
The public is invited to observe City Council Work Sessions. However, the agenda for Work Sessions does not include and opportunity for public interaction. Seating in the Council Chambers may be limited. All seating is available on a first-come, first-serve basis. The public also may view this meeting via livestream on the City's website at <https://www.idahofallsidaho.gov/429/Live-Stream>.

This meeting may be cancelled or recessed to a later time in accordance with law. If you need communication aids or services or other physical accommodations to participate or access this meeting of the City of Idaho Falls, you may contact City Clerk Corrin Wilde at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 not less than 48 hours prior to the meeting. They can help accommodate special needs.

CITY COUNCIL WORK SESSION

Times listed in parentheses are only estimates.

Call to Order and Roll Call

Public Works:

Presentation and Discussion: Gift Annual Report (40)

Action Item: Council Direction to Staff (or take other appropriate action)

Municipal Services:

Presentation and Discussion: Third Quarter Financial Presentation (40)

Action Item: Council Direction to Staff (or take other appropriate action)

Follow-up: FY2023-24 Budget (5)

Action Item: Council Direction to Staff (or take other appropriate action)

Police, City Attorney, Public Works,
Parks and Rec:

Presentation and Discussion: Nuisance Noise Ordinance (40)

Action Item: Council Direction to Staff (or take other appropriate action)

Parks and Recreation:

Review: Final Concession Agreement for Tubing/Sledding Park (20)

Action Item: Council Direction to Staff (or take other appropriate action)

Mayor's Office,

Presentation and Discussion: Costco Economic Development Report
(25)

Action Item: Council Direction to Staff (or take other appropriate action)

DATED this 17, day of August 2023


Jasmine Marroquin, Deputy City Clerk

Public Works

Date	Working Days	Ridership Per Month	% Increase	Riders Per Day(average)	% Increase	Riders Per Year (projected if RPD stays same)
Jun-22	24	3974		166		51662
Jul-22	26	6154	55%	237	43%	73848
Aug-22	27	6454	5%	239	1%	74580
Sep-22	26	6174	-4%	237	-1%	74088
Oct-22	26	6247	1%	240	1%	74964
Nov-22	25	7405	19%	296	23%	92414
Dec-22	27	7457	1%	276	-7%	86170
Jan-23	26	7900	6%	304	10%	94800
Feb-23	24	7676	-3%	320	5%	99788
Mar-23	27	8652	13%	320	0%	99979
Apr-23	25	8027	-7%	321	0%	100177
May-23	27	8639	8%	320	0%	99828
Jun-23	26	8956	4%	344	8%	107472
Jul-23	26	8615	-4%	331	-4%	103380

GIFT GRANT Pools	5307 funds	Match needed	Anticipated Utilization	Remainder
FY 2021 +2	\$1,482,424.00	\$518,848.40	\$965,000.00	\$517,424.00
FY 2022 +2	\$1,907,685.00	\$667,689.75	\$1,200,000.00	\$707,685.00
FY 2023 +2	\$1,945,748.00	\$681,011.80	\$1,300,000.00	\$645,748.00
CARES				
	\$3,104,244.00	0		
ARP				
	\$371,719.00	0		



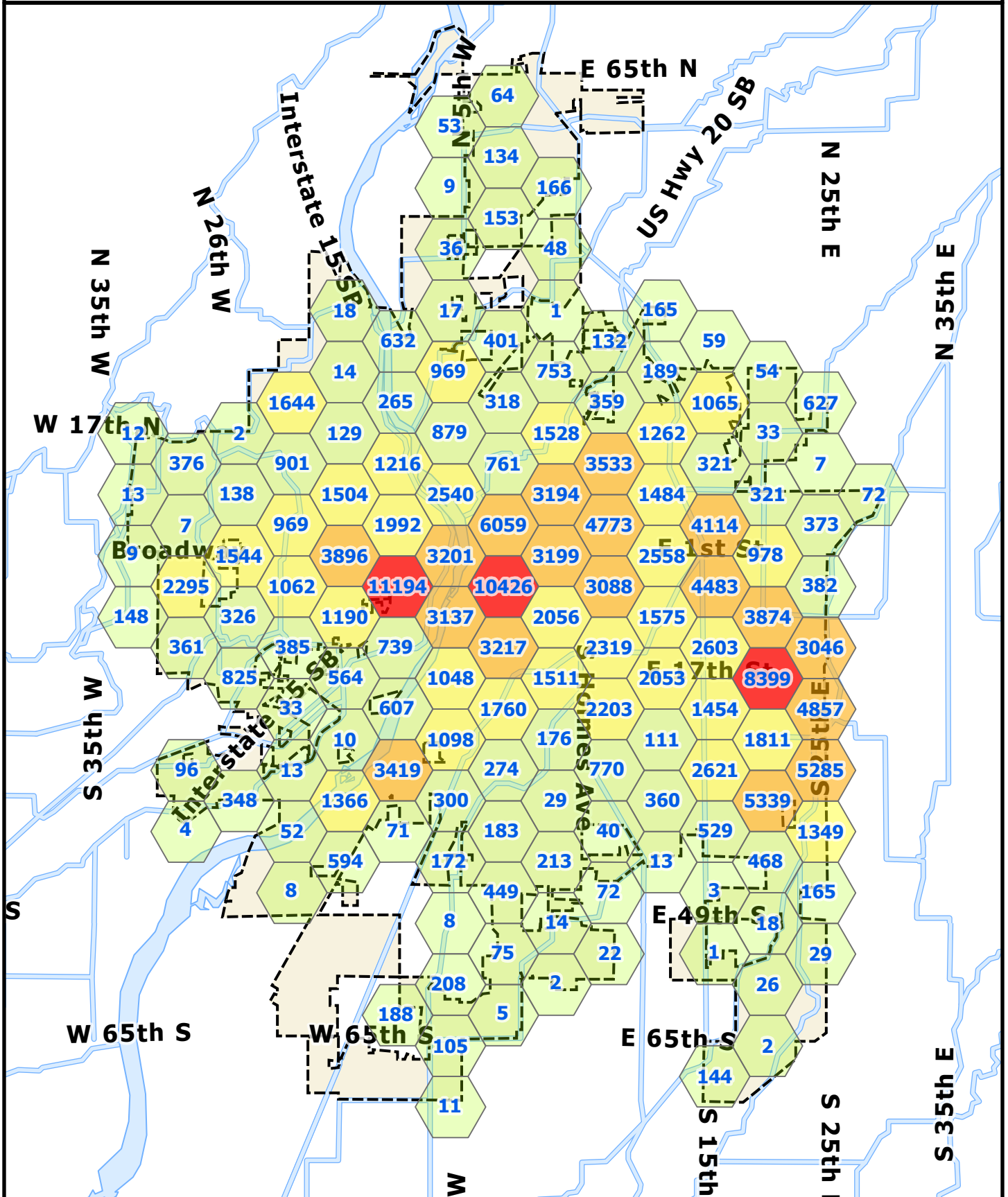




GIFT Pickup and Dropoff Boardings per 1/2 mile bins June 2022 - May 2023



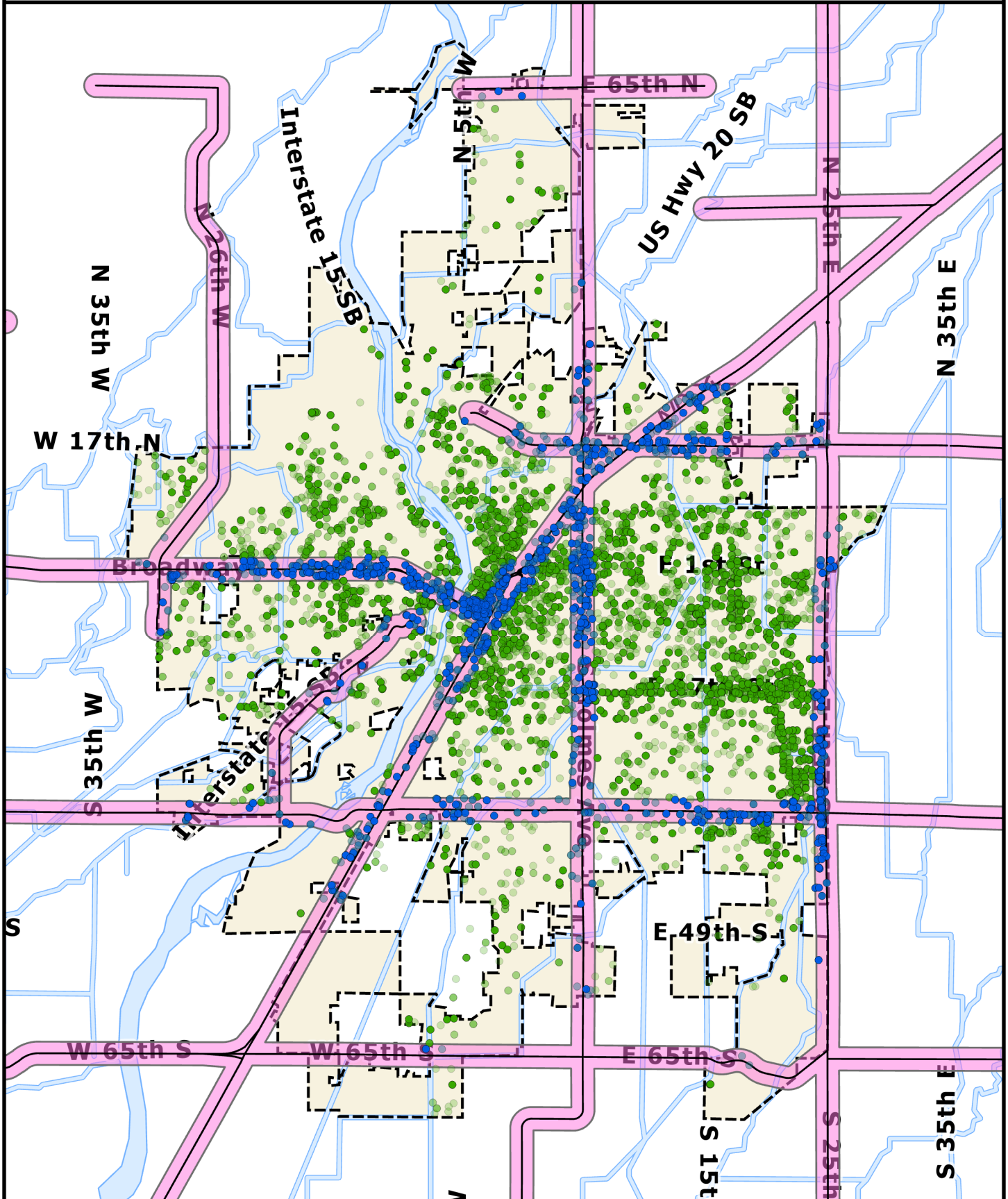
1" = 1.5 miles



**GIFT Pickup and Dropoff Boardings
within 500' of Major Arterial (29.5%)
June 2022 - May 2023**



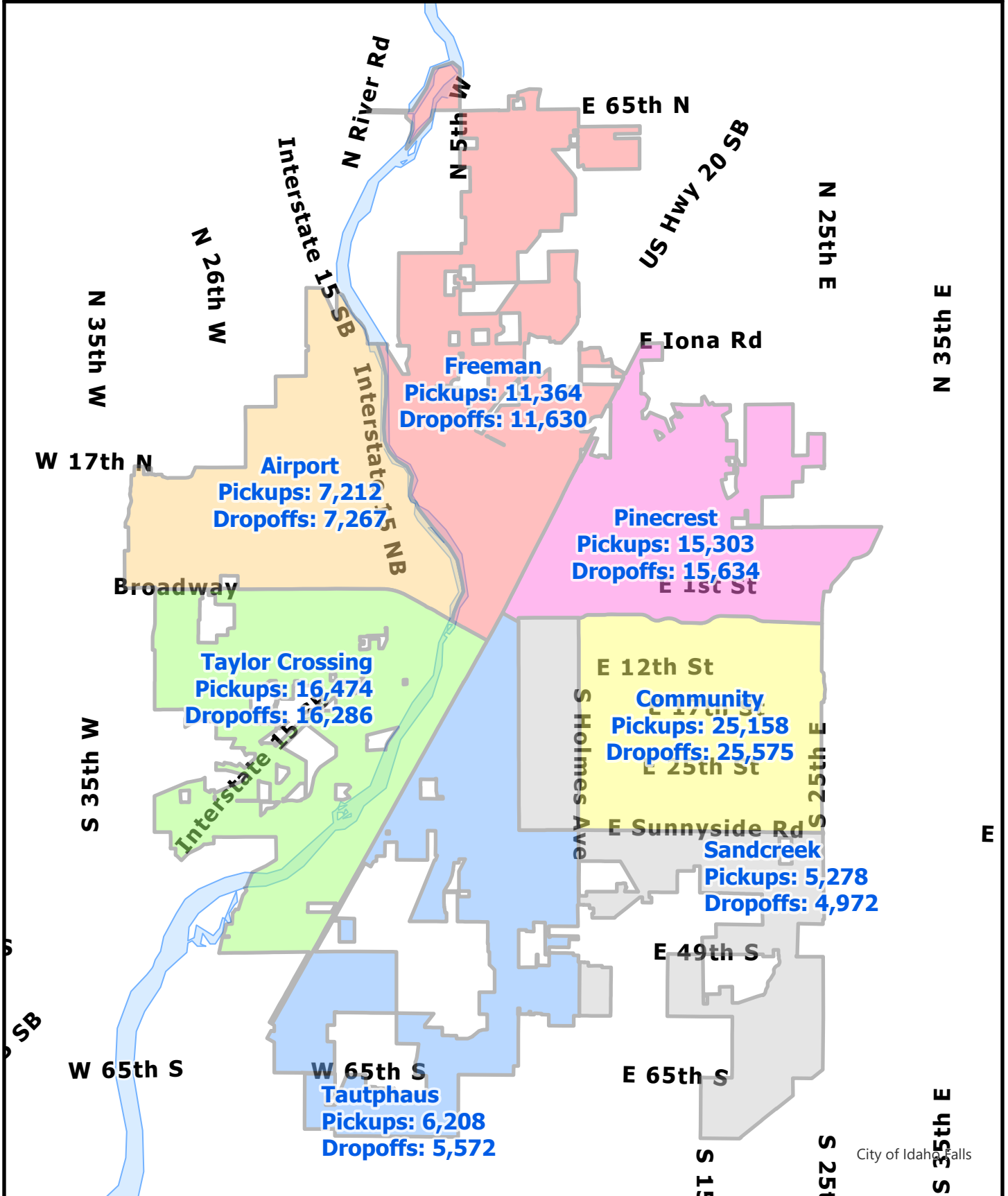
1" = 1.5 miles



GIFT Boardings per Work Zone June 2022 - May 2023



1" = 1.5 miles



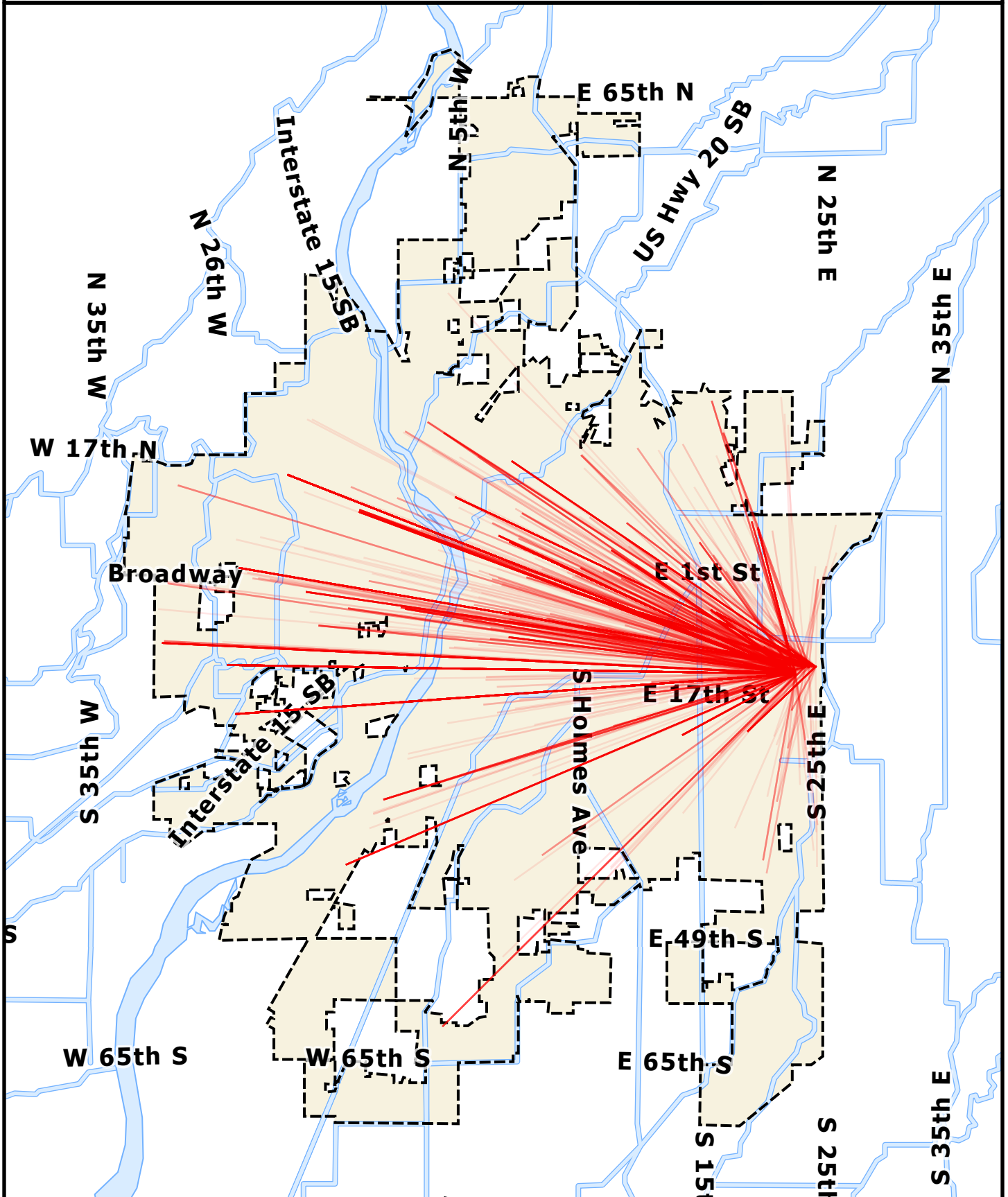


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 College of Eastern Idaho (2,176)



1" = 1.5 miles



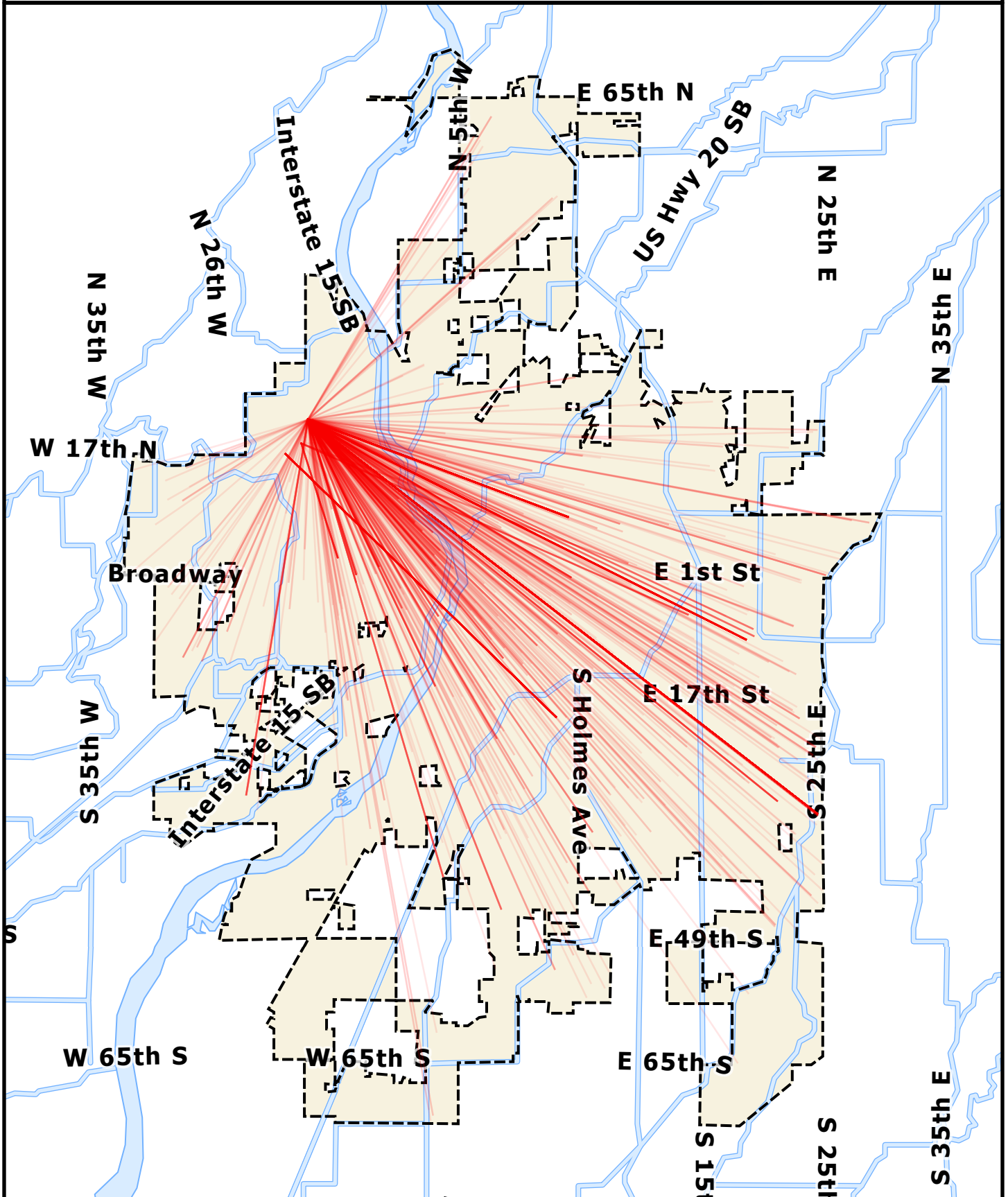


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls Airport (1,132)



1" = 1.5 miles



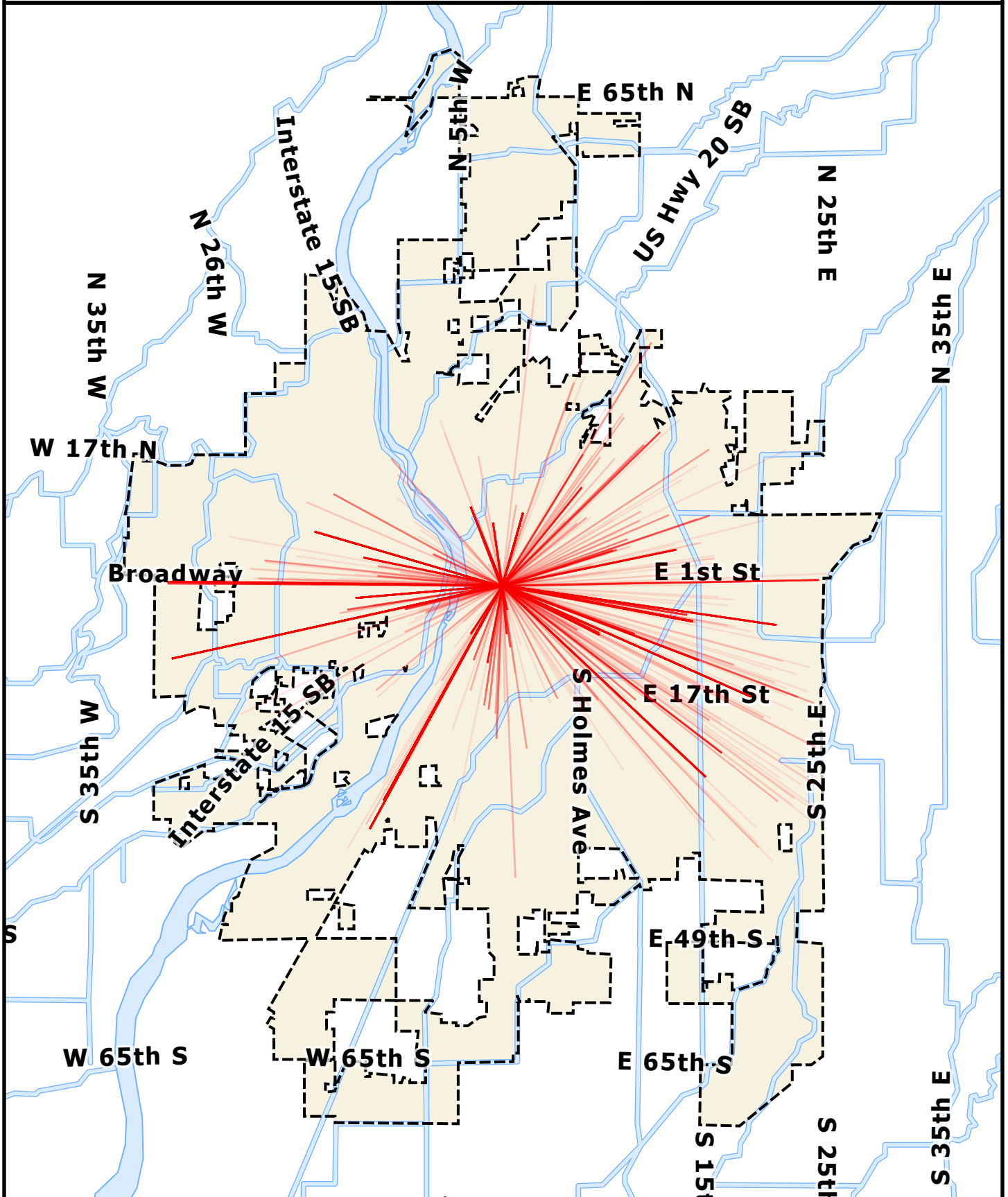


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls DMV (2,028)



1" = 1.5 miles



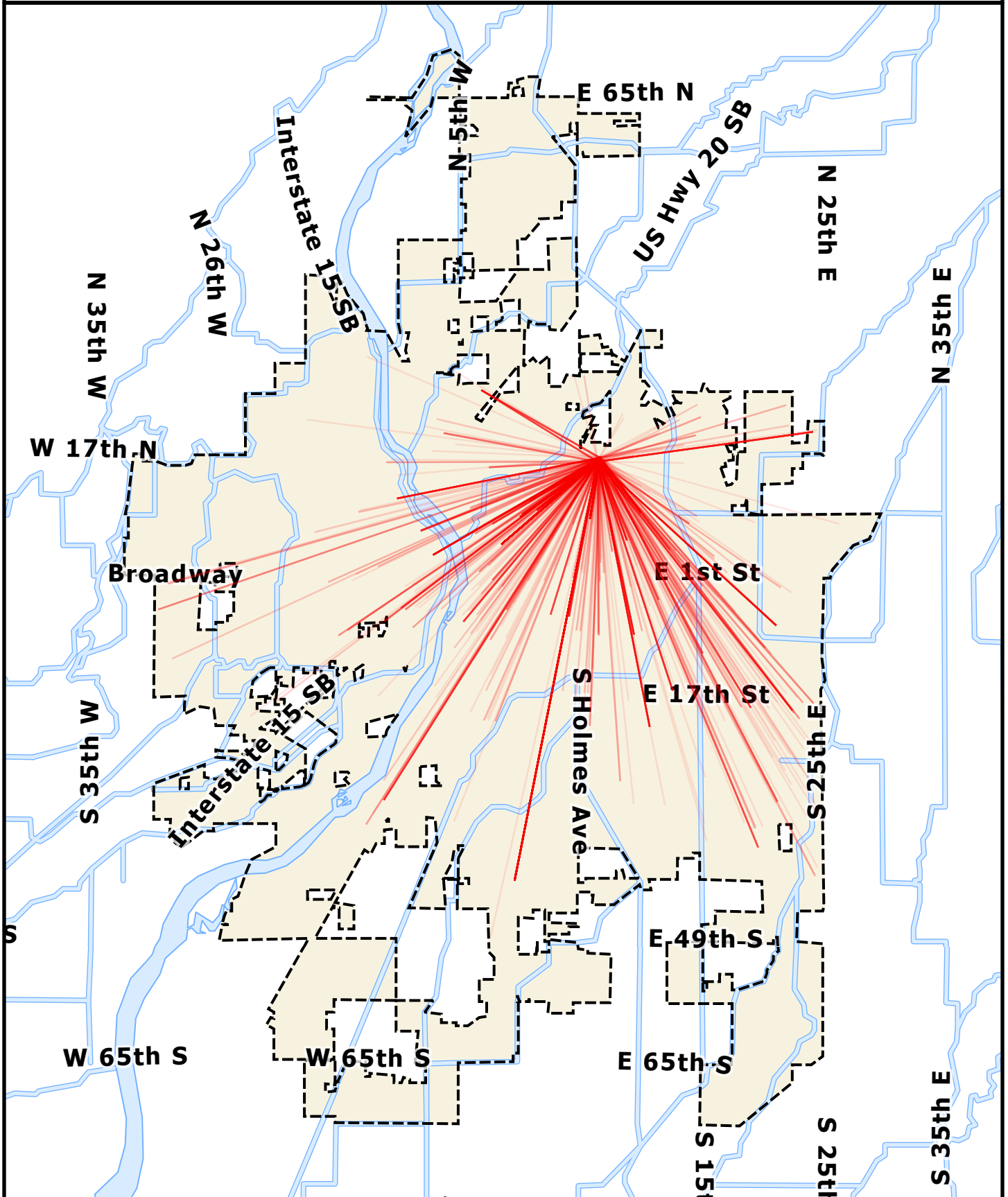


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls Fred Meyer (1,346)



1" = 1.5 miles



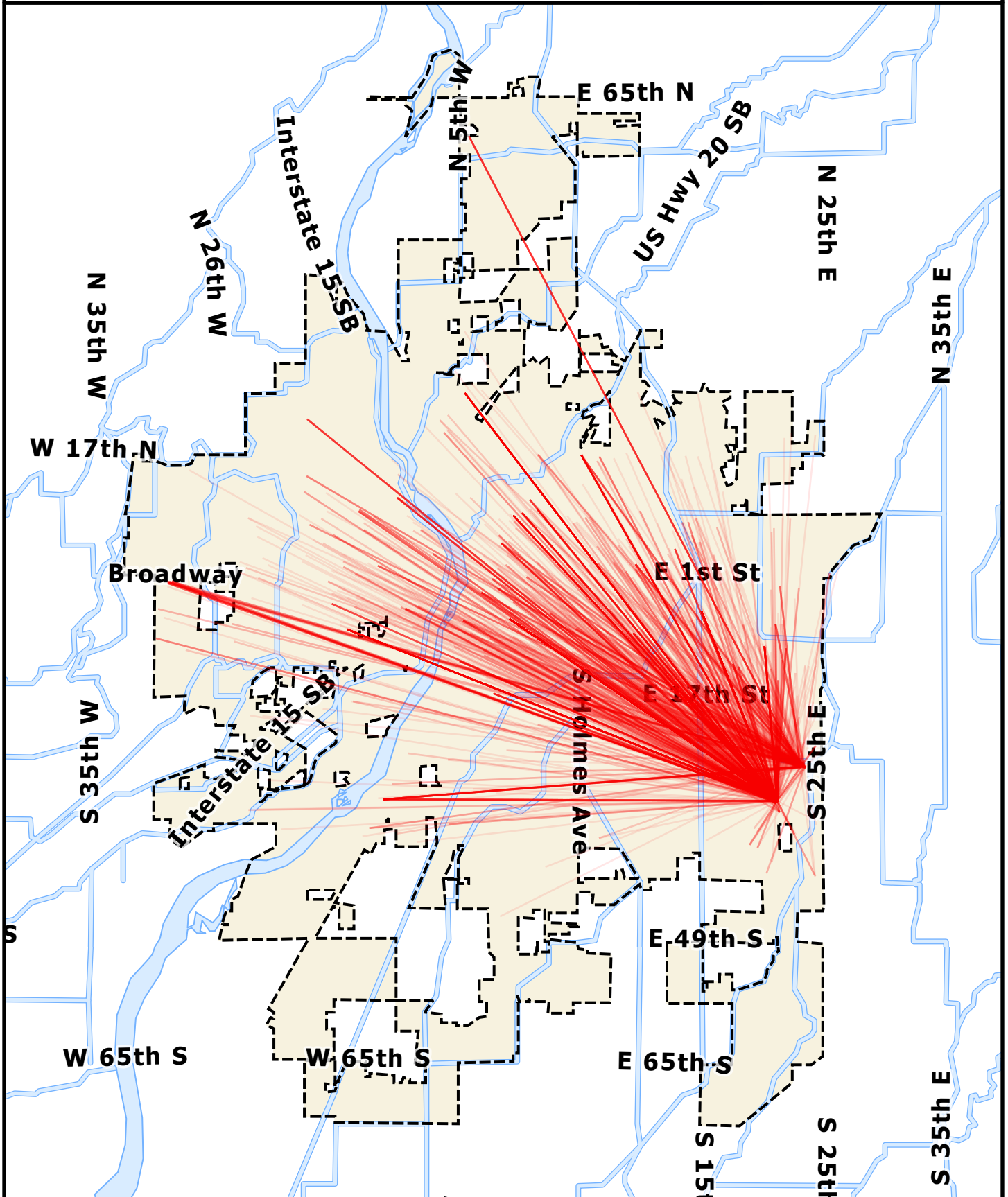


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls Hospitals (1,870)



1" = 1.5 miles



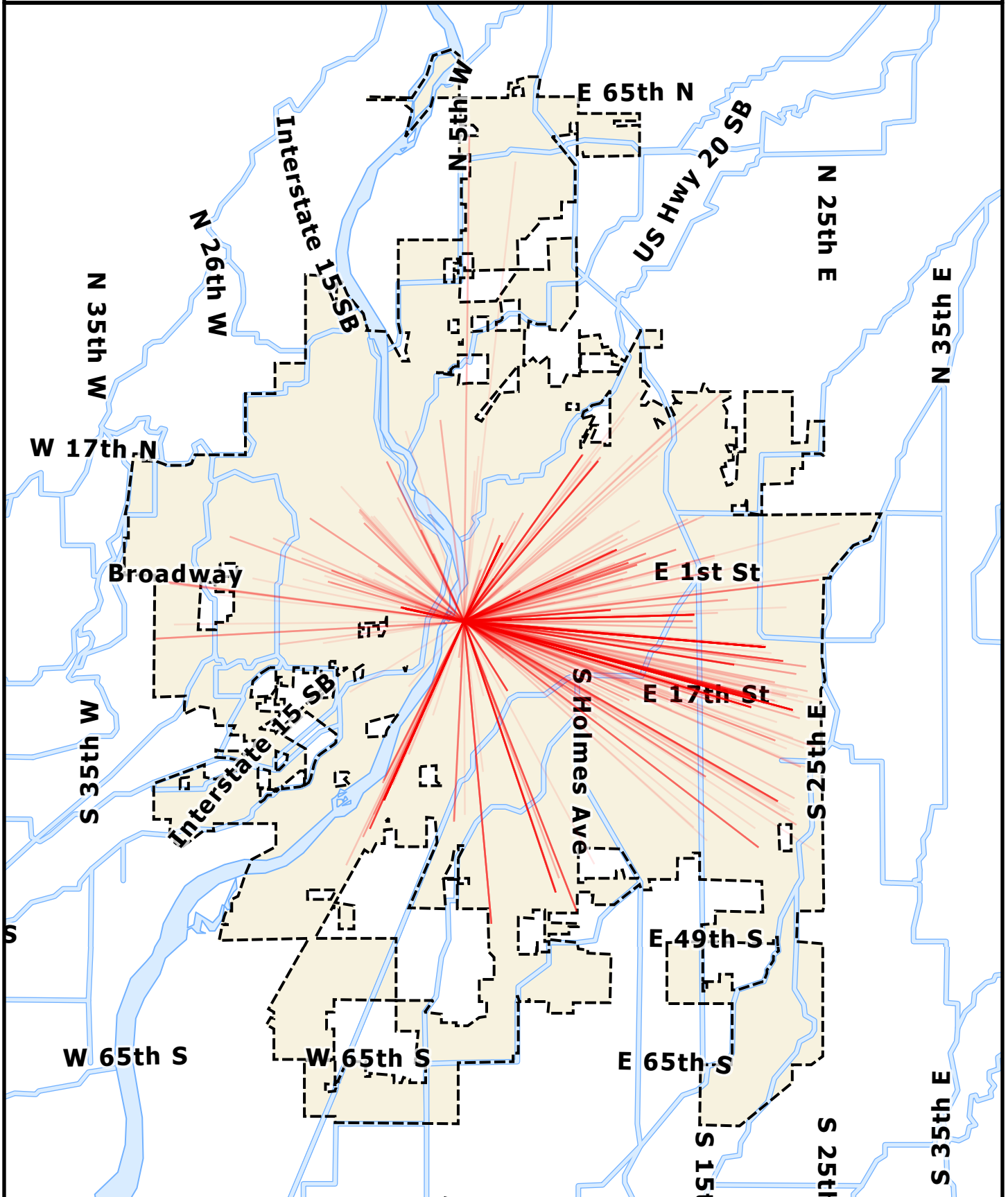


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls Library (1,047)



1" = 1.5 miles



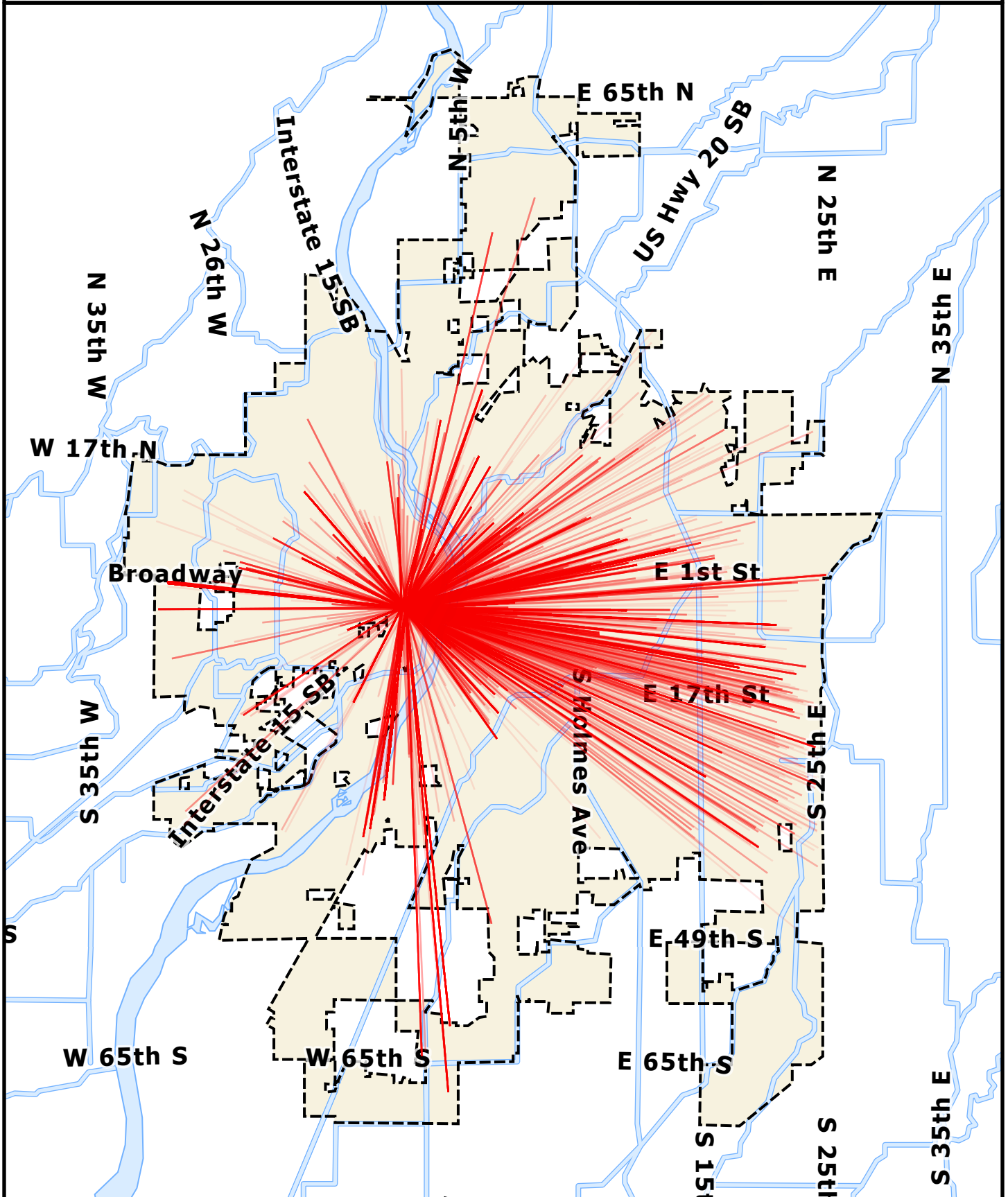


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls Walmart (6,149)



1" = 1.5 miles



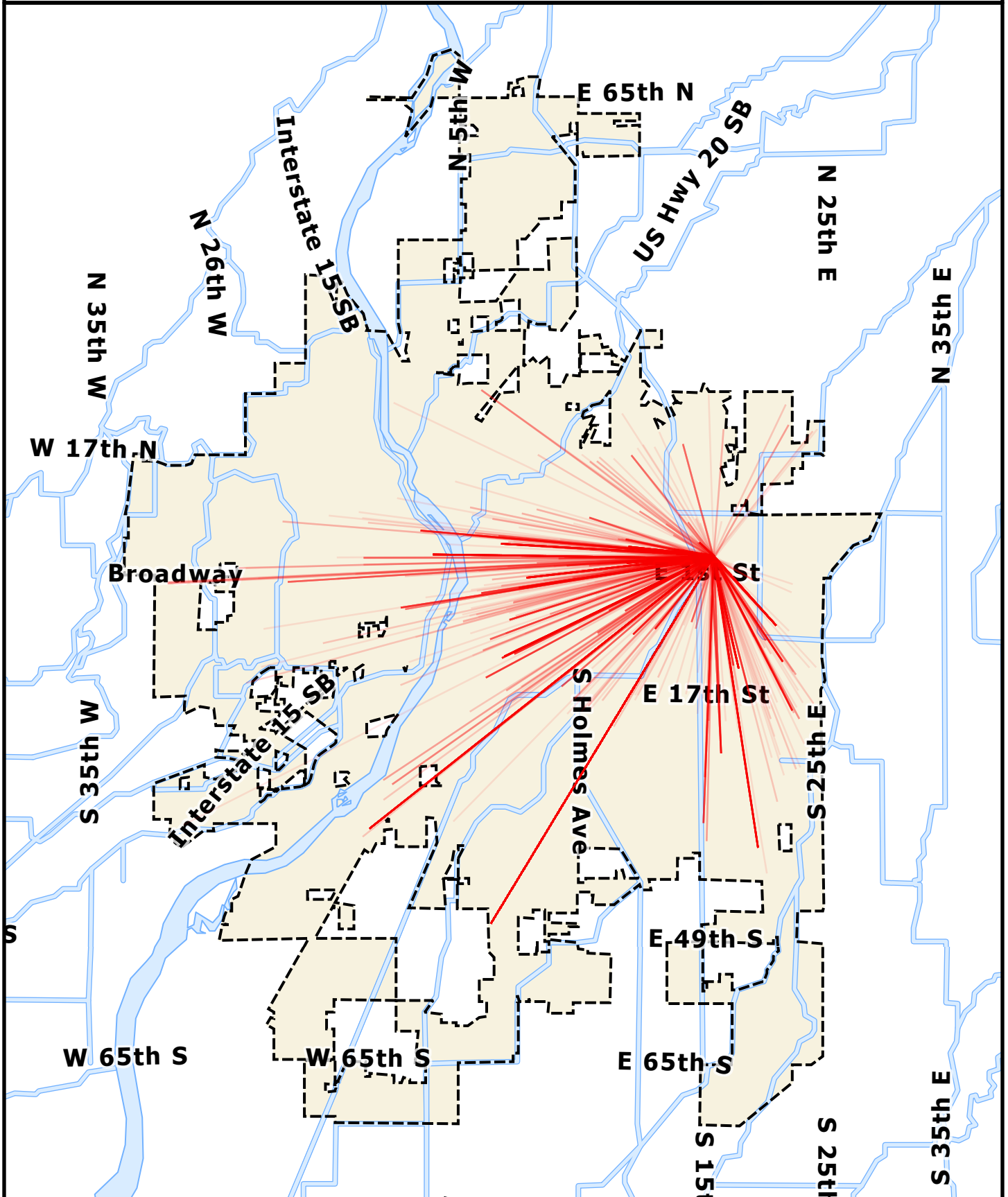


June 16, 2023

GIFT Ride Boardings June 2022 - May 2023 Idaho Falls Winco (1,929)



1" = 1.5 miles





August 2, 2023

Idaho Falls Public Works
Attn: Kade Marquez
PO Box 50220
Idaho Falls, ID 83405

Dear Mr. Marquez,

GIFT has been a great addition to our resources here in Emergency Communications Center and to our community. I know that there are daily referrals from our PASP to the GIFT number.

Unfortunately, we do not have any way to collect data showing the actual decline in call volume since the service GIFT, has been in place.

I do believe that Idaho Falls Fire Department would have seen a great benefit from the service GIFT provides. Since the GIFT service, would impact IFFD as a more cost-effective way for community members to get to doctor's appointments and other medical type non-emergent calls.

Sincerely,

Rona Williams

Emergency Communications Supervisor
IFPD/BCSO/IFFD/SVFD/AFD/UFD

**Police, City
Attorney, Public
Works, Parks and
Rec**

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 5, CHAPTER 4 BY ADDING SECTION 9 PROHIBITING NUISANCE NOISES TO REGULATE THE TIME, PLACE, AND MANNER OF NOISE GENERATED BY A VARIETY OF ACTIVITIES; ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, the City is an attractive destination for both visitors and inhabitants; and

WHEREAS, part of what makes the City particularly attractive is the beauty, peace, and quiet of its environs; and

WHEREAS, the Council wishes to encourage the peaceable enjoyment of the City, its amenities, neighborhoods, and open spaces; and

WHEREAS, in order to facilitate the wide variety of activities within the City, while promoting mutual respect, the City wishes to establish general noise regulations; and

WHEREAS, such regulations balance fairly the sometimes competing activities within City limits and establish expectations regarding the amount and timing of noise expected by the community during certain hours and within certain areas within City limits; and

WHEREAS, these regulations reflect community standards and are an exercise of health, safety, and welfare police powers granted to the City by the Idaho Constitution, the Idaho Code, and the City's charter; and

WHEREAS, the Council hereby declares certain noise to be a general public nuisance as set out in this Ordinance; and

WHEREAS, the Council also amends the current construction hours to be consistent with the Code language adding for nuisance noises.

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

SECTION 1. Title 5, Chapter 4, Section 9, of the City Code of the City of Idaho Falls, Idaho, is hereby added as follows:

5-4-9 NUISANCE NOISE.

- A. **PURPOSE.** Plainly audible noise or sound which due to its volume, its duration, or its location disturbs, injures or endangers the comfort, repose, health, peace, or safety of persons who are not voluntary listeners, is hereby declared to disturb the peace and to be

excessive and harmful to the welfare of the occupants in the City and; therefore, a public nuisance.

B. DEFINITIONS.

Construction. Any site preparation, assembly, erection, repair, alteration, or similar action, including demolition of buildings or structures.

Demolition. Any dismantling, destruction, or removal of buildings, structures, or roadways.

Emergency Work and Public Works Activities. Any work or action necessary to deliver essential public services including, but not limited to, constructing or repairing water, gas, electricity, broadband fiber, telephone, sewer facilities, or transportation facilities, removing fallen trees on public rights-of-way, sanitation, plowing snow, tree trimming and removal, dredging navigational waterways, or abating life-threatening conditions.

Plainly Audible. Any unusual or amplified sound that can be detected by a person using unaided hearing faculties from a distance of fifty feet (50') from the source that is emitting the sound. For example, if a sound source is a portable or personal vehicular sound amplification or reproduction device, the rhythmic bass component of the music is sufficient to be considered plainly audible even if the title of music, words, or artist is not distinct or identifiable. If the source of the sound is not readily determinable, the property line along the parcel of real property from which the sound is emitted shall be deemed as the source of the sound.

Vehicle. As used in this Section, "vehicle" shall have the same meaning as under Chapter 1, Title 49 of the Idaho Code.

C. NOISE PROHIBITED.

1. Nuisance Noise. No person shall make, continue, cause to be made or allow to be made any loud, repetitive, or high pitched noise(s) or amplified or reproduced sound, including recorded music, that is plainly audible at a distance of fifty (50') feet from the source of the sound.
2. Loud Music Noise. No person shall make, continue, or cause to be made a plainly audible noise or sound by playing, amplifying, or performing music between the hours of 12:00 am and 8:00 am, including, but not limited to, live bands; music ensembles; radios, music or audio players, smartphones, or similar sound emitting device; and parked vehicles.
3. Manufacturing Noise. No person shall conduct, perform, or continue a manufacturing process that creates plainly audible noise or sound between the hours of 12:00 a.m. and 5:30 a.m. except when the source of the noise or sound is in an area zoned for Industrial or Manufacturing uses under this Code.

4. Firework Noise No person shall create or cause plainly audible sound or noise caused by or created by a firework.
 - a. Exception: Plainly audible noise or sound caused by or created by a firework during the celebratory hours of 10:00 p.m. to midnight on December 31st, 12:00 am to 1:30 am on January 1st, and 8:00 p.m. and midnight on July 3rd through July 5th.
 5. Excessive Vehicle Noise. No person shall use, operate, or permit to be used, attached, installed, or operated from a vehicle glass packed mufflers, loud tailpipes, and similar amplified or unamplified sound emitting devices, modification, or apparatuses in or on a motor vehicle that is plainly audible noise.
 6. Construction Noise in Residential Areas: No person shall create, continue, or cause any plainly audible noise within an area that is zoned residential that is created by construction activities, between the hours of 12:00 am to 5:30 am.
- D. EXCEPTIONS: It shall be a defense to prosecution under this Section that the person cited for violation was engaged in any of the following:
1. Emergency and Public Interest. A governmental agency or person acting within the course and scope of such governmental authority who was operating an emergency vehicle, engaged in Emergency Work and/or Public Works activities, including but not limited to repairs or construction in the interest of public health and/or traffic flow.
 2. Lawful Parades. Any person or vehicle engaged in a lawful parade involving sirens, exhaust, music, loudspeakers, and associated noises for the duration of the parade.
 3. Snow Removal. Any person engaged in snow removal operations.
 4. Construction Noise. Any plainly audible noise created by construction activities that occurs:
 - a. Between the hours of 5:30 am to 12:00 am where the source of the sound is in an area zoned residential; or
 - b. Any area that is zoned commercial or industrial, or
 - c. Where the construction activity has received a night construction noise permit from the Director of Public Works.
- E. NIGHT CONSTRUCTION RESIDENTIAL AREA NOISE PERMIT. The Director of the Public Works Department shall issue a permit to any applicant where:
1. The applicant demonstrates an unavoidable loss or substantial inconvenience that warrants special consideration, including but not limited to time constraints

associated with concrete pouring, asphalt application, roofing, weather and heat conditions that require reasonable accommodation due to the practical needs of the construction work, or health and safety concerns; and

2. The applicant's need for exemption from the construction noise hour restrictions under this Chapter will not exceed fourteen (14) consecutive days; and
3. The applicant provides a written plan detailing the reasonable and responsible steps the applicant will take to keep plainly audible construction noise at the lowest practical level during the construction noise hour restrictions applicable under this Chapter; and
4. The applicant provides notice of the construction activities no less than seven (7) days prior to the commencement of the construction work to property owners within five hundred feet (500') of the construction site. The notice shall include the written plan detailing steps taken to minimize noise and the expected duration of the construction noise that will occur outside of the hours permitted by this section.

Any permit issued pursuant to this section shall expire fourteen (14) days from the date that construction begins. An applicant who receives a permit may renew the permit, provided that the Director of Public Works determines that the renewal is necessary due to unforeseen circumstances, outside of the applicant's control, or to prevent an unavoidable loss or substantial inconvenience.

- F. **PENALTY.** A person who violates any provision of this Section shall be deemed guilty of an infraction and upon conviction thereof, shall be punishable by a fine set from time to time by resolution of the Council. Provided, that any person who has been previously found guilty of two (2) violations of this Section within the period of one (1) calendar year shall be guilty of a misdemeanor.

SECTION 2. Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

SECTION 3. Codification Clause. The Clerk is instructed to immediately forward this Ordinance to the codifier of the official municipal code for proper revision of the Code.

SECTION 4. Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 5. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Idaho Falls, Idaho, this ____ day of _____, 2023.

CITY OF IDAHO FALLS, IDAHO

REBECCA L. NOAH CASPER, Ph.D., MAYOR

ATTEST:

CORRIN WILDE, CITY CLERK

(SEAL)

STATE OF IDAHO)
) ss:
County of Bonneville)

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

That the above and foregoing is a full, true and correct copy of the Ordinance entitled, “AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; AMENDING TITLE 5, CHAPTER 4 BY ADDING SECTION 9 PROHIBITING NUISANCE NOISES TO REGULATE THE TIME, PLACE, AND MANNER OF NOISE GENERATED BY A VARIETY OF ACTIVITIES; ESTABLISHING PENALTIES FOR VIOLATIONS; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.”

(SEAL)

CORRIN WILDE, CITY CLERK

Parks and Recreation

**CONCESSION AGREEMENT BETWEEN KCR ADVENTURES, LLC,
AND CITY OF IDAHO FALLS, IDAHO**

THIS CONCESSION AGREEMENT BETWEEN KCR ADVENTURES, LLC, AND CITY OF IDAHO FALLS, IDAHO ("Agreement") is made and entered into this _____ day of _____, 2023, by and between the CITY OF IDAHO FALLS, IDAHO acting through the DEPARTMENT OF PARKS AND RECREATION, a municipal corporation, whose address is P.O. Box 50220, Idaho Falls, Idaho 83405 ("CITY") and KCR ADVENTURES, LLC, whose address is 930 Pier View Drive, Idaho Falls, Idaho 83401 ("CONCESSIONAIRE").

W I T N E S S E T H:

WHEREAS, CITY owns, maintains, and manages Ryder Park ("PARK"); and

WHEREAS, CITY desires to enter into an agreement with CONCESSIONAIRE to provide for the creation and operation of a winter sports venue at PARK; and

WHEREAS, the Agreement grants concession rights to CONCESSIONAIRE for only a portion of PARK and related only to a winter sports venue, while leaving other concessions rights at PARK open for other uses and occupation; and

WHEREAS, CONCESSIONAIRE desires to secure such concession rights in the PARK shown in Exhibit "A", attached and incorporated by reference into this Agreement; and

NOW THEREFORE, in consideration of the foregoing recitals, mutual covenants, and promises, and provisions set forth in this Agreement and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. GRANT AND DESCRIPTION OF CONCESSION PREMISES. CITY, pursuant to the authority of, and in accordance with, Idaho Code, Title 50, Chapter 3, grants to CONCESSIONAIRE and CONCESSIONAIRE accepts from CITY, the privilege to provide the required and optional services and facilities as set forth below and in Exhibit "B" (Required and Optional Concession Services).
 - A. CONCESSIONAIRE's operations shall be limited to the premises marked as "Concession Premises" in Exhibit "A" attached, and incorporated by reference into this Agreement, and hereinafter referred to as "CONCESSION PREMISES".
 - B. CONCESSIONAIRE shall have the first right to accept an agreement to provide additional services at the PARK under such terms and conditions as CITY may then prescribe. CONCESSIONAIRE recognizes that, within the PARK, CONCESSIONAIRE does not have the exclusive right for concessions other than those set forth in Exhibit "B" (Required and Optional Concession Services).

2. TERM. The initial ten (10) year term of this Agreement shall commence on August 1, 2023 and shall terminate on July 31, 2033 unless extended pursuant to this Agreement. CONCESSIONAIRE shall have the option to renew this Agreement for not more than two (2) consecutive five (5) year periods on the same terms and conditions as are stated in this Agreement, provided CONCESSIONAIRE shall not be in default of CONCESSIONAIRE's obligations beyond any applicable notice and cure period at the expiration of such initial term or any extended term. No term shall extend or renew automatically unless CONCESSIONAIRE provides written notice to CITY of CONCESSIONAIRE's intent to exercise an option to renew a term not less than ninety (90) days prior to the end of any current term.
3. HOLDOVER. If CONCESSIONAIRE holds over after the expiration of the term(s) of this Agreement with the express or implied consent of CITY, such holding over shall be deemed to be a month-to-month tenancy otherwise subject to the terms of this Agreement.
4. GOING CONCERN, BLUESKY, BUSINESS VALUES OF CONCESSION OPERATIONS. CONCESSIONAIRE's rights and privileges are limited to those rights and privileges specifically granted in this Agreement and CONCESSIONAIRE's business operations upon the CONCESSION PREMISES shall not, as between CITY and CONCESSIONAIRE, accrue any value for going concern, good will, blue sky, business values, trade name, or other intangible property. Nothing in this Agreement shall create a partnership between the Parties or transfer to or authorize CONCESSIONAIRE to exercise any governmental authority or power.
5. PAYMENT OF COMPENSATION TO CITY.
 - A. CONCESSIONAIRE shall pay to CITY each year during the term of this Agreement one dollar (\$1) per paid patron admission. This per paid patron admission amount shall be paid for every paid patron admission for every session in every season and includes every season pass holder entry and every discounted patron admission. This per paid patron visit amount will not be owed to CITY for a patron for whom there is no charge for the patron admission (e.g., under the age to pay, special free entrance promotions, etc.). [Alternative season pass holder compensation to City?]
 - B. At the Council's direction, monies paid by CONCESSIONAIRE to CITY under this Section of the Agreement may be deposited in the Parks Improvement Fund (Fund 47) and expended from that Fund, as directed or approved by CITY Council.
 - C. Payment to CITY and CONCESSIONAIRE's annual revenue report is due on July 1st of each year of this Agreement.
 - D. Payment shall be made to the order of the Idaho Falls Department of Parks and Recreation, Attn: Director, P.O. Box 50220, Idaho Falls, Idaho 83405. Late payments shall accrue interest at the legal rate of interest as set by CITY Treasurer for the accrual of interest on judgments until paid. Payments that are more than thirty (30) days late will constitute a breach of this Agreement absent a written addendum to this Agreement signed by both

parties. If this Agreement is breached by CONCESSIONAIRE, unpaid annual rent shall be considered at once due and payable by CONCESSIONAIRE without notice or demand by CITY.

6. ACCOUNTING AND RECORDS.

- A. CONCESSIONAIRE shall install and maintain inventory, bookkeeping, and accounting methods; and methods of collection of monies, which shall permit CITY to accurately compute the gross revenue of CONCESSIONAIRE.
- B. CONCESSIONAIRE shall, at CONCESSIONAIRE's own expense, maintain such cash and transaction records as will provide a breakdown of admission and charges for CONCESSIONAIRE patrons and sales, including records of admission charges. This report shall provide the number of patrons admitted and shall, at a minimum, indicate the total number of admitted patrons, paid patrons, and no-charge patrons. For the purposes of this report and to calculate the Compensation to City required in Section 5, paid patrons shall include all admitted patrons who paid any amount for admission, including, but not limited to, who were admitted to the venue for:
 - i. paying a full admission fee,
 - ii. paying discount as authorized by CONCESSIONAIRE; or
 - iii. presenting a season pass.
- C. CONCESSIONAIRE shall submit to CITY, no later than May 1st of each year of this Agreement, a statement of annual gross receipts and a copy of the year-end sales tax report for the preceding calendar year. Such statement shall contain an appropriate certification that all gross receipts during the yearly accounting period have been duly and properly reported to CITY.
- D. CONCESSIONAIRE shall keep true and accurate books and records showing all of its business transactions in separate records of account for CONCESSION PREMISES in a manner acceptable to CITY. CITY shall have the right to examine daily sales records kept on CONCESSION PREMISES during regular business hours of CONCESSIONAIRE, provided that such examination does not unreasonably interfere with CONCESSIONAIRE's operation of the concession. CITY shall have the right to examine all other books and records, including but not limited to inventory records and certified state of Idaho Sales Tax Return Records, provided that CITY shall treat such records as confidential and not divulge them to third parties except in the event of litigation or as required by the Idaho Public Records Law (Idaho Code Title 74, Chapter 1). CITY shall examine books and records only upon reasonable notice and only at such times as shall not unreasonably interfere with CONCESSIONAIRE's operation of the concession. CITY further shall have the right to examine all such books and records at any time within two (2) years of termination or expiration of this Agreement, or until such time that a final audit is concluded as to CONCESSIONAIRE's activities under this Agreement, whichever event occurs first.

7. EXCLUSIVENESS POLICY. CONCESSIONAIRE shall have the exclusive right to provide the required and optional services described in Exhibit “B” within CONCESSION PREMISES during the operating season of October 1st to May 1st and any extensions before or after. While CONCESSIONAIRE may, at its option, provide additional services within CONCESSION PREMISES, such right is non-exclusive. CONCESSIONAIRE shall not provide any concession services whatsoever on any portion of the PARK outside CONCESSION PREMISES.
8. RENEWAL. CITY grants CONCESSIONAIRE the right to automatically renew this Agreement for additional time periods pursuant to Section 2 of this Agreement.
9. QUALITY OF SERVICE. All items sold and all food service provided by CONCESSIONAIRE shall comply with the Rules of the Idaho Department of Health and Welfare governing Food Safety and Sanitation Standards for Food Establishments, as enforced by Eastern Idaho Public Health Department. A copy of the permit, license, and inspection report issued by Eastern Idaho Public Health Department shall be made available to CITY. CITY shall have the right to prohibit the sale of any item or to order the improvement of any service or equipment not satisfying the above requirements.
10. CONTROL OF RATES AND CHARGES. Prices charged by CONCESSIONAIRE for food, beverages, and services (other than patron admission) shall be reasonably related to the quality and quantity of the items sold. If CITY determines that any price is not so related, CITY may request that the price be modified. CITY shall not require a modification in price that would prevent CONCESSIONAIRE from realizing a profit on items sold. CONCESSIONAIRE shall keep a schedule for such fees, rates or prices posted at all times in a conspicuous place on CONCESSION PREMISES.
11. INITIAL CONSTRUCTION OR IMPROVEMENTS ON CONCESSIONAIRE PREMISES.
 - A. 1. Reimbursable Expenditures. The Parties agree that one half (1/2) of the total value of agreed upon construction and installation of parking facilities; initial earth work/berming; extension of water, sewer, and electrical utilities; landscaping; irrigation; infrastructure to keep river pumps warm and running during the winter season; and all additional initial improvements and appurtenances that are beneficial to general Ryder Park-wide users, such as a restroom and park shelter included in this Section 11.A.1, shall be reimbursed to CONCESSIONAIRE over time, as set out further in this Section 11 of this Agreement.

INITIAL CONSTRUCTION/FACILITIES

AGREED UPON VALUE

Parking Facilities	TBD
Earthwork/Berming	TBD
Extension of Utilities	TBD
Landscaping	TBD
Irrigation	TBD
Water Pump Infrastructure	TBD
Restrooms/Park Shelters	TBD
[edit as needed]	

2. Non-Reimbursable Expenditures. The Parties agree that ticket booth/office space, pump equipment, infrastructure used for snowmaking specifically and other improvements which serve only CONCESSIONAIRE, or as determined by CITY, shall not be included in the reimbursable amount of this Section. Initial construction and improvements that are “winter park specific” shall not qualify for reimbursement.

CONSTRUCTION/FACILITIES NOT ELIGIBLE FOR REIMBURSEMENT

Ticket Booth
Office Space
Pump Equipment following its initial installation
Snow Making Infrastructure and Equipment
Portable Warming Hut
Food Trailer(s)
[edit as needed]

3. Potentially Reimbursable Future Expenditures. Any changes or additions to the list of reimbursable costs in Section 11.A.1 of this Agreement after the date of execution of this Agreement shall be approved by CITY in writing at CITY’s sole discretion and prior to their addition or installation.

POTENTIAL FUTURE REIMBURSABLE CONSTRUCTION/FACILITIES

AGREED UPON VALUE

[edit as needed]

B. Until CITY reimburses CONCESSIONAIRE for fifty percent (50%) of the total initial capital improvement costs to CONCESSIONAIRE PREMISES pursuant to Section 11.A.1 of this Agreement, CONCESSIONAIRE may retain up to one hundred percent (100%) of CONCESSIONAIRE’s fees owed to CITY pursuant to Section 5 of this Agreement, as such fees are documented and collected. After CONCESSIONAIRE has been reimbursed for fifty percent (50%) of CONCESSIONAIRE’s installation of initial improvements to CONCESSIONAIRE PREMISES as listed in 11.A.1 of this Agreement, CONCESSIONAIRE shall deliver to CITY all CONCESSIONAIRE’s fees required to be paid to CITY pursuant to Section 5 of this Agreement, unless otherwise agreed upon in writing by the Parties.

12. CONSTRUCTION OR MODIFICATION OF IMPROVEMENTS. If the CONCESSIONAIRE should undertake, at CONCESSIONAIRE’s own expense, any construction, alterations, or modification of CONCESSION PREMISES, CONCESSIONAIRE shall submit, for the review and prior written approval of CITY, all

plans, drawings, and specifications. CITY shall approve, reject, or require modifications of such plans within forty-five (45) days after submission of those plans to CITY.

13. MAINTENANCE, REPAIRS, OR DAMAGE TO CONCESSION PREMISES. CONCESSIONAIRE shall, at CONCESSIONAIRE's own expense, maintain CONCESSION PREMISES in clean, healthful, and safe condition, and in accordance with applicable state, county, and federal laws and regulations. If CONCESSIONAIRE fails to undertake repairs necessary to maintain such conditions, CITY shall have the right to perform such maintenance or repairs and CONCESSIONAIRE shall promptly reimburse CITY for the cost thereof, provided that CITY shall first give CONCESSIONAIRE fifteen (15) days written notice of its intention to perform such maintenance or repairs to enable CONCESSIONAIRE to perform such maintenance or repairs at its own expense.

CONCESSIONAIRE shall be legally and financially responsible for the maintenance and repair of all water pumps and other water pump equipment related to CONCESSIONAIRE's withdrawal of water from the Snake River (to aide of the production of snow from October 1st to May 1st of each year) during the term of this Agreement. In the event of any emergency, such as vandalism, fire, wind, flooding, hail, or other act of God, which threatens damage to CONCESSION PREMISES or harm to the public, CITY may immediately act to stop such emergencies and mitigate any potential damage to CONCESSION PREMISES. CITY shall notify CONCESSIONAIRE of any emergency circumstances, action, or repair and shall request that CONCESSIONAIRE make further repairs necessitated by such emergency. CONCESSIONAIRE shall reimburse CITY for all reasonable repairs made pursuant to this emergency provision.

14. PARKING NOT EXCLUSIVE TO CONCESSIONAIRE OR ITS PATRONS. Parking at Ryder Park, including parking on CONCESSIONAIRE PREMISES, shall be available to the general public, without charge, whether or not the users parking on CONCESSIONAIRE PREMISES are patrons of CONCESSIONAIRE.
15. INSURANCE. CONCESSIONAIRE shall obtain and maintain insurance at its own expense as required herein for the duration of the Agreement, and shall comply with all limits, terms and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. CONCESSIONAIRE shall provide certificates of insurance or certified endorsements as applicable for the insurance required. CONCESSIONAIRE shall not commence work under this Agreement until satisfactory evidence of all required insurance is provided to CITY.
 - A. Additional Insured. All CONCESSIONAIRE insurance required in this Agreement, except for Workers Compensation, shall name the "City of Idaho Falls, Idaho" as an Additional Insured.
 - B. Ratings. All insurance shall be with insurers rated A-, VII, or better in the latest Bests Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due CITY.

- C. Tail Coverage. If any of the liability insurance required for this Agreement is arranged on a "claims-made" basis, "tail coverage" shall be required at the completion or termination of this Agreement for a duration of twenty-four (24) months thereafter. Continuous "claims-made" coverage shall be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of this Agreement, or twenty-four (24) months "prior acts" coverage is provided. CONCESSIONAIRE shall be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.
- D. No Implied Limitation. By requiring insurance herein, CITY does not represent that coverage and limits shall necessarily be adequate to protect CONCESSIONAIRE, and such coverage and limits shall not be deemed as a limitation on CONCESSIONAIRE's liability under the indemnities granted to CITY.
- E. Required Coverages. CONCESSIONAIRE shall maintain insurance in amounts not less than the following:
1. Commercial General Liability (CGL) with a limit of not less than one million dollars (\$1,000,000) each occurrence, and one million dollars (\$1,000,000) annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be two million dollars (\$2,000,000) each occurrence, and two million dollars (\$2,000,000) aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.
 2. Automobile Liability including owned, non-owned, and hired liability with a limit of not less than one million dollars (\$1,000,000) each occurrence, and one million dollars (\$1,000,000) aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the Auto is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable earners.
 3. Workers Compensation Insurance in amounts as required by statute, and Employers' Liability with a limit of one hundred thousand dollars (\$100,000) Bodily Injury by Accident-each Accident, one hundred thousand dollars (\$100,000) Bodily Injury by Disease-each employee, five hundred thousand dollars (\$500,000) Bodily Injury by Disease-policy limit.
16. **HOLD HARMLESS AGREEMENT.** CONCESSIONAIRE shall indemnify, defend and save harmless CITY, its officers, agents, elected officials, and employees from and against any and all liability, claims, damages, losses, expenses, actions, attorneys' fees and suits whatsoever caused by or arising out of CONCESSIONAIRE's negligent or wrongful performance, acts or omissions under this Agreement or CONCESSIONAIRE's failure to comply with any state or federal statute, law, regulation or rule. Nothing contained herein shall be deemed to constitute a waiver of CITY's sovereign immunity, which immunity is hereby expressly reserved.

17. ALCOHOL CONSUMPTION AND SALES. No alcohol shall be sold or consumed on CONCESSION PREMISES until after a required change in Idaho Falls City Code or policy is made by CITY Council and terms of such sale or consumption is agreed to in writing, including provision for insurance to cover associated risks and liabilities.
18. BREACH AND TERMINATION. Each term and condition of this Agreement is material, and default as to, or breach of any, of these terms by CONCESSIONAIRE shall be grounds for termination of the entire agreement by CITY. Any material violation by CONCESSIONAIRE of any rule or regulation now in force or hereafter adopted by the Director of Parks and Recreation Department, shall be grounds for termination of this Agreement. The determination of whether a violation constitutes a material violation subjecting this Agreement to termination shall rest solely in the discretion of CITY.
- A. Bankruptcy. A material violation of this Agreement shall be deemed to occur if CONCESSIONAIRE files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or if involuntary proceedings under any bankruptcy act or insolvency act be instituted against CONCESSIONAIRE or if a trustee or receiver is appointed of any property of CONCESSIONAIRE. Any bankruptcy filing shall automatically relieve CITY from any further obligations to reimburse CONCESSIONAIRE for CONCESSIONAIRE's cost for any initial construction or initial improvements identified in Section 11 of this Agreement, unless otherwise agreed to in writing by the Parties; however, CITY shall remain obligated to reimburse CONCESSIONAIRE for initial construction or initial improvements due and owing prior to the date of CONCESSIONAIRE's bankruptcy filing.
- B. Compliance with Environmental Laws. CONCESSIONAIRE agrees that it shall not treat, store, manufacture, dispose, use, or allow the use of any "hazardous substance" upon the Premises, as such term is defined under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", 42 U.S.C. § 9601, et seq.), the Clean Water Act, ("CWA", 33 U.S.C. § 1251, et seq.), the Toxic Substances Control Act ("TSCA", 15 U.S.C. § 7401, et seq.), the Resource Conservation and Recovery Act of 1976 (RCRA", 42 U.S.C. § 6901, et seq.), the Idaho Environmental Protection and Health Act of 1972 ("IEPHA", Title 39, Chapter I , Idaho Code), the Idaho Hazardous Waste Management Act of 1983 ("IHWMA", Title 39, Chapter 44, Idaho Code) or any other similar state or federal law or regulation regulating the use, storage, transport or manufacture of a hazardous substance, without first sending written notice of such intended use to CITY at least sixty (60) days prior to the commencement of such use. Such notice shall specifically describe the hazardous substance involved, the reason for such use and all methods, precautions and procedures to be employed by CONCESSIONAIRE to ensure such hazardous substance is not released into the environment. CONCESSIONAIRE also agrees to strictly comply with all terms and provisions of such acts, statutes and laws, and any other similar environmental law or any rule or regulations, enacted or promulgated after the date hereof, and to design and construct all facilities in a manner which reasonably ensures hazardous substances will not be released into the environment.

CITY, and its agents, attorneys, employees, consultants and contractors, hereby reserve the right to enter upon and inspect the real property and facilities leased hereby at any time for the purpose of determining CONCESSIONAIRE's compliance with the provisions of this section, including, without limitation, the right to perform such inspections, examinations, subsurface testing, soils and ground water testing and other tests necessary to protect CITY's interest in the property and ensure CONCESSIONAIRE's compliance with the terms and provisions of this section.

In the event CONCESSIONAIRE gives notice of its intent to use such hazardous substances, CITY may require that CONCESSIONAIRE annually submit a written site assessment and environmental audit to CITY, in scope, form and substance satisfactory to CITY, and prepared by an independent, competent and qualified licensed engineer showing that the engineer has conducted an environmental audit of CONCESSION PREMISES, consistent with good commercial and customary practice and certifying that no evidence or indication came to light which would suggest there has been a release of hazardous substances on CONCESSION PREMISES, which would necessitate an environmental response action by the United States government or the State of Idaho, or any agency thereof, and further certifying that CONCESSIONAIRE's use of CONCESSION PREMISES and the condition of CONCESSION PREMISES, complies with and does not deviate from all applicable environmental statutes, laws, ordinances, rules and regulations, including any licenses, permits or certificates required thereunder. In the event any environmental response action is initiated by any federal or state agency charged with the enforcement of such environmental laws and regulations, CITY may require such environmental audit and inquiry be conducted more frequently than annually and as frequently as necessary to ensure CONCESSIONAIRE's compliance with the terms and provisions hereof. In the event any environmental response action is initiated or taken by any state or federal regulatory agency, CITY may require CONCESSIONAIRE to post and deliver a performance bond or policy of insurance indemnifying and holding CITY harmless from any and all reasonably foreseeable costs, penalties, fines or response costs of any kind which may be assessed by such agency on account of CONCESSIONAIRE's failure to comply with the provisions of such environmental laws and regulations, as a condition for CONCESSIONAIRE's continued use of CONCESSION PREMISES pending determination by a court of law of CONCESSIONAIRE's compliance with such statutes.

In the event CONCESSIONAIRE's failure to strictly comply with the terms and provisions of said statutes or laws, CITY may immediately and without prior notice enter upon CONCESSION PREMISES and take such response action as reasonably necessary to bring the property into compliance with such laws and comply with any response action taken by any agency charged with the enforcement thereof. In such event, all costs, expenses and consultants' fees incurred by CITY shall be promptly and immediately paid by CONCESSIONAIRE, and together with interest at a rate of twelve percent (12%) per annum until paid, from the date such costs were incurred by CITY.

In the event CONCESSIONAIRE has used, stored or transported a hazardous substance upon CONCESSION PREMISES, CITY may, at the termination of this Agreement,

perform an environmental audit of such scope and extent determined necessary by CITY, in order to determine CONCESSIONAIRE's compliance with the terms and provisions of this section. Such audit shall be performed at the sole expense of CONCESSIONAIRE.

CONCESSIONAIRE agrees to indemnify, defend, and save CITY harmless from any and all damages, remedial orders, judgments, decrees, costs and expenses, including but not limited to attorneys fees, consultants fees, clean-up costs, removal and response costs arising from CONCESSIONAIRE's failure to strictly comply with the terms and provisions of this section. The terms and provisions of this section shall survive the termination of this Agreement and shall remain in effect for the full period of any statute of limitations with respect to the enforcement of such environmental laws and regulations, or the terms and conditions of this Agreement, whichever is longer

- C. Notice of Violation. CITY shall provide written notice to CONCESSIONAIRE of any Agreement, legal, or regulatory rule violation and shall allow CONCESSIONAIRE thirty (30) days from service of the notice to cure the violation.
- D. Notice of Termination. Agreement or rule violations which have not been cured Concession Agreement Gateway Parks within thirty (30) days of receipt of the notice of violation shall subject the Agreement to termination. Notice of termination shall be in writing and shall be effective upon service.
- E. Reinstatement. Not later than thirty (30) days following the termination of this Agreement for cause, CONCESSIONAIRE may submit to CITY a written request for reinstatement setting forth good cause why the Agreement should be reinstated. At CITY's discretion, the Agreement may be reinstated upon the payment of a reinstatement fee of four hundred dollars (\$400), and upon such other terms and conditions as CITY deems appropriate.
- F. Going Concern. Blue Sky, Business Values. CONCESSIONAIRE waives any claim that it is entitled to compensation for going concern, good will, blue sky, business values, trade name, or other intangible property in the event this Agreement is terminated, regardless of whether CITY intends to continue similar business operations upon CONCESSION PREMISES or offer an opportunity to a successor concessionaire to operate a similar business upon CONCESSION PREMISES.
- G. Termination by CONCESSIONAIRE. In addition to the right to terminate for breach or cause as outlined above, CONCESSIONAIRE may terminate this Agreement at any time by giving three (3) months written notice to CITY of its intent to terminate.
- H. Termination by CITY for Public Interest. In addition to the right to terminate for breach or cause as outlined in this Agreement, CITY may terminate this Agreement at its sole discretion upon a finding by the Idaho Falls City Council that it is in the Public Interest to terminate this Agreement. CITY shall give three (3) months' written notice to CONCESSIONAIRE that CITY is exercising its right to terminate for the Public Interest. In the event that CITY exercises its right to terminate for the Public Interest, CITY shall:

1. reimburse CONCESSIONAIRE for any unpaid balance of fifty percent (50%) of the total initial capital improvement costs, as outlined in Section 11.A.1 of this Agreement, to the extent that CONCESSIONAIRE is entitled to reimbursement under Section 11.B of this Agreement; and
2. refrain from operating, or granting to a third party a concession to operate, a winter sports venue at PARK for a period of no less than five (5) years from the termination of this Agreement under this Section 18.

CITY shall not exercise its right to terminate for the Public Interest during the initial five (5) years following the execution of this Agreement.

19. ASSIGNMENTS OR SALE OF INTEREST.

- A. CONCESSIONAIRE and/or any person or entity that owns a "controlling interest" as herein defined in CONCESSIONAIRE's ownership (collectively defined as the CONCESSIONAIRE for the purpose of this section), shall not assign, sublease, or otherwise sell or transfer responsibilities under this Agreement or the concession operations authorized hereunder, or sell, or otherwise assign or transfer (including but not limited to mergers, consolidations, reorganizations, or other business combinations) a controlling interest in such operations, this Agreement, or controlling interest in CONCESSIONAIRE's ownership as defined herein, without the prior written consent of CITY, such permission not to be unreasonably withheld. Failure to comply with this provision or the procedures described herein shall constitute a material breach of this Agreement for which the Agreement may be terminated immediately by CITY without regard to the procedures for termination set forth above; and CITY shall not be obligated to recognize any right of any person or entity claiming an interest in this Agreement or claiming the right to own or operate the concession operations authorized hereunder.
- B. CONCESSIONAIRE shall advise the person or entity proposing to enter into a transaction described above that CITY shall be notified and the proposed transaction is subject to review and approval by CITY. CONCESSIONAIRE shall request in writing CITY's approval of the proposed transaction and shall promptly provide CITY all relevant documents related to the transaction including all prospective CONCESSIONAIRE data forms that must be obtained from and filed with CITY prior to any approval by CITY.
- C. CITY in exercising its discretionary authority herein shall, among other matters, take into consideration the management qualifications of any individual or entity that would obtain an interest in facilities or services authorized hereunder, the experience of any such individual or entity with similar operations, and the ability of any such individual or entity to operate the concession authorized hereunder in the public interest under the regulation of CITY.
- D. For the purposes of this section, the term "controlling interest" in CONCESSIONAIRE's ownership shall mean, in the instance where CONCESSIONAIRE is a corporation or limited liability company, an interest beneficial or otherwise of sufficient outstanding

voting securities or capital of CONCESSIONAIRE so as to permit exercise of substantial managerial influence over the operations of CONCESSIONAIRE; and, in the instance of a partnership, limited partnership, joint venture, or individual entrepreneurship, any beneficial ownership of the capital assets of CONCESSIONAIRE sufficient to permit substantial managerial influence over the operations of CONCESSIONAIRE shall constitute a controlling interest for purposes of this Agreement.

- E. No mortgage shall be executed and no bonds or other evidence of interest in, or indebtedness upon the assets or proposed assets of CONCESSIONAIRE, including this Agreement, shall be issued except for the purpose of installing, enlarging, or improving facilities and equipment for the accommodation of the public in the PARK; and then only with the prior written consent from CITY. In the event of default on such mortgage, encumbrance, or other indebtedness or of other assignment or transfer, the creditor or any assignee thereof shall succeed to the interest of CONCESSIONAIRE in such assets; but shall not thereby acquire any operating right or privilege in or to the operation of the concession, or CONCESSION PREMISES, pursuant to this Agreement, without the express prior written consent of CITY.
- F. In the event that approved improvements are financed by any outside investors, CONCESSIONAIRE shall disclose the identity of said investors to CITY.
- G. In the event that CITY shall approve assignment of this Concession Agreement to any other person or entity other than a mortgagee, CONCESSIONAIRE shall pay to CITY an amount equivalent to ten percent (10%) of the assignment price, minus the amount paid by the assignee for any buildings, improvements, appurtenances, and fixtures owned by CONCESSIONAIRE existing upon CONCESSION PREMISES.

20. RIGHTS UPON TERMINATION OR EXPIRATION.

- A. At the expiration or early termination of this Agreement, CONCESSIONAIRE shall, within thirty (30) days thereafter, remove from CONCESSION PREMISES or otherwise dispose of in a manner satisfactory to CITY all personal property belonging to CONCESSIONAIRE located on CONCESSION PREMISES, and restore CONCESSION PREMISES to as good a condition as the same was in at the date of this Agreement. If removal and restoration is not completed within thirty (30) days after termination, CITY may, at its election, perform the work and bill CONCESSIONAIRE for the costs thereof. CONCESSIONAIRE shall pay such bill within thirty (30) days of receipt.
- B. All fixtures or improvements permanently installed upon CONCESSION PREMISES by or at the direction of CONCESSIONAIRE shall become the property of CITY upon the termination or expiration of this Agreement, unless they are removed by CONCESSIONAIRE without damage to CONCESSION PREMISES prior to such termination or expiration or as otherwise allowed or provided for in this Agreement. CONCESSIONAIRE shall procure and maintain property damage insurance for the full fair market value of all fixtures or improvements located upon CONCESSION PREMISES during the term of this Agreement. Such insurance policy shall include a provision

requiring written notice be given to CITY not less than thirty (30) days prior to any termination of this Agreement.

C. This Agreement may be terminated by CITY at any time when CITY, in its sole judgment, determines that any or all of CONCESSION PREMISES is needed for public use or the public good. In the event of such termination, CONCESSIONAIRE shall be given ninety (90) days prior written notice of such termination.

21. BUILDINGS AND IMPROVEMENTS. CONCESSIONAIRE shall not erect any buildings, structures, improvements or fixtures upon CONCESSION PREMISES, other than temporary structures that are removed by CONCESSIONAIRE at the end of each operating season, unless otherwise permitted in writing by CITY, at CITY's sole discretion.
22. EQUIPMENT. CONCESSIONAIRE, at its own expense, shall provide CONCESSION PREMISES with all equipment necessary for the services required under this Agreement. The quality and maintenance of such equipment shall comply with all applicable laws and regulations.
23. RIGHT OF FIRST REFUSAL. During the term of this Agreement, CITY shall have a Right of First Refusal for the purchase of the amusement devices and concession equipment utilized by CONCESSIONAIRE on CONCESSION PREMISES. If CONCESSIONAIRE receives a bona fide offer from a third party for the purchase of all or any portion of the amusement devices or concession equipment, within ten (10) days of receiving said offer, CONCESSIONAIRE shall give CITY written notice thereof and shall send to CITY a copy of the offer and proposed purchase agreement outlining the terms of sale to said third party. CONCESSIONAIRE further agrees that it shall not accept such offer without full and complete compliance with the terms and conditions of this section.

CITY shall have ten (10) days following the date CONCESSIONAIRE first physically delivers such proposed purchase agreement to decide whether to purchase the amusement devices and concession equipment from CONCESSIONAIRE at the same price and on the same terms as contained in the proposed purchase agreement.

If CITY desires to purchase such devices and equipment in accordance with the terms and conditions of such offer, CITY shall, within said ten (10) day period deliver to CONCESSIONAIRE written notice of CITY's intent to exercise this Right of First Refusal. Within thirty (30) days after delivery of such notice, the Parties shall mutually execute a written agreement memorializing the terms and conditions of such agreement. If CITY fails to so exercise this Right of First Refusal, CONCESSIONAIRE shall be at liberty to enter into a contract for the sale of the amusement devices and concession equipment with the original offering party on the same terms and conditions set forth in the offer delivered to CITY.

24. SIGNS, ADVERTISING NAME. CONCESSIONAIRE shall not erect a sign on CONCESSION PREMISES or in the vicinity thereof, without first obtaining the prior written approval of CITY. No signs containing brand names or products sold on CONCESSION PREMISES are to be displayed, except pursuant to such written approval of CITY.

25. BUSINESS NAME. Any assumed or fictional business name used by CONCESSIONAIRE in conjunction with its concession operations upon CONCESSION PREMISES shall be subject to the approval of CITY.
26. LICENSES AND PERMITS. CONCESSIONAIRE shall obtain and pay for all permits or licenses that may be required for the operation of the concession allowed by this Agreement.
27. COMPLIANCE WITH APPLICABLE LAWS. CONCESSIONAIRE shall at all times comply with all applicable laws, ordinances, and regulations of the county of Bonneville, CITY, and the United States. Violation of such laws, ordinances, or regulations may be considered as cause for termination of this Agreement.
28. UTILITIES. CONCESSIONAIRE shall, at CONCESSIONAIRE's own expense, be responsible for the extension, hookup, metering, and payment of all utilities used in connection with CONCESSION PREMISES.
29. WATER. During the term of this Agreement, CONCESSIONAIRE shall be financially responsible for any cost increase associated with the provision of water to the CONCESSION PREMISES that occurs after the execution date of this Agreement, including water use or lease rate increases or required additional water infrastructure. This section may be altered by mutual agreement of the Parties in writing.
30. OPERATION.
- A. CONCESSIONAIRE shall provide PARK the required facilities and services described in Exhibit "B" (Required and Optional Concession Services) in writing, each year of the Agreement from October 1st to May 1st, inclusive, daily.
 - B. CONCESSIONAIRE is encouraged to be open for service before and after the above dates to better service PARK visitors. CONCESSIONAIRE may provide facilities and services to public on other dates at CONCESSIONAIRE's discretion with the approval of CITY. CITY reserves the right to require changes in the dates and times of required facilities and services to ensure adequate service to the public. CONCESSIONAIRE shall provide CITY with an operation schedule indicating times of operation.
 - C. In the event of adverse weather or other adverse operating conditions, CITY may permit CONCESSIONAIRE to close the facilities and services at any time during the term of this Agreement.
 - D. CONCESSIONAIRE, its employees, and representatives shall conduct themselves in such a manner as to promote a positive image for the business, PARK and CITY.
 - E. CONCESSIONAIRE shall keep CONCESSION PREMISES in a clean and sanitary condition at all times.

31. RIGHT TO ACCESS. CITY shall have access to CONCESSION PREMISES and to each part thereof during the regular business hours of CONCESSIONAIRE for the purpose of inspecting CONCESSION PREMISES and daily sales records.

CONCESSIONAIRE shall have the right at all times to transverse PARK's property on a route approved by CITY to get to and from CONCESSION PREMISES in order to keep CONCESSION PREMISES open during regularly scheduled business hours.

32. TAXES. CONCESSIONAIRE shall pay all taxes on personal property belonging to CONCESSIONAIRE located on CONCESSION PREMISES. CONCESSIONAIRE shall pay all sales and other taxes levied against the operation of the concession. CONCESSIONAIRE shall pay all taxes or assessments or charges, which at any time may be lawfully levied upon any interest in this Agreement or any possessory right that CONCESSIONAIRE may have in or to CONCESSION PREMISES. CONCESSIONAIRE shall provide CITY with a valid tax identification number.
33. WAIVER OF AGREEMENT TERMS. No waiver by either Party at any time of any of the terms, conditions, or covenants of this Agreement shall be deemed a waiver at any time thereafter of the same or any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof. No delay or failure by CITY to reenter CONCESSION PREMISES or to exercise any right, power or privilege or option arising from any default, nor any subsequent acceptance of rent then or thereafter accrued shall impair any such right, power, privilege, or option held by CITY, or be construed as a waiver of such default or relinquishment of any rights herein. No notice to CONCESSIONAIRE shall be required to restore or revive the condition that time is of the essence after the waiver by CITY of any default. No option, right, power, remedy, or privilege of CITY shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, options, and remedies given to CITY by this Concession Agreement shall be deemed cumulative.
34. MODIFICATION. Notwithstanding any of the provisions in this Agreement, the Parties, by mutual consent, may agree to written modifications or additions to this Agreement, subject to approval of the Director of the Parks and Recreation Department. CITY shall have the right to grant reasonable extensions of time to CONCESSIONAIRE for any purpose or for performance of any obligation of CONCESSIONAIRE hereunder.
35. TERMS BINDING UPON SUCCESSOR. All the terms, covenants, and conditions of this Agreement shall inure to the benefit of and be binding upon the successors and assignees of the Parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment set forth in this Agreement.
36. NON-DISCRIMINATION. CONCESSIONAIRE 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.
37. TIME OF THE ESSENCE. Time is expressly declared to be of the essence in this Agreement.

38. NOTICES. Any notices that may be given by either Party to the other shall be deemed to have been fully given when made in writing deposited in the United States mail, postage prepaid, and addressed as follows:

TO CONCESSIONAIRE AT:

KCR Adventures, LLC.
Mike VanSteenkiste
930 Pier View Drive
Idaho Falls, ID 83401
Email:
Phone:

TO CITY AT:

City of Idaho Falls, Idaho
c/o PJ Holm, Director of Parks and Recreation
520 Memorial Drive
Idaho Falls, ID 83402
pholm@idahofallsidaho.gov
Phone: (208) 612-8480
Fax: (208) 612-8179

The address to which notices may be mailed shall be changed by written notice to the other Party.

39. PUBLIC RECORDS. Pursuant to Idaho Code Title 74, Chapter 1, information or documents received from CONCESSIONAIRE may be open to public inspection and copying unless exempt from disclosure. CONCESSIONAIRE shall clearly designate individual documents as "exempt" and shall indicate the basis for such exemption, if any.
40. 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 CONCESSIONAIRE employs ten (10) or more persons, CONCESSIONAIRE 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 section that are defined in Idaho Code section 67-2346 shall have the meaning defined therein.
41. CERTIFICATION OF NO CHINESE OWNERSHIP. Pursuant to Idaho Code 67-2359, CONCESSIONAIRE certifies that CONCESSIONAIRE 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.
42. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between the Parties related to the subject matter of this Agreement and may not be modified without the written consent of both Parties.

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

ATTEST:

“CITY”

City of Idaho Falls, Idaho

By _____
Corrin Wilde, City Clerk

By _____
Rebecca L. Noah Casper, Ph.D., Mayor

“CONCESSIONAIRE”
KCR Adventures, LLC

By _____
Mike VanSteenkiste, Owner

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, a municipal corporation that executed the foregoing document, and acknowledged to me that they are authorized to execute the same for and on behalf of said City.

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

(Seal)

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

STATE OF _____)
) ss:
County of _____)

On this _____ day of _____, 2023, before me, the undersigned, a notary public, in and for said State, personally appeared Mike VanSteenkiste, known or identified to me to be the owner of KCR Adventures, 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 KCR Adventures.

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: _____

EXHIBIT “A”

1. Conceptional Layout of Ryder Park



EXHIBIT “B”

Required and Optional Concession Services

A. Required services and facilities:

1. The creation, maintenance, and operation of a winter sports venue of approximately two (2) acres in size, suitable for tubing, sledding, skiing, and snowboarding, all located within the Concession Operation Premises shown in Exhibit “A” in this Agreement.

B. Optional Concession Services:

1. The rental of winter sports equipment required for the use and enjoyment of the venue, e.g., sledding tubes, and snowboards.
2. The sale of prepared food and beverages.

C. Activities specifically prohibited:

1. The sale or on-premises consumption of alcoholic beverages.
2. other [?]

Mayor's Office



MEMORANDUM

TO: Honorable Mayor Rebecca Casper

RE: Costco Warehouse Corp. Capital Expenditure Certification

FROM: Catherine Smith

DATE: August 21, 2023

Attached please find the original Resolution No 2019-04 that entered the City of Idaho Falls into the Economic Development Incentive Agreement with Costco Wholesale Corporation. The Agreement, pursuant to City Code Title 1, Chapter 16, allowed for expedited permit processing and waiver of fees associated with the establishment of a business at the discretion of the City Council. Waiver of fees included those pertaining to road and bridge fees, storm drainage fees, land use application and plan review fees, and building permit fees.

This incentive agreement granted Costco Wholesale Corporation waived fees on development in consideration of the investment and hiring commitments.

The fee waivers were as follows:

- Road and Bridge Fees: \$43,272.50
- Storm Drainage Fees: \$5,625.43
- Land Use Application and Plan Review Fees: \$21,580.77
- Building Permit Fees: \$60,310.43

Total estimated fee waivers: \$130,789.13

Costco's mission is to continually provide its members with quality goods and services at the lowest possible prices. Costco developed, constructed and operates on the property, in accordance with Costco's requirements, a wholesale and retail general merchandise facility, a pharmacy; liquor sales; photo processing; butcher, deli and bakery services; optometry services; a tire sales and installation center; a propane sales and fueling center; a vehicle fueling facility; a car wash; related office space; related parking; and other related improvements.

The Economic Development Incentive Agreement related to the Priority Based Budgeting results in the area of Strong, Stable, and Healthy Economic Growth and Vibrancy. The city is committed to retaining, expanding, and attracting high quality businesses to support employment stability and growth in all parts of the city.

The Attachment 3 included, satisfies the requirement of providing full-time positions with average wages of not less than fifteen dollars (\$15.00) plus medical, dental and vacation benefits. The average wage of \$24.63 of one-hundred-eighty-four (184) employees is demonstrated in the attachment included.

If you have any questions or comments, please feel free to contact me.

Attachment C
Form of Capital Expenditure Certification

CAPITAL EXPENDITURE CERTIFICATION

This Capital Expenditure Certification is being delivered by Costco Wholesale Corporation ("Costco") in connection with that certain Economic Development Incentive Agreement between the City of Idaho Falls, Idaho ("City") and Costco entered into in April 2019 ("Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

THE UNDERSIGNED HEREBY CERTIFIES TO CITY THAT AS OF THE DATE OF THIS CERTIFICATION COSTCO HAS MADE A CAPITAL EXPENDITURE IN THE FACILITY OF NOT LESS THAN FIFTEEN MILLION DOLLARS (\$15,000,000) AS FOLLOWS:

Land Acquisition Costs:	approximately \$ <u>6,239,271</u>
Hard and Soft Construction Costs:	approximately \$ <u>22,683,676</u>
Equipment and Fixtures:	approximately \$ <u>7,336,205</u>
Other (does not include inventory):	approximately \$ _____

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Capital Expenditure Certification.

COSTCO WHOLESALE CORPORATION

BY:

Gail Tsuboi
NAME — SIGNATURE

Gail Tsuboi

NAME — PRINTED

Vice President

TITLE

DATE Feb. 20, 2023

STATE OF WA

COUNTY OF King

Sworn to and subscribed to before me on the 20 day of February, 2023, by
Gail E Tsuboi

[Signature]
NOTARY NAME



Attachment D
Form of Employment Certification

EMPLOYMENT CERTIFICATION

This Employment Certification is being delivered by Costco Wholesale Corporation ("Costco") in connection with that certain Economic Development Incentive Agreement between the City of Idaho Falls, Idaho ("City") and Costco entered into in April 2019 ("Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

THE UNDERSIGNED HEREBY CERTIFIES TO CITY THAT AS OF THE DATE OF THIS CERTIFICATION COSTCO HAS CREATED AND FILLED THE FOLLOWING NUMBER OF FULL-TIME EQUIVALENT POSITIONS AT THE FACILITY, WITH AVERAGE WAGES OF NOT LESS THAN FIFTEEN DOLLARS (\$15.00) PER HOUR, PLUS MEDICAL, DENTAL AND VACATION BENEFITS:

Number of full-time equivalent positions: 184

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Employment Certification.

COSTCO WHOLESALE CORPORATION

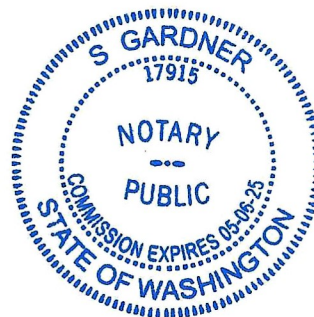
BY: *Gail Tsuboi*
NAME — SIGNATURE
Gail Tsuboi
NAME — PRINTED
Vice President
TITLE DATE Feb 17, 2023

STATE OF WA

COUNTY OF King

Sworn to and subscribed to before me on the 17th day of February, 2023, by
Gail E Tsuboi

S. Gardner
NOTARY NAME



Idaho Falls, ID 2021 Payroll and Employment Report

Full Time Equivilant Count

Total Hours / 2080		184
Avg Wage	\$	24.63
Minimum Wage Paid	\$	15.00

Employee #	Hours	Amount	Avg Hrly Rate
6310155	4.90	73.50	15.00
6171816	16.18	242.70	15.00
6295812	20.50	307.50	15.00
6297331	11.93	178.95	15.00
6297343	9.25	138.75	15.00
6300964	9.06	135.90	15.00
6301569	20.38	305.70	15.00
6309136	12.53	187.95	15.00
6295814	10.77	161.55	15.00
6301499	10.70	160.50	15.00
6309481	17.09	256.35	15.00
6276757	269.71	4,045.65	15.00
6309138	23.20	348.38	15.02
6297334	20.35	317.25	15.59
6276231	440.88	6,948.40	15.76
6276229	541.17	8,577.94	15.85
6234752	567.64	9,007.59	15.87
6276225	100.90	1,615.43	16.01
6271218	94.29	1,512.90	16.05
6275674	732.18	11,789.53	16.10
6276230	192.24	3,096.66	16.11
6290768	905.09	14,602.34	16.13
6295793	20.27	328.58	16.21
6278203	185.31	3,019.66	16.30
6271521	263.23	4,290.14	16.30
6271241	308.84	5,041.26	16.32
6296029	22.87	373.43	16.33
6271195	518.21	8,468.92	16.34
6271430	1,451.19	23,717.61	16.34
6271166	1,653.35	27,050.97	16.36
6271356	560.49	9,199.56	16.41
6270900	1,460.63	24,090.61	16.49
6278208	598.70	9,876.02	16.50
6290752	25.03	412.95	16.50
6271168	876.51	14,490.88	16.53
6332908	257.53	4,258.19	16.53
6273442	498.99	8,252.42	16.54

Employee #	Hours	Amount	Avg Hrly Rate
6349759	213.40	3,650.96	17.11
6271206	875.81	14,992.00	17.12
6295837	1,157.58	19,829.00	17.13
6277076	1,681.70	28,819.92	17.14
6270907	1,963.27	33,654.41	17.14
6330663	30.80	528.00	17.14
6049690	774.40	13,280.46	17.15
6271222	1,797.84	30,832.57	17.15
6270897	1,445.37	24,856.73	17.20
6271359	1,374.35	23,639.59	17.20
6275672	1,304.22	22,438.24	17.20
6271210	1,972.18	33,979.09	17.23
6332640	567.02	9,796.43	17.28
6273310	1,648.49	28,488.42	17.28
6271187	1,682.20	29,078.08	17.29
6279260	1,676.95	29,005.80	17.30
6322984	180.06	3,118.56	17.32
6275556	1,512.14	26,199.10	17.33
6263948	1,264.70	21,929.36	17.34
6271188	964.76	16,751.23	17.36
6273023	736.76	12,795.72	17.37
6278217	1,726.90	29,999.33	17.37
6350387	241.91	4,206.04	17.39
6355956	233.45	4,061.48	17.40
6320322	28.95	503.84	17.40
6271426	1,596.68	27,812.92	17.42
6270898	1,457.74	25,424.95	17.44
6328703	835.52	14,573.01	17.44
6324111	853.33	14,884.93	17.44
6264340	1,458.55	25,454.74	17.45
6291710	1,245.33	21,738.68	17.46
6349758	44.05	769.20	17.46
6270896	1,328.69	23,223.70	17.48
6323168	751.55	13,148.10	17.49
6271351	1,371.00	24,014.35	17.52
6271378	1,999.13	35,018.09	17.52
6229164	631.32	11,059.32	17.52
6271211	1,437.56	25,183.01	17.52
6296221	1,191.19	20,879.17	17.53
6271220	1,605.53	28,146.78	17.53
6275941	1,451.63	25,451.68	17.53
6182987	1,449.73	25,460.47	17.56
6270905	1,467.41	25,797.91	17.58
6317126	1,262.37	22,195.72	17.58
6318278	220.01	3,869.92	17.59
6332581	643.34	11,317.99	17.59

Employee #	Hours	Amount	Avg Hrly Rate
6348596	265.63	4,831.66	18.19
6334191	518.62	9,441.57	18.21
6268451	1,983.19	36,127.45	18.22
6347945	255.41	4,656.69	18.23
6347861	234.55	4,277.80	18.24
6270080	1,713.66	31,263.48	18.24
6270890	1,820.70	33,221.70	18.25
6359437	172.13	3,142.46	18.26
6163168	539.25	9,854.58	18.27
6268900	1,990.64	36,401.66	18.29
6270081	1,969.16	36,085.31	18.33
6269303	1,961.91	35,957.18	18.33
6363611	149.23	2,736.50	18.34
6349794	306.24	5,619.40	18.35
6271362	1,788.69	32,829.32	18.35
6357857	189.99	3,488.06	18.36
6088159	250.33	4,596.69	18.36
6356565	225.08	4,133.72	18.37
6271332	2,007.51	36,916.39	18.39
6103113	792.02	14,571.67	18.40
6363542	163.34	3,012.41	18.44
6224557	1,981.10	36,545.36	18.45
6359863	178.43	3,295.80	18.47
6356400	197.16	3,645.14	18.49
6359420	172.96	3,201.02	18.51
6359861	180.34	3,341.02	18.53
6352963	288.91	5,365.46	18.57
6359866	95.87	1,780.67	18.57
6363847	216.40	4,021.46	18.58
6084621	232.30	4,320.59	18.60
6355941	217.40	4,048.90	18.62
6191183	258.72	4,819.81	18.63
6367603	100.43	1,871.97	18.64
6367609	113.24	2,112.43	18.65
6367604	111.66	2,085.65	18.68
6367610	87.60	1,637.95	18.70
6317468	189.34	3,544.42	18.72
6363846	138.32	2,594.29	18.76
6251020	815.09	15,327.66	18.80
6133561	1,043.35	19,635.44	18.82
6355781	44.43	846.69	19.06
6107939	1,683.66	32,164.69	19.10
6367589	188.24	3,616.38	19.21
6277959	282.48	5,428.31	19.22
6271177	1,984.11	38,816.33	19.56
6269300	954.21	18,850.09	19.75

Employee #	Hours	Amount	Avg Hrly Rate
583476	1,964.43	53,472.19	27.22
316805	2,072.31	56,438.00	27.23
662704	1,778.96	48,461.94	27.24
148427	2,088.80	56,906.86	27.24
234588	2,060.66	56,166.57	27.26
278948	1,852.89	50,567.53	27.29
6050531	1,857.45	50,724.21	27.31
519659	2,074.37	56,650.57	27.31
579431	1,394.60	38,120.51	27.33
548178	1,297.52	35,549.44	27.40
6008289	1,728.84	47,378.27	27.40
598605	711.54	19,515.16	27.43
522888	1,212.04	33,284.73	27.46
6011460	1,731.84	47,783.90	27.59
646627	1,884.22	52,091.89	27.65
196295	2,208.17	61,288.42	27.76
6032653	375.74	10,429.43	27.76
6073343	2,010.50	55,808.82	27.76
642863	1,101.47	31,036.76	28.18
117198	1,034.65	29,162.28	28.19
497092	958.28	27,052.13	28.23
6081708	2,010.05	56,754.42	28.24
612453	1,772.63	50,562.95	28.52
630837	1,927.91	55,175.85	28.62
498153	1,804.87	51,705.75	28.65
111177	1,457.18	41,764.71	28.66
511836	1,923.26	55,267.77	28.74
6001098	1,899.24	54,582.62	28.74
239950	1,351.01	38,950.25	28.83
259056	907.63	26,172.49	28.84
334255	507.06	14,639.44	28.87
415852	1,872.21	54,103.93	28.90
518786	1,404.99	40,638.83	28.92
6268461	1,886.56	54,653.63	28.97
204843	79.80	2,313.93	29.00
107110	761.42	22,090.18	29.01
632007	1,982.65	57,548.29	29.03
393651	137.46	4,010.78	29.18
497103	1,711.51	49,960.59	29.19
487779	1,870.73	54,635.34	29.21
6114675	2,025.05	59,205.74	29.24
631127	2,129.99	62,336.99	29.27
393886	2,042.07	60,329.68	29.54
543831	1,925.03	57,742.40	30.00
6002645	1,928.97	57,865.36	30.00
685931	2,027.64	60,992.23	30.08

Employee #	Hours	Amount	Avg Hrly Rate
6024795	81.89	5,814.83	71.01
545463	2,116.50	175,202.52	82.78
	382,764.74	9,426,150.63	24.63

RESOLUTION NO. 2019-04

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ENTERING INTO AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH AND GRANTING INCENTIVES TO COSTCO WHOLESALE CORPORATION; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Idaho Falls, Idaho, is committed to the promotion of quality development in all parts of the City and to improving the quality of life for its citizens; and

WHEREAS, in order to help meet these goals, the Council will consider providing incentives for the retention and/or expansion of existing businesses located within the City and to encourage the establishment of new targeted businesses within the City; and

WHEREAS, it is the policy of the City that such incentives will be provided in accordance with the procedures and criteria outlined in Title 1, Chapter 16, of the Idaho Falls City Code; and

WHEREAS, the City offers economic development incentives on an individual basis so that the total package of incentives, if any are approved of by Council, may be designed specifically for each project proposed; and

WHEREAS, this individualized approach allows the City the flexibility necessary to satisfy the unique needs and concerns of each applicant and the needs and concerns of the City and its citizens; and

WHEREAS, the Council, with the help of City staff, has thoroughly and carefully evaluated the Costco Wholesale Corporation (Costco) Application for the Economic Development Incentive Program and finds that Costco is eligible for such incentives, as set out in the Economic Development Incentive Agreement attached to and incorporated into this Resolution as Attachment A; and


WHEREAS, at the sole discretion of this Council and pursuant to City Code Title 1, Chapter 16, the Council desires to enter into the Economic Development Incentive Agreement with Costco and to grant to Costco the incentives contained in Attachment A to this Resolution and to authorize the Mayor to execute the necessary documents and to ensure that the obligations of both parties to the Agreement are complied with.

NOW, THEREFORE, THE COUNCIL FOR THE CITY OF IDAHO FALLS, IDAHO, HEREBY ORDERS AS FOLLOWS:

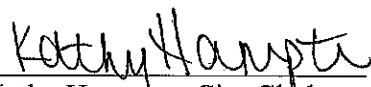
1. That, pursuant to City Code Title 1, Chapter 16, the City hereby enters into the Economic Development Incentive Agreement with Costco Wholesale Corporation and grants to Costco the incentives contained in Attachment A, Economic Development Incentive Agreement (adopted herein by this reference), and
2. Authorizes the Mayor to execute the necessary documents and the duty to ensure that the obligations of both parties to the Agreement (Attachment A) are complied with.

ADOPTED and effective this 25 day of April, 2019.

CITY OF IDAHO FALLS, IDAHO


Rebecca E. Noah, Mayor

ATTEST:


Kathy Hampton, City Clerk

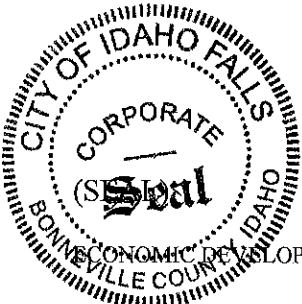


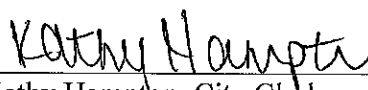
County of Bonneville

)
) ss:
)

I, KATHY HAMPTON, 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, ENTERING INTO AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH AND GRANTING INCENTIVES TO COSTCO WHOLESALE CORPORATION; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW."




Kathy Hampton, City Clerk

ECONOMIC DEVELOPMENT RESOLUTION

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is made this 25 day of April, 2019, by and between the City of Idaho Falls, a municipal corporation ("City"), whose mailing address is P.O. Box 50220, Idaho Falls, Idaho, 83405, and Costco Wholesale Corporation, a Washington Corporation, whose mailing address is 999 Lake Drive, Issaquah, Washington 98027 ("Costco").

WHEREAS, Costco intends to develop, construct, operate and maintain a wholesale and retail general merchandise facility with an approximately 150,000 square foot building, a fuel facility, parking, and landscaping ("Facility") at the NW corner of E. Lincoln Road & N. 25th E (Hitt Road), as legally described in Attachment A and as shown in the Preliminary Site Plan in Attachment B ("Property");

WHEREAS, Costco intends to hire at least 100 new full-time-equivalent employees, with an average wage of at least \$15.00 per hour, plus benefits;

WHEREAS, City is authorized to enter into this Agreement by Title 1, Chapter 16, of Idaho Falls City Code;

WHEREAS, City believes the addition of a Costco store in Idaho Falls will advance local economic development and will stimulate business and commercial activity within the City:

NOW, THEREFORE, the parties agree as follows:

ARTICLE I COSTCO COMMITMENTS

1.1 Real Property Investment. Costco plans to expend approximately Twenty-One Million Dollars (\$21,000,000) to construct the Facility. The construction is currently anticipated to commence in September 2019 and to be substantially completed in August 2020. Within ninety (90) days after the Costco store opens for business, Costco will certify to City in writing using the form in Attachment C the total capital expenditures on the Facility, which must be not less than Fifteen Million Dollars (\$15,000,000) to support the fee waiver contemplated in this Agreement ("Capital Expenditure Minimum").

1.2 Creation of New Full-Time Jobs. Costco plans to provide not fewer than one hundred (100) full-time equivalent positions at the Facility, with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits. Within ninety (90) days after the Costco store opens for business, Costco will certify to City in writing using the form in Attachment D the number of full-time equivalent positions at the Facility, which must be not fewer than one hundred (100) positions with average wages of not less than Fifteen Dollars (\$15.00) per hour, plus medical, dental and vacation benefits, to support the fee waiver contemplated in this Agreement ("Employment Minimum"). For the purposes of this paragraph, "full-time equivalent" is any combination of seasonal or part-time employees whose compensated hours during a consecutive twelve (12) month period equals two thousand eighty (2,080) hours.

1.3 Compliance with City Building Codes and Zoning Regulations. Costco will comply at all times with all City zoning ordinances, building codes or other laws and regulations relating to construction of the Facility and appurtenant utilities. City inspectors will have access to the construction site during reasonable business hours in order to assure compliance with ordinances and building codes during construction.

1.4 Compliance with Title 7. Costco will adhere to the provisions of Title 7, of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*, and all equal opportunity employment laws and regulations promulgated by the United States Equal Employment Opportunity Commission, the Idaho Department of Labor, and the Idaho Human Rights Commission, in its hiring and recruitment policies for such new full-time jobs.

ARTICLE II CITY COMMITMENTS

2.1 Economic Development Incentives. In consideration of the investment and hiring commitments by Costco as set forth above in Article I, and in light of anticipated tax revenues and economic development benefits from the investment and job creation associated with the new Facility, City agrees to (i) expedite the permitting process for the Facility per City Code Section 1-16-3(A) and (ii) to waive one hundred percent (100%) of the following fees at such time the fee would otherwise come due if the fee were not waived (collectively "Waived Fees") per City Code Section 1-16-3(B):

(A) The total amount of road and bridge fees, which are currently estimated to be Forty-Three Thousand Two Hundred Seventy-Two and 50/100 Dollars (\$43,272.50);

(B) The total amount of surface drainage fees, which are currently estimated to be Five Thousand Six Hundred Twenty-Five and 43/100 Dollars (\$5,625.43);

(C) The total amount of land use application and plan review fees, which are currently estimated to be Twenty-One Thousand Five Hundred Eighty and 77/100 Dollars (\$21,580.77);

(D) The total amount of building permit fees, which are currently estimated to be Sixty Thousand Three Hundred Ten and 43/100 (\$60,310.43).

ARTICLE III REMEDIES FOR NON-PERFORMANCE

3.1 Default and Right to Cure. If either party to this Agreement defaults in the performance of its obligations under this Agreement, the other party will deliver to such defaulting party a written notice of default. The defaulting party will then have a period of ninety (90) days within which to commence its cure of such default and to expeditiously prosecute and completely remedy such default as soon as reasonably possible thereafter.

3.2 City Remedies for Non-Performance. In the event Costco constructs the Facility but does not meet the Capital Expenditure Minimum and the Employment Minimum set forth in paragraphs 1.1 and 1.2 of this Agreement, then Costco will be obligated to pay to City the

Waived Fees at such time as each fee would otherwise come due if the fee were not waived, or, if the due date has passed, then upon the event of non-performance and failure to cure in accordance with paragraph 3.1. City's sole remedy will be recovery of the Waived Fees.

ARTICLE IV GENERAL TERMS AND CONDITIONS

4.1 Notices. All notices required or allowed under the terms of this Agreement will be deemed delivered upon physical delivery of such notice to an authorized officer or agent of the receiving party, in the same manner as provided for service of a summons and complaint under the Idaho Rules of Civil Procedure, or by depositing the same in the United States mail, certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the following address or such other address as may be previously delivered to the sending party in the same manner:

Costco Wholesale Corporation
Attn: Legal Department
999 Lake Drive
Issaquah, WA 98027

City of Idaho Falls, Idaho
P. O. Box 50220
Idaho Falls, Idaho 83405

4.2 Attorneys' Fees. In the event it becomes necessary to enforce the terms and conditions of this Agreement by action or suit, the prevailing party in such action or suit will be entitled to recover from the losing party its reasonable attorney fees and costs.

4.3 No Joint Venture. This Agreement will not be deemed as, construed as, or otherwise determined to constitute any partnership, joint venture, or joint undertaking between the parties, and no party will have any right to represent or make any statement or warranty that is binding upon any other party.


4.4 Binding Effect. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns.

4.5 Venue and Interpretation. The venue for any action or suit arising from this Agreement will be the District Court of the State of Idaho, Seventh Judicial District, in and for Bonneville County, Idaho, or in the United State District Court, in and for the District of Idaho. This Agreement will be interpreted in accordance with the laws of the State of Idaho.

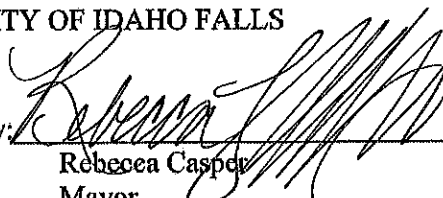
4.6 Entire Agreement. This writing evidences and contains the entire agreement among the parties. No prior negotiations, statements, representations, or understandings will be binding except as expressly set forth in this written agreement. This Agreement may only be amended or altered by a written instrument signed by both parties.

DATED this day and year first above written.

COSTCO WHOLESALE CORPORATION

By: 
Name: ALI MOYERS
Its: SVP Construction Costco Wholesale Corporation

CITY OF IDAHO FALLS

By: 
Rebecca Casper
Mayor

Attachment A
Legal Description

The Land referred to herein below is situated in the County of Bonneville, State of ID, and is described as follows:

THE EAST HALF OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 38 EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO.

ALSO:

BEGINNING AT THE NORTHWEST CORNER OF BELTLOOP SUBDIVISION, DIVISION NO. 1, BONNEVILLE COUNTY, IDAHO; RUNNING THENCE SOUTH 00°08'12" WEST ALONG THE WEST BOUNDARY OF SAID SUBDIVISION 1284.84 FEET; THENCE SOUTH 00°08'29" WEST 1363.19 FEET TO THE SOUTH LINE OF SECTION 9, TOWNSHIP 2 NORTH, RANGE 38 EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY, IDAHO; THENCE SOUTH 88°18'35" WEST ALONG SAID SOUTH LINE 16.36 FEET; THENCE NORTH 00°18'47" EAST 2648.45 FEET TO THE EAST-WEST CENTER SECTION LINE; THENCE NORTH 89°17'22" EAST 8.31 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING FROM THE IMMEDIATE NEXT ABOVE:

BEGINNING AT THE NORTHWEST CORNER OF BELTLOOP SUBDIVISION, DIVISION NO. 1, BONNEVILLE COUNTY, IDAHO; RUNNING THENCE SOUTH 00°08'12" WEST ALONG THE WEST BOUNDARY OF SAID SUBDIVISION 1284.84 FEET; THENCE NORTH 89°51'55" WEST 12.25 FEET; THENCE NORTH 00°18'49" EAST 1284.73 FEET TO THE EAST-WEST CENTER SECTION LINE; THENCE NORTH 89°17'22" EAST 8.28 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM:

ALL OF BELTLOOP SUBDIVISION, DIVISION NO. 1, BONNEVILLE COUNTY, IDAHO.

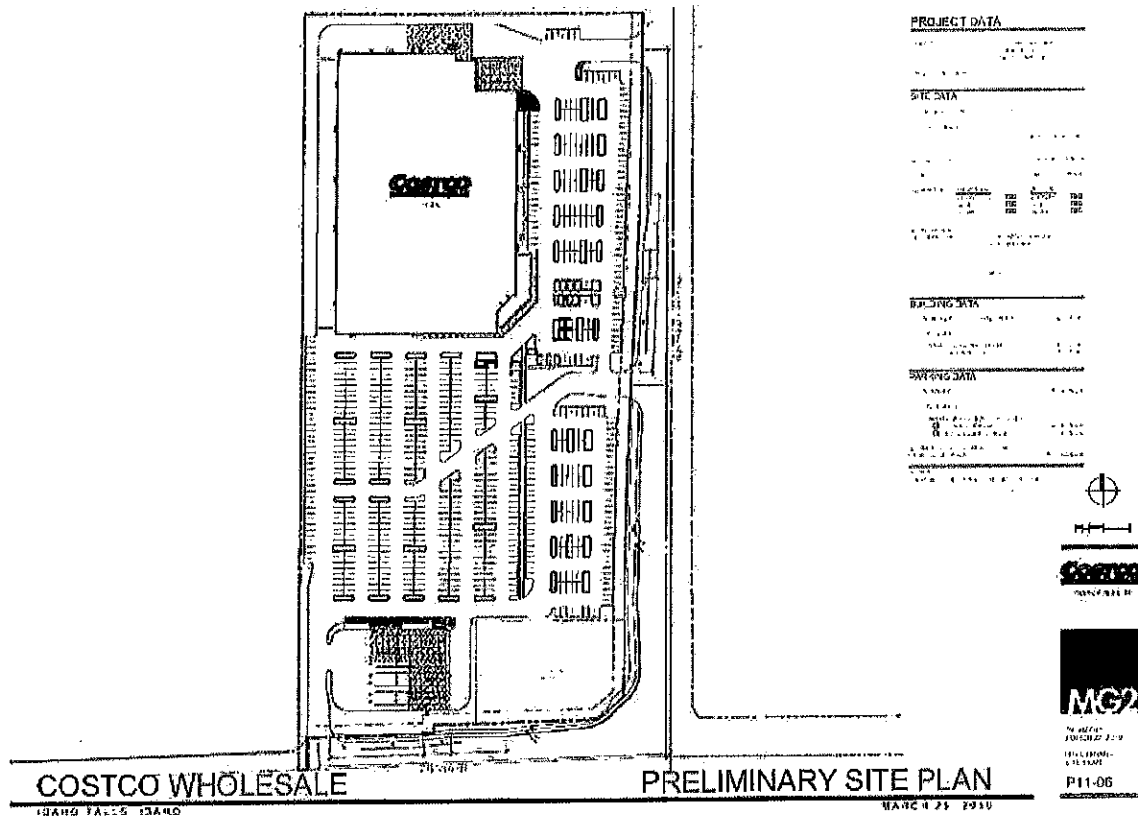
ALSO LESS AND EXCEPTING THEREFROM:

THAT CERTAIN PROPERTY CONVEYED TO BONNEVILLE COUNTY FOR ROADWAY PURPOSES BY QUITCLAIM DEED RECORDED JANUARY 28, 2000, INSTRUMENT NO. 1015716.

ALSO LESS AND EXCEPTING THEREFROM:

THAT CERTAIN PROPERTY CONVEYED TO BONNEVILLE COUNTY FOR ROADWAY PURPOSES BY WARRANTY DEED RECORDED FEBRUARY 26, 2018, INSTRUMENT NO. 1575698.

Attachment B **Preliminary Site Plan**



Attachment C
Form of Capital Expenditure Certification

CAPITAL EXPENDITURE CERTIFICATION

This Capital Expenditure Certification is being delivered by Costco Wholesale Corporation ("Costco") in connection with that certain Economic Development Incentive Agreement between the City of Idaho Falls, Idaho ("City") and Costco entered into in April 2019 ("Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

THE UNDERSIGNED HEREBY CERTIFIES TO CITY THAT AS OF THE DATE OF THIS CERTIFICATION COSTCO HAS MADE A CAPITAL EXPENDITURE IN THE FACILITY OF NOT LESS THAN FIFTEEN MILLION DOLLARS (\$15,000,000) AS FOLLOWS:

Land Acquisition Costs:	approximately \$ _____
Hard and Soft Construction Costs:	approximately \$ _____
Equipment and Fixtures:	approximately \$ _____
Other (does not include inventory):	approximately \$ _____

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Capital Expenditure Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME — SIGNATURE

NAME — PRINTED

TITLE _____ DATE _____, 20__

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the _____ day of _____, 20__, by
_____.

NOTARY NAME

Attachment D
Form of Employment Certification

EMPLOYMENT CERTIFICATION

This Employment Certification is being delivered by Costco Wholesale Corporation ("Costco") in connection with that certain Economic Development Incentive Agreement between the City of Idaho Falls, Idaho ("City") and Costco entered into in April 2019 ("Agreement"). All terms used herein have the meanings ascribed to them in the Agreement unless otherwise defined herein.

THE UNDERSIGNED HEREBY CERTIFIES TO CITY THAT AS OF THE DATE OF THIS CERTIFICATION COSTCO HAS CREATED AND FILLED THE FOLLOWING NUMBER OF FULL-TIME EQUIVALENT POSITIONS AT THE FACILITY, WITH AVERAGE WAGES OF NOT LESS THAN FIFTEEN DOLLARS (\$15.00) PER HOUR, PLUS MEDICAL, DENTAL AND VACATION BENEFITS:

Number of full-time equivalent positions: _____

The undersigned hereby certifies that I am a duly authorized representative of Costco and am duly authorized to execute this Employment Certification.

COSTCO WHOLESALE CORPORATION

BY: _____
NAME — SIGNATURE

NAME — PRINTED

TITLE _____ DATE _____, 20____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed to before me on the _____ day of _____, 20____, by

NOTARY NAME