



# City Council Agenda

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City of Idaho Falls  
Regular Council Meeting  
680 Park Avenue

**Thursday**  
**September 28, 2023**  
**7:30 P.M.**

## **Mayor**

Rebecca Casper

## **City Council**

Michelle Ziel-Dingman  
Council President

John Radford  
Council Seat 5

Jim Freeman  
Council Seat 6

Tom Hally  
Council Seat 3

Jim Francis  
Council Seat 4

Lisa Burtenshaw  
Council Seat 2



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

# PUBLIC PARTICIPATION

Welcome to the Idaho Falls City Council Meeting.

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

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

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

## Public Comment Guidelines

Speakers are encouraged to:

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

## Public Hearing Guidelines

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

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



# City Council Meeting

## Agenda

680 Park Avenue  
Idaho Falls, ID 83402

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Thursday, September 28, 2023

7:30 PM

City Council Chambers

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### City Council Agenda:

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

Please see guidelines above.

4. **Consent Agenda.**

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

#### A. **Municipal Services**

- 1) Purchase Water Meters and Cellular Endpoints for Public Works **23-280**

**Attachments:** Requisition 90094

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

- 1) 25th East Median U-Turn Improvements **23-281**

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

- 1) License Applications, all carrying the required approvals

#### **Action Item:**

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

5. **Regular Agenda.**

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

- 1) IFP 23-17 Advanced Distribution Management System (ADMS) - Survalent **23-277**

Idaho Falls Power solicited proposals from qualified vendors to purchase Advanced Data Management System (ADMS) software which will replace outdated Supervisory Control and Data Acquisition (SCADA) and Outage Management System (OMS) systems. The Survalent ADMS system is \$697,725, plus a 10% contingency of \$69,772, and a 5-year maintenance contract for \$215,140 totaling \$982,637.00. Two proposals were received with Survalent being the lowest responsive, responsible bidder.

**Action Item:**

Approve the purchase of Advanced Distribution Management System (ADMS) software, hardware and maintenance subscription from Survalent for a total of \$982,637.00 and give authorization to the Mayor and City Clerk to execute the necessary documents, (or take other action deemed appropriate).

**Attachments:** Survalent City Council document.pdf

**B. Public Works**

- 1) Development Agreement for Legacy Village within the City of Ammon **23-282**

Legacy Village is a development within the City of Ammon adjacent to 25th East (Hitt Road), south of Sunnyside Road. The Development Agreement identifies developer responsibilities including the design and construction of road improvements for 25th East (Hitt Road). Specific requirements are covered within the Special Conditions included within Exhibit B of the Agreement.

**Action Item:**

Approve the Legacy Village Development Agreement and authorize the Mayor and City Clerk to sign the necessary documents (or take other action deemed appropriate).

**Attachments:** Legacy Village Dev Agreement 9.21.23

**C. Municipal Services**

- 1) Adoption of the 2023/24 Water Division Fees, Including New Fees, and Fee Increases **23-278**

The Public Works Water Division fees were inadvertently left of the public notices for the public hearing on Thursday, August 10, 2023, and subsequently required separate public notice and hearing. The Public Hearing for the 2023/24 Water Division fees was held on Thursday, September 14, 2023, pursuant to Idaho Code §50-1002.

**Action Item:**

Adopt the 2023/24 fee resolution adding the Public Works, Water Division fees as Exhibit A (or take other action deemed appropriate).

**Attachments:** Resolution Fee Schedule Budget (Sept. 14 update for water division fees)

**D. Community Development Services**

- 1) Final Plat Extension for East River Estates Division 1. **23-273**

The City Council approved the final plat for East River Estates Division 1 at its August 11, 2022, meeting. The Subdivision Ordinance requires that the plat be provided to the city for recording within 6 months of Council approving the plat unless the Council provides an extension. The developer requested an extension on March 30, 2023, as they were considering lot line adjustments and putting the property up for sale. When the sale fell through, they decided to continue with the project. The developer is now requesting an extension due to the project transitioning between different firms. The

new firm has encountered challenges beyond their control in relation to the plat recording and has had unforeseen delays in the developer's construction schedule. Nothing has changed with the plat layout and the staff continues to recommend approval of the plat as it meets all the minimum subdivision standards. The developer anticipates being able to provide the plat for recording in the near future but requests an extension to March 28, 2023, to allow them to complete the process.

**Action Item:**

Approve the extension for the Final Plat for East River Estates Division 1 (or take other action deemed appropriate).

**Attachments:** Request for Extension Email.pdf  
Apprvd East River Estates Plat20-046.pdf  
Final Plat.pdf

- 2) Quasi-judicial Public Hearing-Rezone from LC, Limited Commercial with Limited Development Approach Surface Airport Overlay Zone to HC, Highway Commercial with Limited Development Approach Surface Airport Overlay Zone, Zoning Ordinance and Reasoned Statement of Relevant Criteria and Standards on approximately 5.26 acres for NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1, 3rd Amended.

**23-270**

Attached is the application for Rezoning from LC with Limited Development Approach Surface Airport Overlay Zone to HC with Limited Development Approach Surface Airport Overlay Zone, Zoning Ordinance, and Reasoned Statement of Relevant Criteria and Standards for approximately 5.26 acres for NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1, 3rd Amended Plat. The Planning and Zoning Commission considered this item at its September 5, 2023, meeting and voted unanimously to recommend approval of the rezone to the Mayor and City Council as presented.

**Action Item:**

1. Approve the Ordinance Rezoning approximately 5.26 acres for NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1, 3rd Amended Plat from LC with Limited Development Approach Surface Airport Overlay Zone to HC with Limited Development Approach Surface Airport Overlay Zone, under suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary (or consider the Ordinance on the first reading and that it be read by title, reject the Ordinance, or take other action deemed appropriate).
2. Approve the Reasoned Statement of Relevant Criteria and Standards for the Rezone from LC with Limited Development Approach Surface Airport Overlay Zone to HC with Limited Development Approach Surface Airport Overlay Zone and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

**Attachments:**    Zoning Map  
                          Aerial  
                          Comp Plan Map  
                          Airport Land Use Map.jpg  
                          Land Use.pdf  
                          Airport Overlay Land Use.pdf  
                          Staff Report  
                          PC Minutes  
                          Neighborhood Meeting Info.pdf  
                          Ordinance  
                          Reasoned Statement

**6.        Announcements.**

**7.        Adjournment.**

# Memorandum

File #: 23-280

City Council Meeting

**FROM:** Pam Alexander, Municipal Services Director  
**DATE:** Thursday, September 21, 2023  
**DEPARTMENT:** Municipal Services

## Subject

Purchase Water Meters and Cellular Endpoints for Public Works

## Council Action Desired

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

Declare Hydro Specialties Company as the only vendor reasonably available for the purchase of Badger water meters and cellular endpoints where compatibility of equipment, components, accessories, and replacement parts is the paramount consideration and the purchase of products, merchandise, or trademarked goods is for resale at a City facility per Idaho Code 67-2808 (2)(a)(ii) and (vii); and accept and approve the quote received from Hydro Specialties Company, for quantities of Badger meters and cellular endpoints for a total of \$354,133.30; and direct staff to take necessary steps to complete the purchase of Badger replacement and resale parts (or take other action deemed appropriate).

## Description, Background Information & Purpose

Hydro Specialties Company was approved as a sole source vendor for the purchase of Badger water meters during the January 23, 2023, City Council work session. The purchase of water meters and cellular endpoints will replenish Water division inventory. Restatement of the Council's sole source declaration will allow for purchase of compatible replacement parts and will allow for City resale of such parts.

## Alignment with City & Department Planning Objectives



This purchase supports the well-planned growth and development community-oriented result by allowing development the flexibility of purchasing water meters from the city or supplier.

## Interdepartmental Coordination

Public Works concurs with the recommended purchase.

## Fiscal Impact

Funds to purchase the water meters and cellular endpoints are available within the Public Works Water division operating budget. Water meters purchased by the city will be resold at actual cost pursuant to Idaho Code §67-2808 (2) (a)(vii).

**Legal Review**

The City Attorney's Office concurs that the Council action is within State Statute.

STATUS: BUYER PROCESSING  
REASON: INVENTORY RESTOCK

DATE: 9/14/23

REQUISITION BY: ATIMMONS - FUTURE

SHIP TO LOCATION: WATER DIVISION

SUGGESTED VENDOR: 8013 HYDRO SPECIALTIES COMPANY, LLC

DELIVER BY DATE: 3/01/24

LINE NBR	DESCRIPTION	QUANTITY	UOM	UNIT COST	EXTEND COST	VENDOR PART NUMBER
1	BADGER METER 1" BADGER E SERIES ULTRASONIC POLYMER BODY 1000 US GALLON INCREMENTS 6 FT WIRED LEAD NICOR CONNECTOR CIF #WA-827-002-26325 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26325	200.00	EA	214.7200	42944.00	
2	BADGER METER 1 1/2" BADGER E SERIES ULTRASONIC STAINLESS STEEL BODY 1000 US GALLON INCREMENTS 6FT WIRE LEAD WITH NICOR CONNECTOR CIF #WA-827-002-26330 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26330	10.00	EA	647.2700	6472.70	
3	BADGER METER 2" BADGER E SERIES ULTRASONIC STAINLESS STEEL BODY 1000 US GALLON INCREMENTS 6FT WIRE LEAD NICOR CONNECTOR CIF #WA-827-002-26335 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26335	130.00	EA	869.4400	113027.20	
4	BADGER METER 3" BADGER E SERIES ULTRASONIC BRONZE BODY 1000 US GALLONS INCREMENTS 6FT WIRE LEAD WITH NICOR CONNECTOR CIF #WA-827-002-26340 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26340	10.00	EA	2303.7700	23037.70	
5	BADGER METER 4" BADGER E SERIES ULTRASONIC BRONZE BODY 1000 US GALLON INCREMENTS 6 FT WIRE LEAD WITH NICOR CONNECTOR CIF #WA-827-002-26345 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26345	5.00	EA	2799.0900	13995.45	

REQUISITION BY: ATIMMONS - FUTURE

STATUS: BUYER PROCESSING  
REASON: INVENTORY RESTOCK

DATE: 9/14/23

SHIP TO LOCATION: WATER DIVISION

SUGGESTED VENDOR: 8013 HYDRO SPECIALTIES COMPANY, LLC

DELIVER BY DATE: 3/01/24

LINE NBR	DESCRIPTION	QUANTITY	UOM	UNIT COST	EXTEND COST	VENDOR PART NUMBER
6	ORION CELLULAR ENDPOINT ORION ENDPOINT LTE-C/M THROUGH LID MOUNTING KIT PREPROGRAMMED FOR CITY OF IDAHO FALLS CIF #WA-827-002-26355 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26355	625.00	EA	153.8500	96156.25	
7	BADGER METER HYDRANT used to meter water on fire hydrants for charging construction water usage fees  CIF WA-827-002-26053 item cost is \$1950.00  * Priced as per attached Quote 45176445  Approved by Council on 9/15/23 COMMODITY: METER-WATER SUBCOMMOD: METER COUPLING INVENTORY BUILDING: 82 STOCK NO: 827-002-26053	30.00	EA	1950.0000	58500.00	
REQUISITION TOTAL:					354133.30	

## A C C O U N T I N F O R M A T I O N

LINE #	ACCOUNT	PROJECT	%	AMOUNT
1	06100001350200 Water Inventory		100.00	42944.00
2	06100001350200 Water Inventory		100.00	6472.70
3	06100001350200 Water Inventory		100.00	113027.20
4	06100001350200 Water Inventory		100.00	23037.70
5	06100001350200 Water Inventory		100.00	13995.45
6	06100001350200 Water Inventory		100.00	96156.25
7	06100001350200 Water Inventory		100.00	58500.00
				354133.30

PURCHASE REQUISITION NBR: 0000090094

STATUS: BUYER PROCESSING  
REASON: INVENTORY RESTOCK

DATE: 9/14/23

REQUISITION BY: ATIMMONS - FUTURE

SHIP TO LOCATION: WATER DIVISION

SUGGESTED VENDOR: 8013 HYDRO SPECIALTIES COMPANY, LLC

DELIVER BY DATE: 3/01/24

LINE NBR	DESCRIPTION	QUANTITY	UOM	UNIT COST	EXTEND COST	VENDOR PART NUMBER
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REQUISITION IS IN THE FUTURE FISCAL YEAR.

# Memorandum

File #: 23-281

City Council Meeting

**FROM:** Chris H Fredericksen  
**DATE:** Thursday, September 21, 2023  
**DEPARTMENT:** Public Works

## Subject

25th East Median U-Turn Improvements

## Council Action Desired

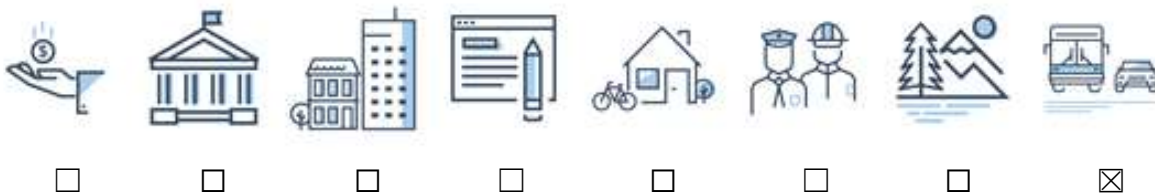
- ☐ Ordinance ☐ Resolution ☐ Public Hearing  
☒ Other Action (Approval, Authorization, Ratification, etc.)

To make a finding that it is impractical to obtain three (3) bids for the work and authorize Public Works to acquire the work from a qualified public works contractor(s) on the open market, as permitted by Idaho Code § 67-2805(1)(e), or take other action deemed appropriate.

## Description, Background Information & Purpose

On Wednesday, September 20, 2023, a bid opening was scheduled for the 25th East Median U-Turn Improvements project. No bids were received. Public Works seeks Council approval to turn to the open market to secure qualified public works contractor(s) to complete the work.

## Alignment with City & Department Planning Objectives



This project supports the community-oriented result of reliable infrastructure by investing in safety improvements to the arterial road network.

## Interdepartmental Coordination

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

## Fiscal Impact

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

**Legal Review**

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

2-38-28-4-STR-2023-24  
2023-063

# Memorandum

File #: 23-277

City Council Meeting

**FROM:** Bear Prairie, General Manager  
**DATE:** Wednesday, September 20, 2023  
**DEPARTMENT:** Idaho Falls Power

## Subject

IFP 23-17 Advanced Distribution Management System (ADMS) - Survalent

## Council Action Desired

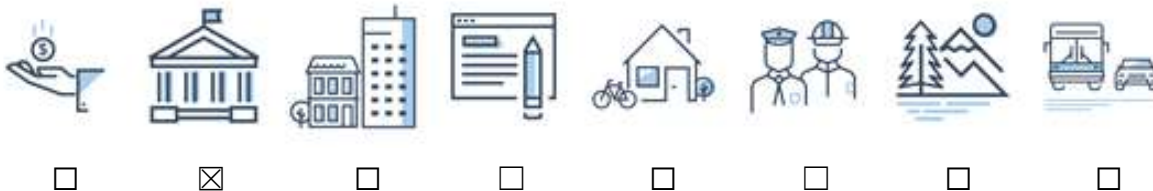
- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing
 ☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the purchase of Advanced Distribution Management System (ADMS) software, hardware and maintenance subscription from Survalent for a total of \$982,637.00 and give authorization to the Mayor and City Clerk to execute the necessary documents, (or take other action deemed appropriate.

## Description, Background Information & Purpose

Idaho Falls Power solicited proposals from qualified vendors to purchase Advanced Data Management System (ADMS) software which will replace outdated Supervisory Control and Data Acquisition (SCADA) and Outage Management System (OMS) systems. The Survalent ADMS system is \$697,725, plus a 10% contingency of \$69,772, and a 5-year maintenance contract for \$215,140 totaling \$982,637.00. Two proposals were received with Survalent being the lowest responsive, responsible bidder.

## Alignment with City & Department Planning Objectives



This purchase of modern technology supports IFP's readiness for reliable public infrastructure ensuring reliable utility services. This action also supports the reliability and modern technology elements of the IFP Strategic Plan.

## Interdepartmental Coordination

City Attorney Department

## Fiscal Impact

This procurement is budgeted for in the Idaho Falls Power 2023-24 CIP budget.

**Legal Review**

The City Attorney Department concurs that this action aligns with state statute.

## 4 Exhibit C – Proposal Pricing

### Base ADMS, DMS Modules, and Services

Complete the following Proposal Pricing. This will be used for evaluation purposes and will be included in the final contract with the successful bidder. IFP reserves the right to purchase any combination of the line items.

Item	Description	Amount
A	<p>Purchase, Integration, &amp; Delivery of control system SCADA software (server, client, web service, historian, and development tools, licensing, <del>required hardware, and all accessories required</del> for a basic functional distribution control system as specified in these documents). See Exhibit B Item A.</p> <p>Note: Survalent interprets Exhibit B Item A to include the provision of database and graphics generation for one substation and one power plant. Consequently, Item F, as stated below, has been considered encompassed within Item A.</p> <p>Note: The scope covers Item 1 ~ 32, in Section 5.14.1 Phase 1 – SCADA System. No hardware or accessories are included.</p>	\$ 200,146
B	<p>Purchase, Integration, &amp; Delivery of Mapping Solution (GIS Import Tools with real- time Power Flow &amp; Topology Model) to evaluate real-time and hypothetical distribution circuit as well as provide accurate outage analysis real time. See Exhibit B Item B</p> <p>Note: The scope covers Item 38 ~ 72, in Section 5.14.2 Phase 2 – OMS System &amp; Power Flow.</p>	\$ 318,014
C	<p>Future Technology Modules that are currently available and their associated costs. Please lists each item separately with costs. Examples of this are listed in Exhibit B</p> <ul style="list-style-type: none"> <li>Item 78 - SurvalentONE FLISR/LOV [50 Feeders]</li> <li>Item 79 - SurvalentONE Protection Settings Manager</li> <li>Item 80 - SurvalentONE Volt/Var Optimization (VVO) [50 Feeders]</li> <li>Item 81 - SurvalentONE Rotational Load Shedding</li> <li>Item 82 - SurvalentONE Fault Location Analysis</li> <li>Item 83 - SurvalentONE Optimal Feeder Reconfiguration (OFR)</li> <li>Item 84 - SurvalentONE Standard DNP3 Upgrade to Secure DNP3</li> </ul> <p>Note: Optional software prices are only valid if included with initial purchase; prices may vary if purchased in the future.</p>	<p>\$36,300</p> <p>\$4,730</p> <p>\$11,350</p> <p>\$35,890</p> <p>\$13,750</p> <p>\$11,350</p> <p>\$9,580</p>

D	<p>Cost for the first year of Annual Service Agreement, including Microsoft Patch Testing/Approval based on System Configuration, Software Upgrades performed by Bidder, continued training courses, and remote Technical Support options</p> <ul style="list-style-type: none"> <li>Item 35 - Gold SCADA Support Plan [1 Year]</li> <li>Item 75 - Gold OMS &amp; DMS Support Plan [1 Year] (Adder to Item 36)</li> </ul> <p>Note: Support Price only covers the license included in the base scope. Optional licenses will incur additional support costs.</p>	<p>\$28,640</p> <p>\$27,975</p>
E	<p>Cost of annual service agreement per year for years 2 through 5 after the first year is provided for (with same criteria) as Schedule E.</p> <ul style="list-style-type: none"> <li>Gold SCADA/OMS/DMS Support Plan [4 Years]</li> </ul> <p>Note: The support cost for 4 years has been discounted and is calculated based on the pricing of the year 2023. However, please note that if purchased in the future, a certain annual increase is expected upon Consumer Price Index (CPI).</p>	<p>\$215,140</p>
F	<p>Design and integration services to establish a SCADA database, graphical user interface, and onsite integration services to commission one substation and one power plant including site acceptance testing, user training, and associated field services.</p> <p>Note: The scope and price has been included in Item A above.</p>	<p>INCLUDED IN ITEM A</p>
G	<p>Cost associated with migrating 10 years of Historical SCADA data</p> <p>Note: Due to the complexity of importing customer data, Survalent recommends you maintain your existing historical data in a relational database and blend the Survalent historical data on an as-needed basis, to save costs and minimize the complexity.</p>	<p>NOT AVAILABLE</p>

Survalent has also offered the following optional items for your considerations:

OPTIONS	Amount (US\$)
SurvalentONE Project Development Server License – Item 33 of Section 5.14	\$19,003
SurvalentONE QA / Test Environment License – Item 34 of Section 5.14	\$28,551
SurvalentONE OMS Call Handler (Single Server) – Item 73 of Section 5.14	\$18,910
SurvalentONE OMS Call Handler (Per Concurrent User) - Item 74 of Section 5.14	\$955
Silver SCADA Support Plan [1 Year] – Item 36 of Section 5.14	\$21,125
Silver OMS & DMS Support Plan [1 Year] – Adder to Item 36 – Item 76 of Section 5.14	\$27,820
Platinum SCADA Support Plan [1 Year] – Item 37 of Section 5.14	\$38,290
Platinum OMS & DMS Support Plan [1 Year] – Adder to Item 37 – Item 77 of Section 5.14	\$27,975

Note: Optional software prices are only valid if included with initial purchase; prices may vary if purchased in the future. Annual support plan is calculated based on the pricing of the year 2023, if purchased in the future, a certain annual increase is expected upon Consumer Price Index (CPI).

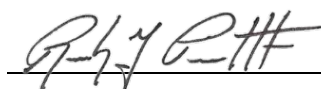
Unless otherwise noted, all prices are in cleared funds and do not include any taxes, levies, imports, duties, charges, fees and withholdings of any nature. If IFP is compelled to make any such deduction, it will pay to Survalent such additional amounts as are necessary to ensure receipt by Survalent of the full amount which Survalent would have received but for the deduction.

Unless otherwise noted, all prices are in cleared funds and do not include any taxes, levies, imports, duties, charges, fees and withholdings of any nature. If IFP is compelled to make any such deduction, it will pay to Survalent such additional amounts as are necessary to ensure receipt by Survalent of the full amount which Survalent would have received but for the deduction.

The undersigned hereby:

- 1) Agrees that this Proposal is a firm offer to Idaho Falls Power to provide the products and services required for the pricing outlined in the Proposal and remains open for acceptance by Idaho Falls Power for a period of sixty (60) days from the proposal issue date; and,
- 2) Declares that the Proposal herein, including the statements made and the information provided in the Proposal are complete, accurate and true in every detail.
- 3) Acknowledges receipt of the following Addendums:
  - a) Addendum #1 dated June 28, 2023

Signature:



Print Name:

Rodrigo Pinetta

Title:

Director, Proposals & Solutions

Date:

September 19, 2023

## 6 Proposed Project Payment Schedule

Milestone	Payment (%)
<b>Phase 1 – SCADA</b>	
Contract Award	30%
SCADA Workshop Complete	30%
SCADA Implementation Complete	30%
System Deployment Complete	10%
<b>Phase 2 – GIS Import, OMS &amp; Power Flow</b>	
OMS Workshop Complete	30%
GIS Import and OMS Implementation Complete	30%
OMS Deployment Complete	30%
DMS Power Flow Deployment Complete	10%

Please refer to Section 5.8 Project Schedule for the detailed services for each Phase.

## 7, 8, 9    **Agreements**

## **SURVALENT TECHNOLOGY CORPORATION** **STANDARD TERMS AND CONDITIONS OF SALE**

**A) Acceptance** – These standard Terms and Conditions of Sale ("Terms") form a part of and are incorporated into this Agreement ("Agreement") between **SURVALENT TECHNOLOGY CORPORATION** ("Seller") and the Buyer or Licensee ("Buyer") for the sale, lease, license or provision of Seller's tangible and intangible products, software, equipment, services, samples and other matters subject to this Agreement from Seller to Buyer ("Products"), and they supersede any contrary provisions presented by Buyer, unless expressly agreed to in writing by Seller. Should the Buyer's purchase order include changes or additions to specifications which are not included in Seller's quotation or proposal, acceptance and acknowledgment of the order by Seller shall not be deemed a waiver of Seller's right to charge and invoice for such changes or additions. In addition, in the event of Buyer's changes or additions made after receipt of a purchase order, Seller shall charge and invoice for the work as necessary. Buyer's acceptance of and/or payment for Products, in whole or in part, shall constitute an acceptance of these Terms.

**B) Prices** – All prices for Products are FOB point of shipment. Prices quoted are subject to change at any time and without notice. Prices do not include any Federal, Provincial, or Municipal taxes, including, without limitation, excise, sales, goods and services and use taxes, duties or other fees imposed on any Product or in connection with this Agreement ("Taxes"), and all such Taxes shall be added to Buyer's billing where applicable. If Seller delays shipment beyond the scheduled shipping date for any reason other than Seller's fault, or if this Agreement includes Products obtained by Seller from third parties, Products shall be subject to any increases in price in effect at the time of shipment. Prices quoted may be adjusted for inflation annually, effective on each January 1st of the calendar year ("Inflation Adjustment").

**C) Payments** – All invoices are due and payable thirty (30) days from the date of invoice. Seller may charge pro rata interest at the maximum rate permitted by law. No discount for early payment is authorized without Seller's written consent. Seller reserves the right at any time to (i) change terms of payment, (ii) withdraw credit or require full or partial payment in advance, should doubt arise as to the financial responsibilities of the Buyer. All holdbacks are limited to 10% of the purchase order value and up to ninety (90) days after delivery of the Products to the carrier. Holdbacks required for periods longer than 90 days carry an interest charge of 1.5% per month (18% per annum). Holdbacks do not apply to amounts invoiced for taxes, freight, spare parts, documentation and commissioning.

**D) Security Interest** – The title, ownership, and right of property of the applicable Products sold hereunder shall remain with Seller until all payments, including deferred payments, shall have been paid in full, and the Buyer shall do all that is necessary to maintain such right and title for the Seller. The Buyer shall assume all risk of loss or damage incurred once the applicable Products have been delivered.

**E) Delivery** – Delivery shall be FOB Seller's point of shipment and risk of loss shall pass to Buyer upon delivery of the Products to a carrier at Seller's point of shipment. Seller, in its discretion, may make and invoice partial shipments. Shipping dates are best estimates based on Seller's production schedule at time of quotation. Shipping dates are subject to modification depending on Seller's production schedule after receipt of Buyer's purchase order, and prompt receipt of all necessary information and specifications related to the Products. Upon receipt of the Products, Buyer shall inspect and accept or reject the Products within thirty (30) days. If Buyer fails to notify Seller in writing of its rejection and the reasons therefore within such time period, Buyer shall be deemed to have accepted such Products and waived any right to later reject any Products. Seller reserves the right at any time to make changes or improvements to any Products without liability or obligation to make such changes or improvements to any Products.

**F) Force Majeure** – Seller shall not be responsible for any failure or delay in the performance of any obligation hereunder if such failure or delay is due to a cause beyond Seller's control including, without limitation, acts of God, wars, riots, strikes, fires, storms, floods, embargoes, shortages of labor or materials, labor disputes and governmental acts, legislation and directives. In the event of any such failure or delay, the period of Seller's performance shall be extended, without liability for penalty, for the period of such failure or delay.

**G) Intellectual Property & Confidential Information** –

(a) Intellectual Property - Seller shall own all right, title and interest in and to all intellectual property, including without limitation all inventions, patents, patent applications, source code, firmware, copyrights, and trade secrets incorporated in any Products.

(b) Confidential Information - "Confidential Information" shall mean any trade secret, as that term is defined by Idaho Code 74-107(1), or other competitively sensitive information or data (whether oral, written, electronic or otherwise) relating to Seller or its respective businesses or operations which is or was disclosed by Seller to Buyer in the course of developing, negotiating or performing this Agreement. With regard to (i) Confidential Information that does not constitute a trade secret under applicable law, during the term hereof and for five (5) years following the termination or expiration hereof; and (ii) Confidential Information that constitutes a trade secret under applicable law, for so long as such Confidential Information remains a "trade secret" under applicable laws Buyer shall not disclose any Confidential Information to any other third party, or use the Confidential Information for its own benefit, except for the purposes approved by Seller in writing. Buyer shall not decompose or reverse engineer all or any portion of the Confidential Information or analyze it for such purposes. Buyer shall use its best efforts to avoid unauthorized disclosure of the Confidential Information. All Confidential Information provided by Seller to Buyer shall be and remain the property of Seller, and any Confidential Information, and any copies thereof, shall be promptly returned to Seller upon written request, or destroyed at Seller's option. Nothing in this section should be interpreted or construed to suggest that this Agreement; the Software Maintenance Agreement between the parties; the Software License Agreement between the parties; payment totals, including project payment schedules to be paid by Buyer to Seller; or pages 1-26, 50-59, and page 91 of Seller's proposal document provided to Buyer by Seller in response to Buyer's Requests for Proposal for an Advanced Distribution Management System constitute Confidential Information or limit Buyer's ability to release any or all of the aforementioned documents pursuant to a public records request submitted to Buyer pursuant to the Idaho Public Records Act, Idaho Code Title 74, Chapter 1.

(c) The Parties acknowledge that Buyer is subject to the terms of the Idaho Public Records Act, Idaho Code Title 74, Chapter 1. Nothing in this Agreement shall be interpreted to prohibit Buyer from complying with the Idaho Public Records Act. Any Confidential Information that is disclosed pursuant to a legal obligation, including obligations under the Idaho Public Records Act, shall not constitute a breach of this Agreement.

**H) Compliance with Laws** – Except to the extent otherwise specifically agreed to in writing by the parties, Buyer shall be responsible for the receiving, installation, use and maintenance of all Products, and Seller shall have no obligation or responsibility of any kind with respect thereto. Buyer shall comply with all laws and regulations governing the purchase or license, installation or use of Products, including, without limitation, obtaining all licenses, permits and registrations and fulfilling all other requirements of governmental agencies.

**I) Cancellation Or Delivery Deferment** – Buyer's purchase order may be canceled or delivery deferred only with Seller's written consent with conditions for payment of cancellation charges which may include, without limitation: Seller's direct costs; sales, general and administrative overhead; reasonable contract profits and any other costs and expenses to which Seller has or will become obligated pursuant to this Agreement.

**J) Patent, Trademark and Copyright Infringement** – Seller shall indemnify and hold Buyer harmless from any damages awarded in a final non-appealable judgment against Buyer in any suit or proceeding to the extent such damages are based on a claim of direct infringement by any Products of a Canadian patent, trademark or copyright, provided that Buyer notifies Seller promptly in writing and gives Seller full authority, information and assistance for the defense or settlement of such claim. In the event the use of any Products are enjoined or restricted as a result of any such claim, at Seller's option and expense, it may: (1) procure for Buyer the right to continue using the Products; (2) replace the Products with non-infringing Products of

comparable quality; (3) modify the Products so they become non-infringing; or (4) remove the Products and refund the purchase price of such Products. Seller shall have no liability for claims of infringement by any Products, if any Products are used for any purposes other than those specified by Seller. These provisions shall not apply to any Products manufactured by any party other than Seller or to any use thereof with any such Products or to any Products manufactured to Buyer's design or specifications, and Buyer agrees to indemnify Seller for any damages based on claims of patent, trademark and/or copyright infringement by any such Products. For software licenses, additional terms and conditions may apply for the grant of use, restriction, and copyright provided in the Seller's Software Product License Agreement.

**K) Limited Warranty** – Seller warrants that the Products furnished hereunder will, at the time of shipment, be free from defects of material and workmanship under normal use and service and will conform to Seller's applicable standard written specifications or, if appropriate, to the specifications accepted in writing by Seller, for the period specified in the contract. If no warranty period is specified in the contract, the warranty period shall be 60 days. Seller's obligation shall be limited to, at Seller's option and expense, replacing or repairing any Products within such warranty period, provided: (1) Seller receives written notice of any nonconformance or defect within thirty (30) days from the date such nonconformance or defect is first discovered; and (2) after Seller's written authorization, the Products are returned to Seller's factory of origin with all freight charges prepaid; and (3) Seller determines the Products have a nonconformance or defect covered under this warranty. Any such repair or replacement shall not extend the warranty period provided hereunder. Where this Agreement governs the sale, lease, license or provision of software, equipment, and services as Products from Seller to Buyer, Buyer's use of such Products is made expressly subject to the Seller's applicable terms and conditions of sale and/or license agreement for such Products, which are incorporated into these Terms for all purposes and a copy of which Buyer acknowledges as having received, and they shall supersede any contrary provisions herein. No rights, warranties or title to such Products are given to Buyer except as expressly set forth herein. All advice and recommendations of Seller are intended for use by persons having skill, at their own risk, and Seller, not controlling or supervising the installation or use of Products after sale, does not warrant or guarantee such advice or recommendations. Seller assumes no responsibility, and Buyer waives all claims against Seller, for results obtained or damages incurred from the use of Seller's advice and recommendations. The warranties set forth herein may be asserted by Buyer only and shall not apply to any products manufactured by parties other than Seller or to any Products which, in the opinion of Seller, are damaged by or subjected to, without limitation, improper handling, storage, installation, use or maintenance; abnormal or undisclosed environmental conditions; tampering; unauthorized repairs or modifications; accidental or intentional damage or acts of God. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, GUARANTEES OR REPRESENTATIONS, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PARTY TO ASSUME FOR SELLER ANY OTHER OBLIGATIONS OR LIABILITIES IN CONNECTION WITH THIS AGREEMENT.

**L) Limitation of Liability** – Seller's total aggregate liability on any claims for loss or liability arising out of or related to this Agreement (including, without limitation, loss or liability arising from simple negligence, warranty, contract, strict liability or operation of law) shall in no case exceed two (2) times the purchase price paid for the affected Products. For claims based on gross negligence, this liability cap shall be three (3) times the purchase price paid for the affected Products. IN NO EVENT SHALL SELLER BE LIABLE FOR OR OBLIGATED IN ANY MANNER TO PAY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR PRODUCTION, INSTALLATION/DEINSTALLATION COSTS, PLANT DOWNTIME, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, RECORDS OR DATA, PROPERTY DAMAGE, PERSONAL INJURIES, OR GOVERNMENTAL FINES OR PENALTIES, WHETHER SUFFERED BY BUYER OR ANY THIRD PARTY.

**M) Indemnification** – To the extent permitted by the Idaho Constitution Art. XII Section 4 and the Idaho Tort Claims Act, Idaho Code Title 6, Chapter 9, Buyer shall indemnify, defend and hold harmless Seller, its affiliates and their respective directors, officers, members, employees, agents, contractors, successors and assigns from and against all losses, damages, expenses, claims, demands, suits, judgments, penalties, and costs of any kind whatsoever, including legal fees and expenses arising out of this Agreement or Buyer's use, acts or omissions in connection with any Products.

**N) Assignment** – Any assignment or attempted assignment of this Agreement, in whole or in part, without

the prior written consent of Seller shall be void. Seller may assign any of its rights, liabilities and obligations arising out of this Agreement without prior written notice to Buyer and without Buyer's written consent.

**O) Publicity** – Unless otherwise instructed by the Buyer, required by law or regulation, Seller reserves the right to publish or make public the Buyer's name and information of the Seller's scope of work as related to this Agreement in presentations, conferences, press release, and other media.

**P) Governing Law and Forum** – This Agreement is made under and shall be governed in all respects by the Laws of the State of Idaho and the Laws of the United States applicable therein. Buyer hereby agrees to the exclusive jurisdiction of the the United States District Court, District of Idaho, or the Idaho District Court, Seventh Juridical District, in and for Bonneville County, for the purposes of resolving any dispute arising under or in connection with this Agreement and irrevocably waives, to the fullest extent permitted by law, any objection which Buyer may now or hereafter have to any such proceedings.

**Q) Entire Agreement** – The headings in this Agreement are inserted for convenience only and shall not be used in the interpretation hereof. Any rule or principle of contractual construction that would otherwise require any aspect of this Agreement to be interpreted against the party primarily responsible for its drafting shall not be employed in the interpretation hereof. This Agreement may only be amended by a written document signed by Seller. No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing and signed by Seller. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach. All provisions of this Agreement are severable, and the unenforceability or invalidity of any of them, in whole or in part, shall not affect the validity or enforceability of the remaining provisions of this Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all previous understandings, agreements, communications and representations, whether written or oral, concerning the Products.

**R) English Language** – The parties hereto agree that this Agreement and any related documents or notices be drafted and executed in the English language. Les parties aux présentes déclarent qu'elles ont exigé que cette convention et tous les documents avis qui s'y rattachent soient rédigés et signés en anglais.

**S) Non-discrimination** - Seller 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.

**T) 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 Seller employs ten (10) or more persons, Seller certifies that it is not currently engaged in, and will not for the duration of this AGREEMENT engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Paragraph that are defined in Idaho Code § 67-2346 shall have the meaning defined therein.

**U) Certification of No Chinese Ownership** - Pursuant to Idaho Code § 67-2359, Seller certifies that Seller 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.

## Software License Agreement

**IMPORTANT** - YOU SHOULD READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SOFTWARE. BY (i) PROCEEDING WITH AN ORDER FOR SOFTWARE, AND/OR INSTALLATION OR UPGRADE OF THE SOFTWARE, AFTER RECEIVING A COPY OF THIS DOCUMENT; OR (ii) CLICKING "*I Accept the Terms of the License Agreement*," DURING INSTALLATION OF THE SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO ABIDE BY ITS TERMS AND CONDITIONS.

This is a software license agreement ('License Agreement') between you ('you' or 'Licensee') and Survalent Technology Corporation ('Survalent') for use of the software provided by Survalent ('Software'). This is not an agreement for sale of the Software. This is a license agreement only. Please read the terms and conditions of this License Agreement before using the Software. By verifying and/or using the Software, you are agreeing to be legally bound by this License Agreement and the terms and conditions set out below.

This agreement incorporates by reference Survalent's **Sales Terms and Conditions** and **Support and Maintenance Terms and Conditions** (if applicable).

**LICENSE:** In consideration of the Licensee's payment of the relevant fees to Survalent, Survalent grants the Licensee a limited, non-exclusive, non-transferable license to use the Software, program copies, documentation, and related materials (collectively, the 'Licensed Material') developed by Survalent solely in accordance with the terms and conditions set out in this License Agreement. It does not give the Licensee the right to own the Licensed Material.

You acknowledge and agree that as between the parties, Survalent retains the title to its Licensed Material, and all intellectual or industrial property rights therein, including any updates, new releases, modifications or enhancements, whether or not made or authorised by Survalent. All rights not expressly granted to the Licensee are reserved and retained by Survalent.

**BUNDLED SOFTWARE LICENSE INFORMATION:** The Licensee might also receive Software produced by other companies as part of a 'bundle' of Software ('Bundled Software'). This Software might have been included in the Survalent product to enhance features and capabilities. Bundled Software is provided under license from the original manufacturer. In the absence of a discrete license from the manufacturer to the customer, the Licensee is permitted to use the Bundled Software under the same terms as this license from Survalent. The Licensee agrees to be legally bound by the provisions of this license for use of any and all Bundled Software included with the Software that does not have its own license included in its packaging. Under the provisions of this Survalent license agreement, 'Bundled Software' is included in the terms 'Licensed Material' and 'Software'.

### USE LIMITATIONS:

This Software is designed to be used on a computer system and/or network. You may only:

- a) Use the Software in the format specified in your purchase documents;
- b) Access the version of the Software provided by Survalent under this License Agreement on one (1) network.

You must not:

- a) Copy, resell, distribute or transfer all or any part of the Software or Licensed Material;
- b) Provide access to the Software or Licensed Material to any person other than your personnel who reasonably require access to the Software and Licensed Material;
- c) Attempt to disassemble, decompile or otherwise reverse engineer or reverse compile the Software;
- d) Alter, customize, modify or create derivative works of the Software or Licensed Material; or
- e) Remove, obliterate or alter any proprietary notice on the Software or Licensed Material.

You may make one (1) copy of the Software solely for system back-up, emergency start-up, disaster



recovery and security purposes. Such copy must be externally labelled as Licensed Material, and must contain all proprietary notices.

**UNAUTHORISED USE:** The Licensee shall notify Survalent immediately if the Licensee becomes aware of any unauthorised use of the whole or part of the Software by any person.

**SERVICES:** This License Agreement applies to any services provided by Survalent in connection with the Software, including deployment, installation, configuration or other services, and to any updates, new releases, modifications or enhancements to the Software provided by Survalent.

**SOFTWARE MAINTENANCE SERVICES:** Survalent will provide upgrades to the Software from time to time ('Software Maintenance Services'). These services will be provided free of charge for one (1) year from acquisition of the Software by the Licensee, and thereafter on an annual basis on payment by the Licensee of the relevant fee.

**EFFECTIVE DATE AND TERMINATION:** The license is effective on the date the Licensee acquires the Licensed Material, and will remain in force until terminated in accordance with its terms. Upon termination, all Licensed Material is to be destroyed or returned postage prepaid to Survalent.

Survalent may terminate this License Agreement immediately on written notice on the happening of one of the following events:

- a) Your unremediable breach or threatened unremediable breach of any of your obligations under this License Agreement;
- b) Your unremedied breach or threatened breach of any of your obligations under this License Agreement after having been given thirty (30) days written notice to remedy such breach;
- c) The occurrence of any of the following events with regard to your affairs: (i) any step is taken to enter into any scheme of arrangement with creditors, (ii) any step is taken to appoint a receiver or manager, a liquidator, an administrator or other like person, (iii) the suspension of debts generally, or (iv) you are deemed insolvent;
- d) Your merger or takeover by another party.

Upon termination of this License Agreement for any reason, you must immediately cease using the Software and Licensed Materials and destroy or return to Survalent all copies of the Software and Licensed Materials in your possession or control.

**RESPONSIBILITIES:** Survalent guarantees that its Software, when correctly used, substantially comply with the technical specifications given in the documentation. The Licensee has nonetheless been notified and specifically agrees that with the present state of technology, it is impossible to guarantee that the Software is completely error-free, and that Survalent cannot guarantee that its Software will operate without interruption or is compatible with all equipment or configurations. The Licensee is therefore responsible for taking all appropriate steps to reduce, insofar as possible, the consequences of any incident or operating interruption, in particular by notifying Survalent of any problem in a timely fashion. The Licensee is also responsible for the use of the Software, and the qualification and competence of its personnel.

**LICENSEE AGREES TO BACKUP REGULARLY ALL FILES GENERATED BY THE LICENSED MATERIAL, TO ELIMINATE CATASTROPHIC LOSS OF DATA.** Survalent shall not be responsible for any costs, loss or damage associated with loss of data, recreating data, substitute equipment or programs, claims by third parties or similar costs.

By using the Software the Licensee agrees to accept all risk associated with its use and agrees to indemnify Survalent against all and any recourse by any third party. Survalent and/or its associates, employees and agents will not be held responsible for any loss, whether direct, indirect or consequential, real or imagined, past, present or future, resulting from the use of the Software by the Licensee or by any person or entity related to the Licensee including their customers.

In no case shall the liability of Survalent exceed the amount of the purchase price of the Software. To the fullest extent permitted by law, Survalent's excludes:

- a) Any term, condition or warranty that may otherwise be implied by custom, law or statute;
- b) Any liability for loss caused by the negligence of Survalent; and
- c) Any liability for any loss or damage suffered by a party or any other person that is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of use, loss of time, loss of interest, damage to credit rating or loss or denial of opportunity.

Some countries and states do not allow the exclusion of implied warranties, terms or conditions, so the above exclusions may not apply to you. In that case the following statements apply to the fullest extent permitted by law:

If Survalent is liable for a breach of a term, condition or warranty described above, its liability is, to the fullest extent permitted by law, limited to any one or more of the following as Survalent determines in its absolute discretion:

- a) In relation to goods:
  - (i) replacing or repairing the goods;
  - (ii) supplying an equivalent item of the goods;
  - (iii) paying the cost of replacing or repairing the goods; or
  - (iv) paying the cost of acquiring or hiring equivalent goods; and
- b) In relation to services:
  - (i) the re-supply of the services; or
  - (ii) the payment of the cost of having the services re-supplied.

**PRIVACY & CONFIDENTIALITY OPT IN/OPT OUT:** The Licensee acknowledges that Survalent may collect and store information relating to the Licensee's Software database, graphics and configuration preferences. Survalent uses the information it collects for providing customer support services, upgrading Software, Software revisions and to improve Software quality and delivery, and staff training. Survalent warrants that only authorised personnel will have access to this information

Survalent supports the Licensee's right to privacy and confidentiality. The Licensee may provide written notice to Survalent opting out of any information collection by Survalent. Upon receipt of such written notice, Survalent will remove the Licensee's information from the database within ten (10) business days.

**ADVERTISING:** Unless the Licensee specifically objects in writing, Survalent has the right to give the Licensee's name in its list of references of the Software and to publish this list.

**GOVERNING LAW AND SEVERABILITY:** The license shall be governed and construed in accordance with the laws of Canada and the Province of Ontario. Furthermore it is understood that this agreement shall be treated as though it were executed in Ontario and the parties agree that any action relating to this agreement shall be instituted and prosecuted in the courts of the competent jurisdiction of the Province of Ontario. If for any reason, a court of competent jurisdiction finds any provision or portion of this agreement unlawful, void, or for any reason unenforceable, it shall be deleted and shall in no way affect the enforceability of any other provisions of this agreement.

By (i) proceeding with an order for Software and/or installation or upgrade of the software, after receiving a copy of this document, or (ii) clicking "*I Accept the Terms of the License Agreement*," during installation of the Software, you acknowledge that you have read and understand this License Agreement and agree to abide by its terms and conditions. You also agree that except as expressly stated this License Agreement is the complete and exclusive agreement between us concerning the Software and supersedes all prior agreements, proposals or communications, verbal or written between us relating to the subject matter in this License Agreement. This License Agreement may be amended only in writing signed by both parties.

## **SURVALENT TECHNOLOGY CORPORATION SUPPORT AND MAINTENANCE TERMS AND CONDITIONS**

These Support and Maintenance Terms and Conditions, including the Service Level Agreement ("SLA"), set out the basis on which Survalent Technology Corporation ("Survalent") shall provide support and maintenance services to the Client.

**1 Definitions:** The following terms have the meanings set forth below whenever they are used:

<b>"Agreement"</b>	The Support and Maintenance Terms and Conditions
<b>"Contract"</b>	A contract for the supply by Survalent and purchase by Client of Support and Maintenance in accordance with this Agreement which shall become effective upon Survalent's acceptance of an Order in accordance with Clause 2.1. The Contract shall be comprised of the Order Acknowledgement, this Agreement and the Order plus any other documents specifically referenced and incorporated therein.
<b>"Documentation"</b>	The applicable end user manuals, training material and other information made available by Survalent to Client at its discretion in either printed or machine-readable form with respect to the Software.
<b>"Hardware"</b>	The equipment used by the Client to operate the Software.
<b>"Hardware Specification"</b>	The minimum technical specification and configuration that must be met by the Hardware in order to ensure the correct operation of the Software, as set out in the Documentation.
<b>"Hot fix"</b>	A software patch on a part of the Software containing a quick-fix remedy to an urgent Issue, and does not undergo the same quality procedures as a regular Update due to the time constraints involved.
<b>"Issue"</b>	The failure of the Software to comply with a reasonable interpretation of its Documentation.
<b>"License"</b>	The license under which the Client may use the Software granted under terms and conditions as applied at the time of such license grant.
<b>"License Fee"</b>	The fee paid by Client to Survalent in respect of its License to use the Software.
<b>"Maintenance"</b>	The provision of Software Hot fix, Updates and Upgrades in accordance with the SLA
<b>"Order"</b>	Client's purchase order for Support and Maintenance, which references the applicable Quote and is subject to this Agreement.
<b>"Order Acknowledgement"</b>	Survalent's written (including email) acknowledgement of Client's Order.
<b>"Quote"</b>	A written quotation for the provision of Support and Maintenance, as confirmed in the Order Acknowledgement, and which specifies: i) the name of the Software to be supported; and ii) the Support and Maintenance Fee
<b>"SLA"</b>	The service level agreement set out in Schedule A hereto.

<b>“Software”</b>	The software licensed by Survalent to Client under the License and supported under the Contract, as set out in the Order Acknowledgement, and including all Hot fixes, Updates and Upgrades supplied to Client under the Contract.
<b>“Support”</b>	Those activities relating to the collection and evaluation of data relating to Issues, establishing the work-arounds and the provision of software fixes to resolve such Issues in accordance with the SLA.
<b>“Support and Maintenance Fee”</b>	The fee payable by Client to Survalent in respect of the provision of Support and Maintenance for the Software, as set out in the Quote, or as calculated in accordance with Clause 3.2 and Clause 3.5.
<b>“Third Party Software”</b>	Software that is developed and supplied by parties other than Survalent, and in conjunction with which the Software will operate, as set out in the Documentation.
<b>“Update”</b>	A release of the Software containing fixes to one or more Issues, and potentially some minor enhancements to the Software functionality.
<b>“Upgrade”</b>	A release of the Software providing significant enhancements to the Software functionality.
<b>“Working Day”</b>	A day from Monday to Friday excluding Canada's statutory and bank holidays.

## 2 Contract:

- 2.1 Upon receipt of a Quote, Client may accept the Quote by submitting an Order referencing the Quote. Survalent shall check the Order to ensure that it is consistent with the Quote and this Agreement, and shall issue an Order Acknowledgement. Survalent's issue of an Order Acknowledgement shall create a binding Contract for the supply and purchase of Support and Maintenance, as set out in the Order Acknowledgement.
- 2.2 Any terms and conditions in addition to, or at variance with, this Agreement contained within Client's Order shall be void and of no effect unless Survalent incorporates them expressly in the Special Conditions.
- 2.3 The Special Conditions (if any) shall take precedence over the provisions of this Agreement which they expressly amend or remove. Subject to the foregoing, in the event of any conflict, this Agreement shall take precedence over any Order Acknowledgement.
- 2.4 The order of precedence of the documents making up the Contract shall be as follows (highest first):
  - a) the Special Conditions; b) this Agreement; c) the remainder of the Order Acknowledgement relating to Support and Maintenance (other than the Special Conditions); and d) the Order.
- 2.5 In the event that Client does not wish to proceed with an Order subject to this Agreement, it may cancel the corresponding Contract without liability provided it notifies Survalent of such in writing (to include by email) within three (3) working days of receipt of the corresponding Order Acknowledgement. After this period, any Contract may only be terminated in accordance with the provisions of Clause 9.2.
- 2.6 Survalent may increase the annual Support and Maintenance Fee with at least thirty (30) days prior written notice to Client. Such increases shall apply to subsequent additional Support and Maintenance services purchased during an ongoing Support period as well as subsequent renewal of the Support and Maintenance Contract.

## 3 Support and Maintenance:

- 3.1 Subject to the terms and conditions of the Contract, and for the duration set out in the Order Acknowledgement, Survalent shall provide Support and Maintenance in respect of the Software.

- 3.2 The Support period Effective Date either begins (i) at the date the Software was purchased or (ii) at the date the Software license was activated or (iii) at the renewal date of the expiration of the previous Support period or (iv) at the renewal date of a multi-year Support Contract. Support must be purchased within one (1) month after expiration of the previous Support period. In the event the Support had expired beyond the one (1) month period, an additional out of compliance fee will be determined and charged to Client to bring Support level current to start the new Support period.
- 3.3 Survalent shall not be obliged to provide Support and Maintenance if undisputed payment of the Support and Maintenance Fee by Client is overdue.
- 3.4 In consideration for the payment of the Support and Maintenance Fee, Survalent shall:
- a) Respond to Issues in accordance with the provisions of the SLA;
  - b) Supply Support and Maintenance only to Client's designated personnel;
  - c) Promptly notify and make available to Client all new Updates of the Software (and associated Documentation) for use by Client only in accordance with the terms of the License Agreement;
  - d) Respond to reasonable queries from Client.
- 3.5 In the event that Client chooses to remain on an Upgrade release of the Software that is not current or not the immediately preceding Software version, Survalent may, at its discretion and subject to written agreement with Client, continue to provide Support and Maintenance on such older Software in consideration of an increased Support and Maintenance Fee to be determined.
- 3.6 Survalent shall advise Client through the support portal of all new Upgrades of the Software, and shall, at Client's request and upon payment of the corresponding fee (if any), make such Upgrades (and associated Documentation) available for use by Client.
- 3.7 In order to permit delivery of Hotfixes, Updates and Upgrades, the Client should have access to the internet. Survalent accepts no liability for any loss or damage or delays in access to Updates and Upgrades arising from Client's failure to obtain such access.
- 3.8 Upon request, Client shall ensure that Survalent's support personnel are provided with the appropriate approvals, access information and remote electronic access to the Software, or physical access to the computer equipment on which the Software is installed if in Survalent's reasonable opinion such physical access is necessary, for the purpose of investigating or rectifying reported Issues. In the event of Client providing such access but without the appropriate approvals, or in the event of Client not providing such access, Client shall not seek any action or remedy from Survalent in association with any loss or damage to Client arising from such unauthorised access or lack of access.
- 3.9 Survalent shall not be obliged to continue to provide Support in respect of the relevant Issue if Client cannot provide or obtain such approvals, information and access set out in Clause 3.8 above.
- 3.10 Survalent may supply Support and Maintenance itself or by its appointed agents. Survalent will remain fully responsible for the delivery of the Support and Maintenance to Client.
- 3.11 The provision of Support is limited to (i) the current version and (ii) the immediately preceding version of the Software. It is the Client's responsibility to review Survalent's customer support portal to determine whether the Client's current Software version qualifies for Support. Furthermore, Client can get proactive notification of Updates and Upgrades by subscribing to Survalent's support portal notification service.
- 3.12 Survalent shall be under no obligation to provide Support in respect of:
- a) Issues resulting from any modifications or customisation of the Software not made by Survalent.
  - b) Incorrect or unauthorised use of Software or operator error where such use or operation is not in

accordance with the Documentation;

- c) Recreation or re-entry of data lost for any reason whatsoever;
- d) Performance of the generalized duties of a network administrator;
- e) Any programs used in conjunction with the Software;
- f) Faults in the Hardware;
- g) Faults in the Third-Party Software; and
- h) Use of the Software with computer hardware, operating systems or other supporting software other than the Hardware and the Third-Party Software.

3.13 Survalent shall notify Client in writing as soon as Survalent is aware that any Issue is not covered by Clause 3.4 and/or if such Issue is covered by Clause 3.12 and any time spent by Survalent investigating such Issues at Client's request after such notification will be chargeable at Survalent's labor and material rates at the time of the request. Survalent shall invoice such charges at Survalent's discretion and such shall be paid within 30 days from the date of said invoice.

#### **4 Client's Cooperation and Obligations:**

4.1 Client shall provide cooperation and support to Survalent in Survalent's efforts to deliver the Support and Maintenance service. Such cooperation and support shall include, but not be limited to:

- a) A reasonable level of responsiveness to Survalent's requirements and communications;
- b) The timely transmittal and release to Survalent of appropriate and accurate documentation, information and materials in respect of reported Issues;
- c) Granting to Survalent remote access to the Hardware on which the Software is installed if required for the provision of effective Support;
- d) Make available competent Client's personnel to assist Survalent when and to the extent as is reasonably requested by Survalent;
- e) The use of the Software only in accordance with the relevant Documentation and any License Agreement.

4.2 Client shall:

- a) Ensure that the Software is managed in a proper manner and that all persons with administrative authority over the Software shall be competent trained employees or shall be persons under their supervision;
- b) Use the latest Update or Upgrade of the Software made available to it by Survalent; and
- c) Copy and use the Software, Updates, Documentation and all other materials provided hereunder only in accordance with the terms of the License Agreement;
- d) Keep adequate backup copies of data, databases, and application programs and agrees that Client is solely responsible for any and all restoration and reconstruction of lost or altered files, data and programs.

4.3 Client agrees that if Client does not perform Client's obligations under the Contract and such non-performance affects Survalent's ability to perform, Survalent shall not be considered in default under the Contract to the extent so affected.

#### **5 Personnel:**

5.1 In the event that Survalent visits Client's premises, Client shall advise Survalent's staff, agents or subcontractors of all rules, regulations and practices with which they should comply while on those premises. Survalent's staff, agents and subcontractors shall comply with such rules and regulations

whenever they are on Client's premises. Client shall take reasonable precautions to ensure the health and safety of Survalent's staff, agents and sub-contractors while they are on Client's premises.

- 5.2 Without in any way restricting the right of an employee freely to accept employment and change employment, if either party (the "Hiring Party") induces the other party's employee engaged in the delivery of Support or Maintenance or the development or integration of the Client Software to enter its service at any time during the term of the Contract or during a period of six months thereafter then the Hiring Party shall pay to the other party an amount being equivalent to fifty percent (50%) of the employee's net annual salary such sum being a genuine pre-estimate of the cost of the disruption that such inducement would cause to the efficient conduct of the affected party's business.

## **6 Fees & Payment:**

- 6.1 Survalent may invoice the Support and Maintenance Fee at least sixty (60) days before the Effective Date.
- 6.2 Payment from Client must be received by Survalent prior to the beginning of a renewal period to maintain continuous Support and Maintenance service.
- 6.3 Client shall be liable for any other agreed upon fees, any national, federal, value added, sales, excise, state, local or other taxes or customs duties applicable. For the avoidance of doubt, should Client be required by any law or regulation to make any deduction on account of tax including but not limited to Withholding Tax or otherwise on any sum payable under the Contract the sum payable shall be increased by the amount of such tax to ensure that Survalent receives a sum equal to the amount to be paid under the Contract.
- 6.4 Survalent may charge Client pro rata interest at the maximum rate permitted by law on any undisputed sum outstanding payable to Survalent. Client shall notify Survalent in writing within ten (10) days of receipt of an invoice that the invoice is in dispute.
- 6.5 In the event that Client purchases additional Software, including but not limited to the purchase of new Upgrades in accordance with Clause 3.6, the Support and Maintenance Fee may be adjusted to account for the additional Software support.

## **7 Warranty:**

- 7.1 Subject to the limitations upon its liability in Clause 8, Survalent warrants to Client that all services supplied under the Contract will be carried out with reasonable skill and care by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 7.2 Save as expressly provided in Clause 7.1 of this Agreement, Survalent specifically excludes, and without limitation, all other conditions, warranties, representations or other terms relating to the Contract including any warranties that might otherwise be implied or incorporated into the Contract, such as those of satisfactory quality, fitness for a particular or any purpose, or ability to achieve any particular result.
- 7.3 In the event that Client believes the warranty in Clause 7.1 has not been met on any occasion, Client shall promptly notify Survalent according to the escalation process set out in the SLA, providing all details that may be necessary for Survalent to remedy the breach, and Survalent shall use all its reasonable endeavours to remedy such breach (either by itself or through a third party).

## **8 Limitation of Liability:**

- 8.1 Survalent's total maximum aggregate liability on any claims for loss or liability arising out of or related to the Contract (including, without limitation, (i) loss of, damage to or corruption of data, (ii) loss of use, (iii) loss or liability arising from negligence, warranty, contract, strict liability or operation of law) shall in no case exceed the Support and Maintenance Fee paid by Client during the twelve (12) month period immediately prior to Client's claim in respect of the Support and Maintenance that is the subject of such claim.

- 8.2 Survalent hereby excludes all liability that Survalent has not expressly accepted in the Contract. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this Clause 8, "Survalent" includes Survalent's employees, sub-contractors, licensors and suppliers who shall therefore have the benefit of the limits and exclusions of liability set out in this Clause.
- 8.3 No action, regardless of form, arising out of transactions occurring under or contemplated under the Contract may be brought by either party more than one (1) years after the cause of action has accrued.
- 8.4 Client shall have no remedy in respect of any representation (whether written or oral) made upon which Client relied in entering into the Contract ("Misrepresentation") and Survalent shall have no liability to Client other than pursuant to the express terms of the Contract.
- 8.5 IN NO EVENT SHALL SURVALENT BE LIABLE FOR OR OBLIGATED IN ANY MANNER TO PAY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR PRODUCTION, INSTALLATION/DEINSTALLATION COSTS, PLANT DOWNTIME, LOSS OF USE OF PRODUCTIVE FACILITIES OR EQUIPMENT, RECORDS OR DATA, PROPERTY DAMAGE, PERSONAL INJURIES, OR GOVERNMENTAL FINES OR PENALTIES, WHETHER SUFFERED BY CLIENT OR ANY THIRD PARTY.

## 9 Duration & Termination.

- 9.1 Each Contract shall become effective on the Effective Date and shall continue for a period of twelve (12) months, unless and until terminated in accordance with the provisions of Clauses 2.5 or 9.2.
- 9.2 Either party ("the Initiating Party") may forthwith terminate the Contract at any time:
- a) On giving written notice to the other party if the other party commits any material breach of any term of the Contract and in the case of a breach which is reasonably capable of remedy fails to remedy that breach to the reasonable satisfaction of the Initiating Party within thirty (30) days of a written request to remedy the same; or
  - b) On giving written notice to the other party if the other party has filed for bankruptcy. As used in this section 9.2 b), the term "bankruptcy" shall mean (i) apply for or consent to the appointment of, or the taking of possession by a receiver, custodian, trustee or liquidator of itself or of all or substantially all of its assets, (ii) commence a voluntary case under applicable bankruptcy laws (as now or hereafter in effect), (iii) be adjudicated as bankrupt or insolvent, (iv) file a petition seeking to take advantage of any other law providing for relief of debtors, or (v) acquiesce to, or fail to have dismissed within sixty (60) days, any petition filed against it in any involuntary case under such bankruptcy laws.
- 9.3 The expiry of the Contract or the termination thereof for whatever reasons shall be without prejudice to any other rights or remedies a party may be entitled to under law and shall not affect the respective rights and liabilities of either of the parties accrued prior to such termination.

## 10 Intellectual Property:

Survalent is the owner or licensee of the patent, copyright, trade secrets, trademarks and any other intellectual property rights which exists in the Hotfixes, Updates and Upgrades. Title to the Hotfixes, Updates and Upgrades shall remain vested in Survalent. For the avoidance of doubt title and all intellectual property rights to any design, new software, new protocol, new interface, enhancement, update, derivative works, revised screen text or any other items that Survalent creates shall remain vested in Survalent. Any rights not expressly granted herein are reserved to Survalent.

## 11 Confidentiality:

- 11.1 Confidential Information shall be defined as any information (whether disclosed in oral, written or electronic form) belonging or relating to Survalent's or Client's business affairs or activities and which: (i) has been marked as confidential or proprietary, (ii) has been identified orally or in writing as being of a confidential nature, or (iii) may reasonably be supposed to be confidential in the circumstances.
- 11.2 Each party undertakes that for a period of five years from the date of disclosure it will not, without the prior written consent of the other party, use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than is necessary for the performance of its rights and obligations under the Contract. Each party hereby agrees that it shall treat the other's Confidential Information with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, disclosing such Confidential Information only to those of its employees, consultants and bona fide professional advisers who need to have such information for the purposes of the Contract, and ensuring that such employees, consultants and professional advisers shall be bound by the same confidentiality obligations as are set out in this clause.
- 11.3 The provisions of Clause 11.2 shall not apply to: a) any information in the public domain otherwise than by breach of the Contract; b) information lawfully in the possession of the receiving party thereof before disclosure by the disclosing party; c) information lawfully obtained without restriction from a third party; and d) information required to be disclosed by a court of competent jurisdiction, governmental body or applicable regulatory authority provided that the party under such duty to disclose shall use all reasonable endeavours to give the other party as much prior notice of such disclosure as is reasonably practicable and permitted by law.
- 11.4 Each party may publicize its involvement with the other party.
- 11.5 If the Contract is terminated, each party shall, at the other party's option, return or destroy all Confidential Information of the other party.

## 12 Assignment:

Either party may assign the Contract or otherwise transfer any rights or obligations under the Contract with the other party's prior written consent, such consent not to be unreasonably withheld.

## 13 Force Majeure:

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the Contract shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

## 14 Notices:

All notices made pursuant to any Contract must be made in writing. Any written notice to be given or made pursuant to the provisions of any Contract shall be sent postage prepaid by registered, or recorded mail, or reputable courier service, or by email, addressed to the other party's address or information stated above. Unless otherwise provided in the Contract, all notices shall be deemed as given on the day of their receipt by the receiving party.

## 15 Entire Agreement:

The Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous representations, agreements and other communications between the parties, both oral and written. The Contract shall prevail notwithstanding any variance with the terms and conditions of any order or purchase order submitted by Client.

## **16 Dispute Resolution, Law & Jurisdiction:**

This Agreement is made under and shall be governed in all respects by the Laws of the Province of Ontario and the Laws of Canada applicable therein. Client hereby agrees to the exclusive jurisdiction of the courts of Ontario for the purposes of resolving any dispute arising under or in connection with this Agreement and irrevocably waives, to the fullest extent permitted by law, any objection which Client may now or hereafter have to any such proceedings.

## **17 Survival:**

The following clauses shall continue to be in effect after the termination or expiration of the Contract: 1, 5.2, 6, 7, 8, 9.3, 10, 11, and 14 - 18 inclusive.

## **18 General:**

If any provision of the Contract is adjudged by a court of competent jurisdiction to be invalid, void, or unenforceable, the parties agree that the remaining provisions of the Contract shall not be affected thereby, and that the remainder of the Contract shall remain valid and enforceable. No waiver by either party of any term hereof shall constitute a waiver of any such term in any other case whether prior or subsequent thereto. No single or partial exercise of any power or right by either party shall preclude any other or further exercise thereof or the exercise of any such power or right under the Contract. The Contract may not be changed, modified, amended, released or discharged except by a subsequent written agreement or amendment executed by duly authorised representatives of Survalent and Client.

## Schedule A Service Level Agreement

### A) Issue Reporting.

Clients must report Issues to Survalent in the following ways:

E-mail	support@survalent.com
Customer Online Support Portal	<a href="http://www.survalent.com">www.survalent.com</a> (Click on Support) <ul style="list-style-type: none"><li>Login username &amp; password will be provided to Client by the Effective Date</li></ul>
Phone	US/Canada: +1 (855) 402-2600 Colombia: +57 (04) 609-1224 Peru: +51 (01) 730-6751 International: +1 (905) 285-2247

All Issues will be logged as support cases and can be tracked by Client via the online support portal. The response and resolution times set out below shall only apply to Issues logged via Survalent's support e-mail, online customer support portal, or by phone numbers noted above. **If any other methods of communication, not listed above, is used to communicate information relating to a support Issue, response and resolution times may be compromised.**

### B) Support Time / Hours.

Survalent will provide telephone support for reporting, correcting and resolving issues within the timeframes set forth herein. Survalent will maintain records of all reported Issues made by Client personnel.

Telephone support will be available to Client during business hours from Monday to Friday, between 08:00 hrs and 18:00 hrs (ET). Support will be available during non-business hours (NBH), including holidays, for Clients with NBH Support service option in their Contract.

Survalent observes **Canadian and Ontario** statutory and banking holidays. The list of Survalent's holidays:

Family Day (3 <sup>rd</sup> Monday of February)	Thanksgiving Day (Third Monday in October)
Good Friday (Friday before Easter)	Christmas Eve (December 24)
Victoria Day (Monday before May 25)	Christmas Day (December 25)
Canada Day (July 1)	Boxing Day (December 26)
Civic Holiday (First Monday in August)	New Year's Eve (December 31)
Labour Day (First Monday in September)	New Year's Day (January 1)

## C) Issue Categories / Response Time.

Issues will be categorised as set out below by Survalent in Survalent's reasonable opinion at the time each Issue is reported:

Priority	Description	Response Time Business / Non-Business Hours
<b>Urgent</b>	Classified as a serious issue that affects System functionality, performance, or stability that results in the loss or failure of the System or a significant component, and so impacts the overall operation of the System, and therefore must be addressed immediately	<ul style="list-style-type: none"> <li>• Bronze – 6 hours / Not Applicable</li> <li>• Silver – 4 hours / 6 hours</li> <li>• Gold – 2 hours / 4 hours</li> <li>• Platinum – 1 hour / 2 hours</li> </ul>
<b>High</b>	Classified as an important issue that affects System functionality, performance, or stability but does not impact the overall operation of the System, but nevertheless must be addressed quickly	<ul style="list-style-type: none"> <li>• Bronze – 12 hours / Not Applicable</li> <li>• Silver – 8 hours / Not Applicable</li> <li>• Gold – 4 hours / Not Applicable</li> <li>• Platinum – 2 hours / Not Applicable</li> </ul>
<b>Medium</b>	Classified as a minor issue which affects a component of the System, but which does not affect the operations, performance, or stability of the System, and so can be addressed over a longer time period	<ul style="list-style-type: none"> <li>• Bronze – 24 hours / Not Applicable</li> <li>• Silver – 12 hours / Not Applicable</li> <li>• Gold – 8 hours / Not Applicable</li> <li>• Platinum – 4 hours / Not Applicable</li> </ul>
<b>Low</b>	Classified as an information request/documentation issue, which does not affect System software/hardware functionality, and so can be addressed over a longer time period	<ul style="list-style-type: none"> <li>• Bronze – 48 hours / Not Applicable</li> <li>• Silver – 24 hours / Not Applicable</li> <li>• Gold – 12 hours / Not Applicable</li> <li>• Platinum – 8 hours / Not Applicable</li> </ul>

Severity	Description	Resolution Target
<b>Critical</b>	Classified as a serious issue that affects System functionality, safety, performance, or stability that seriously compromises the operation of the System.	Survallent will use best efforts to resolve the Issue during and after business hours to provide a resolution or workaround. If the resolution requires a software fix, the fix will be provided in a subsequent Hot Fix, Update, or Upgrade.
<b>Major</b>	Classified as an important issue that affects System functionality, safety, performance, or stability but does not impact the overall operation of the System.	Survallent will use best efforts to resolve the Issue during business hours to provide a resolution or workaround. If the resolution requires a software fix, the fix will be provided in a subsequent Hot Fix, Update, or Upgrade.
<b>Minor</b>	Classified as a minor issue that does not affect System functionality, performance, or stability, such as cosmetic issues that are considered important that do not affect operation of the System.	Survallent will provide initial response during normal business hours. Survalent will suggest a workaround if appropriate. If the resolution requires a software fix, the fix will be provided in a subsequent Hot Fix, Update, or Upgrade.

**Note:** Response time may rollover to next business day hours depending on time of received request.



Survallent shall use its reasonable efforts to respond and resolve Issues during the timeframes noted. The current status of the Issue can be viewed via Survalent customer online support portal.

#### D) Escalation.

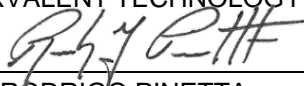
In the event that the Client has concerns regarding the Survalent's progress with a particular issue or with any other matter regarding the delivery of Support and Maintenance, the Client may raise such concerns with Survalent according to the following escalation path:

- a. Manager Customer Support – Rafael De La Fuente [jacosta@survalent.com](mailto:jacosta@survalent.com) (905) 285-9491
- b. VP Customer Success – Ian MacCuaig [imaccuaig@survalent.com](mailto:imaccuaig@survalent.com) (905) 285-9497
- c. President/CEO – Steve Mueller [smueller@survalent.com](mailto:smueller@survalent.com) (905) 285-2211

#### E) Upgrades, Updates and Hot fix process

Where an Upgrade, Update or Hot fix is used to remedy an Issue, it is the responsibility of the Client to ensure that this release resolves the Issue and that the Client is satisfied to continue with this release until a future Update, Upgrade or Hot fix is available. If the Client finds that the Upgrade, Update or Hot fix does not resolve the Issue to an acceptable level then the Client is free to revert back to their previous version of the software and shall notify Survalent of such. Survalent shall then create a new Issue, which shall be resolved in accordance to the Clause C above.

PURCHASER: \_\_\_\_\_  
PRINT \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

SELLER: SURVALENT TECHNOLOGY INC.  
PRINT  \_\_\_\_\_  
NAME: RODRIGO PINETTA  
TITLE: DIRECTOR, PROPOSALS & SOLUTIONS

# Memorandum

File #: 23-282

City Council Meeting

**FROM:** Chris H Fredericksen  
**DATE:** Thursday, September 21, 2023  
**DEPARTMENT:** Public Works

## Subject

Development Agreement for Legacy Village within the City of Ammon

## Council Action Desired

- ☐ Ordinance
 ☐ Resolution
 ☐ Public Hearing

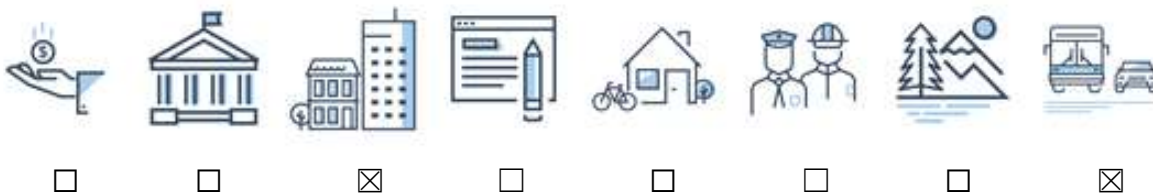
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the Legacy Village Development Agreement and authorize the Mayor and City Clerk to sign the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

Legacy Village is a development within the City of Ammon adjacent to 25th East (Hitt Road), south of Sunnyside Road. The Development Agreement identifies developer responsibilities including the design and construction of road improvements for 25th East (Hitt Road). Specific requirements are covered within the Special Conditions included within Exhibit B of the Agreement.

## Alignment with City & Department Planning Objectives



The Agreement supports the community-oriented results of well-planned growth and development and reliable public infrastructure and transportation by ensuring that new development participates financially in constructing required infrastructure.

## Interdepartmental Coordination

Reviews will be conducted with all necessary city departments to ensure coordination of proposed roadway improvements.

## Fiscal Impact

Per the Agreement, Idaho Falls has a financial obligation to fund half the cost of roadway illumination. This cost will be borne by the Arterial Road and Bridge Fund and sufficient funding and budget authority exist for completion of this

work.

**Legal Review**

The Agreement was prepared by the City Attorney Department.

2023-064

DEVELOPMENT AGREEMENT  
LEGACY VILLAGE

This DEVELOPMENT AGREEMENT LEGACY VILLAGE ("AGREEMENT"), made this 21<sup>st</sup> day of September, 2023, by and between CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, ("CITY"), whose mailing address is P.O. Box 50220, Idaho Falls, Idaho 83405, and TETON RIDGE HOLDINGS, LLC., ("DEVELOPER"), whose mailing address is 3539 Briar Creek Lane, Ammon, Idaho 83406.

W I T N E S S E T H:

WHEREAS, DEVELOPER is the sole owner, in law or equity, of a certain tract of land in the County of Bonneville, State of Idaho, which land (hereafter referred to as "Subdivision"), is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof; and,

WHEREAS, DEVELOPER desires to develop the Subdivision within CITY and has submitted a plat bearing the Subdivision name described in the caption of this AGREEMENT; and,

WHEREAS, City Engineer, and the Idaho Falls Planning and Zoning Commission, have recommended such development be allowed, subject to certain requirements and obligations on the part of DEVELOPER; and

WHEREAS, CITY is willing to allow the development of the Subdivision within City of Idaho Falls, Idaho, subject to the terms and conditions of this AGREEMENT and the Special Conditions attached hereto; and

WHEREAS, CITY has authority to approve Subdivision plats and the construction of streets, utility lines and other public improvements within CITY; and

WHEREAS, DEVELOPER specifically waives DEVELOPER's right to protest development requirements described in this AGREEMENT, including DEVELOPER's right of judicial review contained in Chapter 52, Title 67, Idaho Code, and pursuant to the standards set forth in § 67-5279, Idaho Code; and,

WHEREAS, DEVELOPER understands that the public improvements required herein are standards required pursuant to Idaho Falls City Code, Title 10, Chapter 1, and are authorized by Idaho Code §§ 67-6513 and 67-6518; and,

WHEREAS, DEVELOPER and CITY believe that without the public improvements required

herein, CITY would not be able to otherwise provide for mitigation of the effects of the Subdivision development on the ability of CITY to deliver services without compromising quality of such service delivery to current CITY residents, or without imposing substantial additional costs upon current CITY residents to accommodate the proposed Subdivision; and,

WHEREAS, CITY desires to ensure that public improvements consisting of those described in this AGREEMENT, including Special Conditions for the Subdivision, are constructed; and,

WHEREAS, DEVELOPER understands that a waiver of public improvements is available pursuant to Idaho Falls City Code, but DEVELOPER specifically does not wish to request such a waiver and wishes to enter into this AGREEMENT; and,

WHEREAS, DEVELOPER enters into this AGREEMENT of DEVELOPER's own free will and accord, without coercion and without inducement and at DEVELOPER's request; and,

WHEREAS, DEVELOPER has read this AGREEMENT, has understood it, and has had the opportunity to avail itself of legal and other counsel prior to entering into this AGREEMENT and prior to signing it; and,

WHEREAS, DEVELOPER has submitted a preliminary plat bearing the Subdivision name described in the caption of this AGREEMENT; and,

WHEREAS, City Engineer and City Planning and Zoning Commission have recommended such Subdivision be approved subject to certain requirements and obligations on the part of DEVELOPER; and,

WHEREAS, CITY is willing to approve the Subdivision to CITY, subject to the terms and conditions of this AGREEMENT and the Special Conditions attached hereto;

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

1. Approval of Subdivision. CITY hereby approves the Subdivision plat as described in Exhibit "A" attached hereto and made a part to this AGREEMENT by reference, and agrees that upon DEVELOPER's full and complete performance of the terms and conditions hereto, it will accept and maintain the property dedicated to CITY on the Subdivision plat and all public facilities and improvements shown in the Improvement Plans for the Subdivision.

2. Improvement, Preliminary, and Final Improvement Plans. "Improvement Plans," used in this AGREEMENT, are engineer-designed plans showing all streets, sewer lines, water lines,

storm drains, street signs, traffic control devices, barricades, other public utilities (telephone, gas, electricity, fiber optic and irrigation facilities) and other public improvements contemplated within the Subdivision. "Preliminary Improvement Plans" as used in this AGREEMENT, are those Improvement Plans submitted and considered for the Subdivision development prior to the approval of City Engineer, and not yet approved for construction. "Final Improvement Plans" as used in this AGREEMENT, are those Improvement Plans submitted, considered and approved by City Engineer for the Subdivision development.

DEVELOPER anticipates that development of the entire Subdivision will occur in phases or divisions. DEVELOPER has filed, and City Engineer has approved, Improvement Plans for the public improvements to be constructed within public rights-of-way exterior to the Subdivision, (hereafter referred to as the "Exterior Improvement Plans") showing the width, location and alignment of all streets, sewer lines and water lines within the Subdivision and the size and materials specifications for such water and sewer lines. Prior to the commencement of any construction or development within any phase or division of the Subdivision, DEVELOPER shall also file with, and obtain the approval of, City Engineer Improvement Plans (hereafter the "Interior Improvement Plans") for all streets, sewer lines, water lines, storm drainage facilities, street signs, traffic control devices, barricades and other public improvements contemplated within such phase or division of the Subdivision. The filed Improvement Plans shall also show the proposed location of other public utilities (telephone, gas and electricity), and irrigation facilities affected by the development of such phase or division of the Subdivision. Preliminary Improvement Plans are incorporated herein by reference as though set out in full, and the Final Improvement Plans shall also, upon approval by City Engineer, be deemed to be incorporated herein by reference.

3. Construction of Public Improvements. Unless otherwise agreed in the Special Conditions, DEVELOPER shall, at its expense, design and construct all public improvements shown in the Exterior Improvement Plans and Interior Improvement Plans. Unless otherwise agreed in writing by City Engineer, DEVELOPER shall construct all required public improvements within such Improvement Plans in strict accordance with the approved Preliminary and Final Improvement Plans and CITY Standard Engineering Drawings and Specifications (hereafter referred to as the "Standard Specifications") in effect at the time the construction is accomplished. The Standard Specifications are incorporated herein by reference as though set out in full and compliance to the Standard Specifications is a condition of this AGREEMENT.

4. Permits. DEVELOPER shall obtain all right-of-way, excavation and/or other permits required by local ordinance and comply with all requirements therein with respect to the timely performance of the work governed by such permits.

5. Inspection. DEVELOPER shall retain a professional engineer (hereafter referred to as the "Project Engineer") licensed within the State of Idaho to supervise, inspect and test the

construction of all public improvements within the Subdivision in order to ensure such improvements are constructed in accordance with this AGREEMENT, the Improvement Plans and the Standard Specifications. DEVELOPER shall not materially deviate from the Improvement Plans or Standard Specifications without the express written approval of the City Engineer.

6. Corrected Improvement Plans. Prior to acceptance of any phase or division of the Subdivision, DEVELOPER will file "As Constructed"/ "As Built" Improvement Plans (hereafter referred to as the "Corrected Improvement Plans") with City Engineer. Such Corrected Improvement Plans shall be prepared by the Project Engineer and shall show the actual constructed location of all public improvements within the Subdivision including the horizontal and vertical location of all water, sewer and storm drain lines, individual building service lines curb and gutter alignment and street grades. Such Corrected Improvement Plans shall also specifically show all changes between the Final Improvement Plans and the public improvements as actually constructed. The Project Engineer shall also certify upon the Corrected Improvement Plans that such Corrected Improvement Plans correctly show all public improvements as actually constructed and that such public improvements have been constructed in accordance with the Standard Specifications in effect at the time such construction was accomplished. The Project Engineer shall also deliver to City Engineer all compaction reports, daily construction logs, reports, written tests, analysis and other data as may be necessary to verify or support the certification of the Project Engineer.

7. Acceptance of Subdivision. Upon satisfactory completion of such public improvements and facilities, DEVELOPER's delivery of Corrected Improvement Plans and the filing and approval by CITY of a final plat, CITY will accept that portion of the Subdivision for which a final plat has been approved. Such acceptance shall not be valid unless expressly acknowledged in writing by City Engineer. Except as otherwise expressly provided in the Special Conditions, upon acceptance of any phase or division within the Subdivision, CITY shall assume ownership and control of all public facilities within any dedicated street or public utility right-of-way within the Subdivision and shall execute and record an instrument documenting such acceptance and that also references the recording information for this AGREEMENT and thereby releasing the Subdivision, or the accepted portion thereof, from the encumbrances of this AGREEMENT. Acceptance of the Subdivision Improvements and recording the acceptance instrument shall not be deemed as a waiver of DEVELOPER's agreement herein to fully and completely perform the terms and conditions of this AGREEMENT, or as a waiver or release of the warranty set forth below in this AGREEMENT.

8. Warranty. DEVELOPER warrants that the materials and workmanship employed in the construction of all public improvements within the Subdivision shall be good and sound, and shall conform to generally accepted standards within the construction industry. Such warranty shall extend for a period of one (1) year after acceptance of any phase or division of the Subdivision

within which such improvements are located, by CITY, provided nothing herein shall limit the time within which CITY may bring an action against DEVELOPER on account of DEVELOPER's failure to construct such improvements in accordance with this AGREEMENT, the Improvement Plans or the Standard Specifications. DEVELOPER, and DEVELOPER's heirs, successors and assigns, shall and do hereby respectively warrant and agree, to defend the quiet and peaceful possession of CITY in all easements, rights-of-way, street dedications or other estates conveyed pursuant to the terms of this AGREEMENT or pursuant to the subdivision plat which is the subject hereof, from and against all claims against DEVELOPER and DEVELOPER's successors or assigns, respectively, and against every person whomsoever who lawfully holds, or who later lawfully claims to have held, rights in the premises by or through DEVELOPER and DEVELOPER's successors or assigns, respectively, as of the date of this AGREEMENT.

9. Water and Sewer Main Connection Charges. DEVELOPER agrees to pay to CITY at the time any separate sanitary sewer service or culinary water service connection to CITY sanitary sewer system or culinary water system is requested, all connection fees, main connection charges, and main charges as set forth in the City Code in effect at the time such request for service is made.

10. Failure to Pay Fees. In the event DEVELOPER fails or refuses to pay any of the fees, charges or costs set forth herein, CITY may disannex any property owned by DEVELOPER within the Subdivision or declare the entire unpaid balance immediately due and payable and collect such sums in the manner provided by law, or may pursue any other remedy set forth herein or as may be available at law or in equity. All such remedies shall be cumulative and CITY may pursue the same separately or simultaneously as it deems necessary or appropriate. In the event of such acceleration, all sums due shall bear interest at the rate established by law for judgments entered in the State of Idaho, commencing on the date the unpaid amount is declared immediately due and written demand therefor is delivered to DEVELOPER.

11. Participation by CITY. The parties agree that those portions of the water main, the sanitary sewer line, storm drains and street section work (hereafter collectively referred to as the "Shared Work"), the cost of which CITY has expressly agreed to pay pursuant to the Special Conditions, including any water or sewer line or storm line extensions, increased line size or capacity and road width or thickness, are required because of future service needs originating from properties not owned by DEVELOPER and located within the vicinity of the Subdivision, and that sound planning requires construction thereof at the present time in order to accommodate future expansion and development. In recognition of the cost savings which can be accomplished by construction of such excess capacity and improvements concurrently with the facilities to be constructed for DEVELOPER's purposes, and the impracticality or impossibility of constructing such excess capacity and improvements separately or at a later time, DEVELOPER agrees to design and construct such facilities subject to CITY's agreement to reimburse DEVELOPER for a portion of such costs, all as set forth in the Special Conditions. Prior to the commencement of the

Shared Work, DEVELOPER shall obtain and deliver to CITY three (3) independent bona fide bids for the performance of such work from qualified and responsible contractors. Such bids shall be solicited and itemized in a manner which allows clear and specific identification of that portion of the construction work for which CITY is responsible. CITY shall have no obligation to pay for any portion of the costs of the Shared work unless prior to the commencement of the work, the parties have expressly agreed in writing to a specific amount for which CITY will reimburse the DEVELOPER. Payment of such costs by CITY shall be due within thirty (30) days from acceptance of the Subdivision by CITY and delivery of an itemized statement to CITY setting forth in detail the total amount of the costs for which CITY is responsible.

12. Special Conditions. In recognition of the unique circumstances relative to this Subdivision the parties agree to the Special Conditions attached hereto as Exhibit "B" and by this reference made a part hereof.

13. Irrigation Facilities. DEVELOPER shall relocate or reconstruct, at DEVELOPER's expense, all ditches, headgate structures, culverts, siphons, drywells or other similar appurtenant structures that will be impaired or otherwise disturbed by the construction of this Subdivision. DEVELOPER shall also obtain the consent of all persons or entities who have any water right or control over such structures. DEVELOPER shall also indemnify and hold CITY harmless from any action, claim, demand or cost of any kind, including attorney's fees and court costs, arising from the relocation or reconstruction of such facilities or DEVELOPER's failure to properly relocate or reconstruct such facilities.

14. Relocation of Power Lines. DEVELOPER shall relocate at its expense, all existing electric utility poles or other utility lines or fixtures necessary to construct the public improvements within this Subdivision as shown on the Improvement Drawings.

15. Construction Schedule Change. Any modification to the public improvements shown in the Improvement Drawings or to the construction phase limits shall be approved by City Engineer. Prior to said approval, revised Improvement Drawings shall be resubmitted to City Engineering Department showing the proposed changes.

16. Taxes and Assessments. DEVELOPER shall pay all real property taxes and assessments levied or assessed against any interest in real property which DEVELOPER has agreed to convey to CITY pursuant to this AGREEMENT up to the date the final Subdivision plat for this Subdivision is recorded. Such taxes and assessments shall be paid prior to the acceptance by CITY of the public improvements within any phase or division of the Subdivision.

17. Occupancy. No building or structure within the Subdivision shall be used or occupied for any purpose other than for the construction of such building or structure, unless a final plat has

been filed and approved and all public improvements within the plat have been completed and accepted by City Engineer. CITY may withhold Certificates of Occupancy until all such work has been completed. Nothing herein shall prevent the use of a model building for the purpose of DEVELOPER's sales promotional efforts provided the building is not occupied for any other commercial or industrial purposes.

18. Default. In the event DEVELOPER fails to comply with the terms and conditions hereof in any material respect, CITY may, without further notice to DEVELOPER, exercise any or all of the following remedies:

- A. Withhold the issuance of any building permit or certificate of occupancy for any structure located within any phase or division of the Subdivision affected by such default;
- B. Withhold the connection of water, sewer or electric service to any property located within any phase or division of the Subdivision affected by such default;
- C. Refuse to accept public ownership and maintenance of public improvements within any phase or division of the Subdivision affected by such default and record a notice of such action with the Bonneville County Recorder's office;
- D. Issue a stop work order for any building under construction within any phase or division of the Subdivision affected by such default;
- E. Withhold reimbursement of Subdivision inspection fees collected pursuant to the Idaho Falls City Code; and
- F. Bring an action for damages, injunctive relief, specific performance or any other remedy available at law or in equity.

19. Notices. Any notice required by this AGREEMENT shall be mailed to the receiving party at the address set forth above or such other address as may be delivered to the sending party in writing. Such notice shall be mailed by certified mail, return receipt requested, postage prepaid and addressed as set forth above and shall be deemed received upon its deposit in the United States mail in such manner.

20. Recording and Recording Fees. CITY may record this AGREEMENT with the Bonneville County Recorder's office and prior to the execution and approval of this AGREEMENT, DEVELOPER shall pay to CITY all recording fees necessary to record this AGREEMENT with the Bonneville County Recorder's office. Prior to the approval of any final plat within the Subdivision, DEVELOPER shall pay to CITY all recording fees necessary to record such final plat with the Bonneville County Recorder's office.

21. Irrigation District Release. Prior to the approval of the Subdivision plat, DEVELOPER shall: (i) include a statement on the Subdivision plat that the property subject to this AGREEMENT has been excluded from the applicable irrigation district and reference the district's exclusion order by recording date and instrument number; or (ii) obtain a certification upon the Subdivision plat signed by any irrigation district, canal company, ditch association or other similar water delivery entity who provides or delivers water to any property located within the Subdivision. This certification shall contain a statement certifying that the property subject to this AGREEMENT has been excluded from the irrigation district, canal company, ditch association or other similar water delivery entity who provides or delivers water to any property located within the Subdivision or the water rights for all property within the Subdivision have been transferred from such property and that all liens and assessments of such water delivery entity have been satisfied and released.

22. Compliance With Applicable Law and Regulation. DEVELOPER agrees to comply with all applicable rules, regulations, Ordinances, Resolutions, statutes or administrative laws having applicability to development to this Subdivision and or phase of this Subdivision including, of those of CITY, Bonneville County, the State of Idaho, the United States of America, or any agency or political subdivisions thereof having jurisdiction over the Subdivision and to obtain any permits, licenses, permissions, authorizations, etc., that are required for such development.

23. Conflict With Standard Specifications. In the event of any conflict between the terms of this AGREEMENT or the Improvement Plans and the Standard Specifications, the terms of this AGREEMENT or the Improvement Plans shall prevail over any contrary provision of the Standard Specifications. In the event of any conflict between the terms of this AGREEMENT and the Improvement Plans, the terms of this AGREEMENT shall prevail.

24. Covenants Appurtenant to the Land. All covenants and conditions set forth herein shall be appurtenant to and run with the Subdivision and shall be binding upon DEVELOPER's heirs, successors or assigns.

25. Governing Law. This AGREEMENT shall be governed by the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County or in the United States District Court for the District of Idaho.

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

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

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

28. Entire Agreement. This writing evidences the final and complete agreement between the parties and no other prior statement, representation or understanding shall be binding upon the parties unless expressly set forth herein.

29. Effective Date. This AGREEMENT shall become valid and binding only upon its approval by CITY Council of CITY and upon its execution by the Mayor.

INWITNESS WHEREOF, the parties have hereunto set their hands and seals this day and year first above written.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

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

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

TETON RIDGE HOLDINGS, LLC.

By \_\_\_\_\_  
Curtis Johnson, Vice President

STATE OF IDAHO                    )  
  ) ss.  
County of Bonneville            )

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

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

(Seal)

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

STATE OF IDAHO                    )  
  ) ss:  
County of Bonneville            )

On this 21<sup>st</sup> day of September, 2023, before me, the undersigned, a notary public, in and for said State, personally appeared Curtis Johnson, known or identified to me to be an authorized signator of Teton Holdings, LLC., and whose name is subscribed to the within instrument and acknowledged to me that they are authorized to execute the same for and on behalf of said company.

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



Emily Leigh  
\_\_\_\_\_  
Notary Public of Idaho  
Residing at: Idaho  
My Commission Expires: 5/13/28

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

**LEGAL DESCRIPTION**  
**LEGACY VILLAGE**

A REPLAT OF A PARCEL OF LAND BEING KNOWN AS FAMILY CARE CENTER SUBDIVISION, DIVISION NO. 1, AN ADDITION TO THE CITY OF AMMON, BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 34, TOWNSHIP 2 NORTH, RANGE 38 EAST OF THE BOISE MERIDIAN, BONNEVILLE COUNTY IDAHO AND FOR WHICH IS MORE SPECIFICALLY DESCRIBED AS FOLLOWS.

BEGINNING AT A POINT THAT IS N.01°29'14"W. ALONG THE SECTION LINE 839.83 FEET AND N.89°41'40"E. 57.01 FEET FROM THE SOUTHWEST CORNER OF SECTION 34, TOWNSHIP 2 NORTH, RANGE 38 EAST OF THE BOISE MERIDIAN, SAID POINT BEING ON THE EAST RIGHT-OF-WAY LINE 25TH EAST (HITT ROAD); RUNNING THENCE N.01°29'14"W. ALONG SAID EAST RIGHT-OF-WAY LINE 406.05 FEET; THENCE N.88°30'46"E. 1265.36 FEET TO THE WEST BOUNDARY LINE OF SUBURBAN ACRES, BONNEVILLE COUNTY, IDAHO; THENCE S.01°42'42"E. ALONG SAID WEST BOUNDARY LINE 1222.03 FEET TO THE NORTH RIGHT-OF-WAY LINE OF 49TH SOUTH (TOWNSHIP ROAD); THENCE S.89°41'32"W. ALONG SAID NORTH RIGHT-OF-WAY LINE 394.60 FEET; THENCE N.01°29'14"W. 789.78 FEET; THENCE S.89°41'40"W. 875.81 FEET TO THE POINT OF BEGINNING.

SUBJECT TO: EXISTING EASEMENTS OF RECORD.

CONTAINING 19.308 ACRES

**EXHIBIT "B"**  
**SPECIAL CONDITIONS**

**LEGACY VILLAGE**

**S.C. 1.00 25<sup>th</sup> East/Hitt Road Right-of-Way/Easement.** 25<sup>th</sup> East/Hitt Road right-of-way, has been dedicated to CITY previous to the date of this AGREEMENT. DEVELOPER shall dedicate and maintain a fifteen (15') foot minimum public utility easement along the Subdivision frontage of 25<sup>th</sup> East/Hitt Road.

**S.C. 2.00 Development Access.** CITY acknowledges that DEVELOPER or DEVELOPER's assigns have the right to develop in the City of Ammon, Idaho (subject to City of Ammon, Idaho, approval), and shall have access to 25<sup>th</sup> East/Hitt Road, as shown in the approved improvement drawings.

**S.C. 3.00 25<sup>th</sup> East/Hitt Road Improvements.** It shall be the responsibility of DEVELOPER to bear the cost of the design and construction of the East half of 25<sup>th</sup> East/Hitt Road improvements along the Subdivision frontage with 25<sup>th</sup> East/Hitt Road. The 25<sup>th</sup> East/Hitt Road improvements shall include asphalt pavement with seal coat, sidewalk, ADA curb ramps, curb and gutter, storm drainage, excavation, soft spot repair, striping, illumination, landscaping and irrigation, including all utility relocations necessary for a complete installation of required public improvements. The required road improvements agreed to in this AGREEMENT shall be designed and constructed in accordance with CITY Standard Drawings and Engineering Specifications and subject to approval by CITY.

Street illumination for this roadway is to be constructed on the West side of 25<sup>th</sup> East; however DEVELOPER cannot provide for the installation of the roadway illumination because the road right-of-way is unavailable along this Development. DEVELOPER shall provide the installation of approximately 520 feet of illumination on frontage available north of this Development (between 120 feet and 640 feet north of this Development on the West side of 25<sup>th</sup> East). This illumination construction shall be in lieu of DEVELOPER's frontage responsibility for this Development. Recognizing that the illumination provided by DEVELOPER will serve other development within CITY, subject to the limitations set forth in this Agreement, CITY agrees to reimburse DEVELOPER for one half of such construction costs, subject to review and approval by CITY.

Prior to issuance of Building Permits requiring access from 25<sup>th</sup> East, DEVELOPER shall complete the road construction or provide CITY a Subdivision Guarantee of Completion for this road construction. All costs associated with maintaining the Subdivision Guarantee of Completion shall be borne by DEVELOPER..

**S.C. 4.00 25<sup>th</sup> East/Hitt Road Sidewalk and Landscape Strip Maintenance.** DEVELOPER or DEVELOPER's successor's, heirs, and assigns shall be perpetually responsible for the maintenance and repair of the curb and gutter, sidewalk, and landscape strip along the Subdivision frontage of 25<sup>th</sup> East/Hitt Road.

# Memorandum

File #: 23-278

City Council Meeting

**FROM:** Pam Alexander, Municipal Services Director  
**DATE:** Wednesday, September 20, 2023  
**DEPARTMENT:** Municipal Services

## Subject

Adoption of the 2023/24 Water Division Fees, Including New Fees, and Fee Increases

## Council Action Desired

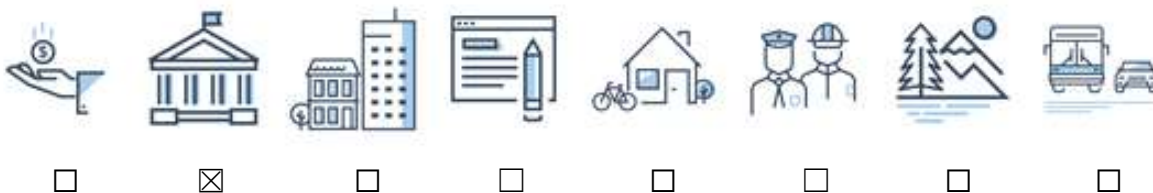
☐ Ordinance ☒ Resolution ☐ Public Hearing  
☐ Other Action (Approval, Authorization, Ratification, etc.)

Adopt the 2023/24 fee resolution adding the Public Works, Water Division fees as Exhibit A (or take other action deemed appropriate).

## Description, Background Information & Purpose

The Public Works Water Division fees were inadvertently left off the public notices for the public hearing on Thursday, August 10, 2023, and subsequently required separate public notice and hearing. The Public Hearing for the 2023/24 Water Division fees was held on Thursday, September 14, 2023, pursuant to Idaho Code §50-1002.

## Alignment with City & Department Planning Objectives



The adoption of the fees is in support of the good governance community-oriented result by fostering innovative and sound fiscal management that enables trust and transparency.

## Interdepartmental Coordination

The Public Works Department concurs with the fees proposed for the 2023/24 fiscal year, beginning October 1, 2023.

## Fiscal Impact

The adopted 2023/24 fees as presented are included in the projected revenue dollars in support of the 2023/24 fiscal year budget ordinance.

## Legal Review

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

**RESOLUTION NO. 2023-**

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

WHEREAS, Council has determined that the revised and new fees included in this Resolution are appropriate and are reasonably related to the purpose for which such fees are charged; and,

WHEREAS, a public hearing was held on September 14, 2023, pursuant to Idaho Code § 63-1311A after which the Council considered input given by the public; and,

WHEREAS, the Council, by this Resolution, desires to amend and update only those fees and charges contained in the Attachment to this Resolution, while continuing and approving of other fees lawfully charged by the City that are contained elsewhere and not within the Attachment to this Resolution.

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

1. That the fees set forth in Idaho Falls Fee Schedule – October 2023, “Exhibit A” attached hereto and made a part hereof, be in force and effect in matters relating to fees on October, 1 2023.
2. That this Resolution amends all previous Resolutions and Ordinances regarding fees charged by the City concerning the fees that are contained in this Resolution;
3. That any Resolution or provision thereof that is inconsistent with this Resolution is hereby repealed.

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

CITY OF IDAHO FALLS, IDAHO

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

ATTEST:

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

(SEAL)

STATE OF IDAHO                    )  
  ) ss:  
County of Bonneville            )

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

\_\_\_\_\_  
Kathy Hampton, City Clerk

(SEAL)

File #: 23-273

City Council Meeting

**FROM:** Wade Sanner, Director  
**DATE:** Wednesday, September 20, 2023  
**DEPARTMENT:** Community Development Services

## Subject

Final Plat Extension for East River Estates Division 1.

## Council Action Desired

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

Approve the extension for the Final Plat for East River Estates Division 1 (or take other action deemed appropriate).

## Description, Background Information & Purpose

The City Council approved the final plat for East River Estates Division 1 at its August 11, 2022, meeting. The Subdivision Ordinance requires that the plat be provided to the city for recording within 6 months of Council approving the plat unless the Council provides an extension. The developer requested an extension on March 30, 2023, as they were considering lot line adjustments and putting the property up for sale. When the sale fell through, they decided to continue with the project. The developer is now requesting an extension due to the project transitioning between different firms. The new firm has encountered challenges beyond their control in relation to the plat recording and has had unforeseen delays in the developer's construction schedule. Nothing has changed with the plat layout and the staff continues to recommend approval of the plat as it meets all the minimum subdivision standards. The developer anticipates being able to provide the plat for recording in the near future but requests an extension to March 28, 2023, to allow them to complete the process.

## Alignment with City & Department Planning Objectives



A successful Plat should be consistent with the Comprehensive Plan and Zoning Ordinance, which includes policies and goals related to Growth, Sustainability, Transportation, and Livable Communities.

## Interdepartmental Coordination

The Final Plat was reviewed by staff from Fire, Idaho Falls Power, BMPO, Water, Planning, Sewer, Engineering, Survey, and Parks and Rec.

**Fiscal Impact**

NA

**Legal Review**

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

## Ann Peterson

---

**From:** Naysha Foster  
**Sent:** Wednesday, September 20, 2023 9:55 AM  
**To:** Ann Peterson  
**Subject:** FW: East River Estates.....

Here you go!

---

**From:** nhumphreys@eaglerockengineering.com <nhumphreys@eaglerockengineering.com>  
**Sent:** Wednesday, September 20, 2023 9:53 AM  
**To:** Naysha Foster <nfooster@idahofalls.gov>  
**Subject:** East River Estates.....

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Naysha,

Eagle Rock Engineering respectfully requests an 8-week extension for the timeline set for the recording of the plat for East River Estates Division No. 1.

Due to the project transitioning between different firms, encompassing both surveying and engineering components, our firm has encountered challenges beyond our control in relation to the plat recording. Additionally, unforeseen delays in the developer's construction schedule for East River Estates have arisen. Despite these setbacks, the developer is now keen to proceed with the construction based on the site plans approved by city staff.

The primary reasons for the delays in plat recording have been the project transition between firms and the unpredictable construction timeline. However, we wish to assure you that we are actively collaborating with Peterson Land Surveying, the initial developer of the plat, and are confident that the recording will be completed well within the duration of the requested extension.

We appreciate your understanding and patience in this matter.

-Eagle Rock Engineering

Thanks,  
*Niel Humphreys,*  
Eagle Rock Engineering & Land Surveying  
1331 Fremont Avenue  
Idaho Falls, ID 83402  
Phone (208) 542-2665  
Cell (208) 391-1925

## REASONED STATEMENT OF RELEVANT CRITERIA AND STANDARDS

**FINAL PLAT OF EAST RIVER ESTATES DIVISION 1. GENERALLY LOCATED NORTH OF W 33<sup>RD</sup> N, EAST OF 5<sup>TH</sup> W, SOUTH OF PEVERO DR., WEST OF N 5<sup>TH</sup> E.**

**WHEREAS**, the applicant filed an application for a final plat on December 23, 2020; and

**WHEREAS**, this matter came before the Idaho Falls Planning and Zoning Commission during a duly noticed public meeting on September 7, 2021; and

**WHEREAS**, this matter came before the Idaho Falls City Council during a duly noticed public meeting on August 11, 2022 and

**WHEREAS**, having reviewed the application, including all exhibits entered and having considered the issues presented:

### I. RELEVANT CRITERIA AND STANDARDS

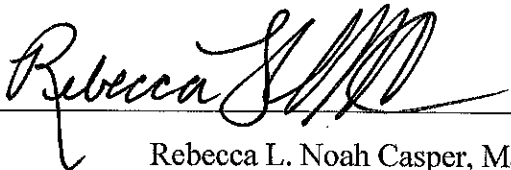
1. The City Council considered the request pursuant to the City of Idaho Falls 2013 Comprehensive Plan, the City of Idaho Falls Zoning Ordinance, the City of Idaho Falls Subdivision Ordinance, the Local Land Use Planning Act, and other applicable development regulations.
2. The property is an approximate 4.20 acres parcel located generally north of W 33<sup>rd</sup> N, east of N 5<sup>th</sup> W, south of Pevero Dr., west of N 5<sup>th</sup> E.
3. The plat complies with all requirements of the Subdivision Ordinance and Zoning Ordinance for the R1, Single Dwelling Unit Zone.
4. The Idaho Falls Planning and Zoning Commission recommended approval of this Final Plat as presented.

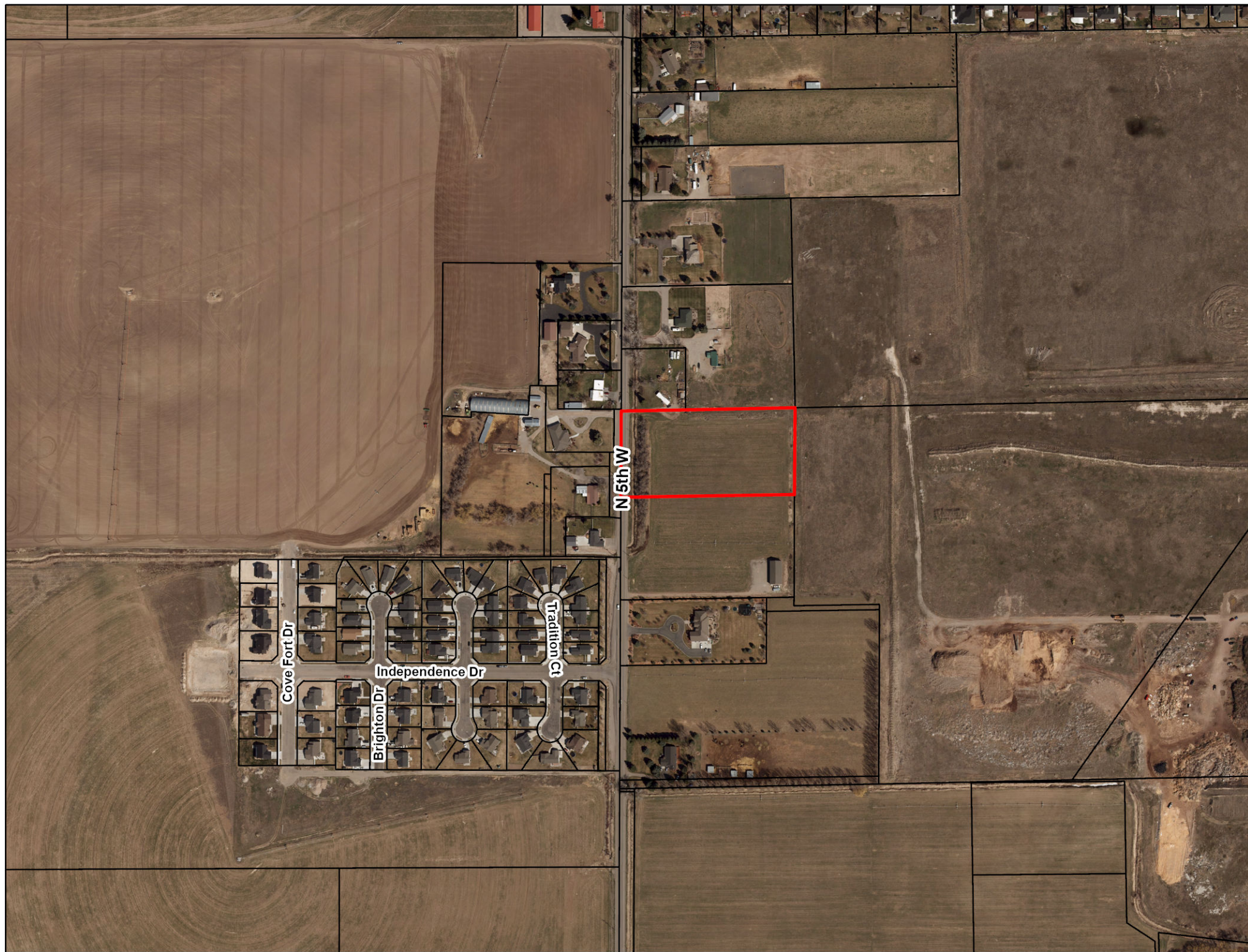
### II. DECISION

Based on the above Reasoned Statement of Relevant Criteria, the City Council of the City of Idaho Falls approved the Final Plat of East River Estates Division 1.

PASSED BY THE CITY COUNCIL OF THE CITY OF IDAHO FALLS

THIS 11 DAY OF August, 2022

  
Rebecca L. Noah Casper, Mayor



**STAFF REPORT  
FINAL PLAT  
East River Estates Division 1,  
August 11, 2022**



Community  
Development  
Services

**Applicant:** Aspen Engineering

**Project Manager:** Naysha Foster

**Location:** north of W 33<sup>rd</sup> N, east of N 5<sup>th</sup> W, south of Pevero Dr., west of N 5<sup>th</sup> E.

**Size:** 4.2 acres

**Lots:** Buildable: 16

**Average Lot Size:**  
0.30 acres (13,138 sq. ft.)

**Net Density:** 0.20 Units

**Existing Zoning:**

Site: R1

North: County A-1

South: County A-1

East: County, A-1

West: County A-1 & City R1

**Existing Land Uses:**

Site: Vacant

North: Residential

South: Residential

East: Residential

West: Gravel Pit

**Future Land Use Map:**

**Attachments:**

1. Subdivision and Zoning Ordinance Requirements
2. Comprehensive Plan Policies
3. Maps and aerial photos
4. Final Plat

**Requested Action:** To approve the final plat for East River Estates Division 1.

**History:** This property was annexed in July of this year with initial zoning of R1, Single Dwelling Residential and the Airport Overlay Zone, Limited Development. The Limited Development overlay zone allows residential. The Planning and Zoning Commission unanimously voted to recommend approval on September 7, 2021.

**Staff Comments:** The plat includes 16 buildable lots. The R1 zone requires a minimum lot size of 7,000 square feet and a maximum lots size of 13,500 square feet. The average lots size is 8,363.52 square feet. The density in the R1 zone is 6 units per net acre. This density would allow 19 units, the developer is proposing 16 unit which is 0.20 units per net acre. A dedicated right of way will be accessed from 5<sup>th</sup> W. a Principle Arterial. Curb, gutter and sidewalk will be improved along 5<sup>th</sup> W.

The block measures approximately 604.96 feet. The block does not exceed the max length of 1,300 feet, nor is it less than the minimum length of 400. The street is 382.31 feet in length before the cul-de-sac which is under the maximum of 400 feet for a dead-end street. The street right of way and cul-de-sac radius met minimum standards in the Subdivision Ordinance.

**Staff Recommendation:** Staff has reviewed the final plat and finds that it complies with the subdivision ordinance and consistent with the development standards of the R1 Zone. Staff, as well as the Planning & Zoning Commission recommend approval of the plat.

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

REQUIREMENTS	Staff Review
Requirements listed in Section 10-1:	
Building envelopes sufficient to construct a building.	X
Lot dimensions conform to the minimum standards of Zoning Ordinance.	X
Lots have full frontage on, and access to, a dedicated street.	X
Residential lots do not have direct access to arterial streets.	N/A
<p>Direct access to arterial streets from commercial or industrial lots shall be permitted only where it can be demonstrated that:</p> <p>1) The direct access will not impede the flow of traffic on the arterial or otherwise create an unsafe condition; 2) There is no reasonable alternative for access to the arterial via a collector street; 3) There is sufficient sight distance along the arterial from the proposed point of access; 4) The proposed access is located so as not to interfere with the safe and efficient functioning of any intersection; and 5) The developer or owner agrees to provide all improvements, such as turning lanes or signals, necessitated for the safe and efficient uses of the proposed access.</p>	N/A
Adequate provisions shall be made for soil preservation, drainage patterns, and debris and waste disposal and collection.	X
Sidelines of lots shall be at, or near, right angles or radial to the street lines. All corner lots shall have a minimum radius of twenty feet on the property line.	X
All property within the subdivision shall be included within a lot or area dedicated for public use.	X
All corner lots zoned RP through R-3, inclusive, shall be a minimum of ten percent larger in area than the average area of all similarly zoned lots in the plat or subdivision under consideration.	N/A
All major streets in subdivision must conform to the major street plan of the City, as set forth in Comprehensive Plan.	N/A
The alignment and width of previously platted streets shall be preserved unless topographical conditions or existing buildings or structures required otherwise.	X
Residential lots adjoining arterial streets shall comply with: 1) Such lots shall have reverse frontage on the arterial streets, 2) such lots shall be buffered from the arterial street by any effective combination of the following: lot depth, earth berms, vegetation, walls or fences, and structural soundproofing, 3) Minimum lot depth shall be 150 ft except where the use of berms, vegetation, and structures can be demonstrated to constitute an effective buffer, 4) Whenever practical, existing roadside trees shall be saved and used in the arterial buffer, 5) Parking areas shall be used as part of the arterial buffer for high density residential uses, 6) Annexation and development agreement shall include provisions for installation and continued maintenance of arterial buffers.	N/A
Planning Director to classify street on basis of zoning, traffic volume, function, growth, vehicular & pedestrian safety, and population density.	New Local Street

### Section 10-1-9A

(9) If the final plat conforms to the provisions of this Chapter and all other applicable State or Federal laws, or local ordinances, the Council shall approve the final plat and authorize the Mayor and Clerk to sign the original plat.

### Zoning Ordinance:

#### 11-3-3: Purpose of Residential Zones, (C) R1 Single Dwelling Residential

This zone provides a residential zone which is representative of a less automobile-oriented, more walkable development pattern, characterized by somewhat smaller lot widths; and somewhat denser residential environment than is characteristic of the RP Residential Park Zone. The principal use in the R1 shall be single detached and attached dwelling units. The zone is also generally located near limited commercial services that provide daily household needs.

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

Table 11-3-1: Standards for Residential Zones

	RE	RP	R1	R2	TN	R3	R3A	RMH
<b>Lot Area</b>								
Lot Area Minimum in ft <sup>2</sup>	1 acre*	12,000	7,000	6,000*	3,000*	5,000*	5,000	5,000
Lot Area Maximum in ft <sup>2</sup>			13,500*					
<b>Site Width</b>								
Site Width at Front Setback, Minimum in ft.	150	60	50	50	25	50	50	50
<b>Setbacks, Minimum in ft.</b>								
Front	40	30*	25*	20*	15*	15	15	30
Front Maximum in ft.					20*			
Side	20	7.5/10*	6	6	5	6	6	10
Rear	40	25	25	25	10	25*	25*	25*
<b>Lot Coverage, Building Height, and Density</b>								
Maximum Lot Coverage in %	30	40	40	80	50	80	80	40
Maximum Building Height in ft*	24	24	24	36	*			24
Maximum Density in net units/acre	1	4	6	17	15	35	35	8
*See explanations, exceptions and qualifications in Section 11-3-4A,B,C of this Zoning Code.								

### Comprehensive Plan Policies:

#### Residential development should reflect the economic and social diversity of Idaho Falls.

New and existing development should foster inclusiveness and connectivity through mixed housing types and sizes. Neighborhood connections through paths, parks, open spaces, and streets. (p 40.)

**Encourage development in areas served by public utilities or where extensions of facilities are least costly.** (p.67)

# SYMBOL LEGEND

PRO.	EXIST.	DESCRIPTION
		PROPOSED/EXISTING ELEVATION
		PROPOSED/EXISTING FIRE HYDRANT
		PROPOSED/EXISTING VALVE
		PROPOSED/EXISTING PLUG
		PROPOSED/EXISTING MANHOLE
		PROPOSED/EXISTING STORM DRAIN INLET
		PROPOSED/EXISTING POWER POLE
		PROPOSED/EXISTING CURB AND GUTTER
		PROPOSED/EXISTING WALK
LINETYPE	DESCRIPTION	
	PRESSURE LINE (WATER LINE)	
	PIPE FLOW LINE (SANITARY AND STORM)	
	OVERHEAD POWER LINE	
	UNDERGROUND PVC POWER CONDUIT	
	EXISTING SERVICE LINE	
	PROPOSED SERVICE LINE	
	Section Line	
	Subdivision Boundary	
	Lot Line	
	Road Centerline	
	Public Utility Easement (Width as Noted)	
	Canal Right-Of-Way (Width as Noted)	
	Existing Easement as Noted	
	CANAL EDGES	
	EXISTING CANAL	
	STORM POND EASEMENT	
	FENCE	

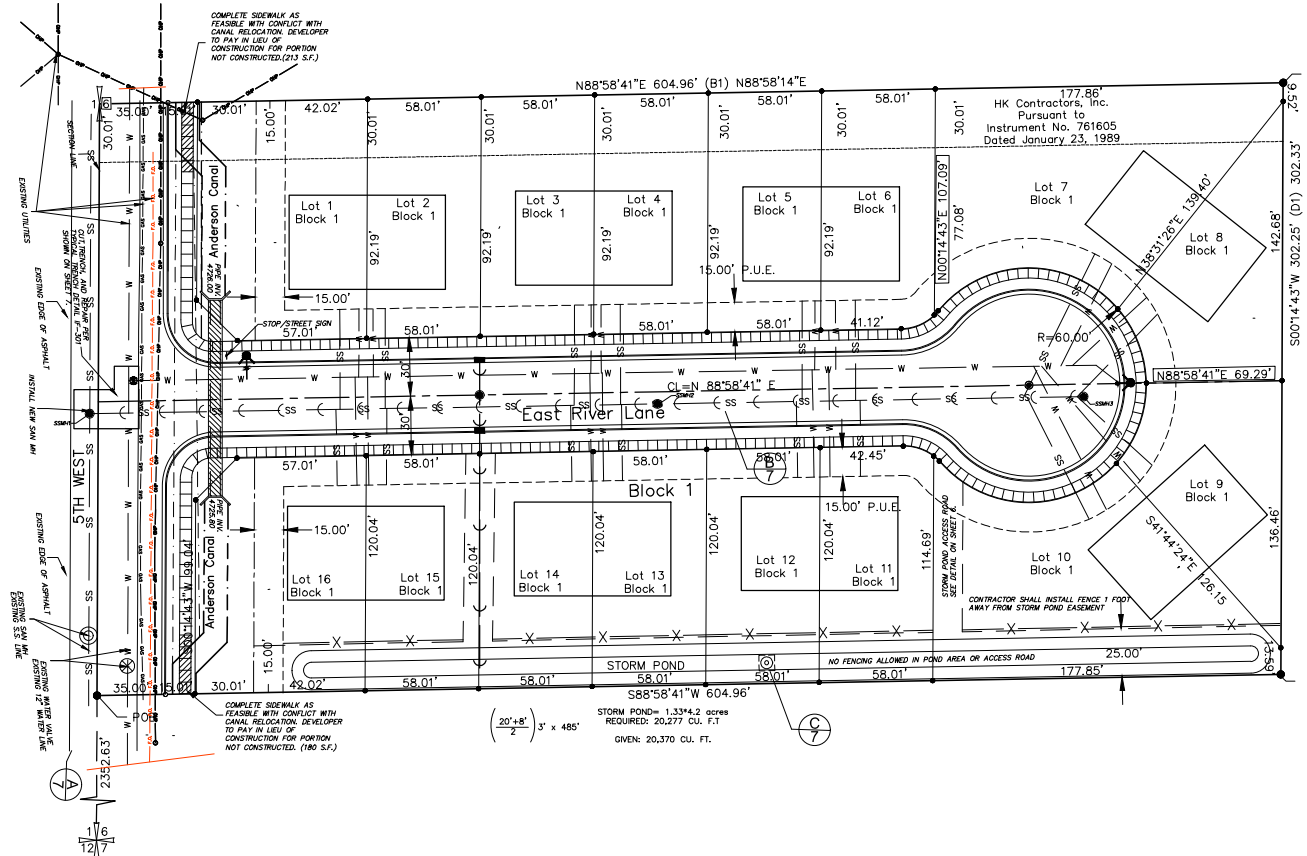
**Basis of Bearing**  
Record of Survey by Ellsworth Engineering, PLLC, Having Inst. No. 1626781

**Vertical Datum**  
City of Idaho Falls Benchmark  
Number 830 Being a 1" Steel Rod  
El.=4725.64 (NAVD 88)

Project Benchmark  
Point Number 8  
1/2" Iron Rod with Plastic Cap  
PLS 10944  
El.=4729.85

The existing Anderson Canal will be moved to the West side of Lots 1 and 16 as shown by the easement herein.

LANDSCAPING BETWEEN CURB AND SIDEWALK ON BOTH 5TH WEST AND EAST RIVER LANE SHALL BE MAINTAINED BY THE INDIVIDUAL PROPERTY OWNERS UNLESS A HOMEOWNER'S ASSOCIATION (HOA) IS ESTABLISHED AND THEN THE MAINTENANCE SHALL BE AS AGREED BETWEEN THE PROPERTY OWNERS AND THE (HOA).



SCALE: 1"= 30'  
(SCALE FOR 24"x36" PRINTS ONLY)

CITY OF IDAHO FALLS APPROVAL  
Revision 10/2018

Approved: Digitally signed by Kent Fugall  
Date: 2022.09.23 13:05:23 -0600  
City of Idaho Falls



**Aspen Engineering, Inc.**  
743 S. Capital Avenue  
Idaho Falls, Idaho 83402  
Phone (208) 542-1911



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**GENERAL LAYOUT**  
DAVID KUHN  
IDaho Falls  
IDaho

FOR NO. 2020-048  
DATE MAY 2022  
DRAWN BY JRL  
CHECKED BY JRL  
REVISIONS DATE

SHEET NO. 2  
8



# Memorandum

File #: 23-270

City Council Meeting

**FROM:** Wade Sanner, Director  
**DATE:** Tuesday, September 19, 2023  
**DEPARTMENT:** Community Development Services

## Subject

Quasi-judicial Public Hearing-Rezone from LC, Limited Commercial with Limited Development Approach Surface Airport Overlay Zone to HC, Highway Commercial with Limited Development Approach Surface Airport Overlay Zone, Zoning Ordinance and Reasoned Statement of Relevant Criteria and Standards on approximately 5.26 acres for NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1, 3rd Amended.

## Council Action Desired

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

1. Approve the Ordinance Rezoning approximately 5.26 acres for NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1, 3rd Amended Plat from LC with Limited Development Approach Surface Airport Overlay Zone to HC with Limited Development Approach Surface Airport Overlay Zone, under suspension of the rules requiring three complete and separate readings and request that it be read by title and published by summary (or consider the Ordinance on the first reading and that it be read by title, reject the Ordinance, or take other action deemed appropriate).

2. Approve the Reasoned Statement of Relevant Criteria and Standards for the Rezone from LC with Limited Development Approach Surface Airport Overlay Zone to HC with Limited Development Approach Surface Airport Overlay Zone and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

## Description, Background Information & Purpose

Attached is the application for Rezoning from LC with Limited Development Approach Surface Airport Overlay Zone to HC with Limited Development Approach Surface Airport Overlay Zone, Zoning Ordinance, and Reasoned Statement of Relevant Criteria and Standards for approximately 5.26 acres for NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1, 3rd Amended Plat. The Planning and Zoning Commission considered this item at its September 5, 2023, meeting and voted unanimously to recommend approval of the rezone to the Mayor and City Council as presented.

## Alignment with City & Department Planning Objectives



The rationale for rezoning must be consistent with the principles of the Comprehensive Plan, which includes many policies and goals related to Good Governance, Growth, Sustainability, and Livable Communities.

**Interdepartmental Coordination**

N/A

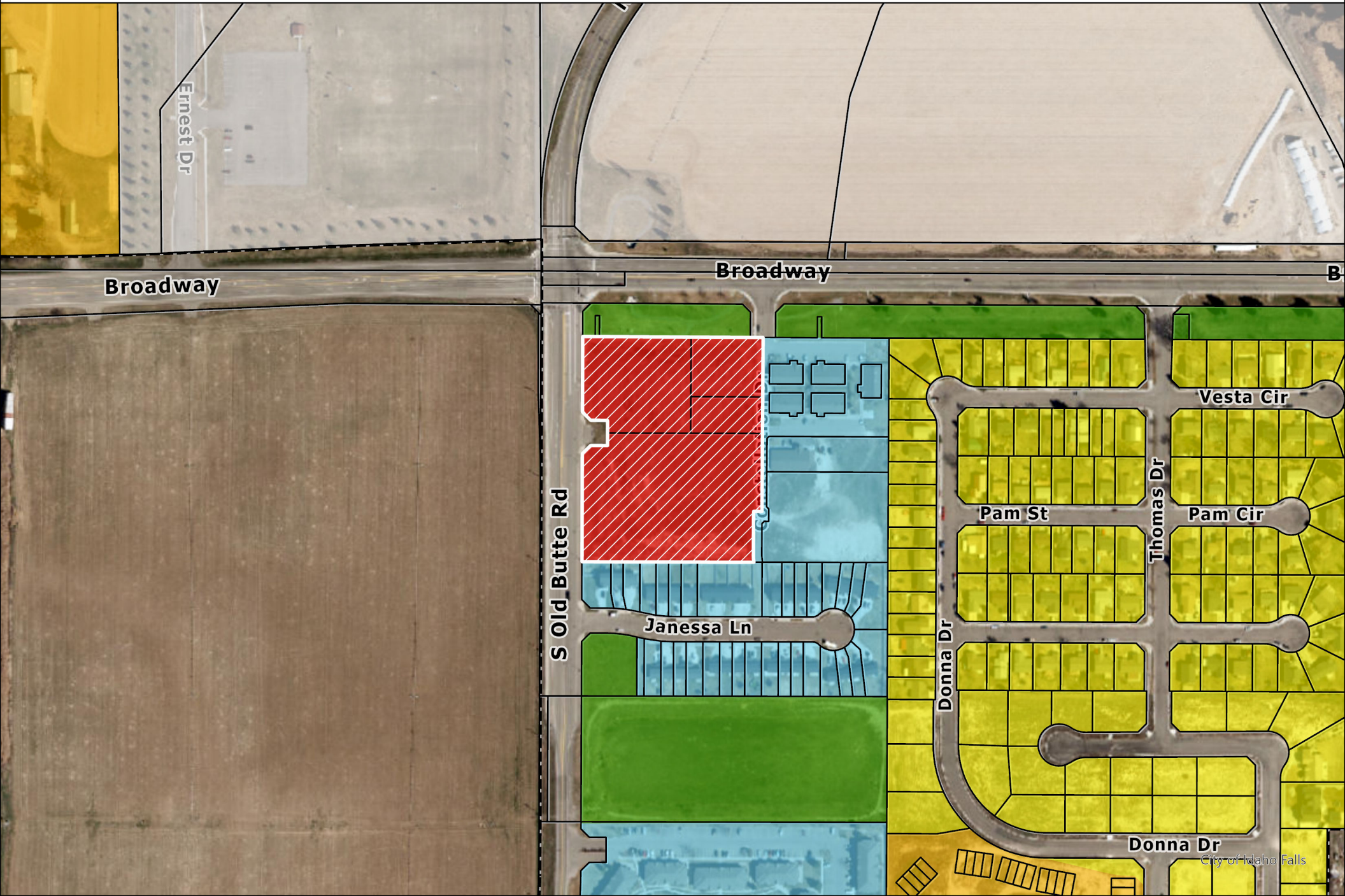
**Fiscal Impact**

N/A

**Legal Review**

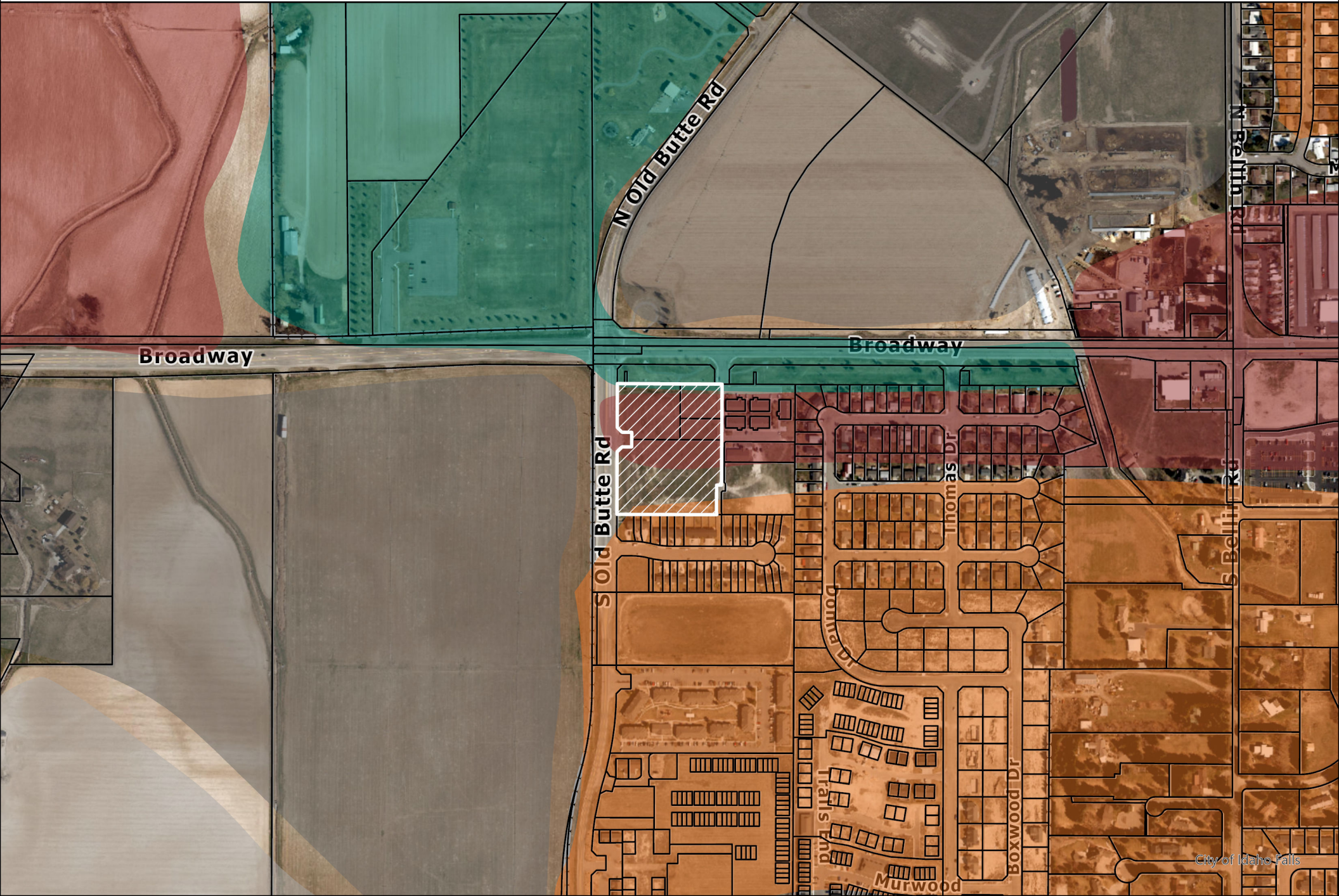
The application and ordinance have been reviewed by the City Attorney's Office pursuant to applicable law.

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





- General Urban
- Mixed Use Centers and Corridors
- Special Use
- Urban Core
- Industrial
- Natural and Open Space
- Suburban



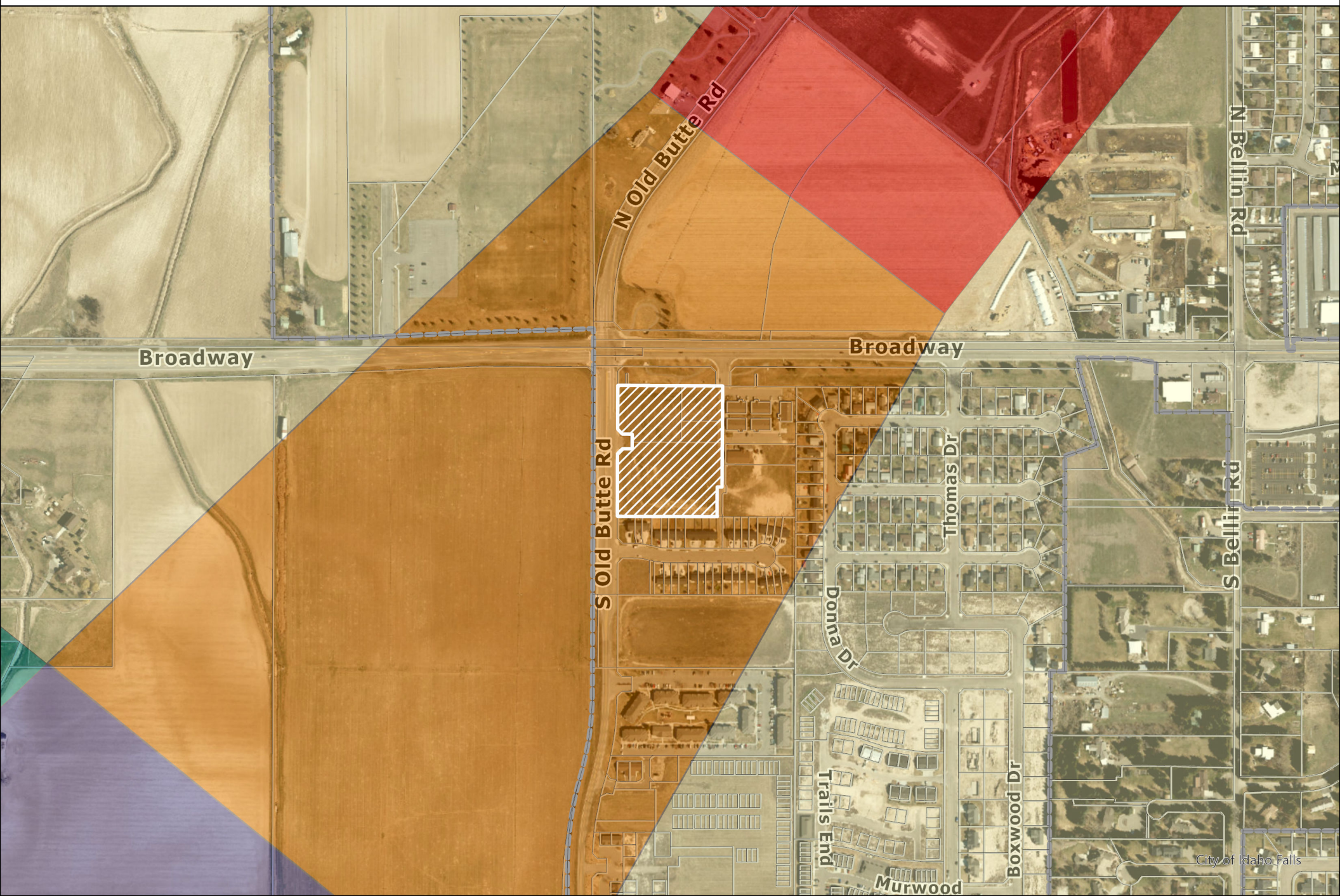
- Approach Surface

Controlled Development Approach Surface

Limited Development Approach Surface
- Controlled Development

Limited Development

No Development



## 11-2-4: ALLOWED USES IN COMMERCIAL ZONES.

**Table 11-2-2: Allowed Uses in Commercial Zones**

P = permitted use. C1 = administrative conditional use. C2 = Board of Adjustment conditional use. C3 = City Council conditional use. A blank denotes a use that is not allowed in that zone.

\*Indicates uses that are subject to specific land use provisions set forth in the Standards for Allowed Land Uses Section of this Chapter.

Proposed Land Use Classification	Commercial				
	PB	CC	LC	HC	PT
Accessory Use	P	P	P	P	P
Accessory Use, Fuel Station*		P	P	P	
Accessory Use, Storage Yard*		P	P	P	
Amusement Center, Indoor		P	P	P	
Amusement Center, Indoor Shooting Range*		P	P	P	
Amusement Center, Outdoor*				P	
Animal Care Clinic*	P	P	P	P	
Animal Care Facility*				P	
Bed and Breakfast*		P	P		P
Boarding /Rooming House		P	P		P
Building Material, Garden and Farm Supplies			P	P	
Cemetery*		C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>	
Club*		P	P	P	
Communication Facility		P	P	P	
Day Care, all Types*	P	P	P	P	P
Drinking Establishment		P		P	
Drive-through Establishment *	P*	P	P	P	P
Dwelling, Accessory Unit *		P	P	P	P
Dwelling, Multi-Unit*		P	P		P
Dwelling, Multi-Unit Attached*		P	P		P
Dwelling, Single Unit Attached*			P		
Dwelling, Single Unit Detached			P		
Dwelling, Two Unit			P		P
Eating Establishment		P	P	P	P
Eating Establishment, Limited	P	P	P	P	P
Financial Institutions	P	P	P	P	P
Entertainment and Cultural Facilities	P	P	P	P	P
Equipment Sales, Rental and Services			P	P	
Food Processing, Small Scale				P	
Food Store		P	P	P	P
Health Care and Social Services	P	P	P	P	P
Higher Education Center		P	P	P	P
Home Occupation*	P	P	P	P	P
Hospital*	C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>
Industry, Craftsman	P	P	P	P	

Proposed Land Use Classification	PB	CC	LC	HC	PT
Industry, Light		P		P	
Information Technology	P	P	P	P	P
Laundry and Dry Cleaning		P			P
Live-Work*	C <sub>2</sub>	P	P	P	P
Lodging Facility		P	P	P	P
Mortuary				P	P
Parking Facility		P	P	P	P
Pawn Shop		P			
Personal Service	P	P	P	P	P
Professional Service	P	P	P	P	P
Planned Unit Development*		C <sub>3</sub>	C <sub>3</sub>		C <sub>3</sub>
Public Service Facility*	C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>	C <sub>2</sub>
Public Service Facility, Limited	P	P	P	P	P
Public Service Use	P	P	P	P	P
Recreation Vehicle Park*				P	
Religious Institution*		P	P	P	P
Residential Care Facility	P	P	P	P	P
Retail		P	P	P	P
School		P	P	P	P
Short Term Rental*		P	P		P
Fuel Station		P	P	P	
Fuel Station, Super		C <sub>2</sub>	P	P	
Storage Facility, Indoor		P	P	P	P
Storage Facility, Outdoor				P	
Storage Yard*				P	
Transit Station		P	P	P	P
Vehicle Body Shop				P	
Vehicle Repair and Service		P	P	P	
Vehicle Sales, Rental and Service		P		P	
Vehicle Washing Facility		C <sub>2</sub>	C <sub>2</sub>	P	

(Ord. 3210, 8-23-18) (Ord. 3218, 9-13-18) (Ord. 3233, 12-20-18) (Ord 3277, 10-10-19)  
(Ord. 3358, 12-10-20) (Ord. 3451, 3-31-22)

**Table 11-5-6: Compatible Uses in the Airport Overlay**

“N” denotes a use that is not compatible and is prohibited.

“Y” denotes a use that is compatible.

“C” denotes a use that is compatible that meets one or more of the following indicated conditions where applicable:

- a. Residential densities must be less than nine (9) units per acre for areas of parcels located within the sixty five (65) decibel limit on the IFRA Noise Contours Map (located in the City’s Planning Division)
- b. Structures shall be shifted away from runway centerline when possible
- c. A recorded avigation easement is required
- d. A recorded avigation easement is required if within one thousand feet (1000’) of the runway.
- e. Permitted uses will not create bodies of water, or generate smoke, steam, or other visual obstruction
- f. An Airport Disclosure Note is required on plats recorded after the adoption of this Section.

Compatible Land Uses				
Land Use	No Development	Limited Development Approach Surface	Controlled Development Approach	Limited Development
Accessory use	N	C <sup>c,f</sup>	Y	Y
Adult Business	N	C <sup>c,f</sup>	Y	Y
Agriculture	N	Y	Y	Y
Agriculture Tourism	N	C <sup>c,f</sup>	Y	Y
Airport	Y	Y	Y	Y
Amusement Center, Indoor	N	N	Y	Y
Amusement Center, Indoor Shooting Range	N	N	Y	Y
Amusement Center, Outdoor	N	C <sup>c,e,f</sup>	C <sup>e</sup>	Y
Animal Care Clinic	N	C <sup>C,F</sup>	Y	Y
Animal Care Facility	N	C <sup>c,f</sup>	Y	Y
Artist Studio	N	C <sup>b,c,e,f</sup>	C <sup>e</sup>	C <sup>e</sup>
Auction, livestock	N	C <sup>c,e,f</sup>	Y	Y
Bed and Breakfast	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Boarding /Rooming House	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Building Contractor Shop	N	C <sup>b,c,f</sup>	Y	Y
Building Material, Garden and Farm Supplies	N	C <sup>b,c,f</sup>	Y	Y
Cemetery	N	C <sup>c,e,f</sup>	C <sup>e</sup>	Y
Club	N	N	Y	Y
Communication Facility	N	C <sup>b,c,e,f</sup>	Y	Y
Correctional Facility or Jail	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	Y
Day Care, all Types	N	C <sup>b,c,f</sup>	Y	Y
Drinking Establishment	N	C <sup>b,c,f</sup>	Y	Y
Drive-through Establishment	N	C <sup>b,c,f</sup>	Y	Y
Dwelling, accessory unit	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Dwelling, multi-unit	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Dwelling, single unit attached	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Dwelling, single unit detached	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Dwelling, two unit	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Eating Establishment	N	C <sup>b,c,f</sup>	Y	Y

Compatible Land Uses				
Land Use	No Development	Limited Development Approach Surface	Controlled Development Approach	Limited Development
Eating Establishment, limited	N	C <sup>b,c,f</sup>	Y	Y
Equipment Assembly	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Entertainment and Cultural Facilities	N	N	Y	C <sup>e</sup>
Equipment Sales, Rental and Services	N	C <sup>b,c,f</sup>	Y	Y
Financial Institutions N	N	C <sup>b,c,f</sup>	Y	Y
Food Processing, small scale	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Food Processing N Cb,c,e,f Cb,e Ce	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Food Store N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Fuel Station N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Fuel Station, super N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Health Care and Social Services N N Y Y	N	N	Y	Y
Higher Education Center N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Home Occupation N N Y Y	N	N	Y	Y
Hospital N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Industry, Craftsman N Cb,c,e,f Cb,e Ce	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Industry, Heavy N Cb,c,e,f Cb,e Ce	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Industry, Light N Cb,c,e,f Cb,e Ce	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Information Technology N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Laundry and Dry Cleaning N Cb,c,f Y Y	N	C <sup>b,c,f</sup>	Y	Y
Live-Work	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Lodging Facility	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Manufactured Home	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Medical Support Facility	N	C <sup>b,c,f</sup>	Y	Y
Mobile Home Park	N	N	C <sup>a,b</sup>	C <sup>d,f</sup>
Mortuary	N	N	Y	Y
Park and Recreation Facility	N	N	Y	Y
Parking Facility	C <sup>b,c,e,f</sup>	C <sup>b,c,f</sup>	Y	Y
Pawn Shop	N	C <sup>b,c,f</sup>	Y	Y
Personal Service	N	C <sup>b,c,f</sup>	Y	Y
Planned Unit Development	N	N	C <sup>a,d,f</sup>	C <sup>d,f</sup>
Professional Service	N	C <sup>b,c,f</sup>	Y	Y
Public Service Facility	C <sup>b,c,e,f</sup>	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Public Service Facility, limited	C <sup>b,c,e,f</sup>	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Public Service Use	C <sup>b,c,e,f</sup>	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Railroad Freight Terminal and Station	C <sup>b,c,e,f</sup>	C <sup>b,c,f</sup>	Y	Y
Recreational Vehicle Park	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Religious Institution	N	N	Y	Y
Research and Development	N	C <sup>b,c,e,f</sup>	C <sup>b,e</sup>	C <sup>e</sup>
Residential Care Facility	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Retail	N	C <sup>b,c,f</sup>	Y	Y

Compatible Land Uses				
Land Use	No Development	Limited Development Approach Surface	Controlled Development Approach	Limited Development
School	N	C <sup>b,c,f</sup>	Y	Y
Short Term Rental	N	N	C <sup>a,b,f</sup>	C <sup>d,f</sup>
Storage Facility, Indoor	N	C <sup>b,c,f</sup>	Y	Y
Storage Facility, self serve	N	C <sup>b,c,f</sup>	Y	Y
Storage Yard	N	C <sup>b,c,f</sup>	Y	Y
Terminal Yard, trucking and bus	C <sup>b,c,e,f</sup>	C <sup>b,c,f</sup>	Y	Y
Transit Station	C <sup>b,c,e,f</sup>	C <sup>b,c,f</sup>	Y	Y
Vehicle Body Shop	N	C <sup>b,c,f</sup>	Y	Y
Vehicle Repair and Service	N	C <sup>b,c,f</sup>	Y	Y
Vehicle Sales and Rentals	N	C <sup>b,c,f</sup>	Y	Y
Vehicle Washing Facility	N	C <sup>b,c,f</sup>	Y	Y
Warehouse	N	C <sup>b,c,f</sup>	Y	Y
Warehouse, Wholesale with flammable materials	N	N	C <sup>b</sup>	Y

(C) Airport Overlay Height Zone Limitations. In order to support the provisions of this Chapter, there are hereby created and established certain Height Zones, which Zones include all of the land and airspace above the surface of the land. Such Height Zones shall be known respectively as the Approach Surface Height Zone, Transitional Surface Height Zone, Horizontal Surface Height Zone and Conical Surface Height Zone. Such Height Zones are shown on the Idaho Falls Regional Airport Height Limitations Map, located in the City's Planning Division.

- (1) Establishment of Airport Height Zones: Each portion of a parcel located in more than one (1) of the following Height Zones shall be evaluated independently. The various zones are hereby established and defined as follows:
  - (a) Approach Surface Height Zone. The inner edge of this Zone coincides with the width of the primary surface and is one thousand (1,000) feet wide. The Approach Surface Height Zone expands outward uniformly from the edge of the runway to a width of sixteen thousand (16,000) feet at a horizontal distance of fifty thousand (50,000) feet. Its centerline is the continuation of the centerline of the runway.
  - (b) Transitional Surface Height Zone. The Transitional Surface Height Zone is the areas beneath the transitional surfaces.
  - (c) Horizontal Surface Height Zone. The Horizontal Surface Height Zone is established by swinging arcs of five thousand (5,000) or ten thousand (10,000) feet radii from the center of each end of the primary surface of the primary runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The Horizontal Surface Height Zone does not include the Approach Surface Height Zone or the Transitional Surface Height Zone. The Horizontal Surface Height Zone is constructed with ten thousand (10,000) feet radii.
  - (d) Conical Surface Height Zone. The Conical Surface Height Zone is established as the

**STAFF REPORT**  
**REZONE FROM LC, LIMITED COMMERCIAL WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE TO HC, HIGHWAY COMMERCIAL WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE**  
**NW 57,439 sq ft and the W Center 127,495 sq ft and the 19,708 sq ft of Lot 2, Block 1, WESTRIDGE Addition Division NO. 1 and Lot 29, Block 1, Westridge Addition, Division NO. 1 3rd Amended**  
**September 28, 2023**



Community  
Development  
Services

**Applicant:** Joseph Belloff

**Project Manager:** Naysha Foster

**Location:** Generally, the south-east corner of the intersection of Broadway and Old Butte Rd

**Size:** 5.26 acres

**Existing Zoning:**

Site: LC and Airport Overlay  
 North: P and LM  
 South: R3A  
 East: R3A  
 West: County A-1

**Existing Land Uses:**

Site: Vacant  
 North: Park strip & Airport Runway  
 South: Single-Dwelling Attached  
 East: Vacant  
 West: Ag

**Future Land Use Map:**

Mixed Use Centers and Corridors

**Attachments:**

1. Zoning Ordinance Information
2. Comprehensive Plan Policies
3. Maps and aerial photos

**Requested Action:** To approve a rezone for the under lying zone from LC, Limited Commercial with Limited Development Approach Surface Airport Overlay Zone to HC, Highway Commercial with Limited Development Approach Surface Airport Overlay Zone.

**History:** This property was annexed in 1993 with an initial zone of HC-1. In 2013 the property was zoned C1, and in 2018 to City Wide initiated zoning change the property was zoned LC. In 2019 the Limited Development Approach Surface Airport Overlay zone was added which prohibits residential land use.

**Staff Comments:** The property is currently vacant and is located directly south of the Airport runway. It is somewhat contiguous to US Hwy 20 with a small city parcel separating it from the highway. The Comprehensive Plan designates this area as Mixed-Use Centers and Corridors. The HC zone provides commercial zoning for retail services and services for the traveling public. Setbacks in the HC zone protect right of ways and promote safety on the highways. This is not the case in the LC zone. Setbacks are closer to property lines.

The closest HC Zone is at the intersection of Bellin/Grandview and Broadway. Old Butte Road is an arterial and intended to extend south to Sunnyside. Long range transportation plans call for the Old Butte Road connection to function as a truck route. The allowed uses in the HC zone are more in line with the uses allowed in the Limited Development Approach Surface Airport Overlay Zone. The LC Zone is out of sync with the Airport Overlay Zone. A change to HC would allow the property to be consistent with the Comprehensive Plan, transportation plans and the restrictions of the Airport Overlay Zone.

**Staff Recommendation:** Staff has reviewed the requested zone change and finds the request is consistent with the policies of the Comprehensive Plan and the Zoning Ordinance. Staff and the Planning and Zoning Commission recommends approval of the of the underlying zone change from LC to HC.

## Comprehensive Plan Policies:

### Rezoning

**Considerations:** Because the comprehensive plan provides only general guidance for zoning decisions, the Planning Commission shall also take the following considerations into account:

<b>Criteria for Rezoning Section 11-6- 5(I) of Ordinance</b>	<b>Staff Comment</b>
The Zoning is consistent with the principles of City's adopted Comprehensive Plan, as required by Idaho Code.	X
The potential for traffic congestion as a result of development or changing land use in the area and need that may be created for wider streets, additional turning lanes and signals, and other transportation improvements	N/A
The potential for exceeding the capacity of existing public services, including, but not limited to: schools, public safety services, emergency medical services, solid waste collection and disposal, water and sewer services, other public utilities, and parks and recreational services	N/A
The potential for nuisances or health and safety hazards that could have an adverse effect on adjoining properties	None
Recent changes in land use on adjoining parcels or in the neighborhood of the proposed zoning map amendment	None
<b>Zoning Application Questions:</b>	<b>Applicant's Response:</b>
Explain how the proposed change is in accordance with the City of Idaho Falls Comprehensive Plan.	The Idaho Falls Comprehensive Land Use Plan indicates that the subject parcel is intended for commercial use. The present Zone (LC) and requested zone (HC) are compliant with the plan.
What changes have occurred in the area to justify the request for rezone?	The subject parcel was annexed with a C1 Zone in 1993. In 2018 this zone was changed to LC by the Amended Zoning Ordinance. In 2019 the City of Idaho Falls placed the Limited Development Approach Surface Zone on the property. The requested rezone would conform the parcel with the Airport Overlay Zone. This Overlay Zone restricts all R uses. The present LC zone allows for R uses while the HC zone does not allow R uses. Farther more the Overlay Zone

	allows uses in the HC zone that are not allowed in the LC Zone. For example: storage facilities, light industrial, vehicle sales rentals and service. Since 1993 US Hwy 20 has been widened from 2 lanes to 5 lanes and the intersection of HWY 20 and Old Butte Road has been upgraded with turn lanes and a traffic signalization.
Are there existing land uses in the area similar to the proposed use?	Existing land use in the area is compatible with the requested HC zone. Fuel stations, storage facilities, parking facilities, and multiple retail establishments are located along HWY 20 (Broadway) to the east.
Is the site large enough to accommodate required access, parking, landscaping, etc. for the proposed use?	The subject parcel is of sufficient size (5+ acres) to accommodate HC zone requirements. There are dedicated accesses to the parcel from both Hwy 20 and from Old Butte Road.

September 5, 2023

7:00 p.m.

Planning Department

City Annex Conference Room

**MEMBERS PRESENT:** Commissioners Margaret Wimborne, Marsha McDaniel, Arnold Cantu, Dale Storer, Forrest Ihler, Bill Scott, Kristi Brower (Via teams).

**MEMBERS ABSENT:** Scott Geddes, Glen Ogden

**ALSO PRESENT:** Assistant Planning Director Kerri Beutler, Planners David Peterson, Caitlyn Long, Assistant City Attorney Michael Kirkham, Esq., and interested citizens.

**CALL TO ORDER:** Wimborne called the meeting to order at 7:00 p.m.

**MINUTES:** Scott moved to accept the minutes of August 1, 2023, Cantu seconded the motion. The motion passed unanimously.

**Business:**

**2. PLAT 23-020: FINAL PLAT. Sand Creek Estates Division No. 2.**

**Applicant: Connect Engineering, Travis Payne, 2295 N. Yellowstone Highway, Idaho Falls, Idaho.** Payne is requesting approval of the final division of the preliminary plat annexed in 2020. This is 33 lots in R1 zone, with one non buildable lot. Adjacent to south 15<sup>th</sup> East and is the final division of the Sand Creek Estates preliminary Plat.

Peterson presented the staff report, a part of the record.

Ihler asked about Tidepool Drive going off Woodruff and asked if the road will be finished on the north side of the road too. Peterson stated that it will be weird with a curb on one side because the north side is not annexed.

**McDaniel moved to recommend to the Mayor and City Council approval of the Final Plat for Sand Creek Estates Division No. 2, Ihler seconded. Wimborne called for roll call vote: Storer, yes; Cantu, yes; Scott, yes; Wimborne, yes; Ihler, yes; McDaniel, yes; Brower, yes. The motion passed unanimously.**

# Charlemont Farms, LLC

P O Box 51535

Idaho Falls, Idaho 83405

August 4, 2023

Community Development Services

RE: RZON23-004

The Neighborhood Meeting to inform the adjacent property holders of the requested zone change (RZON23-004) from LC to HC1 was held on August 3, 2023 at 6:00 PM.

Joseph Belloff arrived on site at 5:45.

At 6:10 Jeff Petersen representing the Petersen Family LLC tract located adjacent and west arrived and discussed the proposed zone change. He has not been happy with the Limited Development Approach Surface Zone overlay placed on his family's farm. Jeff Petersen commented that the HC zone request would be a good fit for the 5 acre corner tract.

No other interested parties attended the meeting.

Meeting adjourned at 6:45

# Charlemont Farms, LLC

P O Box 51535

Idaho Falls, Idaho 83405

July 18, 2023

Dear Resident,

Charlemont Farms has requested the City of Idaho Falls to re-zone the 5.26 acres at the corner of Hwy-20 and Old Butte Road from a limited commercial (LC) zone to a highway commercial (HC) zone.

We will hold a neighborhood meeting to give you an opportunity to review and discuss the zone change. This is not a public hearing and public officials will not be present.

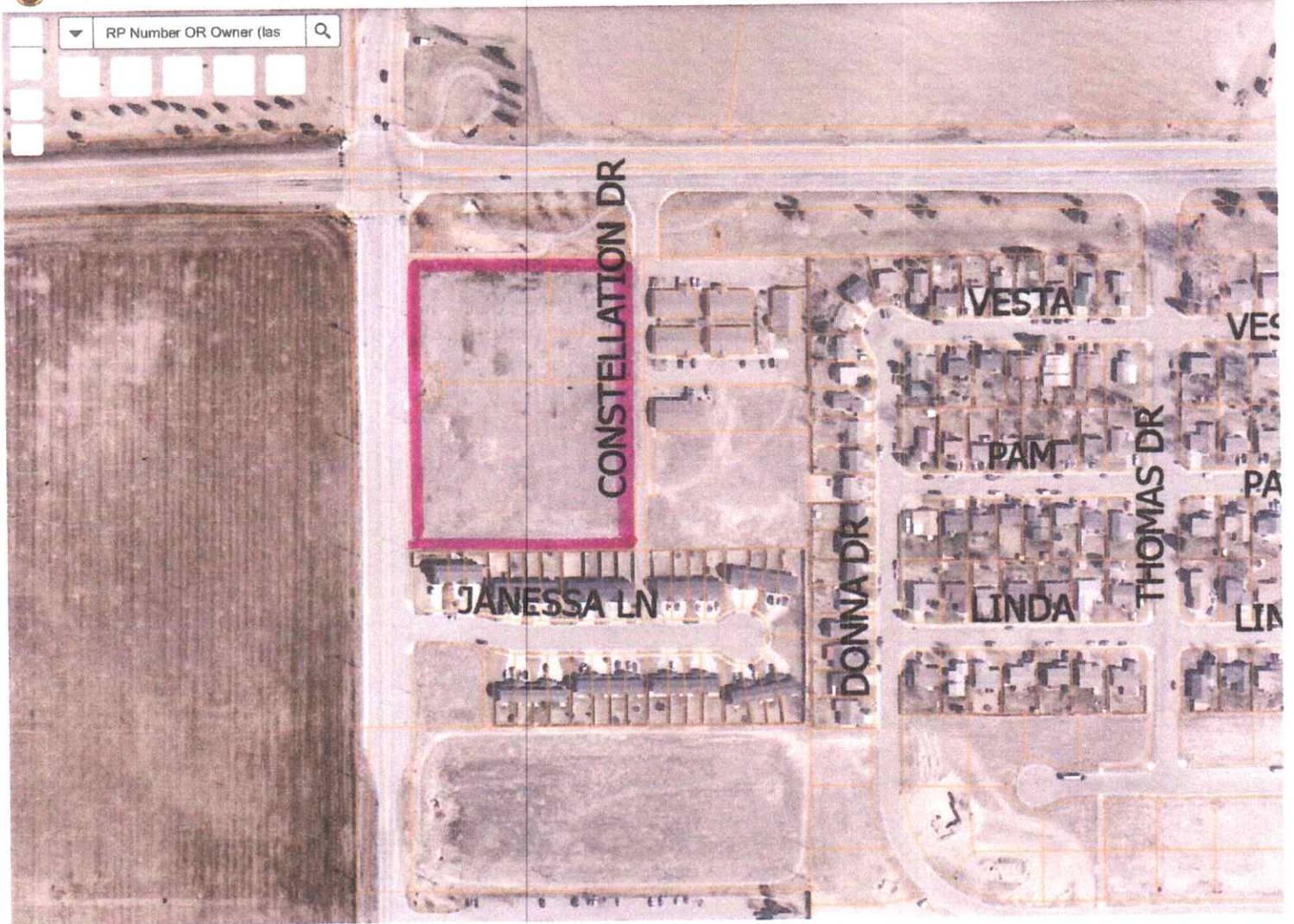
The neighborhood meeting will be held on August 3<sup>rd</sup> at 6:00 pm at the west entrance to the property located on Old Butte Road (see enclosed vicinity map).

Purpose for the re-zone:

- 1) The Idaho Falls Comprehensive Land Use plan indicates that the subject parcel is intended for commercial use. The present zone (LC) and the requested zone (HC) are compliant with the plan.
- 2) The subject parcel was annexed with a C1 Zone in 1993. In 2018 this zone was changed to LC by the Amended Zoning Ordinance. In 2019 the City of Idaho Falls placed the Limited Development Approach Surface Zone on the property. The requested rezone would conform the parcel with the Airport Overlay Zone. This Overlay Zone restricts all R uses. The present LC zone allows for R uses while the HC zone does not allow R uses. Farther more the Overlay Zone allows uses in the HC zone that are not allowed in the LC Zone. For example: storage facilities, light industry, vehicle sales rental and service. Since 1993 US HW 20 has been widened from 2 lanes to 5 lanes and the intersection of Hwy 20 and Old Butte Road has been upgraded with turn lanes and traffic signalization.
- 3) Existing land use in the area is compatible with the requested HC zone. Fuel stations, storage facilities, parking facilities, and multiple retail establishments are located along Hwy 20 (Broadway) to the east.
- 4) The subject parcel is of sufficient size (5+ acres) to accommodate HC zone requirements. There are dedicated accesses to the parcel from both Hw20 and from Old Butte Road.

If you have any questions about meeting or proposed re-zone, please contact Joe Belloff at [jfbelloff@q.com](mailto:jfbelloff@q.com).

Thank you,



Petersen Family LLC  
3310 Valencia Drive  
APT 5360  
Idaho Falls, ID 83404

LMD Management  
11035 Lavender Hill Drive  
Los Vegas, NV 89135

IRAR Trust FBO Stephen W Ward IRA  
1000 Broadway, Suite 350  
Oakland, CA 94607

LJR Landholding LLC  
PO Box 3525  
Idaho Falls, ID 83403-3525

Ward Family Trust  
1376 Cynthia Lane  
Carlsbad, CA 92008

Grant Thompson  
P.O Box 221  
Victor, ID 83455-0221

Calvin and Michelle Carey  
7178 Lost Trail Way  
Evansville, WY 82636

Ian and Brooklyn Mohnney  
2982 Janessa Lane  
Idaho Falls, ID 83402

Chris and Ashley Byington  
7366 Lupine Lane  
Victor, ID 83455

Tyler and Melinda Salvesen  
3070 Janessa Lane  
Idaho Falls, ID 83402

Amber Nelson  
2976 Janessa Lane  
Idaho Falls, ID 83402

Angela Standley  
3021 Janessa Lane  
Idaho Falls, ID 83402

Kristen Bernabee  
3064 Janessa lane  
Idaho Falls, ID 83402

DAW Properties LLC  
168 E Harvest Run Drive  
Idaho Falls, ID 83404

JAC Properties ID, LLC  
4090 E 534 N  
Rigby, ID 83442

Keegan Renfro  
3052 Janessa lane  
Idaho Falls, ID 83402

Aaron Woolf  
4331 Silverado Drive  
Idaho Falls, ID 83404

Catherine Maxwell  
3035 Janessa Lane  
Idaho Falls, ID 83402

Stephen Ward  
1376 Cynthia Lane  
Carlsbad, CA 92008

Kadin and Hannah Bloxham  
4212 N. Catalina Avenue  
Idaho Falls, ID 83401

Tala Togiai  
3035 Janessa Lane  
Idaho Falls, ID 83402

Ronald and Kay Beach  
3044 Janessa Lane  
Idaho Falls, ID 83402

Maria Luna  
2944 Janessa Lane  
Idaho Falls, ID 83402

Nicole Johnson  
3047 Janessa Lane  
Idaho Falls, ID 83402

Jaden and Aileen Corral  
3036 Janessa Lane  
Idaho Falls, ID 83402

Pamela Conners  
2975 Janessa Lane  
Idaho Falls, ID 83402

Amanda Harmon  
3055 Janessa Lane  
Idaho Falls, ID 8302

Skyline LLC  
2398 N Bramble Lane  
Idaho Falls, ID 83402

Stephanie Hunt  
2981 Janessa Lane  
Idaho Falls, ID 83402

City of Idaho Falls  
P.O.Box 50220  
Idaho Falls, ID 83405-0220

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2981 Janessa Lane  
Idaho Falls, ID 83402

City of Idaho Falls  
P.O.Box 50220  
Idaho Falls, ID 83405-0220

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE REZONING OF APPROXIMATELY 5.26 ACRES AS DESCRIBED IN SECTION 1 OF THIS ORDINANCE FROM LC, LIMITED COMMERCIAL WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE, TO HC, HIGHWAY COMMERCIAL WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, the proposed zoning district of lands described in Section 1 is HC, Highway Commercial with Limited Development Approach Surface Airport Overlay Zone for such annexed lands and such zoning is consistent with the current City of Idaho Falls Comprehensive Plan Land use designation “Mixed Use Center and Corridors” and “Limited Development Approach Surface” Airport Overlay zone; and

WHEREAS, the proposed zoning district is consistent and compatible with the existing and surrounding zoning districts and is consistent with the City of Idaho Falls Comprehensive Plan as well as the Airport Overlay Zone; and

WHEREAS, Idaho Falls Planning and Zoning Commission held a duly noticed public hearing on September 5, 2023, and recommended approval of zoning the subject property to HC for the underlying zone; and

WHEREAS, the Idaho Falls City Council conducted a duly noticed public hearing and passed a motion to approve this zoning on September 28, 2023.

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

**SECTION 1: LEGAL DESCRIPTION:**

This ordinance shall apply to the following described lands in Idaho Falls, Idaho, Bonneville County, to-wit:

NW 57,439 square feet and the west center 127,495 square feet and 19,708 square feet of Lot 2, Block 1 of Westridge Addition NO. 1, and Lot 29, Block 1, of Westridge Addition NO.1 3<sup>rd</sup> Amended.

**SECTION 2. Zoning.** That the property described in Section 1 of this Ordinance be and the same hereby is zoned “HC Zone with the Airport Overlay Zone” and the City Planner is hereby ordered to make the necessary amendments to the official maps of the City of Idaho Falls which are on file at the City Planning Department Offices, 680 Park Avenue.

**SECTION 3.** 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 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, 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; PROVIDING FOR  
THE REZONING OF APPROXIMATELY 5.26 ACRES AS DESCRIBED IN  
SECTION 1 OF THIS ORDINANCE FROM LC, LIMITED COMMERCIAL  
WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT  
OVERLAY ZONE, TO HC, HIGHWAY COMMERCIAL WITH LIMITED  
DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE; AND  
PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND  
ESTABLISHING EFFECTIVE DATE.”

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

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

**ZONE CHANGE FROM LC, LIMITED COMMERCIAL WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE, TO HC, HIGHWAY COMMERCIAL, WITH LIMITED DEVELOPMENT APPROACH SURFACE AIRPORT OVERLAY ZONE, GENERALLY LOCATED IN THE SOUTH-EAST CORNER OF THE INTERSECTION OF BROADWAY AND OLD BUTTE ROAD.**

**WHEREAS**, the applicant filed an application for a rezone on July 17, 2023; and

**WHEREAS**, this matter came before the Idaho Falls Planning and Zoning Commission during a duly noticed public hearing on September 5, 2022; and

**WHEREAS**, this matter came before the Idaho Falls City council during a duly noticed public hearing on September 28, 2023; and

**WHEREAS**, having reviewed the application, including all exhibits entered and having considered the issues presented:

### **I. RELEVANT CRITERIA AND STANDARDS**

1. The City Council considered the request pursuant to City of Idaho Falls Comprehensive Plan, City of Idaho Falls Zoning Ordinance, City of Idaho Falls Subdivision Ordinance, the Local Land Use Planning Act, and other applicable development regulations.
2. The property is approximately 5.26 acres generally located in the south-east corner of the intersection of Broadway and Old Butte Road.
3. The Comprehensive Plan designates this area as Mixed-Use Centers and Corridors.
4. The proposed zoning of HC is consistent with the Comprehensive Plan map, the Limited Development Approach Surface Airport Overlay Zone and policies and existing zoning and land uses in the area.
5. Idaho Falls Planning and Zoning Commission recommended approval of zoning of the under lying zone of the property to HC.

### **II. DECISION**

Based on the above Reasoned Statement of Relevant Criteria, the City Council of the City of Idaho Falls approved the change of zoning as presented.

PASSED BY CITY COUNCIL OF THE CITY OF IDAHO FALLS

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023

---

Rebecca L. Noah Casper - Mayor