. OR 11.127 ACRES

**EXHIBIT “B”**  
**SPECIAL CONDITIONS**

**SOUTHBIDGE DIVISION NO. 1**

**S.C. 1.00 Traffic Signs.** DEVELOPER agrees to install all street signs designating the names of all streets within the Subdivision. Street signs designating the name of public streets shall be constructed with white letters over green background. Street signs designating the name of private streets shall be constructed with white lettering over blue background. Such signs shall be installed in the manner and locations as directed by CITY’s Engineer.

**S.C. 2.00 Access to 5<sup>th</sup> East.** Access to 5<sup>th</sup> East shall be in accordance with the Bonneville Metropolitan Planning Organization (“BMPO”) Access Management Plan.

**S.C. 3.00 Arterial Street Section Improvements for 5<sup>th</sup> East.** DEVELOPER shall design and construct the Arterial Roadway improvements of one hundred forty-four feet (144 ft) along 5<sup>th</sup> East through the limits of the Subdivision in accordance with CITY approved Improvement Drawings. DEVELOPER shall be reimbursed for this work and reimbursement is subject to paragraph 11 of this AGREEMENT. Reimbursement schedule is also subject to CITY’s ability to collect impact fees and final acceptance of the Arterial Roadway. DEVELOPER shall also provide for the landscape strip between the curb and the sidewalk. Maintenance of the landscape strip shall be the continuing responsibility of DEVELOPER or DEVELOPER’s heirs, successors, or assigns.

**S.C. 4.00 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. 5.00 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. 6.00 Water Line Connection in Ally Rose Lane.** DEVELOPER is planning to connect to the water main that is currently planned to be constructed in Ally Rose Lane but not currently accepted. DEVELOPER acknowledges that the water main is required to be accepted by CITY prior to connection for this Subdivision. CITY is not responsible to bring the water main to final acceptance.

CITY agrees to allow DEVELOPER to connect to the water main planned in Ally Rose Lane, subject to DEVELOPER's payment of the water main connection fees in the amount of Twenty-One Thousand Two Hundred Ninety-One dollars and Fifty Cents (\$21,291.50; 485 ft currently at \$43.90 per foot), upon execution of this AGREEMENT, pursuant to Section 8-4-14 (C) of Idaho Falls City Code. Mainline connection fee costs are subject to adjustment when CITY's Fee Resolution is adjusted from time to time by City Council. This fee amount is subject to fee adjustments at time of building permit application. 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. DEVELOPER acknowledges that the water main in Rose Alley Lane was installed by Justin Miller for Taylorview Homes Division No. 2. DEVELOPER shall pay the connection fee or provide a waiver from Justin Miller waiving the connection fee. Waiver to be provided is subject to review and approval of CITY's Legal Department.

**S.C. 7.00 Sewer Main Connection Fee Higbee Avenue.** DEVELOPER is planning to connect to the sewer main that is currently planned to be constructed in Ally Rose Lane but is not currently accepted. DEVELOPER acknowledges that the sewer main is required to be accepted by CITY prior to connection for this Subdivision. CITY is not responsible to bring the sewer main to final acceptance.

CITY agrees to allow DEVELOPER to connect to the planned sewer main in Ally Rose Lane, 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 Twelve Thousand Four Hundred Sixty-Four Dollars and Fifty Cents (\$12,464.50; 485 feet; currently at \$25.70 per foot). Mainline connection fee costs are subject to adjustment when the CITY Fee Resolution is adjusted from time to time by City Council. This fee amount is subject to fee adjustments at time of building permit application. 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. DEVELOPER acknowledges that the sewer main in Ally Rose Lane was installed by Taylorview Homes, LLC., (Bret Faulkenrath) for Taylorview Homes Division No. 1. DEVELOPER shall pay the connection fee or provide a waiver from Taylorview Homes, LLC., waiving the connection fee. Waiver to be provided is subject to review and approval of CITY's Legal Department.

# Memorandum

File #: 23-219

City Council Meeting

**FROM:** PJ Holm, Director, Parks and Recreation Department  
**DATE:** Tuesday, August 1, 2023  
**DEPARTMENT:** Parks & Recreation

## Subject

Resolution to Waive Certain 2023 Fourth of July Celebration Fees

## Council Action Desired

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

Approve the Resolution to waive certain 2023 Fourth of July fees for services performed by the City of Idaho Falls to assist in the free, public Fourth of July activities and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

This annual Resolution waving Fourth of July fees was not included with the prior approval of the Indemnification Agreement at City Council on June 29, 2023. It should be approved to provide support for the Community's 2023 Fourth of July Celebration and to document proper fee accounting in the budget.

## Alignment with City & Department Planning Objectives



Resolution aligns with the livability community-oriented result by supporting an accessible, free family-oriented community event and fosters economic growth by attracting visitors to the community.

## Interdepartmental Coordination

Public Works and Idaho Falls Power concur with the fee waiver resolution.

## Fiscal Impact

The labor and equipment for this event are donated by the Idaho Falls Public Works Department and Idaho Falls Power as well as the Parks and Recreation Department. The estimated cost to the city is \$8,803.72 (Parks and Recreation Dept.), \$1,007.10 (Idaho Falls Power), and \$25,264.72 (Public Works Dept.), for a total of \$35,075.54. Services provided



by the City's Police and Fire Departments to support these events, though significant, are not calculated here as fees typically are not charged for overall public safety services.

**Legal Review**

The 2023 Resolution has been prepared by and approved by the City Attorney's Office.

## RESOLUTION NO. 2023-

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, WAIVING CERTAIN CITY FEES FOR SERVICES IN SUPPORT OF THE 2023 COMMUNITY FOURTH OF JULY CELEBRATION; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Fourth of July is a special time that allows citizens to celebrate the heritage of American freedom initiated by the signing of the Declaration of Independence; and

WHEREAS, Independence Day has been celebrated since the creation of Idaho Falls as a city; and

WHEREAS, the City of Idaho Falls has gained wide notoriety by the sustained and community wide Fourth of July celebration; and

WHEREAS, the Fourth of July and associated Freedom Festival is a point of civic pride and an event that bring people together; and

WHEREAS, for many years the City has supported Freedom Celebration and Fourth of July fireworks by providing emergency and support services to accommodate the large crowds that gather by the Snake River setting for the fireworks; and

WHEREAS, the Council wishes to continue to provide necessary and appropriate services and support of the community-wide celebration and fireworks show as the event changes location; and

WHEREAS, the City, in support of the community's enjoyment of fireworks, desires to waive certain fees for services performed in July of 2023, which normally would be required for services; and

WHEREAS, the City provided the necessary City services to accommodate large crowds, transportation, ingress and egress to the fireworks viewing sites, general public safety measures at no cost.

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

1. The City waives the following fees at the currently established City rates, as indicated below:

2023 4<sup>th</sup> of July Fee Waivers

Public Works – Street Division		
SERVICE		QUANTITY or COSTS
Fireworks Sand – Loader		\$ 100.00
Fireworks Sand – Dump Truck		\$ 240.00
Fireworks Barricades – Message Boards		\$4,800.00
Fireworks Barricades – Flat Bed		\$7,236.80
Fireworks Barricades – Pick Up (Set up)		\$ 283.74
Fireworks Barricades – Pick Up (During/After)		\$ 378.32
Fireworks Barricades – Loader and Backhoe (Set up)		\$ 388.74
Fireworks Barricades – Loader and Backhoe (During/After)		\$ 518.32
Fireworks Barricades – Patch Truck		\$2,091.60
Fireworks Barricades – Barrier Delivery (Backhoe)		\$ 897.90
Fireworks Barricades – Barrier Delivery (Dump Truck)		\$1,295.80
Fireworks Cleaning – Sweeper (Before)		\$ 213.28
Fireworks Cleaning – Sweeper (After)		\$ 213.28
Total		\$22,249.72
Public Works – Sanitation Division		
SERVICE		QUANTITY or COSTS
Employee #1, 2, 3	Deliver 150 - 95 gals	\$ 540.00
Employee #4	Deliver 6 - 30yd's	\$ 204.00
Employee #1, 2, 3	Remove 150 - 95 gals	\$ 540.00
Employee #4	Dump & Remove 6 - 30yd's	\$ 280.00
	5 - 30yd's	\$1,265.00
	1 - 30yd's (cardboard)	\$ 150.00
Total		\$3,015.00
<b>COMBINED TOTAL: \$ 25,264.72</b>		

Parks and Rec	
SERVICE/STAFF HOURS	QUANTITY or COSTS
Delivery/Set Up Trash Containers and Picnic Tables	
Park Manager	\$ 360.00
Park Operator	\$ 192.00
2 Seasonal Staff	\$ 204.00
2 Pick Up Trucks with Trailers	\$ 384.00
96 Picnic Tables	\$1,084.00
3 Pick-Up Trucks with Trailers	\$ 576.00
Garbage and Porta-Potty Maintenance	
Park Manager	\$ 127.56
2103 Operator	\$ 97.71
2103 3 hrs	\$ 180.00
6 Seasonal Staff	\$ 611.00
3 OHV Mules	\$ 648.00
Pick-up truck	\$ 72.00
Event Clean Up	

Park Manager	\$ 360.00
Park Operator	\$ 192.00
2 Seasonal Staff	\$ 204.00
2 Pick Up Trucks with Trailers	\$ 384.00
96 Picnic Tables	\$1,084.00
3 Pick-Up Trucks with Trailers	\$ 576.00
2103 Operator	\$ 162.86
2103 5 hrs	\$ 400.00
7 Seasonal Staff	\$ 445.55
3 Full Time Staff	\$ 408.05
Cleaning Supplies and Trash Can Liners	\$ 75.00
<b>TOTAL</b>	<b>\$ 8,803.72</b>

<b>Idaho Falls Power</b>	
<b>SERVICE</b>	<b>QUANTITY or COSTS</b>
Disconnect/Reconnect Street Lighting – 2 Employees/6hrs	\$1,007.10
<b>TOTAL</b>	<b>\$1,007.10</b>

ADOPTED and effective this \_\_\_\_ day of July, 2023.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

\_\_\_\_\_  
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 Resolution entitled, “A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, WAIVING CERTAIN CITY FEES FOR SERVICES IN SUPPORT OF THE 2023 COMMUNITY FOURTH OF JULY CELEBRATION; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.”

Corrin Wilde, City Clerk

(SEAL)

# Memorandum

File #: 23-222

City Council Meeting

**FROM:** Pam Alexander, Municipal Services Director  
**DATE:** Monday, July 31, 2023  
**DEPARTMENT:** Municipal Services

## Subject

Public Hearing for the Tentative 2023/24 Fiscal Year Budget

## Council Action Desired

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

Municipal Services respectfully requests that the Mayor and Council conduct a public hearing for the 2023/24 fiscal year budget. The Public Hearing has been scheduled for Thursday, August 10, 2023, at 7:30 pm in the City Council Chambers of the City Annex Building located at 680 Park Avenue, Idaho Falls, Idaho.

## Description, Background Information & Purpose

Pursuant to Idaho Code §50-1002, the Notice of Public Hearings for the 2023/24 fiscal year budget was published on Saturday, July 29, 2023, and Saturday, August 5, 2023.

## Alignment with City & Department Planning Objectives



Public Hearings support the good governance community-oriented result by fostering innovative and sound fiscal management. Hearings enable participation, public trust, and transparency.

## Interdepartmental Coordination

All city departments have participated in the 2023/24 fiscal budget process.

## Fiscal Impact

The tentative approval of the 2023/24 fiscal year budget occurred on Thursday, July 27, 2023, for \$339,533,522. This approval sets a maximum level of total expenditures that cannot be exceeded in the appropriations ordinance.

## Legal Review

The City Attorney concurs that the Council action is within Idaho Code §50-1002.



# Memorandum

File #: 23-223

City Council Meeting

**FROM:** Pam Alexander, Municipal Services Director  
**DATE:** Monday, July 31, 2023  
**DEPARTMENT:** Municipal Services

## Subject

Public Hearing for the Proposed Fees for Fiscal Year 2023/24

## Council Action Desired

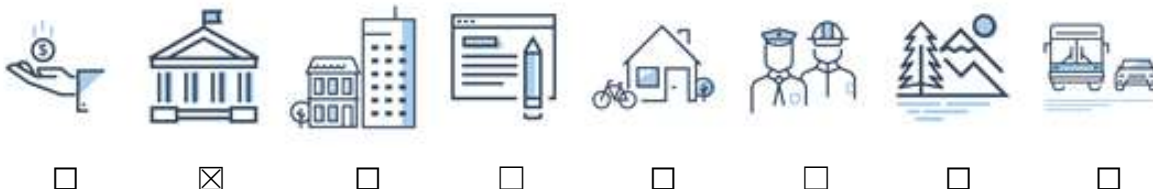
☐ Ordinance ☐ Resolution ☒ Public Hearing  
☐ Other Action (Approval, Authorization, Ratification, etc.)

Municipal Services respectfully requests that the Mayor and Council conduct a public hearing for the proposed 2023/24 fee schedule. The Public Hearing has been scheduled for Thursday, August 10, 2023, at 7:30 pm in the City Council Chambers of the City Annex Building located at 680 Park Avenue, Idaho Falls, Idaho.

## Description, Background Information & Purpose

Due to the Post Register's inability to post the Notice of Public Hearings for the 2023/24 fiscal year proposed fee schedule as submitted within the deadline on Saturday, July 29, 2023, the Post Register has published the Notice of Public Hearing for the proposed fees in print on Tuesday, August 1, 2023, and Saturday, August 5, 2023, and electronically on Saturday, July 29, 2023, and Saturday, August 5, 2023. Pursuant to Idaho Code §60-106A(5), "if the state of Idaho or any political subdivision thereof properly submits a legal notice, advertisement, or publication to a newspaper for publishing and such governmental entity has otherwise met all statutory publication requirements and deadlines, it shall not be liable for failing to comply with publication deadlines provided by law or administrative rule in the even that a newspaper fails to correctly publish such legal notice, advertisement or publication...."

## Alignment with City & Department Planning Objectives



Public hearings support the good governance community-oriented result by fostering innovative and sound fiscal management. Hearings enable participation, public trust, and transparency.

## Interdepartmental Coordination

All City departments have participated in the 2023/24 fiscal year budget and fee setting process.

**Fiscal Impact**

Approval of the proposed 2023/24 fee resolution sets the maximum fees for the fiscal year, beginning October 1, 2023.

**Legal Review**

The City Attorney concurs that the Council action is within Idaho Code §50-1002.