



**CITY COUNCIL MEETING
SPECIAL MEETING
Tuesday, November 22, 2016
7:30 p.m.**

**CITY COUNCIL CHAMBERS
680 Park Avenue
Idaho Falls, ID 83402**

*Thank you for your interest in City Government. If you wish to express your thoughts on a matter listed below, please contact Councilmembers by email or personally **before** the meeting as testimony on agenda items will not be taken unless a hearing is indicated. Be aware that an amendment to this Agenda may be made upon passage of a motion that states the reason for the amendment and the good faith reason that the Agenda item was not included in the original Agenda posting. City Council Meetings are live streamed at www.idahofallsidaho.gov, then archived on the city website. If you need communication aids or services or other physical accommodations to participate or access this meeting please contact City Clerk Kathy Hampton at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 as soon as possible and they will make an effort to accommodate your needs.*

1. Call to Order.

2. Pledge of Allegiance.

3. Public Comment. *Members of the public are invited to address the City Council regarding matters that are **not** on this Agenda or already noticed for a public hearing. When you address the Council, please state your name and address for the record and please limit your remarks to three (3) minutes. Please note that matters currently pending before the Planning Commission or Board of Adjustment which may be the subject of a pending enforcement action, or which are relative to a City personnel matter are not suitable for public comment.*

4. Consent Agenda. *Any item may be removed from the Consent Agenda at the request of any member of the Council for separate consideration.*

A. Items from the City Clerk:

- 1) Approval of Expenditure Summary for the month of October, 2016.
- 2) Approval of Minutes from the November 7, 2016 Council Work Session and November 10, 2016 Council Meeting.
- 3) Approval of License Applications, including Beer Licenses for Bear & Blue, Copper Rill Restaurant, Diamond Concessions, Garcias Street Taco, Hilton Garden Inn, Home 2 Suites by Hilton, Jakers of Idaho Falls, Krung Thep, Miss Kim's Place, New Yummy House, Plum Loco, Samoa Club, Sandpiper East LLC, Skyline Lanes, Snake Bite, and, The Zone, all carrying the required approvals.

RECOMMENDED ACTION: To approve all items on the Consent Agenda according to the recommendations presented.

5. Regular Agenda.

A. Fire Department

- 1) Fire Service Memorandum of Understanding (MOU) between Idaho Falls and Ammon:** For consideration is the MOU for Fire Services between the City of Idaho Falls and the City of Ammon.

The intent of this MOU is to provide a mechanism to assist each other with equipment and staffing for major emergencies when City resources are depleted. The MOU also addresses a method of compensation.

RECOMMENDED ACTION: To approve the MOU for Fire Services between the City of Idaho Falls and the City of Ammon and give authorization for the Mayor and City Clerk to execute the necessary document (or take other action deemed appropriate).

2) Mutual Aid Agreement with City of Blackfoot and Caribou County: For consideration is a Mutual Aid Agreement with the City of Blackfoot and Caribou County regarding assisting each other with EMS (Emergency Medical Services) calls for service.

RECOMMENDED ACTION: To approve the Mutual Aid Agreement with the City of Blackfoot and Caribou County and give authorization for the Mayor and City Clerk to execute the necessary document (or take other action deemed appropriate).

B. Idaho Falls Power

1) Approve Pole Attachment License Agreement with Qwest Corporation dba CenturyLink: For consideration is a Pole Attachment License Agreement with Qwest Corporation dba CenturyLink. This reciprocal agreement will govern attachments of one entity on poles owned by the other entity and will also establish rules for work coordination between the two entities, set requirements for make ready work, and establish fees associated with pole attachments.

RECOMMENDED ACTION: To approve the Pole Attachment License Agreement with Qwest Corporation dba CenturyLink and give authorization for the Mayor and City Clerk to execute the necessary document (or take other action deemed appropriate).

C. Public Works

1) Cooperative Agreement for Sewage Treatment – City of Ucon: The current Sewage Treatment agreement with the City of Ucon was approved in February of 1986 and will expire at the end of the month. For your consideration is a Cooperative Agreement for Sewage Treatment for the City of Ucon for the next five (5) years.

RECOMMENDED ACTION: To approve the Cooperative Agreement for Sewage Treatment for the City of Ucon and give authorization for the Mayor and City Clerk to execute the necessary document (or take other action deemed appropriate).

2) 17th Street and 25th E (Hitt Road) Intersection Improvement Project – Joint Powers Agreement with the City of Ammon: For consideration is a Joint Powers Agreement with the City of Ammon for proposed roadway improvements to 17th Street and 25th E (Hitt Road). The agreement addresses shared costs and other applicable items associated with improvements to the intersection of 17th Street and 25th E (Hitt Road).

RECOMMENDED ACTION: To approve the Joint Powers Agreement with the City of Ammon and give authorization for the Mayor and City Clerk to execute the necessary document (or take other action deemed appropriate).

3) Request to Negotiate Professional Services with Murray, Smith and Associates to Design Well No. 1 Upgrades: Proposals were solicited, received, and evaluated for design services for the Well No. 1 Upgrades Project. Based upon those evaluations, Public Works recommends selecting Murray, Smith and Associates to perform design services, and is requesting authorization to negotiate a scope of work and fee structure.

RECOMMENDED ACTION: To authorize Public Works to negotiate a scope of work and fee structure with Murray, Smith and Associates for the Well No. 1 Upgrades Project (or take other action deemed appropriate).

6. **Motion to Adjourn.**

CONSENT AGENDA:

City of Idaho Falls
Expenditure Summary
From 10/01/2016 To 10/31/2016

Fund	Total Expenditure
General Fund	2,043,542.76
Street Fund	565,676.04
Recreation Fund	16,276.31
Library Fund	51,321.48
MERF Fund	170,040.00
EL Public Purpose Fund	37,394.53
Bus Improvement District	12,500.00
Golf Fund	30,268.96
Self-Insurance Fund	217,501.02
Street Capital Imp Fund	2,750.00
Traffic Light Cap Imp F	49,328.86
Airport Fund	913,021.53
Water & Sewer Fund	895,623.80
Sanitation Fund	523,389.45
Ambulance Fund	57,113.77
Electric Light Fund	3,008,544.29
Payroll Liability Fund	1,943,124.65
	10,537,417.45

November 7, 2016

The City Council of the City of Idaho Falls met in Special Council Meeting (Council Work Session), Monday, November 7, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 3:00 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember Barbara Ehardt
Councilmember Ed Marohn
Councilmember Thomas Hally
Councilmember John B. Radford
Councilmember David M. Smith (joined by phone at 4:15 p.m.)
Councilmember Michelle Ziel-Dingman

Also present:

Brad Cramer, Community Development Services Director
Kerry Beutler, Community Development Services Assistant Director
Dana Briggs, Economic Development Coordinator
Pamela Alexander, Municipal Services Director
Dave Hanneman, Fire Chief
Chris Fredericksen, Public Works Director
Greg Weitzel, Parks and Recreation Director
Kerry Hammon, Public Information Officer
Randy Fife, City Attorney
Kathy Hampton, City Clerk

Mayor Casper called the meeting to order at 3:03.

After brief discussion, it was moved by Councilmember Hally, seconded by Councilmember Marohn, to revise the agenda and change the order of items to facilitate the better use of time for directors. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to receive recommendations from the Planning and Zoning Commission November 1, 2016 meeting pursuant to the Local Land Use Planning Act, and to accept all other minutes. Roll call as follows: Aye – Councilmembers Dingman, Radford, Marohn, Hally, Ehardt. Nay – none. Motion carried.

Mayor's Report, Calendar Items, and Announcements:

November 9, Association of Idaho Cities (AIC) Fall District Meeting

November 14, ceremony to recognize the White House Christmas tree coming through Idaho Falls

November 16, public meeting at Eastern Idaho Technical College (EITC) regarding the 17th Street and Hitt Road intersection reconstruction

December 5, Eastern Idaho Mayor's will be meeting with Eastern Idaho Legislators prior to the upcoming legislative session

Mayor Casper briefly reviewed upcoming November and December Work Sessions and Council Meetings with regard to the holidays. She stated she realizes the pressure of lengthy work sessions and believes the number of subject items may not be decreasing. She requested any alternative suggestions from Councilmembers with possible changes to be launched in the new year.

Mayor Casper reminded the Councilmembers that Kami Morrison, the Mayor's executive assistant, is available as administrative support for the Councilmembers.

Mayor Casper stated due to recent Open Meetings Law trainings, which follows her platform of open government, a previous sub-committee meeting was re-done. She indicated the law regarding open meetings has not changed

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although the individual interpretations may have. Therefore, the practice for liaison meetings, which has typically consisted of two (2) Councilmembers as an informational meeting only, will be changed. She proposed only one (1) Councilmember meet with individual directors. She has re-worked Council assignments, in which the second Councilmember is now listed at back-up. She stated the purpose of liaisons is for developing expertise and strength within a department to then be shared with other Councilmembers. Mayor Casper briefly reviewed a Transparency Resolution adopted from the City of Twin Falls for Council consideration which may assist with clarification of interpretation. She indicated through correspondence with City of Ammon Mayor Dana Kirkham, all combined meetings will be properly noticed with each City taking responsibility for their meeting notices.

Council reports:

Councilmember Hally acknowledged Bear Prairie, Brad Cramer, and PJ Holm for their recent Distinguished Under 40 recognition in the Idaho Falls Magazine.

Councilmember Marohn stated the Civic Auditorium Committee is moving along well with proposals expected in the near future. He stressed the importance of the proposed Civic Auditorium Use Agreement as there has been no agreement since 1993. He, along with Councilmember Ehardt, will be meeting with the City of Ammon in the near future regarding fire support services.

Councilmember Radford stated the National Community Mobility Institute will be in Idaho Falls November 14-16.

Councilmember Ehardt had no items to report.

Councilmember Dingman had no items to report.

Community Support Grants Recommendations:

Councilmember Dingman stated the public meeting regarding the Community Support Grants recommendations was re-held on October 28, 2016. She indicated the sub-committee recommendations are slightly different than the previous discussion and believes each recommendation should be individually approved. The total recommended amount increased by \$3,500. Councilmember Marohn stated the Council previously approved the budgeted amount of \$181,099 within the encumbrances and he strongly believes that amount should not increase. Councilmembers Dingman and Hally concurred. Brief discussion of each grant request followed.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to recommend \$7,500 to the Eastern Idaho Visitor Information Center and Convention and Visitors Bureau. Roll call as follows: Aye – Councilmember Radford, Marohn, Dingman. Nay – Councilmembers Ehardt, Hally. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to recommend \$7,349 to Hospice of Eastern Idaho for the Community Grants Program. Roll call as follows: Aye – Councilmember Ehardt, Marohn, Hally, Radford, Dingman. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve \$7,500 for the Art Museum of Eastern Idaho for the Community Grants Program. Roll call as follows: Aye – Councilmember Hally, Dingman, Radford, Ehardt, Marohn. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Radford, to approve \$6,000 to the Behavioral Health Crisis Center for the Community Grants Program. Roll call as follows: Aye – Councilmember Ehardt, Radford, Marohn, Dingman, Hally. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Radford, to approve \$1,050 to the Center for Hope Recovery Center in the Community Grants Program. Roll call as follows: Aye – Councilmember Hally, Marohn, Radford, Dingman, Ehardt. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Radford, to approve \$40,000 to the Bonneville County Veterans Memorial Commission in the Community Grants Program. It was then moved by Councilmember Marohn, seconded by Councilmember Dingman, to amend the amount from \$40,000 to \$39,000

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which motion passed following a unanimous vote. Roll call as follows on the amended motion: Aye – Councilmember Hally, Marohn, Radford, Dingman, Ehardt. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Hally, to approve \$10,000 to the Senior Citizen's Community Center in the Community Grants Program. Roll call as follows: Aye – Councilmember Dingman, Hally. Nay – Councilmembers Ehardt, Radford, Marohn. Motion failed. It was moved by Councilmember Ehardt, seconded by Councilmember Radford, to approve \$18,000 to the Senior Citizen's Community Center. It was then moved by Councilmember Hally, seconded by Councilmember Dingman, to amend the motion to approve \$15,000 to the Senior Citizen's Community Center which motion passed following a unanimous vote. Roll call as follows: Aye – Councilmembers Hally, Dingman, Marohn, Radford, Ehardt. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve \$7,000 to the Idaho Falls Symphony in the Community Grants Program. Roll call as follows: Aye – Councilmember Radford, Dingman, Ehardt, Hally, Marohn. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve \$30,000 to the Idaho Falls Arts Council in the Community Grants Program. Roll call as follows: Aye – Councilmember Hally, Marohn, Dingman, Ehardt, Radford. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve \$50,000 to the Museum of Idaho in the Community Grants Program. Roll call as follows: Aye – Councilmember Dingman, Radford, Hally, Marohn, Ehardt. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve \$5,000 to the Idaho Falls Historic Downtown Foundation in the Community Grants Program. Roll call as follows: Aye – Councilmember Marohn, Ehardt, Radford, Dingman, Hally. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Radford, to approve \$2,700 to the Domestic Violence and Sexual Assault Center in the Community Grants Program. Roll call as follows: Aye – Councilmember Hally, Dingman, Marohn, Radford, Ehardt. Nay – none. Motion carried.

Councilmember Dingman stated Ms. Briggs will assist with future applications process. She recommended a bi-annual report be submitted from each organization which would include a project timeline, budgets, expenditures, what outcomes have occurred, and a plan for any unspent money. It was also recommended the process occur prior to future budget sessions.

Short-term Rentals Discussion:

Director Cramer stated discussion needs to occur for short-term rentals prior to a formal proposal. He indicated by review of other cities there is no consistent, best practice way to deal with short-term rentals and believes this will be an on-going conversation. He stated short-term rentals would apply to rentals for less than 30 days as lodging houses and apartments go beyond 30 days. He indicated staff has received phone calls, not necessarily for complaints, but inquiring about short-term rentals. He stated staff has not taken a hard approach for enforcement at this time due to the ordinance which was written in 1960's. He briefly reviewed the search capability for short-term rentals, stating approximately two (2) tenths of a percent being listed as available. He stated there is a need to be respectful to neighbors but also recognizes the need for short-term housing for businesses, medical facilities, and students. Director Cramer indicated any nuisance complaints/issues are currently addressed in City Code and believes there is no need for duplication. He stated any Home Owners Association (HOA) would be responsible to enforce their own neighborhoods. Brief discussion followed regarding the economic growth and the business community. Assistant Director Beutler stated short-term rentals would be allowed in all zone districts where residential uses are allowed. A short-term rental would need to comply with all general requirements outlined in the

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draft document. Mayor Casper believes any fees associated with enforcement, inspection, and permits should be considered. Brief discussion followed regarding concerns for non-owner occupied residences. Director Cramer proposed next steps: public outreach in January including listening posts as well as online survey to the business community and residents; follow-up Work Session discussion in February; Planning and Zoning Commission public hearing in March; public hearing with the Council in April.

Development Ordinance Discussion – Line Extensions/Waivers:

Director Cramer stated this item is a follow-up discussion regarding electric line extension waivers or adjustments. A draft resolution, including a corresponding map, has been prepared outlining reasons for any waivers. An ordinance will also be drafted to coincide with the Resolution and any related fees. He anticipates an annual review of line extension/waivers with the corresponding map. This item will be included on the November 10 Council Meeting agenda for Council approval.

Magistrate Court Invoice Discussion:

Director Alexander stated the Bonneville County Magistrate Court invoice was previously allocated in the non-departmental account, and is now included in the City Attorney's current budget. She reviewed the history of the original invoice of \$200,000, which began in 2013. A payment plan of funding increase over the course of three (3) years was scheduled for anticipated cost increase. Mr. Fife stated the law allows Magistrate Divisions to order cities to provide a court room, staff, and other supplies to function. He indicated most counties/cities enter into agreements, including Bonneville County and Idaho Falls. Details of services and allocation of costs are estimated by the County. Mayor Casper stated residents pay County taxes in addition to City taxes and believes access to the courts should be equitable. She indicated legislation discussion will be occurring regarding court fees. Brief general discussion followed. This item will be included on November 10 Council Meeting Consent Agenda for Council approval.

Civic Auditorium Agreement Discussion and Update:

Director Alexander stated after several coordination meetings with representatives from Idaho Falls School District 91, a Civic Auditorium Use Agreement has been finalized. This agreement was created to memorialize the current use with the school district as no agreement had been in place since 1993. She reviewed other terms of the agreement and stated the school district board reviewed and approved the agreement on October 12, 2016. She indicated this is an annual agreement and conversation with the school district will occur in spring of 2017 with any possible changes. This item will be included on the November 10 Council Meeting agenda for Council approval.

3-D Walk-thru of Fire Station:

Chief Hanneman stated Fire Station No. 1 is approximately two-thirds into the construction. The construction is staying within budget with anticipated move-in date for March 2017. He presented the 3-D walk-thru which is currently available for viewing on the City website. He indicated the exterior brick is currently being installed and the parking lot will be constructed last due to the cold-weather season. Chief Hanneman indicated he could arrange a live walk-thru of Fire Station No. 1 if Council desires.

Snow Removal Update:

Director Fredericksen stated maps of snow removal were previously submitted to Council for consideration as well as an ordinance revision related to parking restrictions. He anticipates adoption of the ordinance to occur in December 2016. He indicated the snow removal budget is the same as the previous year although staff has identified potential savings which could address additional snow removal in residential areas by City staff as opposed to contractors. The ordinance change would eliminate the proclamation and any communication of the snow removal policy to the public would continue through the Public Information Officer. Director Fredericksen stated the practice to remove 10' berm of snow from driveways will continue. He indicated staff is working to simplify the policy for easier use by residents. The policy will also be available on the City website.

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1st Street and Freeman Avenue Traffic Signal Discussion:

Director Fredericksen stated through inter-coordination meetings with Idaho Falls Power (IFP), a larger IFP truck snagged the overhead wire that holds the traffic signal. He indicated there is not sufficient Right-of-Way or easement to support the power poles with guide wires. He believes this has become a safety concern and upon further analysis, it was determined the intersection does not meet traffic signal warrants. Director Fredericksen will be submitting a proposal to remove the overhead traffic signal system and place LED (Light-emitting Diode) stop sign controls at the intersection which will be consistent with the Federal Aid Project scheduled for the Lomax corridor in the following year. There was consensus of the Council to proceed with the traffic signal removal.

Fourth of July Review and Fireworks Sponsor Analysis:

Mayor Casper stated the recent announcement of Melaleuca to relocate the fireworks show touched off concern from the community. She indicated there has been no pre-existing formal analysis to host large crowds or events and believes now is the time to evaluate potential venues with regard to safety, traffic and engineering, and crowd control concerns. She stated a preliminary analysis has been performed by a team consisting of representatives from the Fire Department, Police Department, Public Works, Parks and Recreation, and Public Information Officer. She indicated none of the research collected is aimed at a particular outcome. She expressed her gratitude toward Melaleuca and believes their contributions have made a truly remarkable event over the previous 24 years with a positive impact to the community. Mayor Casper turned the presentation to Director Weitzel with general discussion throughout:

Special Event Presentation Overview:

-Evaluated three (3) areas:

- John's Hole
- Sandy Downs Park
- Snake River Landing

-Scoring Matrix – The committee evaluated seven (7) criteria when scoring the locations.

Criteria

- Traffic
- Parking
- Crowd Control and Access
- Facilities
- Safety and Security
- Potential Firework Launch Site
- Future Growth

Director Weitzel reviewed pros and cons for each of the criteria at each location.

Scoring of locations, including the criteria, were based on a scale from 1-5 from a Grading Matrix. Overall grading as follows:

- John's Hole – 24.5
- Sandy Downs – 15.4
- Snake River Landing – 24.1

Next Steps include:

- More detailed evaluation on proposed locations by staff
- Public involvement (survey)
- Decide on event location – time-sensitive for planning purposes
- Other Considerations – economic impact and potential sponsorships

Mayor Casper indicated the data compiled from the survey should assist with serving the community needs including any logistics. She stated additional information and discussion will be scheduled for the December 12 Work Session with Council's possible recommendation for a location. Brief comments followed. Director Weitzel believes this is an opportunity for the City to learn and grow for any future special events.

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Eclipse Planning Information and Review of Incident Management Planning:

Mayor Casper stated after an informational meeting hosted by the Chamber of Commerce, the number of initial crowds may exceed what has been anticipated. She indicated the City may need to assist with the coordination of people, including public safety. Chief Hanneman reviewed the Level 3 Incident Management Response, which includes multiple counties, and believes this is the best way to address large crowds. He indicated the management team, consisting of representatives from Fire, EMS, Law Enforcement, and Public Health, will require 3-4 months to plan for this large event. The Eclipse will be occurring on August 21, 2017 with totality occurring at 11:33 a.m. Additional discussion of this item will occur in the near future.

There being no further business, it was moved by Councilmember Marohn, seconded by Councilmember Ehardt, that the meeting adjourn at 6:26 p.m. which motion passed following a unanimous vote.

CITY CLERK

MAYOR

November 10, 2016

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, November 10, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember David M. Smith
Councilmember Thomas Hally
Councilmember John B. Radford
Councilmember Michelle Ziel-Dingman
Councilmember Barbara Ehardt
Councilmember Ed Marohn

Also present:

Randy Fife, City Attorney
Kathy Hampton, City Clerk
All available Department Directors

Mayor Casper invited Ryan Leavitt, a seventh-grade student at Eagle Rock Middle School and Boy Scout Troop #323, to come forward and lead those present in the Pledge of Allegiance.

Mayor Casper requested any public comment not related to items on the agenda.

Russell Leavitt, Idaho Falls, appeared. Mr. Leavitt expressed his concern for the crosswalk on Skyline Drive and Beverly Road as several children use the crosswalk to get to Temple View Elementary School. He believes the crosswalk is not fully visible and may be unsafe.

Greg Gerber, Idaho Falls, appeared. Mr. Gerber requested status of work on the Green Belt as it has not been completed and he believes the work is overdue.

Consent Agenda Items:

Office of the Mayor requested Arnold Cantu to the Planning and Zoning Commission.

Municipal Services requested approval of Bonneville County Magistrate Court Invoice.

The City Clerk requested approval of minutes from the October 24, 2016 Council Work Session; October 25, 2016 Joint Meeting with Bonneville County Elected Officials; and October 27, 2016 Council Meeting.

The City Clerk requested approval of license applications, including a Beer License to Westbank Restaurant and Lounge, all carrying the required approvals.

It was moved by Councilmember Marohn, seconded by Councilmember Dingman, to approve all items on the Consent Agenda according to the recommendations presented. Roll call as follows: Aye – Councilmembers Hally, Marohn, Radford, Dingman, Smith, Ehardt. Nay – none. Motion carried.

Regular Agenda Items:

Municipal Services

Subject: Bid IF-17-03, Automated Side Load Refuse Trucks

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It is the recommendation of the Public Works and Municipal Services Departments to reject the low bid for not meeting bid specifications, and to accept the lowest responsive, responsible bid from Idaho Falls Peterbilt to furnish two (2) automated side load refuse trucks for a lump sum amount of \$509,780.00 with trade-in of two (2) units.

Councilmember Marohn reviewed the reasons for the bid rejection. He stated funding to purchase these side loaders is budgeted in the 2016/17 Municipal Equipment Replacement Fund (MERF).

It was moved by Councilmember Marohn, seconded by Councilmember Hally, to reject the low bid, and to accept the lowest responsive, responsible bid from Idaho Falls Peterbilt to furnish two (2) automated side load refuse trucks for a lump sum amount of \$509,780.00. Roll call as follows: Aye – Councilmembers Ehardt, Radford, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

Subject: Bid IF-17-C, Idaho Falls Power Console for Dispatch Control Room

It is the recommendation of Idaho Falls Power and the Municipal Services Department to piggyback the General Services Administration Contract #GS-28F-0036M with Evans Consoles to furnish and install the required consoles for the dispatch control room at Idaho Falls Power, in the amount of \$60,343.55.

Councilmember Marohn stated the funding for this project is included in the Idaho Falls Power budget.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to piggyback the General Services Administration Contract #GS-28F-0036M with Evans Consoles to furnish and install the required consoles for the dispatch control room at Idaho Falls Power, in the amount of \$60,343.55. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Hally, Smith, Marohn, Dingman. Nay – none. Motion carried.

Subject: Write-off of Unpaid Ambulance Service Accounts

Municipal Services and the Fire Department respectfully request authorization to write-off ambulance service accounts determined as uncollectible for the calendar years of 2009, 2010, 2011, 2012 and a portion of 2013 in the amount of \$1,302,221.43 pursuant to the ambulance account review and management presentation to City Council on October 24, 2016.

Councilmember Marohn stated Medicare and Medicaid contractual allowable write-offs, along with other accounts, have been determined to be uncollectible by the City's collection agencies. He indicated it is necessary for the audit function to remove this amount as non-collectable revenue. This write-off is not impacting the budget.

Municipal Services Director Pamela Alexander stated all measures to collect on these accounts have been completely exhausted. She indicated the newly-formed Ambulance Account Review Committee will assist with moving forward to prevent a similar occurrence. Accounts will be updated on an annual basis.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to write-off ambulance service accounts determined as uncollectible for the calendar years of 2009, 2010, 2011, 2012 and a portion of 2013 in the amount of \$1,302,221.43. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

Subject: Civic Auditorium Use Agreement

Municipal Services respectfully requests authorization to approve the Civic Auditorium Use Agreement between the City of Idaho Falls and Idaho Falls School District 91.

Councilmember Marohn stated an agreement has not been in place since 1993. He reviewed additional terms of the agreement and stated the School District Board reviewed and approved the document on October 12, 2016.

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Councilmember Smith stated this item was recommended by the Municipal Services Citizen Review Committee. Councilmember Marohn stated a Civic Auditorium Committee has been established for recommendations of better use of the facility.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to approve the Civic Auditorium Use Agreement between the City of Idaho Falls and Idaho Falls School District 91. Roll call as follows: Aye – Councilmembers Ehardt, Marohn, Hally, Radford, Smith, Dingman. Nay – none. Motion carried.

Public Works

Subject: Corrected Easement Vacation – Lot 13, Block 1, Freeway Commercial Plaza

On October 27, 2016 the City Council passed Ordinance No. 3097 to vacate the subject utility easement on Lot 13, Block 1, Freeway Commercial Center Div. 3 as recorded in Instrument #1489425. Section 1 of Ordinance 3097 inadvertently referred to the easement as being part of “Milligan Commercial Plaza” instead of “Freeway Commercial Center Div. 3”.

It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to approve the revised Easement Vacation Ordinance prepared by the City Attorney under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Dingman, Radford, Marohn, Smith, Hally, Ehardt. Nay – none. Motion carried.

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

ORDINANCE NO. 3100

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

Subject: Request to Negotiate Professional Services with Six Mile Engineering to design 17th Street and Woodruff Avenue Intersection Improvements

Proposals were solicited, received, and evaluated for design services for the 17th Street and Woodruff Avenue Intersection Reconstruction. Based upon those evaluations, Public Works recommends selecting Six Mile Engineering to perform design services, and is requesting authorization to negotiate a scope of work and fee structure.

It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to authorize Public Works to negotiate a scope of work and fee structure with Six Mile Engineering for the 17th Street and Woodruff Avenue Intersection Reconstruction. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

Community Development Services

Subject: Code Change and Resolution for Electric Line Extension Fee Waiver

For consideration is a Resolution and proposed code change to Sections 8-5-28, 8-5-30 and 8-5-31 addressing Electric Line Extension Fee waivers within the City.

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Mayor Casper, through advice from the City Attorney, indicated due to the resolution being dependent on passage of the ordinance, the order of Recommended Actions as listed on the agenda needs to be reversed.

Councilmember Dingman stated this subject item has been thoroughly discussed with Council and is intended to encourage ways to create development that does not require utility rate payers to subsidize power infrastructure. The revised ordinance will allow Council to set transfer charge fees from time to time in coordination with the resolution and will allow implementation of waivers for development or redevelopment.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve the Ordinance amending Title 8, Chapter 5, for Electric Extension Fee Waivers, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Smith, Hally, Radford, Dingman, Ehardt, Marohn. Nay – none. Motion carried.

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

ORDINANCE NO. 3101

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 8, CHAPTER 5 TO ESTABLISH A FEE TO TRANSFER FROM AN ELECTRIC SUPPLIER TO IDAHO FALLS POWER; AND ESTABLISHING AREAS ELIGIBLE FOR CONSIDERATION OF WAIVER OR ADJUSTMENT OF FEES IN TITLE 8, CHAPTER 5 (OTHER THAN METERING FEES); PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

Councilmember Dingman stated the resolution is a more effective way to manage infrastructure and growth. The resolution identifies specific geographical areas for potential waiver of fees, including urban renewal and infill areas. Staff will review this resolution on an annual basis as the City grows.

It was moved by Councilmember Dingman, seconded by Councilmember Marohn, to approve the Resolution for Electric Line Extension Fee Waivers within the City, and give authorization for the Mayor and City Clerk to execute the necessary document. Roll call as follows: Aye – Councilmembers Hally, Smith, Dingman, Ehardt, Marohn, Radford. Nay – none. Motion carried.

Subject: Public Hearing – Planned Unit Development and Reasoned Statement of Relevant Criteria and Standards, Linden Trails Townhomes

For consideration is the application for Planned Unit Development (PUD) and Reasoned Statement of Relevant Criteria and Standards, Linden Trails Townhomes. The Planning and Zoning Commission considered this application at its July 19, 2016 meeting and recommended approval by unanimous vote. Staff concurs with this recommendation.

Mayor Casper opened the public hearing and ordered all staff presentation and materials be entered into the record.

Community Development Services Assistant Director Kerry Beutler stated a letter had very recently been received in the Mayor's office. He distributed the letter to Council for review and for inclusion into the record. He stated a PUD is designed to provide flexibility to applicant with development. He then presented the following information:

Slide 1- Area under consideration in current surrounding zoning areas

Slide 2- Aerial photo of property under consideration

Slide 3- Additional aerial photo of property under consideration

Slide 4- Development plan for the PUD

Assistant Director Beutler stated the development plan includes 172 residential units consisting of 43 individual townhome-type developments. He reviewed the applicant requirements and amenities stating three (3) small parks

November 10, 2016

and one (1) larger park (green areas) are included in the development plan. He indicated the applicant is exceeding the minimum parking requirements. He stated the PUD has proposed a 10'-wide pathway for the connection of the pathway system from the north to Pancheri Drive.

Slide 5-Phasing Plan

Assistant Director Beutler stated the PUD will be completed in six (6) different phases with a schedule and amenities required for each phase. A traffic study has been completed which did not find any requirements for off-site improvements.

Slide 6- Watercolor sketch submitted by the applicant

Slide 7- Elevations of other similar developments (within Idaho Falls) submitted by the applicant

Slide 8- Additional elevations of similar developments within Idaho Falls

Slide 9- Photo looking at existing Pancheri Drive Right-of-Way

Slide 10- Photo looking north across the property

Assistant Director Beutler stated areas identified for variance were submitted and indicated the setbacks on each lot are not being met as each lot will be platted separately for possible individual ownership, although the perimeter setback requirements are being met for the entire development.

Assistant Director Beutler stated the Comprehensive Plan for this area is low density, general single-family residential. He indicated there are no concerns for providing utility services and also indicated the current streets were designed for development into property.

Blake Jolley, Connect Engineering, appeared. Mr. Jolly stated his client is attempting to utilize as much of the property as possible without making it too dense and unattractive. He indicated the additional parking spaces are to alleviate on-street parking. He stated his client will continue to work with the City Engineering Department to ensure Pancheri Drive remains safe.

Jake Roberts, Idaho Falls, appeared. Mr. Roberts requested information regarding utility services and traffic.

Betsy Hanks, Idaho Falls, appeared. Ms. Hanks requested information regarding landscaping on Pancheri Drive and expressed her concern for the additional traffic.

At the request of Councilmember Ehardt, Assistant Director Beutler stated the proposed buffer zone along Pancheri Drive meets the sub-division ordinance standards. He believes traffic will be similar to other neighborhoods.

Mayor Casper closed the public hearing.

Councilmember Dingman stated the Home Owners Association (HOA) will maintain the green areas/common lots which will be available for the community at large. She expressed her appreciation to City staff.

Councilmember Ehardt expressed her concern for the traffic.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Planned Unit Development for Linden Trails Townhomes. Roll call as follows: Aye – Councilmembers Dingman, Smith, Marohn, Ehardt, Hally, Radford. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the Planned Unit Development for Linden Trails Townhomes, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

November 10, 2016

There being no further business, it was moved by Councilmember Marohn, seconded by Councilmember Hally, that the meeting adjourn at 8:44 p.m. which motion passed following a unanimous vote.

CITY CLERK

MAYOR

REGULAR AGENDA:



IDAHO FALLS FIRE DEPARTMENT



DATE: NOVEMBER 10, 2016
TO: MAYOR AND CITY COUNCIL
FROM: DAVE HANNEMAN, FIRE CHIEF
RE: FIRE SERVICE MOU BETWEEN IDAHO FALLS AND AMMON

Mayor and Council Members,

Please find attached the MOU for Fire Services between the City of Idaho Falls and the City of Ammon. The intent of this MOU is to provide a mechanism to assist each other with equipment and staffing for major emergencies when our resources are depleted. The MOU also addresses a method of compensation based on the Idaho State rate book for fees.

The Fire Department respectfully requests that Council approve this MOU between the City of Idaho Falls and the City of Ammon for Fire Services.

A handwritten signature in cursive script that reads "Dave Hanneman".

Dave Hanneman
Fire Chief

FIRE SERVICES MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF
IDAHO FALLS, IDAHO AND CITY OF AMMON, IDAHO

THIS FIRE SERVICES MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF IDAHO FALLS, IDAHO, AND CITY OF AMMON, IDAHO, ("MOU") is made and entered into this day of between the CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, P.O. Box 50220, Idaho Falls, Idaho 83405 ("CITY") and CITY OF AMMON, IDAHO, 2135 S. Ammon Road, Ammon, Idaho 83406, and all joining entities effective this day of July 1, 2016.

W I T N E S S E T H:

WHEREAS, each of the parties hereto as an interest in the control of fires, fire protection, hazardous materials control and/or other major emergency support within their respective lawful jurisdictions; and

WHEREAS, in the event of a major fire, disaster or other emergency, any party may need assistance of the other party to this MOU, to provide supplemental fire suppression, hazardous materials control, and/or other supplementary emergency support; and

WHEREAS, it is believed each of the parties may have the necessary equipment and personnel available to enable it to provide such supplementary services to the other parties to this MOU in the event of such a major fire, disaster, hazardous materials control, and depletes the resources of the requesting agency; and

WHEREAS, the equipment and facilities of each party are located in such a manner as to enable each party to render mutual assistance to the others under circumstances set out in this MOU; and

WHEREAS, it is not the interest of the parties that this MOU alter, supersede, or amend any separate agreement between the parties for normal and customary contractual services between the parties for similar (but non-supplementary) services, if any; and

WHEREAS, it is not the intent of the parties hereto that this MOU be interpreted to be a joint powers agreement or a creation of any separate legal or administrative entity; and

WHEREAS, each of the parties to this MOU has determined that it is in the best interests of each party to set forth guidelines for providing supplementary assistance to the other in the case of a major fire, disaster, or other emergency.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

1. REQUEST FOR ASSISTANCE. The Commanding Officer or Incident Commander of the party (also known as the Requesting Party) at the scene of an emergency within the boundaries of that party's lawful geographical jurisdiction is authorized to request assistance from the other party to this MOU, if confronted

with an emergency situation, at which the Requesting Party has determined a need for equipment or personnel in excess of that reasonably available to the Requesting Party.

2. MUTUAL AID REQUEST. Upon receipt of a request as provided for in Paragraph No. 2 of this MOU, the Commanding Officer of the party receiving the request (also known as the Responding Party) shall immediately take the following action:
 - A. Determine, in its sole discretion, whether the Responding Party has equipment and/or personnel available to respond to the request of the Requesting Party, and if so, determine the type of equipment and number of personnel available to respond to the request.
 - B. Determine what available equipment and personnel, if any, should be dispatched in accordance with the plans, requests, and procedures established by the parties hereto.
 - C. In the event the requested equipment and/or personnel are available (as determined by the Responding Party in its sole discretion), then the Commanding Officer shall dispatch that equipment and/or personnel to the scene of the emergency, with proper operating instructions.
 - D. In the event the requested equipment and/or personnel are not available (as determined by the Responding Party in its sole discretion), the Commanding Officer shall immediately advise the Requesting Party of such.
3. COMMAND RESPONSIBILITY AT EMERGENCY SCENE. The Incident Commander of the Requesting Party at the scene of the emergency to which the response is made, shall be in command of the operations under which the equipment and/or personnel sent by the Responding Party shall serve; provided, however, that the responding equipment and/or personnel shall be under the immediate supervision of the person in charge of the responding equipment and/or personnel. If the Incident Commander specifically requests that a senior officer of the Responding Party assumes command, then the Incident Commander shall not, by relinquishing command, be relieved of responsibility for operation.
4. LIABILITY. The parties agree that the Requesting Party shall assume liability for and hold the Responding Party harmless from all liabilities that arise out of command decisions or judgments made that are related to the request. However, each party hereto agrees to assume responsibility for liabilities arising out of the actions of its own personnel and to hold all other parties harmless therefrom as to actions relating to performance under this MOU. Nothing in this MOU shall increase or alter financial or legal responsibility or liability for services rendered under this MOU from that set out in the Idaho Tort Claims Act (Idaho Code Title 6, Chapter 9), where applicable.

5. RETURN OF EQUIPMENT. Upon completion of rendering of assistance by the Responding Party, such help as is necessary will be given by the parties to locate and return any items of equipment to the fire department owning said equipment. All equipment and personnel used under the terms of this MOU shall be returned to the Responding Party upon being released by the Requesting Party, or on demand being made by the Responding Party for return of said equipment and personnel.
6. COMPENSATION. Each party agrees that the most current Idaho Fire Service Organization Rate Book establishes the compensation for services rendered under this MOU, with the addition that ladder trucks are compensated at two hundred twenty-five dollars (\$225) for a three (3) personnel response and command vehicles are hourly at one hundred dollars (\$100). Each party hereto shall at all times be responsible to its own employees for payment of wages and other compensation and for carrying workers' compensation upon said employees; and, each party shall be responsible for its own equipment and shall bear the risk of loss therefor, irrespective of whether or not said personnel and equipment are being used within the area of primary responsibility of that party.
7. REIMBURSEMENT. Nothing in this MOU shall prohibit any party hereto to seek reimbursement for expenditure of equipment, materials or personnel where Federal or State law regulation or program allows such reimbursement or payment to any party hereto. Each party hereto will cooperate and assist every other party hereto regarding reimbursement.
8. INSURANCE. Each party agrees to maintain adequate insurance or liability coverage, including workers' compensation coverage, for its own equipment and personnel.
9. PRE-INCIDENT PLANNING. The Commanding Officers of the parties may, from time to time, mutually establish pre-incident plans which shall indicate the type and location of potential problem areas where emergency assistance may be needed, the type of equipment that should be dispatched under various possible circumstances, the number of personnel that should be dispatched under such circumstances, and the training to be conducted to ensure efficient operation. Such plans shall take into consideration the proper protection by the Responding Party of its own lawful geographical jurisdiction. The parties hereto agree to take such steps as are feasible to standardize equipment such as couplings, hoses, and apparatus, so that said equipment can be fully utilized by any of the parties hereto.
10. SHARED PURCHASING. There shall be no joint or cooperative acquiring, holding and disposing of real or personal property.
11. ADMINISTRATION AND FINANCE. There is not hereby created any separate legal or administrative entity as might be provided by Idaho Code. There shall be

no joint or cooperate acquiring, holding and disposing of real or personal property, and each party hereto shall be responsible for administering and financing its separate obligations hereunder.

12. DOCUMENT CONTROL – EXECUTION. A duplicate original of this MOU shall be filed at the administrative offices of each party. The MOU shall be effective upon execution by the parties.
13. TERMINATION. This MOU shall remain in full force and effect from year to year unless sooner terminated as follows:
 - A. A party desiring to terminate this MOU shall serve written notice upon the other party of its intention to terminate this MOU. Such notice shall be served not less than ninety (90) calendar days prior to the termination date set forth in said written notice. Said written notice shall automatically terminate this MOU on the date specified therein, unless rescinded prior thereto in writing.
 - B. Termination of the relationship affected by this MOU shall not preclude future agreements for mutual aid between the parties.
14. MOU NOT EXCLUSIVE. This MOU is not intended to be exclusive as between the parties hereto. Any of the parties hereto may, as they deem necessary or expedient, enter into a separate mutual assistance agreement or agreements with any other party or parties. Entry into such separate agreement shall not change any relationship or covenant herein contained, unless the parties hereto mutually agree in writing to such change.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed by their authorized representatives on the day and year first above written.

“CITY”
CITY OF IDAHO FALLS

“ATTEST”

BY: _____
Dave Hanneman; Idaho Falls Fire Chief

BY: _____
~~Keith Banda~~; Ammon City Fire Chief
Stacy Hyde

BY: _____
Rebecca L. Noah Casper
Mayor City of Idaho Falls, Idaho

BY: _____
Dana Kirkham
Mayor City of Ammon, Idaho

DATED: _____

STATE OF IDAHO)
) ss.
County of Bonneville)

On this ____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah Casper, known to me to be the Mayor of the City of Idaho Falls, Idaho, a municipal corporation that executed the foregoing document, and acknowledged to me that she is 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.

Notary Public of Idaho
Residing at:

My Commission Expires: _____

(Seal)

STATE OF IDAHO)
) ss.
County of Bonneville)

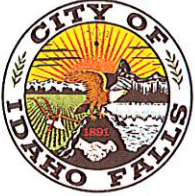
On this ____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Dana Kirkham, known to me to be the Mayor of the City of Ammon, Idaho, a municipal corporation that executed the foregoing document, and acknowledged to me that she is authorized to execute the 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.

Notary Public of Idaho
Residing at:

My Commission Expires: _____

(Seal)



IDAHO FALLS FIRE DEPARTMENT



DATE: NOVEMBER 10, 2016
TO: MAYOR AND CITY COUNCIL
FROM: DAVE HANNEMAN, FIRE CHIEF
RE: **MUTUAL AID AGREEMENT WITH CITY OF BLACKFOOT AND CARIBOU COUNTY**

Mayor and Council Members,

Please find attached a mutual aid agreement with the City of Blackfoot and Caribou County regarding assisting each other with EMS call for service. This mutual aid agreement outlines how Caribou County EMS will assist our department with calls in Bonneville County around Greys Lake and in turn we will assist Bingham County in areas around Blackfoot Reservoir. We believe this is a fair agreement and to the mutual benefit of all parties. Legal has reviewed the agreement.

The Fire Department respectfully requests that Council approve this Mutual Aid agreement with the City of Blackfoot and Caribou County.

A handwritten signature in blue ink that reads "Dave Hanneman".

Dave Hanneman
Fire Chief

**MUTUAL AID AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO AND
CITY OF BLACKFOOT FIRE DEPARTMENT AND CARIBOU COUNTY
EMERGENCY SERVICES AND ALL JOINING ENTITIES, AS PROVIDED
HEREIN**

THIS MUTUAL AID AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO AND CITY OF BLACKFOOT FIRE DEPARTMENT AND CARIBOU COUNTY EMERGENCY SERVICES, (“Agreement”) is made and entered into this day of 3 November 2016, and upon receipt of authorized signature of a new entity, by and between the **CITY OF IDAHO FALLS, IDAHO**, a municipal corporation of the State of Idaho (“CITY”) and Blackfoot Fire Department and Caribou County Emergency Services, and all joining entities effective this day of 3 November 2016 and upon receipt by the City of Idaho Falls, Idaho of a joining entity’s duly authorized and executed signature page.

W I T N E S S E T H:

WHEREAS, each of the parties hereto as an interest in the control of fires, fire protection emergency medical service, hazardous materials control and/or other major emergency support and

WHEREAS, in the event of a major fire, disaster or other emergency, any party may need assistance of the other parties to this Agreement, to provide supplemental fire suppression, emergency medical service equipment and personnel, hazardous materials control, and/or other supplementary emergency support; and

WHEREAS, it is believed each of the parties may have the necessary equipment and personnel available to enable it to provide such supplementary services to the other parties to this Agreement in the event of such a major fire, disaster, hazardous materials control, or other emergency; and

WHEREAS, the equipment and facilities of each party are located in such a manner as to enable each party to render mutual assistance to the others; and

WHEREAS, it is not the interest of any of the parties that this Agreement alter, supersede, or amend any separate agreement between the parties for normal and customary contractual services between the parties for similar (but non-supplementary) services; and

WHEREAS, it is not the intent of any of the parties hereto that this Agreement be interpreted to be a joint powers agreement or a creation of any separate legal or administrative entity; and

WHEREAS, each of the parties to this Agreement has determined that it is in the best interests of each party to set forth guidelines for providing mutual supplementary assistance to each other in the case of a major fire, disaster or other emergency; and

WHEREAS, the parties to this Agreement wish to allow other public entities to join the Agreement as provided for herein below.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

1. AUTOMATIC ASSISTANCE. All Joining Entities agree to operate, maintain and otherwise provide Emergency Medical Services to the residents and inhabitants of respective areas of the joining Counties of Idaho.
 - A. Idaho Falls, Idaho agrees to provide emergency medical service equipment and personnel to Bingham County in the geographic areas North of Blackfoot Reservoir and East of the Wolverine Canyon Area to include the Bone/Blackfoot Reservoir Road.
 - B. Caribou County EMS agrees to emergency medical service equipment and personnel to Bonneville County in the geographic areas of Greys Lake to include the Greys Lake Wildlife Preserve.
 - C. In the event the requested equipment and/or personnel are available, then the Commanding Officer shall dispatch such equipment and/or personnel to the scene of the emergency, with proper operating instructions.
 - D. In the event the requested equipment and/or personnel are not available, the Dispatch Center personnel shall immediately advise the Requesting Party and of such.
2. DISPATCHING SERVICES. All dispatching services for ambulance services provided pursuant to this Agreement shall be provided by and solely governed by the terms and conditions of a separate dispatching agreement between the parties to this Agreement and not by this Agreement.
3. REQUEST FOR ASSISTANCE. The Commanding Officer or Incident Commander of the party (also known as the Requesting Party) at the scene of an emergency within the boundaries of that party's geographical jurisdiction is authorized to request assistance from another party or parties to this Agreement, if confronted with an emergency situation, at which the Requesting Party has determined a need for equipment or personnel in excess of that available at the Requesting Party's facilities.
4. MUTUAL AID REQUEST. Upon receipt of a request as provided for in Paragraph No. 3 of this Agreement, the Commanding Officer of the party or parties receiving the request (also known as the Responding Party) shall immediately take the following action:

- A. Determine if the Responding Party has equipment and personnel available to respond to the request of the Requesting Party, and determine the type of equipment and number of personnel available.
 - B. Determine what available equipment and personnel, if any, should be dispatched in accordance with the plans and procedures established by the parties hereto.
 - C. In the event the requested equipment and/or personnel are available, then the Commanding Officer shall dispatch such equipment and/or personnel to the scene of the emergency, with proper operating instructions.
 - D. In the event the requested equipment and/or personnel are not available, the Commanding Officer shall immediately advise the Requesting Party of such.
5. **COMMAND RESPONSIBILITY AT EMERGENCY SCENE.** The Incident Commander of the Requesting Party at the scene of the emergency, to which the response is made, shall be in command of the operations under which the equipment and/or personnel sent by the Responding Party shall serve; provided, however, that the responding equipment and/or personnel shall be under the immediate supervision of the officer in charge of the responding equipment and/or personnel. If the Incident Commander specifically requests a senior officer of the Responding Party to assume command, then the Incident Commander shall not, by relinquishing command, be relieved of responsibility for operation.
6. **LIABILITY.** The parties agree that the Requesting Party shall assume liability for and hold the Responding Party harmless from all liabilities that arise out of command decisions or judgments. However, each party hereto agrees to assume responsibility for liabilities arising out of the actions of its own personnel and to hold all other parties harmless therefrom as to actions relating to performance under this Agreement. Nothing in this Agreement shall increase or alter financial or legal responsibility or liability for services rendered under this Agreement from that set out in the Idaho Tort Claims Act (Idaho Code Title 6, Chapter 9), where applicable.
7. **RETURN OF EQUIPMENT.** Upon completion of rendering of assistance, such help as is necessary will be given by the parties to locate and return any items of equipment to the fire department owning said equipment. All equipment and personnel used under the terms of this Agreement shall be returned to the Responding Party upon being released by the Requesting Party, or on demand being made by the Responding Party for return of said equipment and personnel.
8. **COMPENSATION.** Each party agrees that it will not seek from any other party to this Agreement, compensation for services rendered under this Agreement. Each party hereto shall at all times be responsible to its own employees for payment of

wages and other compensation and for carrying workers' compensation upon said employees; and, each party shall be responsible for its own equipment and shall bear the risk of loss therefor, irrespective of whether or not said personnel and equipment are being used within the area of primary responsibility of that party. However, if fire suppression chemicals are utilized by the Responding Party, the Requesting Party shall compensate the Responding Party for the actual cost of such chemicals.

9. REIMBURSEMENT. Nothing in this Agreement shall prohibit any party hereto to seek reimbursement for expenditure of equipment, materials or personnel where Federal or State law regulation or program allows such reimbursement or payment to any party hereto. Each party hereto will cooperate and assist every other party hereto regarding reimbursement.
10. INSURANCE. Each party agrees to maintain adequate insurance or liability coverage for its own equipment and personnel.
11. PRE-INCIDENT PLANNING. The Commanding Officers of the parties may, from time to time, mutually establish pre-incident plans which shall indicate the type and location of potential problem areas where emergency assistance may be needed, the type of equipment that should be dispatched under various possible circumstances, the number of personnel that should be dispatched under such circumstances, and the training to be conducted to ensure efficient operation. Such plans shall take into consideration the proper protection by the Responding Party of its own geographical jurisdiction. The parties hereto agree to take such steps as are feasible to standardize equipment such as couplings, hoses, and apparatus, so that said equipment can be fully utilized by any of the parties hereto.
12. SHARED PURCHASING. There shall be no joint or cooperative acquiring, holding and disposing of real or personal property.
13. ADMINISTRATION AND FINANCE. There is not hereby created any separate legal or administrative entity as might be provided by Idaho Code. There shall be no joint or cooperate acquiring, holding and disposing of real or personal property, and each party hereto shall be responsible for administering and financing its separate obligations hereunder.
14. DOCUMENT CONTROL – EXECUTION. A duplicate original of this Agreement shall be filed at the administrative offices of each party. The Agreement shall be effective upon execution by the parties.
15. TERMINATION. This Agreement shall remain in full force and effect from year to year unless sooner terminated as follows:
 - A. A party desiring to terminate this Agreement shall serve written notice upon the other parties of its intention to terminate this Agreement. Such

notice shall be served not less than ninety (90) calendar days prior to the termination date set forth in said written notice. Said written notice shall automatically terminate this Agreement on the date specified therein, unless rescinded prior thereto in writing.

B. Termination of the relationship affected by this Agreement shall not preclude future agreements for mutual aid between the parties.

16. ADDITIONAL PARTIES. The parties to this Agreement specifically agree hereby that any governmental entity that desires to enter into this Agreement may do so under the same terms and conditions contained herein, by executing and delivering a signature page from a person duly authorized to bind the joining entity to the terms and conditions herein. If a party to this Agreement determines not to accept a joining entity under the terms and conditions of this Agreement, such party may communicate that determination to the joining entity, and to all other parties, in writing within sixty (60) days of receiving notice of joining entity's signing of this Agreement, after which neither the declining party or joining entity shall be bound to render mutual aid to one another pursuant to this Agreement.
17. AGREEMENT NOT EXCLUSIVE. This Agreement is not intended to be exclusive as between the parties hereto. Any of the parties hereto may, as they deem necessary or expedient, enter into a separate mutual assistance agreement or agreements with any other party or parties. Entry into such separate agreement shall not change any relationship or covenant herein contained, unless the parties hereto mutually agree in writing to such change.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives on the day and year first above written.

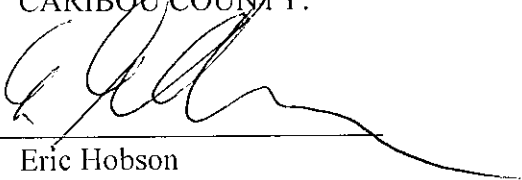
ATTEST:

"CITY"
CITY OF IDAHO FALLS

Kathy Hampton
City Clerk

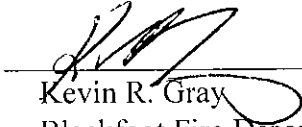
By:
Rebecca L. Noah Casper
Mayor

CARIBOU COUNTY:



Eric Hobson
Director of Public Safety
Caribou County EMS

CITY OF BLACKFOOT:



Kevin R. Gray
Blackfoot Fire Department
Fire Chief

AS TO FORM:

[illegible]

On this _____ day of _____, 2015, 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 she is 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.

Residing at:

My Commission Expires:

(Seal)



MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Jackie Flowers *JF* General Manager
DATE: November 14, 2016
RE: Approve Pole Attachment License Agreement with Qwest Corporation dba CenturyLink

Idaho Falls Power has been working for years to establish a Pole Attachment License Agreement with Qwest Corporation, then subsequently CenturyLink following the merger. Attached is the final agreement. This reciprocal agreement will govern attachments of one entity on poles owned by the other entity. The agreement establishes rules for work coordination between the two entities, sets requirements for make ready work, and establishes fees associated with pole attachments.

The agreement is based on the American Public Power Association Pole Attachment Toolkit and complies with Federal Communications Commission requirements. The City Attorney has reviewed the document.

Idaho Falls Power respectfully requests City Council approve the Pole Attachment License Agreement with Qwest Corporation dba CenturyLink and authorize the Mayor to sign the document.

Attachment

JRF/767

POLE ATTACHMENT AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO AND QWEST CORPORATION D/B/A CENTURYLINK QC

THIS POLE ATTACHMENT LICENSE AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO AND QWEST CORPORATION D/B/A CENTURYLINK QC (hereinafter "Agreement"), is made this 22nd day of November, 2016, by and between CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, and its Electric Light Division d/b/a Idaho Falls Power, (hereinafter "IFP"), whose address is P.O. Box 50220, Idaho Falls, Idaho 83405, and QWEST CORPORATION D/B/A CENTURYLINK QC, a Colorado corporation (hereinafter "CENTURYLINK"), whose address is 100 CenturyLink Drive, Monroe, LA 71203. IFP and CENTURYLINK may each be referred to at times herein individually as a "party" or collectively as the "parties"; references to "LICENSEE" and "OWNER" refer to either party interchangeably as the context may require.

BACKGROUND:

- A. The parties own and maintain Poles in the State of Idaho.
- B. Each party desires to place and maintain on the other party's Poles, Attachments located in the State of Idaho for use in the party's business and operations.
- C. In accordance with the terms and conditions of this Agreement, each party is willing to permit the other party to place and maintain Attachments to its respective Poles.

RECITALS

WHEREAS, LICENSEE proposes to install and maintain LICENSEE's Facilities and associated electric or communication equipment on the OWNER'S Poles to provide electric or Communication Services to the public; and

WHEREAS, OWNER is willing, when it may lawfully do so and in accordance with the regulations in the state of Idaho, to issue one or more Permits authorizing the placement or installation of the LICENSEE'S Attachments on OWNER Poles, provided that the OWNER may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes, and/or any other Applicable Standard; and

WHEREAS, therefore, in consideration of the mutual covenants, terms and conditions set out below the parties agree as follows:

AGREEMENT

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future and past tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate:** when used in relation to LICENSEE, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with LICENSEE.
- 1.2 **Applicable Standards:** means all applicable engineering and safety standards governing the installation, maintenance, and operation of facilities and the performance of all work in or around OWNER Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of OWNER or other federal, state, or local authority with jurisdiction over OWNER Facilities.
- 1.3 **Attaching Entity:** means any public or private entity, other than OWNER, LICENSEE or LICENSEE Affiliate, that, pursuant to a license agreement with OWNER, places an Attachment on OWNER’s Pole to provide Communications Service.
- 1.4 **Attachment(s):** means LICENSEE’s Facilities that are placed directly on OWNER’s Poles, but does not include either a Riser, a service drop, power supply, or support and safety attachments attached to a single Pole where LICENSEE has an existing Attachment on such Pole.
- 1.5 **Capacity:** means the ability of a Pole to accommodate an Attachment based on Applicable Standards, including space and loading considerations.
- 1.6 **Climbing Space:** means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable OWNER employees and contractors to safely climb, access, and work on OWNER Facilities and equipment.
- 1.7 **Communications Facilities:** means wireline or wireless facilities, including but not limited to, fiber optic, copper, and/or coaxial cables, wireless antennas, receivers or transceivers, including any and all associated equipment, utilized to provide Communications Service.
- 1.8 **Communications Service:** means the transmission or receipt of voice, video, data, broadband Internet, or other forms of digital or analog signals over Communications Facilities.

- 1.9 LICENSEE:** The party, including its parent, subsidiaries or Affiliates, successor or assigns, granted a license by OWNER under this Agreement.
- 1.10 LICENSEE's Facilities:** means cable, wires, conductors, fiber optics, insulators, connectors, fasteners, transformers, capacitors, switches, batteries, amplifiers, devices, structures, material, machines, appurtenances, articles, apparatus of any sort, and all other items related to a party's electrical or communication distribution system, including without limitation all support equipment such as guy wires, anchors, anchor rods, grounds and other accessories.
- 1.11 Make-Ready Work:** means all work that OWNER reasonably determines to be required to accommodate LICENSEE's Facilities and/or to comply with all Applicable Standards. Such work includes, but is not limited to, rearrangement and/or transfer of OWNER Facilities or existing Attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), or pole replacement and construction but does not include LICENSEE's routine maintenance
- 1.12 Occupancy:** means the use or reservation of space for Attachments on an OWNER Pole.
- 1.13 OWNER -** The party owning or controlling the Pole.
- 1.14 Overlash:** means to place an additional wire or cable onto an existing Attachment owned by LICENSEE.
- 1.15 Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are not attached to OWNER Poles but are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices, and/or to provide a service connection point (see Appendix D Specifications).
- 1.16 Permit:** means written or electronic authorization (see Appendix C) by OWNER for LICENSEE to make or maintain Attachments to specific OWNER Poles pursuant to the requirements of this Agreement. LICENSEE's Attachments made prior to the effective date (Existing Attachments) shall be deemed Permitted Attachments hereunder.
- 1.17 Pole:** means a pole owned by OWNER that is used for the distribution of electricity and/or Communications Service and is capable of supporting Attachments for LICENSEE's Facilities.
- 1.18 Post-Construction Inspection:** means the inspection by OWNER to verify that the Attachments have been made in accordance with Applicable Standards and the Permit.
- 1.19 Pre-Construction Survey:** means all work or operations required by Applicable Standards and/or OWNER to determine the Make-Ready Work necessary to accommodate LICENSEE's Facilities on a Pole. Such work includes, but is not limited to field inspection. The Pre-Construction Survey shall be coordinated with OWNER and may, at LICENSEE's option, include LICENSEE's representative. All Pre-Construction Surveys, when complete, shall be agreed upon by both parties.
- 1.20 Reserved Capacity:** means Capacity or space on a Pole that OWNER has identified and reserved for its own future utility requirements at the time of the Permit grant, including the

installation of communications circuits for operation of OWNER electric system pursuant to an existing capital improvement plan.

- 1.21 **Riser:** means metallic or plastic encasement materials placed vertically on the Pole to guide and protect wires and cables.
- 1.22 **Tag:** means to place distinct markers on wires and cables, coded by color or other means specified by OWNER and/or applicable federal, state or local regulations, that will readily identify the owner and be legible from the ground.
- 1.23 **OWNER Facilities:** means all personal property and real property owned by OWNER, including Poles, and related facilities.

Article 2—Scope of Agreement

- 2.0 **Grant of License.** Subject to the provisions of this Agreement, OWNER grants LICENSEE a revocable, nonexclusive license authorizing LICENSEE to install and maintain Attachments to OWNER's Poles.
- 2.1 **Omitted**
- 2.2 **Parties Bound by Agreement.** LICENSEE and OWNER agree to be bound by all provisions of this Agreement, except to the extent the Agreement conflicts with applicable law or any subsequent law made following the execution of the Agreement.
- 2.3 **Permit Issuance Conditions.** OWNER will issue one or more Permit(s) to LICENSEE only when OWNER determines, in its sole judgment, which shall not be unreasonably withheld, that (i) it has sufficient Capacity to accommodate the requested Attachment(s), (ii) LICENSEE meets all requirements set forth in this Agreement, and (iii) such Permit(s) comply with all Applicable Standards.
- 2.4 **Reserved Capacity.** Access to space on OWNER Poles will be made available to LICENSEE with the understanding that certain Poles may be subject to Reserved Capacity. At the time of Permit issuance, OWNER shall notify LICENSEE if Capacity on particular Pole(s) is being designated as Reserved Capacity. For Attachments made with notice of such a Reservation of Capacity, on giving LICENSEE at least sixty (60) calendar days prior written notice, OWNER may reclaim such Reserved Capacity at any time following the installation of LICENSEE's Attachment if required for OWNER's future utility service requirements. If reclaimed for OWNER's use, OWNER may at such time also install associated facilities, including the attachment of communications lines for internal OWNER operational or governmental communications requirements. OWNER shall give LICENSEE the option to remove its Attachment(s) from the affected Pole(s) or to pay for the actual and reasonable cost of any Make-Ready Work needed to expand Capacity for LICENSEE service requirements, so that LICENSEE can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third party Attachments) shall be determined in accordance with Article 9. LICENSEE shall not be required to bear any of the costs for Make-Ready Work needed to expand Capacity if the Pole was not identified at the time of Permitting. Asserting Reserved Capacity must be pursuant to an existing capital improvement plan. LICENSEE

shall not be required to bear any of the costs or rearranging or replacing its Attachment(s), if such rearrangement or replacement is required as a result of an additional attachment or the modification of an Existing Attachment sought by any other Attaching Entity.

- 2.5 No Interest in Property.** No use, however lengthy, of any OWNER Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in LICENSEE, any easement or other ownership or property right of any nature in any portion of OWNER Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of OWNER's rights to OWNER Facilities. Notwithstanding anything in this Agreement to the contrary, LICENSEE shall, at all times, be and remain a licensee only.
- 2.6 LICENSEE's Right to Attach.** Unless otherwise specified in this Agreement, nothing other than a Permit issued pursuant to Article 6, shall be construed as granting LICENSEE any right to attach LICENSEE's Facilities to any specific Pole.
- 2.7 OWNER's Rights over Poles.** The parties agree that this Agreement does not in any way limit OWNER's right to locate, operate, maintain, or remove its Poles in the manner that will best enable it to fulfill its statutory service requirements or to comply with any federal, state, or local legal requirement.
- 2.8 Expansion of Capacity.** OWNER will take reasonable steps to expand Pole Capacity when necessary to accommodate LICENSEE's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require OWNER to install, retain, extend, or maintain any Pole for use when such Pole is not needed for OWNER's own service requirements.
- 2.9 Other Agreements.** Except as expressly provided in this Agreement, nothing in this Agreement shall limit, restrict, or prohibit OWNER from fulfilling any agreement or arrangement regarding its Poles into which OWNER has previously entered, or may enter in the future, with others not party to this Agreement.
- 2.10 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals set forth above and no other use shall be allowed without OWNER's express written consent to such use. Nothing in this Agreement shall be construed to require OWNER to allow LICENSEE to use OWNER's Poles after the termination of an individual Permit(s) or this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement, unless required to do so by applicable law or regulation.
- 2.11 Overlapping.** The following provisions apply to Overlapping:
- 2.11.1** LICENSEE shall obtain a Permit for each Overlapping, in accordance with the requirements of Article 6. Absent such authorization, Overlapping constitutes an unauthorized Attachment and is subject to, at OWNER's discretion, imposition of an unauthorized Attachment fee, as specified in Appendix A, Item 2.
- 2.11.2** Authorized Overlapping to accommodate Attachments of LICENSEE or its Affiliate(s) shall not increase the Annual Attachment Fee paid by LICENSEE pursuant to Appendix A, Item 1. LICENSEE or LICENSEE's Affiliate shall,

however, be responsible for all Make Ready Work and other charges associated with the Overlashing. LICENSEE shall not have to pay a separate Annual Attachment Fee for such Overlashed Attachment.

2.11.3 At LICENSEE's request, OWNER may allow Overlashing to accommodate facilities of a third party, not affiliated with LICENSEE. In such circumstances, the third party must enter into a License Agreement with OWNER, obtain Permit(s), and pay a separate Attachment fee (Appendix A, Item 1) as well as the actual and reasonable costs of all necessary Make-Ready Work required to accommodate the Overlashing. OWNER shall not grant such Permit(s) to third parties allowing Overlashing of LICENSEE's Communications Facilities without LICENSEE's written consent. Authorized Overlashing shall not increase the fees and charges paid by LICENSEE pursuant to Appendix A, Item 1. Nothing in this Agreement shall prevent LICENSEE from seeking a contribution from an Overlashing third party to defray fees and charges paid by LICENSEE.

2.11.4 Make Ready Work procedures set forth in Article 7 shall apply, as necessary, to all Overlashing.

2.12 Enclosures. CENTURYLINK shall not place Pedestals, Vaults, and/or other Enclosures on or within four feet (4') of any Pole or other IFP facilities without IFP's prior written permission. If permission is granted, all such installations shall be per the Specifications and Drawings in Appendix D of this Agreement. Such permission shall not be unreasonably withheld. If IFP installs or relocates IFP facilities within four (4) feet from CENTURYLINK's existing Pedestal, Vault, and/or Enclosure, CENTURYLINK shall not be in violation per Article 4.5 of this Agreement.

Article 3—Fees and Charges

3.1 Payment of Fees and Charges. LICENSEE shall pay to OWNER the fees and charges specified in Appendix A and shall comply with the terms and conditions specified in this Agreement.

3.2 Payment Period. Unless otherwise expressly provided, LICENSEE shall pay any undisputed invoice it receives from OWNER pursuant to this Agreement within sixty (60) calendar days after receipt of the invoice. Owner will issue invoice by July 30th and will consider the payment delinquent if not received by October 30th.

3.3 Billing of Attachment Fee. OWNER shall invoice LICENSEE for the per-pole Attachment Fee annually. OWNER will submit to LICENSEE, an invoice for the annual rental period not later than July 30th of each year. The initial annual rental period shall commence upon the execution of this Agreement and conclude on September 30th of the same or next year, and each subsequent annual rental period shall commence on the following October 1st and conclude on September 30th of the subsequent year. The per-pole Attachment Fee due from either party as LICENSEE to the other party as OWNER for each period shall be based on the total number of OWNER's Poles on which LICENSEE was issued and/or holds Permit(s) for Attachments during such annual rental period, including any previously authorized and valid Permits. The smaller total sum shall be deducted from the

larger and IFP or CENTURYLINK, as the case may be, shall pay to the other the difference between such amounts. The total sums owed to each Party will be detailed on the invoice. If requested, each Party will provide calculations and underlying data used to determine the annual Pole Attachment fee.

- 3.4 Refunds.** Except as described in Article 4.7, no fees and charges specified in Appendix A shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole is not used or abandoned by OWNER.
- 3.5 Late Charge.** If OWNER does not receive payment for any undisputed fee or other amount owed within thirty (30) calendar days after it becomes due, LICENSEE shall pay interest to OWNER at the rate of 1 % per month, or the maximum interest allowed by law, whichever is greater, on the amount due.
- 3.6 Payment for Work.** LICENSEE will be responsible for payment of all actual and reasonable costs to OWNER for all work that OWNER or OWNER's contractors perform pursuant to this Agreement to accommodate LICENSEE's Facilities.
- 3.7 Advance Payment.** At its sole discretion, OWNER may require that LICENSEE pay in advance all reasonable costs, including, but not limited to, construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of LICENSEE's Facilities pursuant to the procedures set forth in Articles 6 and 7 below.
- 3.8 True-Up.** Whenever OWNER, in its discretion, requires advance payment of estimated expenses prior to undertaking an activity on behalf of LICENSEE and the actual and reasonable cost of the activity exceeds the advance payment of estimated expenses, LICENSEE agrees to pay OWNER for the difference in cost, provided that OWNER documents such costs with sufficient detail to enable LICENSEE to verify the charges. OWNER's final invoice may not exceed **120%** of the estimated expenses, and LICENSEE will not be required to pay more than **120%** of such estimated expenses. To the extent that OWNER's actual and reasonable cost of the activity is less than the estimated cost, OWNER shall refund to LICENSEE the difference in cost.
- 3.9 Determination of Charges.** Wherever this Agreement requires LICENSEE to pay for work done or contracted by OWNER, the charge for such work shall include all reasonable material, labor, and engineering and applicable overhead costs. OWNER shall bill its services based upon actual and reasonable costs, and such costs will be determined in accordance with OWNER's cost accounting systems used for recording capital and expense activities. If LICENSEE was required to perform work and fails to perform such work in the time specified, necessitating completion of the work by OWNER, LICENSEE shall pay OWNER the actual and reasonable cost or costs of such work. OWNER shall not be liable for any loss or damage for undertaking work pursuant to this section unless caused by the sole negligence of the OWNER, provided, however, that Licensee's failure to act shall not be considered a form of negligence.
- 3.10 Work Performed by OWNER.** Wherever this Agreement requires OWNER to perform any work, OWNER, at its sole discretion, may utilize its employees or contractors, or any combination of the two, to perform such work.

- 3.11 Default for Nonpayment.** Nonpayment of any amount not disputed in writing due under this Agreement beyond ninety (90) days shall constitute a material default of this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of LICENSEE's Facilities.** When a Permit is issued pursuant to this Agreement, LICENSEE's Facilities shall be installed and maintained in accordance with the requirements and specifications of Appendix D. All of LICENSEE's Facilities must comply with all Applicable Standards. LICENSEE shall be responsible for the installation and maintenance of its facilities. LICENSEE shall, at its own expense, make and maintain its Attachment(s) in safe condition and good repair, in accordance with all Applicable Standards. Notwithstanding anything in this Agreement to the contrary, LICENSEE shall not be required to update or upgrade its Attachments if they met Applicable Standards at the time they were made, unless such updates or upgrades are required by the NESC or NEC.
- 4.2 Tagging.** LICENSEE shall Tag all of its fiber optic Attachments installed after the execution of this Agreement as specified in Appendix D and/or applicable federal, state, and local regulations upon installation of such Attachments. Prior authorized fiber optic Attachments shall be Tagged if LICENSEE physically performs an operation or maintenance function on a prior authorized fiber optic Attachment after the effective date of this Agreement. OWNER Failure to provide proper Tagging for Attachments that are installed after the execution of this Agreement will be considered a violation of the Applicable Standards.
- 4.3 Interference.** LICENSEE shall not allow LICENSEE's Facilities to impair the ability of OWNER or any third party to use OWNER's Poles, nor shall LICENSEE allow LICENSEE's Facilities to interfere with the operation of any OWNER Facilities. The attachment rights subsequently granted by the OWNER to other Attaching Entities pursuant to licenses, permits, or rental agreements shall not limit nor interfere with any prior attachment rights granted to the LICENSEE hereunder or result in further rearrangement or make ready costs without reimbursement.
- 4.4 Protective Equipment.** LICENSEE and its employees and contractors shall utilize and install adequate protective equipment to ensure the safety of people and facilities consistent with Applicable Standards. CenturyLink as LICENSEE shall, at its own expense, install protective devices designed to handle the electric voltage and current carried by IFP's facilities in the event of a contact with such facilities as specified in Applicable Standards.
- 4.5 Violation of Specifications.** If CenturyLink's Communications Facilities, or any part of them, are installed, used, or maintained in violation of this Agreement, and CenturyLink has not corrected or disputed the violation(s) within ninety (90) calendar days from receipt of written notice of the violation(s) from IFP, or such other time as may be agreed to by the parties, IFP, at its option, may correct such conditions. IFP will notify CenturyLink in writing prior to performing such work whenever practicable. When IFP reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of IFP's service obligations, or present an immediate threat to the physical integrity of IFP facilities, IFP may perform such work and/or take such action as it deems

necessary without first giving written notice to CenturyLink. As soon as practicable afterward, IFP will advise CenturyLink of the work performed or the action taken. If CenturyLink was at fault for the violation, CenturyLink shall be responsible for all actual and reasonable costs incurred by IFP in taking action pursuant to this Paragraph.

- 4.6 Restoration of OWNER Service.** OWNER's service restoration requirements shall take precedence over any and all work operations of LICENSEE on OWNER's Poles.
- 4.7 Effect of Failure to Exercise Access Rights.** If LICENSEE does not exercise any access right granted pursuant to this Agreement and/or applicable Permit(s) within one hundred eighty (180) calendar days of the effective date of such right and any extension to such Permit(s), OWNER may, use the space scheduled for LICENSEE's Attachment(s) for its own needs or make the space available to other Attaching Entities. In such instances, OWNER shall endeavor to make other space available to LICENSEE, upon written or electronic application under Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions. If OWNER uses the space for its own needs or makes the space available to other parties, then from the date that OWNER or a third party begins to use such space, LICENSEE may obtain a refund on the portion of any Attachment Fees that it has paid in advance for that space. For purposes of this paragraph, LICENSEE's access rights shall not be deemed effective until any necessary Make-Ready Work has been performed.
- 4.8 Removal of Nonfunctional Attachments.** At its sole expense, LICENSEE shall remove any of its Attachments or any part thereof that becomes nonfunctional and no longer fit for service (Nonfunctional Attachment) as provided in this Paragraph 4.8. A Nonfunctional Attachment that LICENSEE has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A. Except as otherwise provided in this Agreement, LICENSEE shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless LICENSEE receives written notice from OWNER that removal is necessary to accommodate OWNER's or another Attaching Entity's use of the affected Pole(s), in which case LICENSEE shall remove the Nonfunctional Attachment within sixty (60) days of receiving the written notice. Where LICENSEE has received a Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until OWNER notifies LICENSEE that removal is necessary to accommodate OWNER's or another Attaching Entity's use of the affected Pole(s).

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Before LICENSEE occupies any of OWNER's Poles, LICENSEE shall obtain from the appropriate public or private authority, or from any property owner or other appropriate person, any required authorization to construct, operate, or maintain LICENSEE's Facilities on public or private property. OWNER retains the right to require evidence that appropriate authorization has been obtained before any Permit is issued to LICENSEE. LICENSEE's obligations under this Article 5 include, but are not limited to, its obligation to obtain and pay for all necessary approvals to occupy public/private rights-of-way and easements and all necessary licenses and authorizations to provide the services that it

provides over LICENSEE's Facilities. LICENSEE shall defend, indemnify, and hold harmless OWNER for all losses, costs, and expenses, including reasonable attorney's fees, that OWNER may incur as a result of claims by governmental bodies, owners of private property, or other persons, that LICENSEE does not have sufficient rights or authority to attach LICENSEE's Facilities on OWNER's Poles.

- 5.2 Lawful Purpose and Use.** LICENSEE's Facilities must at all times serve a lawful purpose, and the use of such facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of OWNER's Rights.** No Permit granted under this Agreement shall extend, or be deemed to extend, to any of OWNER's Poles to the extent that LICENSEE's Attachment would result in a forfeiture of OWNER's rights. Further, if any of LICENSEE's existing facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, LICENSEE shall upon receipt of written notice from the OWNER: (i) provide OWNER with a written response that is taking corrective action to remedy the underlying issue creating the claimed potential for forfeiture; or (ii) promptly remove its Facilities. If LICENSEE does not take corrective action or challenge the basis for forfeiture, and subsequently fails to remove its facilities, may at its option perform such removal at LICENSEE's expense not sooner than the expiration of thirty (30) calendar days from the OWNER's issuance of the written notice.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by OWNER to the construction or maintenance of any Attachments by LICENSEE shall not be deemed consent, authorization, or acknowledgment that LICENSEE has obtained all required Authorizations with respect to such Attachment.

Article 6—Permit Application Procedures

- 6.1 Permit Required.** Except for service drops, LICENSEE shall not make any Attachments to any of OWNER's Poles without first applying for and obtaining a Permit pursuant to the applicable requirements of Appendix B and C. LICENSEE shall not be required to obtain Permits for Attachment(s) existing as of the effective date of this Agreement. Such grandfathered Attachments shall, however, be subject to the Attachment Fees specified in Appendix A. In the event that a service drop constitutes the initial Attachment to a given Pole, LICENSEE will be required to follow the Permitting process set forth in this Article 6. LICENSEE will be allowed thirty (30) days after the Attachment is made to initiate the Permitting process.
- 6.2 Permits for Overlapping.** As set out in Paragraph 2.11, Permits are required for any Overlapping allowed under this Agreement and LICENSEE, LICENSEE's Affiliate or other third party, as applicable, shall pay any necessary Make-Ready Work costs to accommodate such Overlapping.
- 6.3 Professional Certification.** Unless otherwise waived in writing by OWNER, as part of the Permit application process and at LICENSEE's sole expense, a qualified employee or contractor of LICENSEE must participate in the Pre-Construction Survey and certify that LICENSEE's Facilities can be and were installed on the identified Poles in compliance with

the standards in Paragraph 4.1 and in accordance with the Permit. LICENSEE's qualified employee's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

OWNER, at its discretion, may waive the requirements of this Paragraph with respect to service drops.

- 6.4 OWNER Review of Permit Application.** Upon receipt of a properly executed Application for Permit (Appendix C), which shall include the Pre-Construction Survey, certified per Paragraph 6.3 above, and detailed plans for the proposed Attachments in the form specified in Appendix C, OWNER will review the Permit application and discuss any issues with LICENSEE, including engineering or Make-Ready Work requirements associated with the Permit application. OWNER acceptance of the submitted design documents does not relieve LICENSEE of full responsibility for any errors and/or omissions in the engineering analysis. Unless otherwise agreed, the Permit application process shall be consistent with the following timeline:

6.4.1 Review Period. OWNER shall review and respond to properly executed and complete Permit applications for routine installations as promptly as is reasonable with a maximum response time of within forty-five (45) days of receipt. For Permit applications seeking Attachments to fifty (50) or more Poles, OWNER and LICENSEE will negotiate a mutually satisfactory longer time frame to complete the Permit application review. OWNER's response will either provide an approved Application or a written explanation as to why the Application is being denied, in whole or in part, and if approved provide a detailed estimate of the costs of all Make-Ready Work if necessary.

6.4.2 Upon receipt of OWNER's Make-Ready estimate, LICENSEE shall have fourteen (14) days to approve the estimate and if advance payment of Make-Ready Work is required, will provide payment within 45 days of receipt of an invoice for the estimated Make-Ready Work.

6.4.3 OWNER will complete routine Make-Ready Work within sixty (60) days of approval and/or receipt of advance payment of Make-Ready Work if required. If there are extenuating circumstances that make the necessary Make-Ready more complicated or time-consuming, including, but not limited to, the number of Poles, seasonal weather conditions, lead time on materials not in inventory, OWNER shall identify those factors in the Make-Ready estimate and the parties shall agree upon a reasonable timeframe for completion.

6.4.4 Make-Ready Work for Attachments of wireless Communications Facilities located above the electric space, if authorized under this Agreement, shall be provided on a reasonable, timely basis but are not subject to a specific time period.

6.4.5 OWNER may toll the time period for completion of Make-Ready Work by written notice in order to respond to severe storms, natural disasters, or other emergency situations.

- 6.5 Permit as Authorization to Attach.** Upon completion of any necessary Make-Ready Work and receipt of payment for such work, OWNER will sign and return the Permit application, which shall serve as authorization for LICENSEE to make its Attachment(s). If no Make-Ready Work is required, OWNER will issue Permit(s) within forty-five (45) days of receipt of a Permit application.

Article 7—Make-Ready Work/Installation

- 7.1 Estimate for Make-Ready Work.** If OWNER determines that it can accommodate LICENSEE's request for Attachment(s), including Overlashing of an existing Attachment, it will, advise LICENSEE of any estimated Make-Ready Work charges necessary to accommodate the Attachment, within the forty-five (45) day timeframe provide in Article 6.4.1.
- 7.2 Payment of Make-Ready Work.** Upon completion of the Make-Ready Work, OWNER shall invoice LICENSEE for OWNER's actual cost of such Make-Ready Work. Alternatively, OWNER, at its discretion, may require payment in advance for Make-Ready Work based upon the estimated cost of such work. The costs of the work shall be in accordance with Paragraph 3.9 and trued up in accordance with Paragraph 3.8.
- 7.3 Who May Perform Make-Ready Work.** Make-Ready Work shall be performed only by OWNER and/or a contractor authorized by OWNER to perform such work. If OWNER cannot perform the Make-Ready Work to accommodate LICENSEE's Communications Facilities within sixty (60) calendar days of LICENSEE's agreement to Make-Ready Work estimate, LICENSEE may request the ability to use a qualified contractor to perform such work and shall specify when such work would be performed. In all instances, qualified contractors, if allowed, must be pre-approved by OWNER for such work if they have not been previously pre-approved by OWNER.
- 7.4 Scheduling of Make-Ready Work.** In performing all Make-Ready Work to accommodate LICENSEE's Facilities, OWNER will endeavor to include such work in its normal work schedule. If LICENSEE requests that the Make-Ready Work be performed on a priority basis or outside of OWNER's normal work hours, LICENSEE will pay any resulting increased costs. Nothing in this Agreement shall be construed to require OWNER to perform LICENSEE's work before other scheduled work or OWNER service restoration.
- 7.5 Notification of Make-Ready Work.** Before starting Make-Ready Work, OWNER shall notify all Attaching Entities of the date and location of the scheduled work and shall afford all such Attaching Entities an opportunity to make any modifications to their existing Attachments at their own cost in connection with the Make-Ready Work.
- 7.6 Written Approval of Installation Plans Required.** With the exception of service drops, before making any Attachments to OWNER's Poles including Overlashing of existing Attachments, LICENSEE must obtain OWNER's written approval of detailed plans for the Attachments. Such detailed plans shall accompany a Permit application as required under Paragraph 6.4.
- 7.7 LICENSEE's Installation/Removal/ Maintenance Work.**

- 7.7.1 All of LICENSEE's installation, removal, and maintenance work, by either LICENSEE's employees or authorized contractors, shall be performed at LICENSEE's sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of OWNER's Poles, or other Facilities or other Attaching Entity's facilities or equipment. LICENSEE shall not be responsible for the cost and expense for any removal or maintenance work on LICENSEE's Facilities that were originally installed per Applicable Standards. All such work is subject to the insurance requirements of Article 18.
- 7.7.2 All of LICENSEE's installation, removal, and maintenance work, either by its employees or authorized contractors, shall comply with all applicable regulations specified in Paragraph 4.1. LICENSEE shall assure that any person installing, maintaining, or removing its facilities is fully qualified and familiar with all Applicable Standards, the provisions of Article 17, and the Minimum Design Specifications contained in Appendix D.

Article 8—Transfers

- 8.1 **Required Transfers of LICENSEE's Facilities.** If OWNER reasonably determines that a transfer of LICENSEE's Facilities is necessary, OWNER will require LICENSEE to perform such transfer at its own expense within sixty (60) calendar days after receiving written notice from OWNER that the Attaching Entities with attachments above the LICENSEE have completed the transfer of their facilities, or perform the transfer itself, using its personnel, and/or contractors. If LICENSEE fails to transfer its Facilities within sixty (60) calendar days after receiving such written notice from OWNER, OWNER shall have the right to transfer LICENSEE's Facilities using its personnel and/or contractors. The costs of such transfers shall be apportioned as specified under Article 9. OWNER shall not be liable for damage to LICENSEE's Facilities except to the extent provided in Paragraph 16. The written advance notification requirement of this Paragraph shall not apply in emergency situations. In emergency situations, OWNER shall provide such advance oral notice as is practical, given the urgency of the particular situation. OWNER shall then provide written notice of any such actions taken within ten (10) days following the occurrence. At the option of the parties, OWNER can be contracted to perform all such transfer work as part of the normal course of business. OWNER will bill LICENSEE at OWNER's actual and reasonable cost. If the parties choose this option a separate transfer agreement must be executed between the OWNER and LICENSEE.

Article 9—Modifications and/or Replacements

- 9.1 **LICENSEE's Action Requiring Modification/Replacement.** If any Pole to which LICENSEE desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Standards, OWNER will notify LICENSEE of the necessary Make-Ready Work, and associated costs, to provide adequate Pole space, including, but not limited to, replacement of the Pole and/or rearrangement or transfer of OWNER's Facilities, as well as the existing facilities of other Attaching Entities. If LICENSEE elects to go forward with the necessary changes, LICENSEE shall

pay to OWNER and any existing Attaching Entity the actual and reasonable cost of the Make-Ready Work, performed by OWNER, in accordance with Paragraph 3.9 or performed by the existing Attaching Entity to accommodate the new Attachment of LICENSEE. OWNER, in its discretion, may require advance payment.

The attachment rights subsequently granted by OWNER to other Attaching Entities pursuant to licenses, permits, or rental agreements shall not limit nor interfere with prior attachment rights granted to the LICENSEE hereunder or result in further rearrangement or make-ready costs without reimbursement to the LICENSEE.

The OWNER shall require such Attaching Entities to compensate LICENSEE for actual and reasonable costs incurred in rearranging any of LICENSEE's Attachments necessary to provide clearance, as required in this Agreement, for such Attaching Entities attachments.

- 9.2 Treatment of Multiple Requests for Same Pole or Conduit.** If OWNER receives Permit applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, OWNER will allocate among such licensees the applicable costs associated with such modification or replacement.
- 9.3 Guying.** The use of guying to accommodate LICENSEE's Attachments shall be provided by, and at the expense of, LICENSEE and to the satisfaction of OWNER, as specified in Appendix D. LICENSEE shall not attach its guy wires to OWNER's anchors without prior written permission of OWNER. If permission is granted, Make-Ready Work charges may apply.
- 9.4 Allocation of Costs.** The costs for any rearrangement or transfer of LICENSEE's Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of OWNER's cables or wires) shall be allocated to OWNER and/or LICENSEE and/or other Attaching Entity on the following basis:
- 9.4.1** If OWNER intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. LICENSEE shall not be responsible for costs associated with the rearrangement or transfer of LICENSEE's Facilities, unless and to the extent the rearrangement or transfer is necessary in connection with OWNER's reacquisition of Reserved Capacity from LICENSEE. Prior to making any such modification or replacement, OWNER shall provide LICENSEE written notification of its intent in order to provide LICENSEE a reasonable opportunity to modify or add to its existing Attachment. Should LICENSEE decide to do so, it must seek OWNER's written permission in accordance with this Agreement. If LICENSEE elects to add to or modify its facilities, LICENSEE shall bear the total incremental costs incurred by OWNER in making the space on the Poles accessible to LICENSEE.
- 9.4.2** If the modification or replacement of a Pole is necessitated by the requirements of LICENSEE, LICENSEE shall be responsible for all costs caused by the

modification or replacement of the Pole as well as the costs associated with the transfer or rearrangement of any other Attaching Entity's Communications Facilities. After receipt of an approved Permit application from OWNER, LICENSEE shall submit evidence, in writing, that it has made arrangements to reimburse all affected Attaching Entities for their costs caused by the transfer or rearrangement of their Facilities. OWNER shall not be obligated in any way to enforce or administer LICENSEE's responsibility for the costs associated with the transfer or rearrangement of another Attaching Entity's facilities pursuant to this Paragraph 9.4.2.

9.4.3 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than OWNER or LICENSEE, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or transferring LICENSEE's Facilities. LICENSEE shall cooperate with such third-party Attaching Entity to determine the costs of moving LICENSEE's Facilities.

9.4.4 If the Pole must be modified or replaced for reasons unrelated to the use of the Pole by Attaching Entities (e.g., storm, accident, deterioration), OWNER shall pay the costs of such modification or replacement and LICENSEE shall pay the costs of rearranging or transferring its facilities.

9.5 OWNER Not Required to Relocate. Nothing in this Agreement shall be construed to require OWNER to relocate its Attachments or to modify or replace its Poles for the benefit of LICENSEE.

Article 10—Abandonment or Removal of OWNER Facilities

10.1 Notice of Abandonment or Removal of OWNER Facilities. If OWNER desires at any time to abandon or remove any OWNER Facilities to which LICENSEE's Facilities are attached, it shall give LICENSEE notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such OWNER's Facilities. Notice may be limited to sixty (60) calendar days if OWNER is required to remove or abandon its OWNER Facilities as the result of the action of a third party and the lengthier notice period is not practical. Such notice shall indicate whether OWNER is offering LICENSEE an option to purchase the Pole(s). If, following the expiration of the 90-day period, LICENSEE has not yet removed and/or transferred all of its facilities and has not agreed to purchase OWNER's Facilities pursuant to Paragraph 10.2, OWNER shall have the right, subject to any applicable laws and regulations, to remove or transfer LICENSEE's Facilities at LICENSEE's expense. OWNER shall give LICENSEE prior written notice of any such removal or transfer of LICENSEE's Facilities.

10.2 Option to Purchase Abandoned Poles. Should OWNER desire to abandon any Pole, OWNER may, in its sole but reasonable discretion, grant LICENSEE the option of purchasing such Pole at a price which is the value in place, at that time, of such abandoned Pole, less cost of removal. LICENSEE must notify OWNER in writing within thirty (30)

calendar days of the date of OWNER's written notice of abandonment that LICENSEE desires to purchase the abandoned Pole. Thereafter, LICENSEE must also secure and deliver proof of all necessary governmental approvals and easements allowing LICENSEE to independently own and access the Pole within forty-five (45) calendar days. Should LICENSEE fail to secure the necessary governmental approvals, or should OWNER and LICENSEE fail to enter into an agreement for LICENSEE to purchase the Pole within forty-five (45) calendar days, LICENSEE must remove its Attachments as required under Paragraph 10.1. If the OWNER grants LICENSEE an option to purchase a Pole the OWNER wished to abandon and LICENSEE agrees to purchase such Pole, the OWNER will convey the Pole to LICENSEE by bill of sale. Nothing in this Agreement shall be construed as requiring OWNER to sell LICENSEE Poles that OWNER intends to remove or abandon.

- 10.3 Underground Relocation.** If OWNER moves any portion of its aerial system underground and purchase of the Poles under Article 10.2 is not an option, LICENSEE shall remove its facilities from any affected Poles within one hundred twenty 120(120) calendar days of receipt of written notice from OWNER and must either relocate its affected Facilities underground with OWNER or find other means to accommodate its Facilities, including (but not limited to) placement of its own pole(s). If LICENSEE does not remove its Attachments within one hundred twenty (120) days, OWNER shall have the right to remove or transfer LICENSEE's Communications Facilities at LICENSEE's expense.

Article 11—Removal of LICENSEE's Facilities

- 11.1 Removal on Expiration/Termination.** At the expiration or other termination of an individual Permit(s), LICENSEE shall remove its Facilities from the affected Poles at its own expense. If LICENSEE fails to remove such Facilities within one hundred eighty (180) calendar days of expiration or termination or the individual Permits, or some greater period as allowed by OWNER, OWNER shall have the right, but not the obligation, to remove or transfer such Facilities at LICENSEE's expense. If this Agreement expires or is terminated in its entirety and LICENSEE and OWNER are not negotiating a new license agreement to replace it, LICENSEE shall have five years from the date of expiration or termination to remove its facilities from OWNER Poles and will endeavor to remove at least twenty percent (20%) of its facilities during each year of the five year period. LICENSEE shall pay OWNER an annual Pole Attachment fee for each Pole bearing its Attachments until all of its Attachments have been removed from the Pole.

Article 12—Termination of Permit

- 12.1 Automatic Termination of Permit.** Any Permit issued pursuant to this Agreement shall automatically terminate when LICENSEE ceases to have authority to construct and operate LICENSEE's Facilities on public or private property at the location of the particular Pole(s) covered by the Permit. Notwithstanding the foregoing, to the extent LICENSEE is actively pursuing a challenge of the revocation of any such permission, LICENSEE may remain on the particular Pole(s) until such time all appeals and remedies are exhausted.

- 12.2 Surrender of Permit.** LICENSEE may at any time surrender any Permit for Attachment(s) and remove its facilities from the affected Pole(s), provided, however, that before commencing any such removal, LICENSEE must notify the OWNER of the proposed date(s) and time(s) during which such work will be completed. All such work is subject to the insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. If LICENSEE surrenders such Permit pursuant to the provisions of this Article, but fails to remove its Attachments from OWNER's Facilities within the time frame set forth in the approved plan above, OWNER shall have the right, but not the obligation, to remove or transfer LICENSEE's Attachments at LICENSEE's expense.

Article 13—Inspection of LICENSEE's Facilities

- 13.1 Inspections.** OWNER may conduct an inspection of Attachments at any time. Within one hundred eighty (180) calendar days of receiving written notice from OWNER, LICENSEE shall correct all Attachments that OWNER identifies as being out of compliance with Applicable Standards. If OWNER finds that twenty percent (20%) or more of LICENSEE's Attachments are either in non-compliance or not permitted, LICENSEE shall pay its pro-rata share of the costs of the inspection as it applies to LICENSEE's Attachments.
- 13.2 Notice.** OWNER will give LICENSEE one hundred eighty (180) calendar days advance written notice of such inspections, except in those instances in which safety considerations justify the need for such inspection without delay. Upon receipt of notice, LICENSEE will notify OWNER if it wishes to participate in the inspection.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon OWNER any liability of any kind whatsoever or to relieve LICENSEE of any responsibility, obligations, or liability, whether assumed under this Agreement or otherwise existing.
- 13.4 Inventory.** OWNER may conduct an inventory of Attachments made to its Poles no more frequently than once every five (5) years. OWNER shall give LICENSEE at least one hundred eighty (180) calendar days prior written notice of an initial meeting to plan the inventory. At such meeting, OWNER, LICENSEE and all other Attaching Entities shall participate in, among other things, review of the predicted costs to perform the inventory, the selection of an independent contractor for conducting the inventory, as well as the scheduling, scope, extent and reporting of the inventory results. All the data from the inventory shall be made available to the participating parties in an electronic format. The inventory data shall be delivered in a format that is usable by each party as specified by each party. Any party to the inventory shall make any objections to the inventory results with one hundred eighty (180) days of receipt of the inventory data or such objections are waived. To the extent that the respective parties may desire to include items in the inventory that are beneficial only to the requesting party, the additional costs for such items shall be the sole responsibility of the Party requesting them. LICENSEE shall reimburse OWNER for its pro-rata share of the costs of the inventory that are attributable

to counting Poles containing LICENSEE's Attachments within forty-five (45) days of receipt of an invoice.

- 13.5 Attachment Records.** Notwithstanding the above inventory provisions, LICENSEE shall furnish to OWNER annually an up-to-date electronic map depicting the locations of its Attachments. If a map is not available, the LICENSEE will provide a list in an electronic format specified by OWNER.

Article 14—Unauthorized Occupancy or Access

- 14.1 Unauthorized Access Fee.** Except as otherwise provided in Article 6.1 with respect to Existing Attachments (which are grandfathered in), if any of LICENSEE's Attachments are found occupying any Pole for which no Permit has been issued, OWNER, without prejudice to its other rights or remedies under this Agreement, may assess an unauthorized access fee, as specified in Appendix A, Item 2. LICENSEE shall pay such fee within forty-five (45) calendar days of receiving an invoice thereof.
- 14.2 No Ratification of Unauthorized Use.** No act or failure to act by OWNER with regard to any un-authorized use shall be deemed as ratification of the unauthorized use. Unless the parties agree otherwise, a Permit for a previously unauthorized Attachment shall not operate retroactively or constitute a waiver by OWNER of any of its rights or privileges under this Agreement or otherwise, and LICENSEE shall remain subject to all obligations and liabilities arising out of or relating to its unauthorized use.

Article 15—Reporting Requirements

- 15.1** Upon receipt of request by Utility, but not more than annually, the LICENSEE shall report Attachments per Article 13.4

Article 16—Liability and Indemnification

- 16.1 Risk of Loss.** LICENSEE assumes all risk and responsibility for all loss and expense whatsoever incurred by OWNER, joint owners or existing Attaching Entities resulting from damages to OWNER Facilities or the associated equipment of OWNER, joint owners or existing Attaching Entities, or the premises surrounding any OWNER Facilities, caused by LICENSEE's use of OWNER Facilities or otherwise arising in connection with the exercise of the rights of LICENSEE under this Agreement. LICENSEE must immediately report to OWNER the occurrence of any damage or loss.
- 16.2 Indemnification.** The indemnification, hold harmless and defense obligations set forth below in Sections 16.2.1 and 16.2.2: (a) are in addition to any other such obligations set forth elsewhere in this Agreement; and (b) will survive the expiration or termination of this Agreement, or the revocation of any applicable license.
- 16.2.1 LICENSEE Indemnification.**
- 16.2.1.1** LICENSEE will indemnify, hold harmless and defend each OWNER indemnitee from and against any and all damages arising out of a claim by a third party against a OWNER indemnitee for: (a) injury to persons (including libel,

slander or death) arising from or related to the act or omission of LICENSEE or its agents; (b) loss of or damage to tangible or intangible property arising from or related to the act or omission of LICENSEE or its agents; (c) violations of any applicable law by LICENSEE or its agents; or (d) arising from or related to the payment of compensation, employment taxes and benefits in connection with work performed on OWNER Facilities by LICENSEE or its agents. The indemnification, hold harmless and defense obligations under this Section 16.2.1.1 do not apply to damages resulting from the negligent act or omission or intentional misconduct of OWNER or its agents, or the violation of any applicable law by OWNER or its agents.

16.2.1.2 LICENSEE will indemnify, hold harmless and defend each OWNER indemnitee from and against any damages arising from or related to the erection, construction, placement, modification, rearrangement, transfer, maintenance, operation, authorized or unauthorized presence, use or removal of LICENSEE equipment, or by its proximity to the facilities of all existing Attaching Entities, or by any act or omission of LICENSEE or its agents in the vicinity of OWNER Facilities. This includes any taxes, special charges by others, claims and demands for damages for copyright or patent infringement, for libel and slander, for unauthorized use of television or radio broadcast programs and other program material.

16.2.2 OWNER Indemnification.

16.2.2.1 OWNER will indemnify, hold harmless and defend LICENSEE and its parent, subsidiaries, Affiliates and their respective directors, officers, employees and agents (LICENSEE and the foregoing, each a "LICENSEE Indemnitee") from and against any and all damages arising out of a claim by a third party against a LICENSEE Indemnitee for: (a) injury to persons (including libel, slander or death) arising from or related to the act or omission of OWNER or its agents; (b) loss of or damage to tangible or intangible property arising from or related to the act or omission of OWNER or its agents; (c) violations of any applicable law by OWNER or its agents; or (d) arising from or related to the payment of compensation, employment taxes and benefits in connection with work performed on OWNER Facilities by OWNER or its agents. The indemnification, hold harmless and defense obligations under this Section 16.2.2.1 do not apply to damages resulting from the negligent act or omission or intentional misconduct of LICENSEE or its agents, or the violation of any applicable law by LICENSEE or its agents.

16.2.2.2 OWNER will indemnify, hold harmless and defend each LICENSEE Indemnitee from and against any damages arising from or related to OWNER's erection, construction, placement, maintenance, operation, use, work on or removal of OWNER Facilities, or by any act or omission of OWNER or its agents in the vicinity of LICENSEE Attachments and LICENSEE equipment.

16.3 Claims Notification. When a party becomes aware of a claim, demand or suit that is subject to the provisions of Sections 16.2.1 and 16.2.2, or any other claim, demand or suit

related to indemnity, duty to defend or hold harmless provisions stated elsewhere in this Agreement (each a "Claim"), the party to be indemnified, defended or held harmless ("Indemnified Party") must promptly give notice of the Claim to the other party ("Indemnifying Party"), accompanied by a copy of any written documentation regarding the matter, including copies of accident reports, petitions, summons, complaints and statements. The Indemnifying Party will defend such Claim with its own counsel and at its own expense, and has the right to control the settlement or defense, except that the Indemnifying Party will not enter into any settlement that imposes any liability or obligation on the Indemnified Party without the Indemnified Party's prior consent, which consent will not be unreasonably withheld, conditioned or delayed. The parties will reasonably cooperate in the settlement or defense of any such Claim, and to the extent legally possible, give each other full access to all relevant information. The Indemnified Party's own counsel may, at the Indemnified Party's own cost and expense, participate with the Indemnifying Party and its counsel in the defense or settlement of any such Claim.

16.4 Damages Limitation. Neither party is liable to the other for any indirect, special, consequential, punitive or exemplary damages, such as damages for loss of anticipated profits or revenue or other economic loss, for any claim or cause of action arising out of or related to this Agreement, whether arising in contract, tort or otherwise, except for claims for which a party has an obligation of indemnity under this Agreement, or arising from any grossly negligent, willful or fraudulent act or omission.

16.5 Environmental Hazards. LICENSEE represents and warrants that its use of OWNER's Poles will not generate any Hazardous Substances, that it will not store or dispose on or about OWNER's Poles or transport to OWNER's Poles any Hazardous Substances and that LICENSEE's Facilities will not constitute or contain and will not generate any Hazardous Substance in violation of federal, state, or local law now or hereafter in effect, including any amendments. "Hazardous Substance" shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect, including any amendments. LICENSEE further represents and warrants that in the event of breakage, leakage, incineration, or other disaster, LICENSEE's Facilities would not release any Hazardous Substances. LICENSEE and its agents, contractors, and subcontractors shall defend, indemnify, and hold harmless OWNER and its respective officials, officers, board members, council members, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, or expenses (including reasonable attorney's fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage, or discovery of any Hazardous Substances on, under, or adjacent to OWNER's Poles to the extent caused by LICENSEE's use of OWNER's Poles.

Should OWNER's Poles be declared to contain Hazardous Substances, OWNER shall be responsible for the disposal of their Pole. If the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties. Notwithstanding the above, OWNER agrees to defend, indemnify and hold

harmless LICENSEE for any claims against LICENSEE related to Hazardous Substances or conditions to the extent caused or created by OWNER.

- 16.6 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by OWNER of any applicable state limits on municipal liability or governmental immunity
- 16.7** If either party institutes an action in a court of competent jurisdiction to enforce the terms of this Agreement, and judgment is rendered in one party's favor, the losing party shall pay the prevailing party's reasonable attorney's fees and expenses, including the cost of appeal.

Article 17—Duties, Responsibilities, and Exculpation

- 17.1 Duty to Inspect.** LICENSEE acknowledges and agrees that OWNER does not warrant the condition or safety of OWNER's Facilities, or the premises surrounding the Facilities, and LICENSEE further acknowledges and agrees that it has an obligation to inspect OWNER's Poles and/ or premises surrounding the Poles for open and obvious dangers, prior to commencing any work on OWNER's Poles or entering the premises surrounding such Poles. LICENSEE's responsibility is limited only to the extent necessary to perform LICENSEE's work. Any obligation of OWNER with respect to the condition of safety of its facilities separate from the Agreement shall remain solely the obligation of OWNER.
- 17.2 Knowledge of Work Conditions.** By executing this Agreement, LICENSEE warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that LICENSEE will undertake under this Agreement and that it fully understands or will acquaint itself with the facilities, difficulties, and restrictions attending the execution of such work.
- 17.3 DISCLAIMER. OWNER MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO OWNER'S POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND OWNER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. OWNER EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 17.4 Duty of Competent Supervision and Performance.** The parties further understand and agree that, in the performance of work under this Agreement, CENTURYLINK and its agents, employees, contractors, and subcontractors will work near electrically energized lines, transformers, or other IFP facilities. The parties understand and intend that energy generated, stored, or transported by IFP facilities will not be interrupted during the continuance of this Agreement, except in emergencies endangering life or threatening grave personal injury or property. CENTURYLINK shall ensure that its employees, agents, contractors, and subcontractors have the necessary qualifications, skill, knowledge, training, and experience to protect themselves, their fellow employees, agents, contractors, and subcontractors; employees, agents, contractors, and subcontractors of IFP; and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In

addition, CENTURYLINK shall furnish its employees, agents, contractors, and subcontractor's competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. CENTURYLINK agrees that in emergency situations in which it may be necessary to de-energize any part of IFP's equipment, CENTURYLINK shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

IFP shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of CENTURYLINK and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, IFP shall furnish its employees, agents, contractors and subcontractor competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner.

- 17.5 Requests to De-energize.** If IFP de-energizes any equipment or line at CENTURYLINK's request and for its benefit and convenience in performing a particular segment of any work, CENTURYLINK shall reimburse IFP in full for all actual and reasonable costs and expenses incurred, in accordance with Paragraph 3.9, in order to comply with CENTURYLINK's request. Before IFP de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating CENTURYLINK's request.
- 17.6 Interruption of Service.** If a party causes an interruption of service by damaging or interfering with any equipment of the other party, the party causing the interruption of service shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify the other party immediately.
- 17.7 Duty to Inform.** CENTURYLINK further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on IFP's Poles by CENTURYLINK's employees, agents, contractors, or subcontractors, and CENTURYLINK accepts the duty and sole responsibility to notify and inform CENTURYLINK's employees, agents, contractors, or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

- 18.1 Policies Required.** The parties recognize and agree that IFP is a subdivision of the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, and, therefore, IFP is subject to all Idaho laws, including the Idaho Constitution and Idaho State Code. Title 6, Chapter 9, of the Idaho Code (the Idaho Tort Claims Act) limits IFP liability. The Idaho Tort Claims Act requires notice of tort claim as a prerequisite to suit for liability for tort claims. Article VIII, Section 4, of the Idaho Constitution prohibits a city from loaning or giving its credit in any amount for any purpose whatsoever to another entity. Additionally, Article VIII, Section 4, prohibits the City from becoming responsible for any debt, contract, or liability of any individual associated with a corporation in or out of the State of Idaho. Nothing in the Article 18 shall obligate IFP to alter, in any way, its obligations under the Idaho State Code. At all times during the term of this

Agreement, Licensee shall keep in force and effect all insurance policies and coverage described below:

- 18.1.1 Workers Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Idaho law at the time of the application of this provision for each accident. This policy shall be endorsed to include a waiver of subrogation. Each party shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.
- 18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.
- 18.1.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in connection with work under this Agreement. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.
- 18.1.4 Umbrella Liability Insurance.** Coverage is to be in excess of the sum employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.
- 18.1.5 Property Insurance.** Each party will be responsible for maintaining property insurance on its own facilities, buildings, and other improvements, including all equipment, fixtures, structures, fencing, or support systems that may be placed on, within, or around OWNER's Facilities to protect fully against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as "extended coverage" insurance or self-insure such exposures.
- 18.2 Qualification; Priority; Contractors' Coverage.** The insurer must be authorized to do business under the laws of the state of Idaho and have an "A-VII" or better rating in Best's Guide. Such insurance policy or policies will be endorsed to provide primary coverage in the event of any overlapping coverage carried by the other party (subject to the indemnification provisions of this Agreement). All contractors and all of their subcontractors who perform work on behalf of either party shall carry, in full force and effect, workers' compensation and employers' liability, comprehensive general liability, and automobile liability insurance coverages of the type required to obtain under this Article 18 with the same limits.
- 18.3 Evidence of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, each party will make available to the other party a memorandum of insurance or other proof of insurance evidencing the coverages required by this Article 18. The evidence of insurance

shall include workers' compensation and property insurance waivers of subrogation required by this Agreement. It shall be the duty of each party to assure that the other party shall be given thirty (30) calendar days advance written notice of cancellation or nonrenewal of insurance during the term of this Agreement on any or the required coverages that are not replaced. Each party, its council members, board members, commissioners, agencies, officers, officials, employees and representatives (collectively, "Additional Insureds") shall be included as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the evidence of insurance. All policies shall be written on an occurrence and not on a claims-made basis. Each party shall defend, indemnify and hold harmless the other party and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Evidence of CENTURYLINK's insurance is available at www.centurylink.com/moi.

18.4 Limits. The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease each party's exposure to risk.

18.5 Prohibited Exclusions. No policies of insurance required to be obtained by either party or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement except as to infringement of patents or copyrights or for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage for injuries to a party's employees or agents directly caused by the negligence of the other party, or (4) exclude coverage of liability for injuries or damages caused by either party's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

18.6 Deductible/Self-insurance Retention Amounts. Each party shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

OWNER shall have the right to grant, renew, and extend rights and privileges to others not party to this Agreement by contract or otherwise, to use OWNER's Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to LICENSEE by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

20.1 Limitations on Assignment. LICENSEE shall not assign or otherwise transfer its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of OWNER, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, LICENSEE shall have a right to assign or transfer this

Agreement, in whole or in part and without consent to (i) any entity that controls, is controlled by, or is under common control with LICENSEE, and (ii) any entity that purchases all or substantially all of LICENSEE's assets located in Idaho Falls, Idaho.

- 20.2 Assignee/Transferee and LICENSEE.** Where consent to an assignment or transfer is required, no assignment or transfer will be effective until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of LICENSEE arising hereunder.

Article 21—Failure to Enforce

Failure of OWNER or LICENSEE to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 22 Issue Resolution Process

- 22.1 Dispute Resolution.** Except for an action seeking a temporary restraining order or an injunction or to compel compliance with this dispute resolution procedure, the parties can invoke the dispute resolution procedures in this Article at any time to resolve a controversy, claim, or breach arising under this Agreement. Each party will bear its own costs for dispute resolution activity.
- 22.2 Initial Meeting.** At either party's written request, each party will designate knowledgeable, responsible, senior representatives to meet and negotiate in good faith to resolve a dispute. The representatives will have discretion to decide the format, frequency, duration, and conclusion of these discussions. The parties will conduct any meeting in-person or via conference call, as reasonably appropriate.
- 22.3 Executive Meeting.** If ninety (90) days after the first in-person meeting of the senior representatives, the parties have not resolved the dispute to their mutual satisfaction, each party will designate executive representatives at the director level or above to meet and negotiate in good faith to resolve the dispute. To facilitate the negotiations, the parties may agree in writing to use mediation or another alternative dispute resolution procedure.
- 22.4 Unresolved Dispute.** If after sixty (60) days from the first executive-level, in-person meeting, the parties have not resolved the dispute to their mutual satisfaction; either party may invoke any legal means available to resolve the dispute, including enforcement of the default and termination procedures set out in Article 23.
- 22.5 Confidential Settlement.** Unless the parties otherwise agree in writing, communication between the parties under this Article will be treated as confidential information developed for settlement purposes, exempt from discovery and inadmissible in litigation.
- 22.6 Business as Usual.** During any dispute resolution procedure or lawsuit, the Utilities will continue providing services to each other and performing their obligations under this Agreement.

Article 23—Termination of Agreement

OWNER shall have the right, pursuant to the procedures set out in this Article 23, to terminate any Permit issued under it, whenever LICENSEE is in default of any material term or condition of this Agreement applicable to such Permit, including, but not limited to, the following circumstances:

- 23.1.1** Construction, operation, or maintenance of LICENSEE's Facilities in violation of law, or in aid of any unlawful act or undertaking; or
 - 23.1.2** Construction, operation, or maintenance of LICENSEE's Facilities after any authorization required of LICENSEE has lawfully been denied or revoked by any governmental authority or any private holder of easements or other rights; or
 - 23.1.3** Construction, operation, or maintenance of LICENSEE's Facilities without the insurance coverage required under Article 18.
- 23.3** Notwithstanding the foregoing, OWNER will not terminate an individual Permit or this Agreement without first notifying LICENSEE in writing, of any defaults by LICENSEE under this Agreement. LICENSEE shall take immediate corrective action to remedy or eliminate any such defaults within thirty (30) calendar days, or such longer period as the parties may mutually agree, and shall confirm in writing to OWNER when the cited condition or conditions have ceased or been corrected, or are in the process of being corrected.
- 23.4** If LICENSEE contests the existence of the default, it may invoke the dispute resolution procedures of Article 22.
- 23.5** If the parties are unable to resolve the dispute and LICENSEE fails to discontinue or correct a default in a timely manner or fails to give the required confirmation, OWNER shall notify LICENSEE in writing of such failure. If LICENSEE has not taken corrective action to remedy or eliminate the condition within twenty (20) days following LICENSEE's receipt of this second notice from OWNER, OWNER may terminate this Agreement or any Permit(s) granted under it thirty (30) calendar days after issuance of the second written notice. In the event of termination of this Agreement or any of LICENSEE's rights, privileges, or authorizations, OWNER may seek removal of LICENSEE's Facilities pursuant to the terms of Article 11. LICENSEE shall be liable to OWNER for all fees and charges accrued pursuant to the terms of this Agreement until LICENSEE's Facilities are actually removed.

Article 24—Term of Agreement

- 24.1** This Agreement shall become effective upon its execution and shall continue in effect for an initial term of five (5) years and, unless terminated by either party after the initial term, shall automatically be renewed for successive one (1) year terms. Either party may terminate this Agreement at the end of the initial term or a successor term by giving written notice of intent to terminate the Agreement at the end of the then-current term. Such a

notice must be given least one hundred eighty (180) calendar days prior to the end of the then-current term.

- 24.2 Even after the termination of this Agreement, each party's indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

Article 25—Amending Agreement

This Agreement shall not be amended, changed, or altered except in writing and with approval by authorized representatives of both parties.

Article 26—Notices

- 26.1 Wherever in this Agreement notice or other communications is required or permitted to be given by either party to the other, such notice shall be in writing and shall be effective when delivered by certified mail with return receipt requested, with postage prepaid, or sent via overnight delivery by a nationally recognized carrier and except where specifically provided for elsewhere, properly addressed as follows:

If to IFP, at: General Manager
Idaho Falls Power
P.O. Box 50220
Idaho Falls, ID 83405

If to CENTURY LINK, at:

Legal Notices:

QWEST Corporation d/b/a CenturyLink QC
Real Estate Transactions and Analysis (RETA)
Mailcode: KS002900200-2C970
600 New Century Parkway
New Century, KS 66031
Attn: Real Estate Manager

and

CenturyLink Law Department
Mailstop: 2310550900-B10.05
1801 California Street
Denver, CO 80202
Attn: Network Legal Group

Billing:

CenturyLink
Poles and Joint Use
700 W. Mineral Ave.
NM M30.13
Littleton, CO 80120-4511

or to such other address as either party, from time to time, may give the other party in writing.

26.2 The above notwithstanding the parties may agree to utilize electronic communications such as Notify® for notifications related to the Permits application and approval process and necessary transfer or Pole modifications.

26.3 Both parties shall maintain a staffed 24-hour emergency telephone number for reporting damage to facilities or other situations requiring immediate communications between the parties. CenturyLink's staffed 24-hour emergency telephone numbers are (800)201-4099 and (877)348-9007. IFP emergency number is (208) 612-8437.

Article 27—Entire Agreement

This Agreement and its appendices constitute the entire agreement between the parties concerning Attachments of LICENSEE's Facilities on OWNER's Poles within the geographical service area covered by this Agreement. Unless otherwise expressly stated in this Agreement, all previous agreements, whether written or oral, between OWNER and LICENSEE are superseded and of no further effect. Any Attachments existing prior to the execution of this Agreement are authorized and in conformity with Applicable Standards.

Article 28—Severability and Change in Law

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, and such invalidity does not materially alter the essence of this Agreement to either party, such provision shall not render unenforceable this entire Agreement. Rather, the parties intend that the remaining provisions shall be administered as if the Agreement did not include the invalid provision.

The terms, conditions, and rates of this Agreement were composed in order to effectuate the legal requirements and/or parameters in effect at the time the Agreement was produced. In the event that any of the terms, conditions, and/or rates herein, or any of the laws or regulations that were the basis or rationale for such terms, conditions, and/or rates in this Agreement are invalidated, modified or stayed by any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the Parties shall expend diligent efforts to arrive at a written amendment regarding the appropriate conforming modifications to the Agreement.

Article 29—Governing Law

All matters relating to this Agreement shall be governed by the laws (without reference to choice of law) of the state of Idaho or any regulatory agency of competent jurisdiction.

Article 30—Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement and shall not be modified without mutual agreement in accordance with Article 25.

Article 31 – Omitted

Article 32—Force Majeure

- 32.1** If either OWNER or LICENSEE is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake, or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slow-downs, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and the affected party shall endeavor to remove or overcome such inability as soon as reasonably possible.
- 32.2** OWNER shall not impose any charges on LICENSEE stemming solely from LICENSEE's inability to perform required acts during a period of unavoidable delay as described in Paragraph 32.1, provided that LICENSEE presents OWNER with a written description of such force majeure within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse LICENSEE from the timely payment of any fees or charges due OWNER under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.

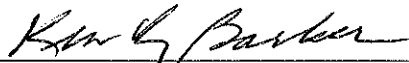
CITY OF IDAHO FALLS, IDAHO
Electric Light Division d/b/a Idaho Falls Power ("IFP")

By _____
Rebecca L. Noah Casper, Mayor

ATTEST:

Kathy Hampton, City Clerk

QWEST CORPORATION D/B/A CENTURY LINK QC

By: 
Name: Kenneth K. Barker
Its: Director Real Estate
Tranasactions and Analysis

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2016, 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 she is 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.

Notary Public for Idaho
Residing at Idaho Falls
My Commission Expires: _____


(SEAL)


STATE OF LOUISIANA)
) ss:
Parish of Ouachita)

On this 8th day of November, 2016, before me, the undersigned, a notary public, in and for said State, personally appeared Kenneth K. Barker, known or identified to me to be the Director - Real Estate* of Qwest Corporation d/b/a Century Link QC, and whose name is subscribed to the within instrument and acknowledged to me that he is authorized to execute the same for and on behalf of said corporation.

***Transactions and Analysis**

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

 (SEAL)
CARRIE BLACKMAN
Notary Public
Notary ID No. 52055
Ouachita Parish, Louisiana



Notary Public for Louisiana
Residing at: Monroe
My Commission Expires: with Life

Appendix A—Fees and Charges

Pole Attachment Fees and Charges

Effective Date: January 1, 2017

1. Annual Pole Attachment Fee:

\$ 11.80 (FCC Telecom Urban Rate) per pole/per year

2. Non-Recurring Fees:

Make Ready Work Charges	See Article 3 of Agreement
Miscellaneous Charges	See Article 3 of Agreement [or Attach Fee Schedule for Work Performed for LICENSEE]
Inspection Fees	See Article 13 of Agreement
Unauthorized Attachment Penalty	5 x annual attachment fee, per occurrence.

Appendix B— Pole Attachment Permit Application Process

The following procedure is to be followed by each LICENSEE seeking to make new Attachments on OWNER's Poles, or Overlashing to existing Pole tenant facilities on OWNER's Poles. Note that no entity may make any Attachments to OWNER's Poles or overlash to existing Pole tenant facilities on OWNER's Poles without having first entered into a binding Pole Attachment Licensing Agreement with OWNER. Third parties seeking to overlash to an existing Pole tenant facility must also have a written overlash agreement with the Pole tenant to be overlash. The overlash agreement must be provided to OWNER at the time of application.

1. LICENSEE shall submit a written request to perform a Pre-Construction Survey. The request must include a preliminary route description. LICENSEE shall have an OWNER-approved employee or contractor, participate in a Pre-Construction Survey, which will include a review of the proposed Attachment(s) to determine the feasibility of the request and identify any potential Make-Ready Work. Appendix F to this Agreement contains the minimum design review information that an applicant must provide and a worksheet for determining the minimum specifications that the proposed Attachment must meet.
2. Following the Pre-Construction Survey, LICENSEE shall submit a completed Permit application (Appendix C or electronic application) that includes: route map, information required in Appendix F, installation plans, and recommendations on Make-Ready Work. LICENSEE shall prepare the Permit application in adherence with the Applicable Standards (Section 1.2 of Agreement) and specifications (Appendix D).
3. At the attacher's expense, OWNER will review the completed Permit application and discuss any issues with LICENSEE.
4. Upon receipt of written authorization, OWNER will proceed with Make-Ready Work according to the specific agreed-upon installation plans and the terms of the Agreement, including payment for the Make-Ready Work charges as set out by OWNER and agreed to by LICENSEE.
5. Upon completion of the Make-Ready Work, OWNER will sign and return the application for Permit authorizing LICENSEE to make its Attachment(s) in accordance with agreed-upon installation plans.
6. Unless waived in writing by OWNER, the LICENSEE's, OWNER-approved employee, or contractor shall submit written notification to OWNER that installation of the Attachment(s) is complete. OWNER shall complete the Post-Construction Inspection to determine that the installation was done in accordance with the provisions of the Permit. The Post-Construction Inspection shall be submitted within ninety (90) calendar days after installation is complete.

**Appendix C— Application
for Permit**

Application for Permit

Application Date: ____/____/____

To: General Manager
Idaho Falls Power
P.O. Box 50220
Idaho Falls, ID 83405
Or
Joint Use Manager
CenturyLink
111 A Street
Cheney, WA 99004

Desire to: ☐ Attach to OWNER Pole(s) ☐ Remove Attachment from OWNER Pole(s)
☐ Overlash to existing facility attached to OWNER Pole(s)

Permit No. _____ Superseded Permit No. _____

Number of Poles this Permit _____ Sheet 1 of _____

LICENSEE Name _____

Address _____

Contact Person: Phone _____ Title _____

OWNER
Contact Person: Phone _____ Title _____

Narrative Description of proposed activity:

Application for Permit

In accordance with the terms and conditions of the Pole Attachment Licensing Agreement dated _____, application is hereby made for a Permit to attach to and/or vacate Pole(s) in the locations detailed on the attached Route Map(s). Also, attached is documentation as required by Appendix F of the Agreement. If applicable, the engineer's name, and phone number are:

Name _____ Phone _____

Permission is hereby granted to LICENSEE to attach and/or vacate Poles listed on the attached Field Data Summary Sheets, subject to payment of the necessary Make-Ready Work charges as set out by OWNER and agreed to by LICENSEE.

SUBMITTED:

APPROVED:

LICENSEE _____ OWNER _____

By _____ By _____

Title _____ Title _____

Date _____ Date _____

Appendix D— Specifications for LICENSEE's Attachments to OWNER Poles

LICENSEE, when making Attachments to OWNER Poles, will adhere to the following engineering and construction practices.

- A.** All Attachments shall be made in accordance with the Applicable Standards, as defined in Paragraph 1.2 of this Agreement.

B. Clearances

- 1. Attachment and Cable Clearances:** LICENSEE's Attachments on OWNER Poles, including metal attachment clamps and bolts, metal cross-arm supports, bolts and other equipment, must be attached so as to maintain the minimum separations specified in the National Electrical Safety Code ("NESC") and in drawings and specifications OWNER may from time to time furnish LICENSEE. (See Drawings A-01 to A-15.)
- 2. Service Drop Clearance:** From the Pole to the home/building the parallel minimum separation between electric service drops and Communications Service drops shall be twelve (12) inches, per NESC 235C1b (exception 3). (See drawing A-9)
- 3.** All other drop clearances at the midspan must conform to NESC table 235-6.

Sag and Mid-Span Clearances: LICENSEE will be particularly careful to leave proper sag in its lines and cables and shall observe the established sag of power line conductors and other cables so that minimum clearances are: (a) achieved at Poles located on both ends of the span; and (b) retained throughout the span.

At mid-span, a minimum of four (4) inches and at the pole twelve (12) inches of separation must be maintained between all communication cables that meet NESC rule 235H1 (includes common phone, CATV, and fiber optic cables lashed to an effectively grounded messenger strand, or self-supporting cables).

NESC table 235-6 requires:

- 12" from neutral (by exception #16)
 - 30" from supply lines carrying 0 to 8.7 kV (secondary)
 - 30" plus 0.4" per kV in excess of 8.7 (primary)
- 4. Vertical Risers:** Unless otherwise directed by OWNER, all Risers, including those providing 120/240 volt power for LICENSEE's equipment enclosure, shall be placed on the quarter faces of the Pole and must be installed in sealed conduit. A two- (2) inch clearance in any direction from cable, bolts, clamps, metal supports, and other equipment shall be maintained. (See Drawings A-02)
 - 5. Climbing Space:** A clear Climbing Space must be maintained at all times on the face of the Pole. All Attachments must be placed so as to allow and maintain a clear and proper Climbing Space on the face of OWNER Pole. LICENSEE's cable/wire Attachments shall be placed on the same side of the Pole as those of other Attaching Entities. In general, all other Attachments and Risers should be placed on Pole quarter faces. (See Drawing A-15.)
 - 6. Pedestals and Enclosures:** Every effort should be made to install Pedestals, Vaults and/or Enclosures at a minimum of four (4) feet from Poles or other IFP facilities. IFP facilities are to be installed or relocated a minimum of four (4) feet from CENTURYLINK's existing Pedestals, Vaults and/or Enclosures.

C. Down Guys and Anchors

1. LICENSEE shall be responsible for procuring and installing all anchors and guy wires to support the additional stress placed on OWNER's Poles by LICENSEE's Attachments. Anchors must be guyed adequately.
2. Anchors and guy wires must be installed on each OWNER Pole where an angle or a dead-end occurs. LICENSEE shall make guy attachments to Poles at or below its cable/wire Attachment. No proposed anchor can be within four (4) feet of an existing anchor without written consent of OWNER.
3. LICENSEE may not attach guy wires to the anchors of OWNER or third-party user without the anchor owner's specific prior written consent.
4. No Attachment may be installed on an OWNER Pole until all required guys and anchors are installed. No Attachment may be modified, added to, or relocated in such a way as will materially increase the stress or loading on OWNER Poles until all required guys and anchors are installed.
5. CENTURYLINK's down guys, if needed, shall be bonded, to the vertical ground wires of IFP's Pole where a ground wire is available, in accordance to NESC rule 92C. If there is no vertical ground present at the pole, the connections to the system neutral are to be made by OWNER as an item of Make-Ready Work. OWNER will determine if guys should be grounded or insulated as required by the NESC.

D. Certification of LICENSEE's Design

1. LICENSEE's Attachment Permit application must be signed certifying that LICENSEE's aerial cable/wire design fully complies with the NESC and OWNER's Construction Standards and any other applicable federal, state or local codes and/or requirements.
2. This certification shall include the confirmation that the design is in accordance with pole strength requirements of the NESC, taking into account the effects of OWNER's Facilities and other Attaching Entities' facilities that exist on the Poles without regard to the condition of the existing facilities.

E. Miscellaneous Requirements

1. **Cable Bonding:** CENTURYLINK's messenger cable shall be bonded according to NESC rule 92C1 and 215C as a minimum, or at every pole with a vertical ground. If no vertical ground exists on a pole to be bonded, OWNER shall install a pole ground as an item of Make-Ready Work in accordance with the attached detail drawing. (See Drawings A-03 to A-04.)
2. **Customer Premises:** LICENSEE's service drop into customer premises shall be protected as required by the most current edition of the NEC.
3. **Communication Cables:** All Communications cables/wires not owned by IFP shall be attached within the Communications Space that is located 40 inches below the lowest IFP electrical conductors. (See Drawings A-01 through A-08.)
4. **Riser Installations:** All LICENSEE's Riser installations shall be in OWNER-approved conduit materials. Ground wires and service drops may be attached directly to Pole. (See Drawings A-03 and A-05.)
5. **Tagging:** All LICENSEE's fiber cables that are permitted after the effective date of this Agreement, shall be identified with a band-type cable Tag or other identification acceptable to OWNER at each Attachment within twelve (12) inches of the Pole. The Tag shall be consistent with industry standards and shall include at least the following: LICENSEE name, which can be read by observation from the ground.
6. **Multi-ground Neutral (MGN):** a Multi-ground neutral (MGN) shall be installed per NESC requirements. There shall be no annual Attachment fee or other charge related to a Multi-ground Neutral attachment to Licensor's Pole.

F. OWNER Construction Drawings and Specifications

1. Refer to the attached IFP Construction Drawings, and obtain additional construction specifications from IFP in accordance with its requirements.
2. Apply IFP's construction drawings and specifications in accordance with the NESC, NEC, and any other federal, state, or local code requirements.

G. Distributed Antenna System

1. The applicant is responsible for responding to any and all community concerns or complaints related to the antenna, including aesthetic appearance, health concerns due to radio frequency emissions, etc.
2. Applicants seeking to attach pole-top antennas must provide the utility with the following:
 - Spec sheets (including typical attachment drawings) and design information for the equipment proposed for attachment;
 - Maps detailing locations for proposed attachment.
3. OWNER must approve the design and mounting requirements for all pole-top, and other type antennas.
4. OWNER must approve all Pole locations selected for antenna placement.
5. Proposed pole-top antenna locations must have adequate pole space and not exceed the Pole's maximum loading. The applicant is solely responsible for all associated make-ready costs needed to bring the Pole into compliance.
 - Only one antenna will be allowed on a Pole.
6. Poles selected for pole-top antennas must meet the following criteria
 - Must be a tangent Pole;
 - Poles selected must not have existing equipment (regulators, gang switches, capacitors, etc.);
 - Pole must be readily accessible by bucket truck; and
 - Minimum of a class 3 pole.

7. Antennas must be a minimum of five feet (5') above the highest electric Attachment.
 - Pole extensions are not permitted.
 - In most cases, the Pole must be changed out.
 - The Applicant will be responsible for the cost of the pole-loading analysis (if required by OWNER).
 - In the event the total height of the Pole with the antenna Attachment exceeds sixty (60) feet, NESC rule 250D shall apply to the pole-loading analysis.
8. All pole-top antennas will be installed by OWNER or a contractor approved by OWNER.
9. A new ground rod is required at all pole-top antenna locations.
10. Antenna riser cables and grounds must be installed in a minimum of Schedule 40 conduit not larger than two inches (2").
11. All antenna power sources must have a lockable disconnect installed, to allow for the antenna power source and any back-up power sources to be disconnected. The attacher must provide OWNER with access to the disconnect by providing keys or combination to the lock. Disconnect and meter boxes must be installed according to OWNER's standards.
12. Where required, two RF warning signs must be installed. One RF warning sign must be placed at eye level, a second sign must be placed at the Pole top, just beyond where the safe approach distance ends. The sign must include the owner's name, contact number, and the approach distance of the antenna
 - The Applicant must provide OWNER with documentation that confirms all RF emissions comply with applicable laws governing RF exposure levels.
13. Applicants seeking to attach antennas to streetlight arms must provide OWNER with the following:
 - Spec sheets and design information for the equipment proposed for Attachment; Maps detailing locations for proposed Attachment.

14. OWNER must review and approve the design and mounting requirements for antennas.
15. All antennas must clamp to the streetlight arm. Holes drilled in the arm or bracket will not be permitted.

**Appendix E—
Distribution Line
Minimum Design
Review
Information and
Suggested
Worksheet**

The following guidelines are provided, and corresponding information must be submitted with each Permit application for Pole Attachments on OWNER's system. OWNER may direct that certain Attachments do not require the submittal of Design Review Information.

Each Permit application must include a report from an OWNER-approved employee or contractor of LICENSEE. This report must clearly identify the proposed construction and must verify that the Attachments proposed will maintain OWNER's compliance with NESC Class B construction for the loading district as outlined in the NESC Section 25.

OWNER may or may not require that all of the following information be submitted at the time of the Permit application. The applicant shall have performed all required calculations and be ready to provide the detailed information below within fifteen (15) calendar days of written notice.

In determining compliance, the following minimum conditions shall be used in the calculations for Pole strength:

1. All single-phase lines shall be assumed to have been reconducted to [code name] _____ (e.g., 4/0 AWG ACSR, code name Penguin) conductor for both phase and neutral. [If OWNER standard size conductor is larger, enter the larger size here.] If a larger conductor size exists, the larger size shall be used in the calculations.
2. All three-phase lines shall be assumed to have been to [code name] _____ (e.g., 4/0 AWG ACSR, code name Penguin) conductor for three (3) phases and neutral. [If

OWNER standard size conductor is larger, enter the larger size here.] If existing conductors are larger than 4/0 AWG ACSR, the larger size shall be used in the calculations.

3. All Pole lines shall assume a secondary/service conductor, installed from Pole to Pole, of #4/0 AWG triplex cable, with an ACSR messenger.
4. For pole strength calculations, all Poles shall be as they actually exist, or be considered Class 4 for calculations.
5. All line angles or dead ends shall be guyed and anchored. Transverse Pole strength shall not be assigned to attaching Pole users for line angles, i.e., Pole should be viewed as being void of other cables, conductors, wires, or guys and considering only the applicant's wires/cables for guying calculations.
6. Points of attachment shall be as they actually exist on the Poles.
7. For an OWNER-approved joint use of anchors, LICENSEE shall utilize guy insulators in its guys.
8. Lessee shall comply with any NESC and/or OWNER safety factors, whichever are more conservative, in their designs. The engineer for the Permit applicant shall provide for each application the following confirmations:

Required permits that have been obtained (insert n/a if not applicable):

- _____ (y/n) U.S. Corp of Engineers.
- _____ (y/n) Highway—state, county, city.
- _____ (y/n) Railroad.
- _____ (y/n) Local zoning boards, town boards, etc.
- _____ (y/n) Joint-use permits, if required.
- _____ (y/n) Notified other Pole users of contacts or crossings.

Confirm that you have:

- _____ (y/n) Obtained appropriate franchise(s).
- _____ (y/n) Obtained Pole/anchor easements from landowners.
- _____ (y/n) Obtained crossing and overhang permits.
- _____ (y/n) Obtained permit to survey R/W.
- _____ (y/n) Completed State of Department of Transportation requirements.
- _____ (y/n) Placed permit number on plans.
- _____ (y/n) Complied with Underground Facility Location requirements.
- _____ (y/n) Included sag/tension data on proposed cable.

Calculations are based upon the latest edition of the NESC and the latest editions of the requirements of the state of Idaho.

It is LICENSEE's responsibility to obtain all necessary permits and provide OWNER with a copy of each, if requested.

The engineer for the Permit applicant shall provide for each Pole(s) the following information:

Project ID

Pole number _____ [if pole Tag missing, contact OWNER]
Pole class _____ [existing—i.e., 4, 3, 2...]
Pole size _____ [existing—i.e., 35, 40...]
Pole type _____ [Wood, Steel, Concrete, Laminate]
Pole fore span _____ [feet]
Pole fore span direction _____ [degrees from Magnetic North]
Pole back span _____ [feet]
Pole back span direction _____ [degrees from Magnetic North]
Calculated bending
moment at ground level _____ [ft-lbs]

Proposed:

Proposed cables _____ qty of _____ dia @ _____ ft above ground line

fore and back span direction _____ ° ' " , _____ ° ' " "

Proposed cables _____ qty of _____ dia @ _____ ft above ground line

fore and back span direction _____ ° ' " , _____ ° ' " "

Equipment #1 type _____ qty of _____ size @ _____ ft above ground line

Equipment #2 type _____ qty of _____ size @ _____ ft above ground line

AGL = Above Ground Level

The minimum vertical clearance under all loading conditions measured from the proposed cable to ground level on each conductor span shall be stated above. Variations in topography resulting in ground elevation changes shall be considered when stating the minimum vertical clearance within a given span.

Proposed loading data [provide similar data for each cable proposed]

A. Weight data (cable and messenger)

1. Vertical weight, bare = _____ [#/ft]

B. Tension data (final tensions on messenger)

1. NESC maximum load for area of construction: _____ [lbs]

2. 60° F, NO wind: _____ [lbs]

Permit applicant's engineer shall provide for each transverse or dead end Pole to which guys and/or anchors are attached, the following information:

Pole number _____

Corresponding Calculated guy tension under NESC maximum loading conditions _____ [lbs]

If connection is:

A dead end, is it a single or double? _____ [S, D]

A change in tension, what is change? _____ [lbs]

A line angle, what is angle change? _____ [degrees]

What is tension change at angle? _____ [lbs]

For each dead end:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from Pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each change in tension:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from Pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each line angle:

Point of attachment for guy hook _____ [feet AGL]

Anchor distance from Pole _____ [feet]

Calculated guy tension _____ [lbs]

Rated guy working strength _____ [lbs]

For each anchor:

Anchor distance to nearest anchor _____ [feet]

Calculated anchor tension _____ [lbs]

Rated anchor strength _____ [lbs]

Soil composition _____ [sandy, loam, clay, rock]

For each dead end:

Point of attachment for guy hook_____ [feet AGL]

Anchor distance from Pole_____ [feet]

Calculated guy tension_____ [lbs]

Rated guy working strength_____ [lbs]

For each change in tension:

Point of attachment for guy hook_____ [feet AGL]

Anchor distance from Pole_____ [feet]

Calculated guy tension_____ [lbs]

Rated guy working strength_____ [lbs]

For each line angle:

Point of attachment for guy hook_____ [feet AGL]

Anchor distance from Pole_____ [feet]

Calculated guy tension_____ [lbs]

Rated guy working strength_____ [lbs]

For each anchor:

Anchor distance to nearest anchor_____ [feet]

Calculated anchor tension_____ [lbs]

Rated anchor strength_____ [lbs]

Soil composition_____ [sandy, loam, clay, rock]

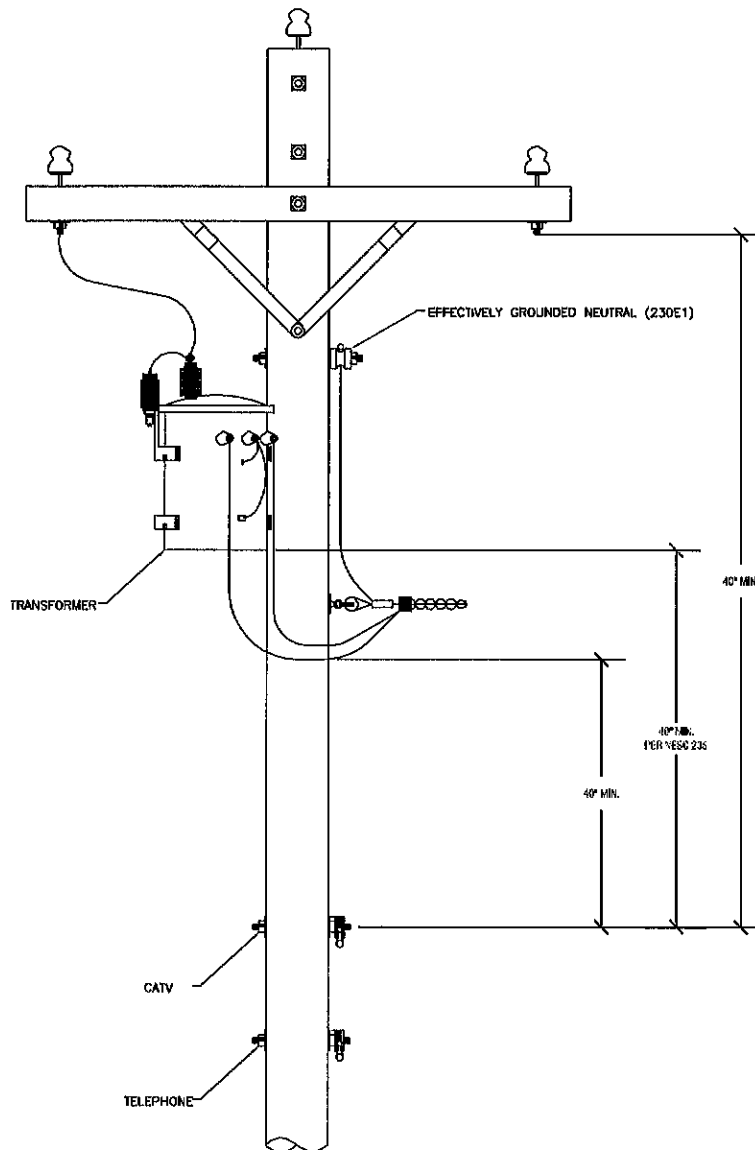
Appendix F— Field Data Summary Sheet Instructions

Column	Instructions
OWNER Pole Number	If a Pole stencil is not in place, it may be left for OWNER if the accompanying sketch is adequate to determine the Location.
LICENSEE Company's Plan Sheet Pole Number	This must correspond with the plan sheet or Pole Sketch Pole identification number.
Pole Height and Class	List the present Pole height and class and list the proposed Pole height and class if it is necessary for OWNER to replace the Pole for clearance, etc.
Guy Attachments	All unbalanced loading on Poles must be guyed. Attachments to OWNER's anchors will only be allowed if approved by OWNER.
Attachment Height	LICENSEE Attachment height above ground level. List guy lead in feet.
Inches Below IFP	The number of inches CENTURYLINK is to be attached below IFP while maintaining clearance as required in
Span Length	List the back span length for each Attachment.
Inches Sag	List the messenger sag for the design listed on the cover sheet at 60 degrees Fahrenheit.
Ground Clearance	List the ground clearance at the low point of the back span. Must not be less than the <i>National Electrical Safety Code</i> (latest edition).

Drawing A-01—Overhead Minimum Clearances

NO COMMUNICATIONS POWER
SUPPLY SHALL BE MOUNTED ON
POLES EXCEPT BY PERMISSION OF
UTILITY.

LICENSEE'S ATTACHMENTS ON
UTILITY POLES, INCLUDING METAL
ATTACHMENT CLAMPS AND BOLTS,
METAL CROSS ARM SUPPORTS,
BOLTS AND OTHER EQUIPMENTS,
MUST BE ATTACHED SO AS TO
MAINTAIN THE MINIMUM
SEPARATIONS SPECIFIED IN THE
NESC AND IN THESE DRAWINGS
AND SPECIFICATIONS.



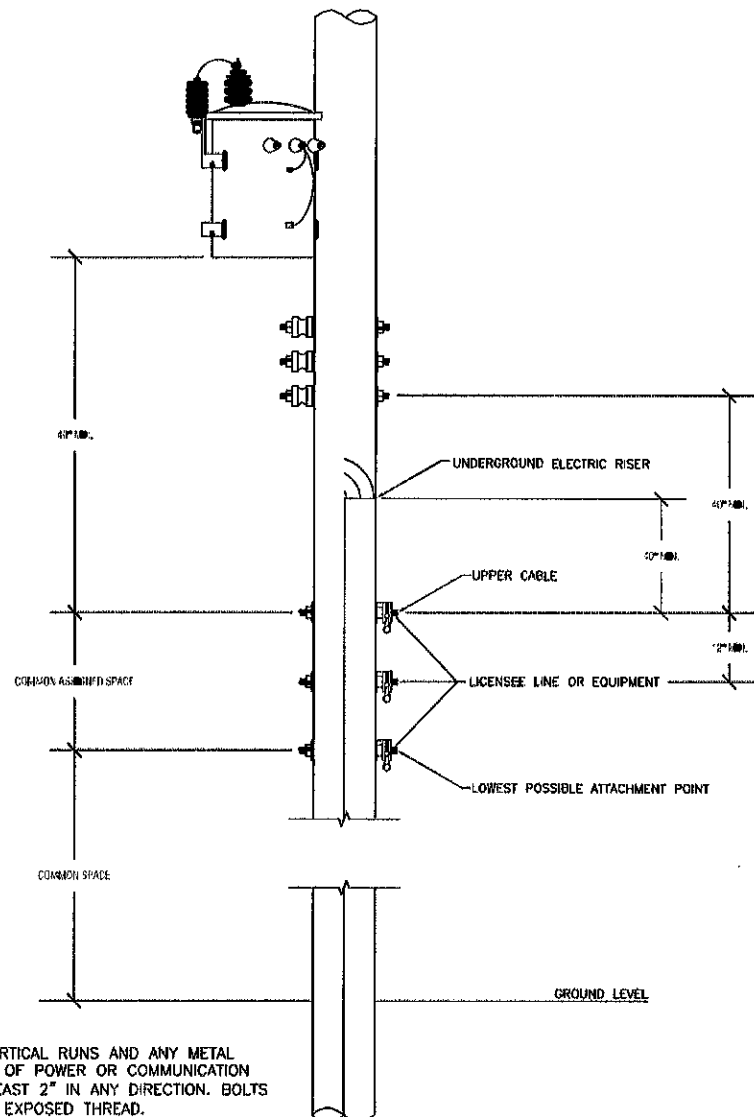
NOTE 1:

1. REFER TO THE ATTACHED UTILITY CONSTRUCTION STANDARDS, OR OBTAIN THE APPLICABLE CONSTRUCTION STANDARDS FROM UTILITY IN ACCORDANCE WITH THE AFFECTED UTILITY'S REQUIREMENTS.

2. APPLY THE UTILITY CONSTRUCTION STANDARDS IN COORDINATION OF THE APPLICABLE NESC, NEC OR STATE STATUE CODE REQUIRMENTS.

3. SEE DRAWING A-02 FOR ADDITIONAL NOTES.

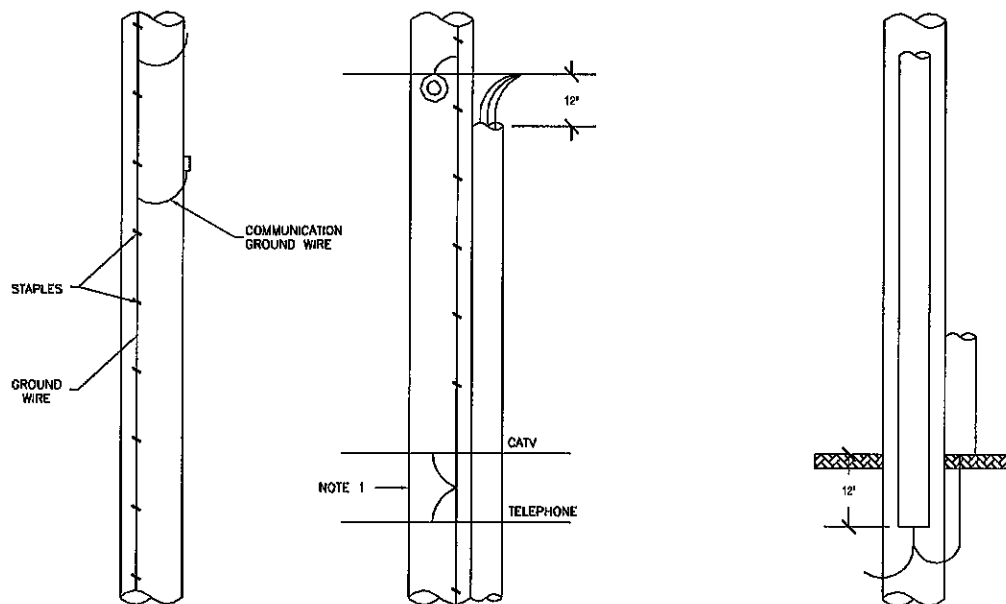
Drawing A-02—Overhead Minimum Clearances



- NOTE 1:**
1. SEPARATION BETWEEN VERTICAL RUNS AND ANY METAL PARTS OR THROUGH BOLTS OF POWER OR COMMUNICATION EQUIPMENT SHALL BE AT LEAST 2" IN ANY DIRECTION. BOLTS SHALL HAVE LESS THAN 2" EXPOSED THREAD.
2. NO COMMUNICATION EQUIPMENT SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.
3. THE ABOVE CLEARANCES MAY HAVE TO BE INCREASED TO ALLOW FOR CODE CLEARANCE REQUIREMENT IN MID SPAN.
4. LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENTS CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENT, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

	A	03/15/2013
POLE ATTACHMENTS		
OVERHEAD MINIMUM CLEARANCES		
NTS		A-02

Drawing A-03—Grounding Connections



NO COMMUNICATION EQUIPMENT
SHALL BE MOUNTED ON
POLES EXCEPT BY PERMISSION OF
UTILITY.

LICENSEE'S ATTACHMENTS ON
UTILITY POLES, INCLUDING METAL
ATTACHMENT CLAMPS AND BOLTS,
METAL CROSS ARM SUPPORTS,
BOLTS AND OTHER EQUIPMENTS,
MUST BE ATTACHED SO AS TO
MAINTAIN THE MINIMUM
SEPARATIONS SPECIFIED IN THE
NESC AND IN THESE DRAWINGS
AND SPECIFICATIONS.

NOTE 1:

1. LICENSEE SHALL BOND TO UTILITY POLE GROUND WHEREVER UTILITY HAS A DOWN GROUND ON THE POLE. IF THE GROUND IS UNDER THE METAL U-GUARD, CONTACT UTILITY TO MAKE THE GROUND CONNECTION.

3. BOND WIRE SHALL BE #6 BARE COPPER OR LARGER. IF BOND WIRE IS UNSUPPORTED MORE THAN 12" LONG, STAPLE TO POLE.

4. WHEN COMMUNICATIONS ARE UNDERGROUND, THE POWER IS OVERHEAD AND IT IS REQUIRED THAT THE COMMUNICATIONS GROUND BE INTERCONNECTED TO THE POWER SUPPLY GROUND, THE CONNECTION SHALL BE MADE BELOW GRADE.

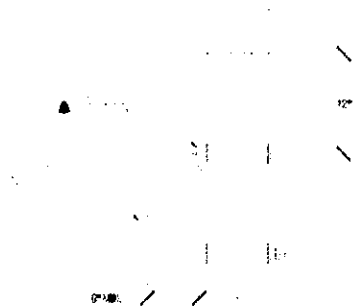
5. IN NO CASE SHALL LICENSEE GROUND BE CONNECTED TO GUYS/ANCHORS.

6. IF A NEUTRAL ISOLATION DEVICE IS INSTALLED ON THIS POLE THE ATTACHER MUST CONTACT UTILITY FOR SPECIAL GROUNDING INSTRUCTIONS.

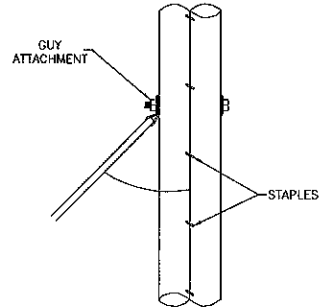
7. LICENSEE'S MESSENGER CABLE SHALL BE BONDED TO UTILITY'S POLE GROUND WIRE AT EACH POLE THAT HAS A GROUND WIRE.

	A	03/15/2013
POLE ATTACHMENTS		
GROUNDING CONNECTIONS		
NTS		A-03

Drawing A-04—Guy Wire Requirements



INSULATED GUY OPTION



GROUNDING GUY OPTION

CONTACT UTILITY TO DETERMINE
IF GUYS ARE TO BE INSULATED OR
GROUNDED.

NOTE 1:

1. LICENSEE SHALL BE RESPONSIBLE FOR PROCURING AND INSTALLING ALL ANCHORS AND GUY WIRES TO SUPPORT THE
ADDITIONAL STRESS PLACED ON UTILITY'S POLES BY LICENSEE'S ATTACHMENTS.

2. ANCHORS AND GUY WIRES MUST BE SET ON EACH UTILITY POLE WHERE THERE IS A TURN OR ANGLE
DEAD-END UTILITY POLES. ON ALL

IF UTILITY OR THIRD PARTY USER WITHOUT PRIOR WRITTEN

E INSTALLED,
THE

POLE AND SHALL NOT
BE PERMITTED OR

WITHIN 12"
LE.

NO COMMUNICATION EQUIPMENT SHALL BE MOUNTED ON
POLES EXCEPT BY PERMISSION OF UTILITY.

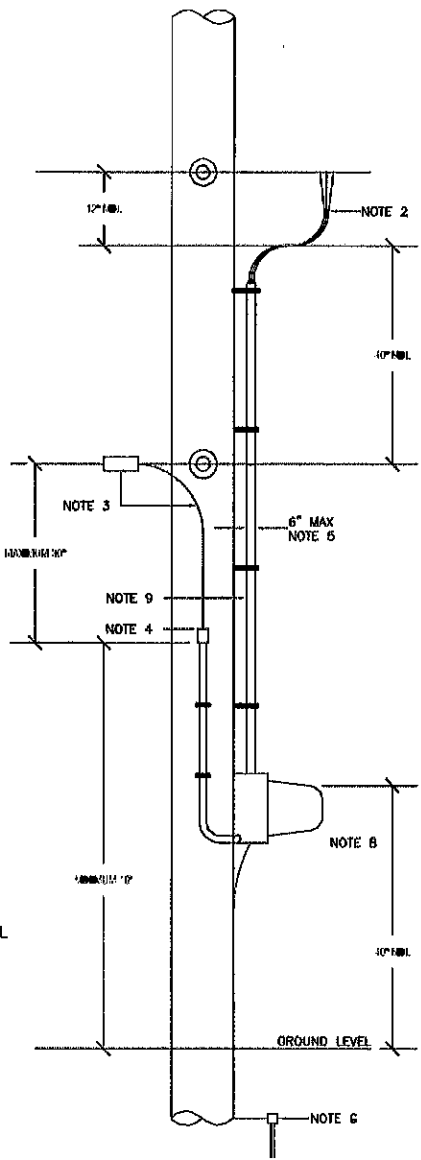


A
POLE ATTACHMENTS
GUY WIRE REQUIREMENTS
NTS A-04

Drawing A-05—Power Service

NO COMMUNICATIONS POWER
SUPPLY SHALL BE MOUNTED ON
POLES EXCEPT BY PERMISSION OF
UTILITY.

LICENSEE'S ATTACHMENTS ON
UTILITY POLES, INCLUDING METAL
ATTACHMENT CLAMPS AND BOLTS,
METAL CROSS ARM SUPPORTS,
BOLTS AND OTHER EQUIPMENTS,
MUST BE ATTACHED SO AS TO
MAINTAIN THE MINIMUM
SEPARATIONS SPECIFIED IN THE
NESC AND IN THESE DRAWINGS
AND SPECIFICATIONS.



NOTE 1:

1. THIS INSTALLATION SHALL COMPLY WITH ALL APPLICABLE ELECTRICAL
CODES AND STATE, CITY, VILLAGE, TOWN, AND UTILITY REQUIREMENTS.

2. SERVICE ENTRANCE CONDUCTORS SHALL EXTEND 30" BEYOND
WEATHERHEAD AND HAVE 600 VOLT RATED INSULATION.

3. COMMUNICATION POWER SUPPLY CABLE.

4. COMMUNICATION POWER SUPPLY.

5. 6" MAXIMUM BETWEEN SERVICE ENTRANCE CONDUIT AND
COMMUNICATIONS CABLE, IF POSSIBLE.

6. GROUNDING SHALL BE IN ACCORDANCE WITH NATIONAL
CODE ARTICLE 250. TOP OF ROD TO BE 6" BELOW GRADE.

7. LOCATION OF ALL LICENSEE EQUIPMENT IS TO BE APPROVED BY ELECTRIC
UTILITY AND SHALL BE RELOCATED BY LICENSEE IF INCORRECT.

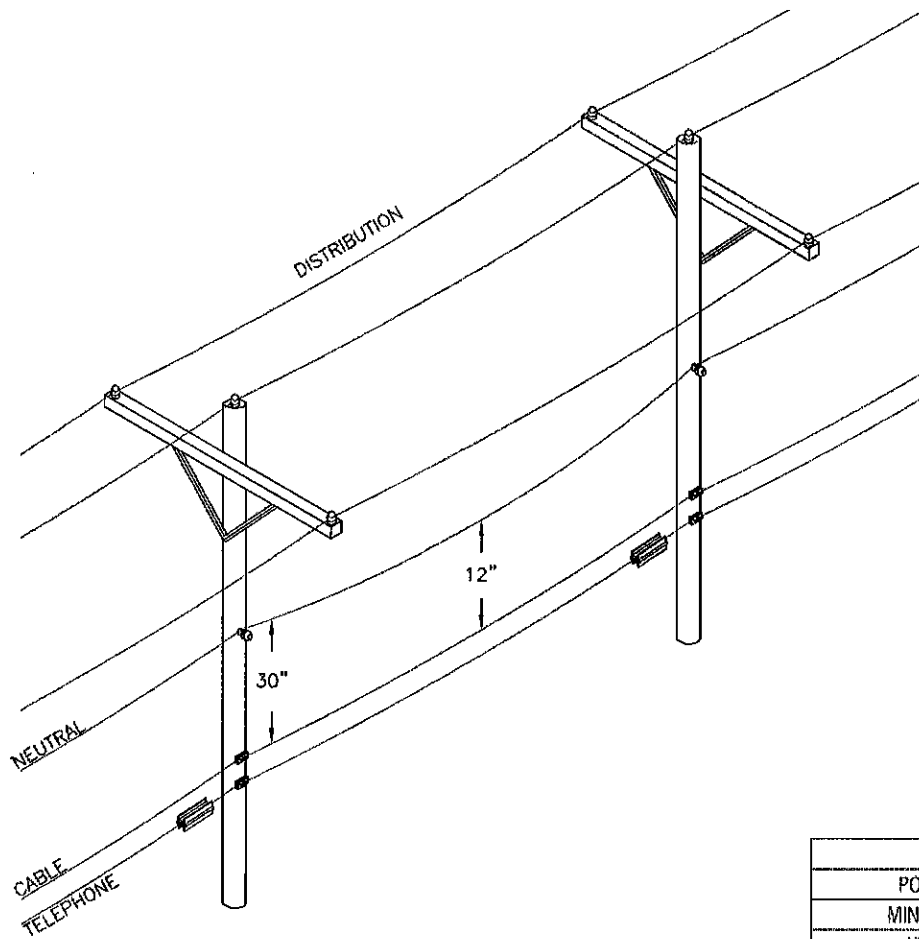
8. PROOF OF COMPLIANCE SHALL BE APPROPRIATELY CERTIFIED.
INSTALL DISCONNECT AND OVERCURRENT PROTECTION WITH METER.

9. ALL RISERS ON POLES WILL BE PLACED IN RIGID STEEL OR
ALUMINUM METALLIC CONDUIT ON THE QUARTER FACES OF THE POLE.

10. THIS SERVICE DETAIL APPLIES TO ALL COMMERCIAL USERS
REQUIRING POWER FOR POLE MOUNTED DEVICES.

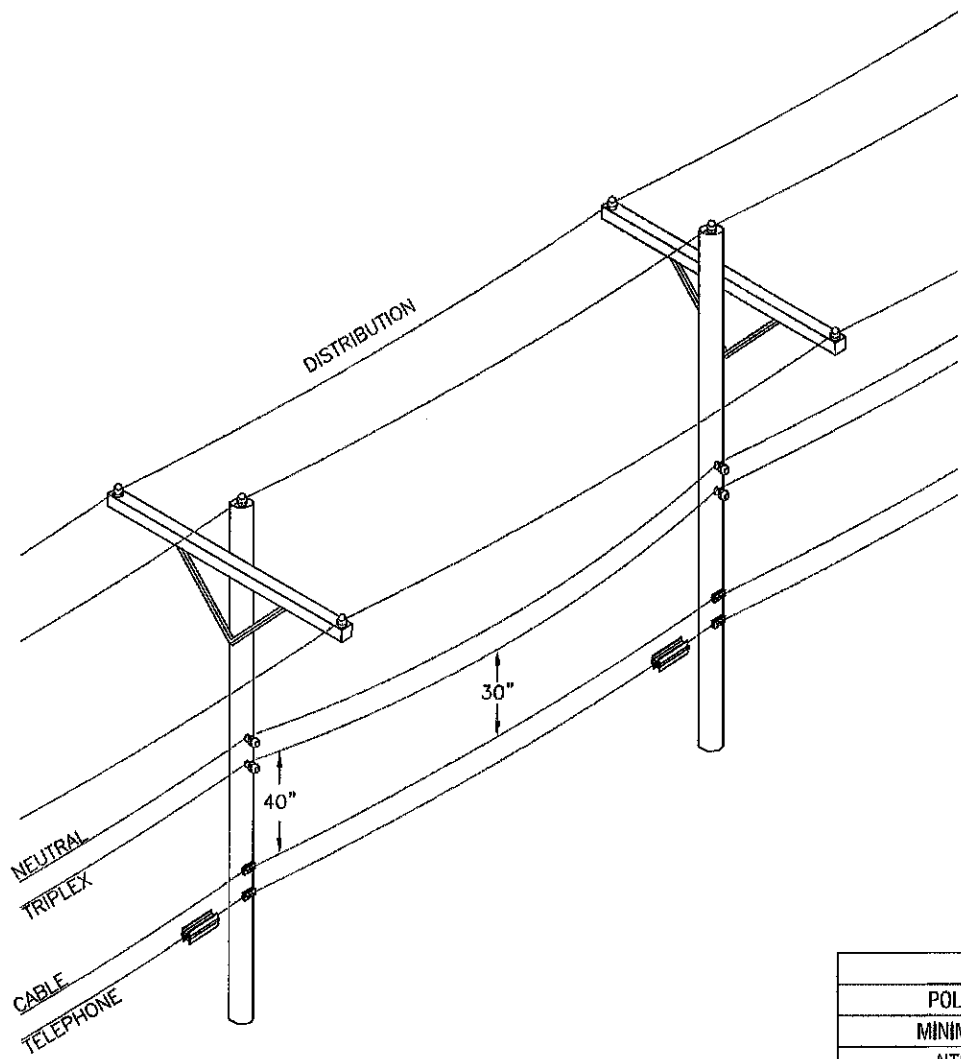
	A	03/15/2013
POLE ATTACHMENTS		
POWER SERVICE		
NTS		A-05

Drawing A-06—Minimum Clearance at Pole/Midspan from Neutral



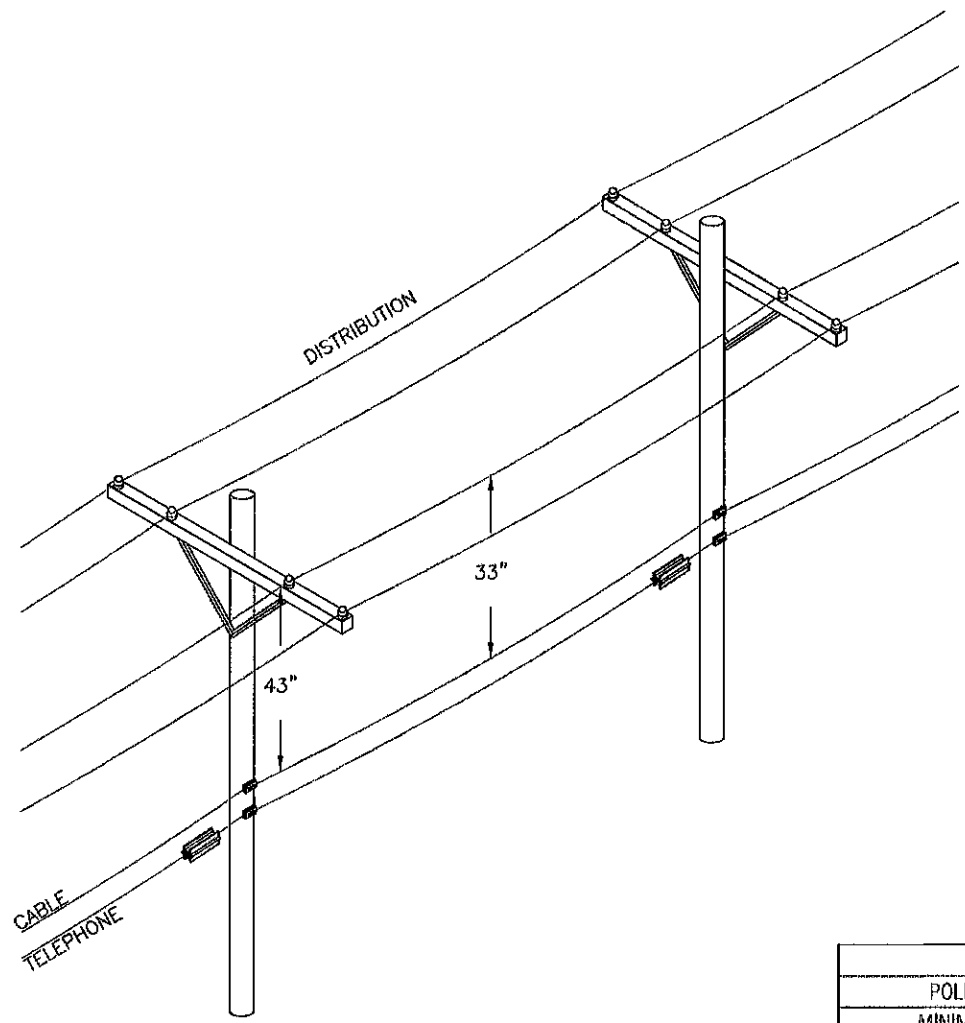
	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCES		
NTS		A-06

Drawing A-07—Minimum Clearance at Pole/Midspan from Secondary



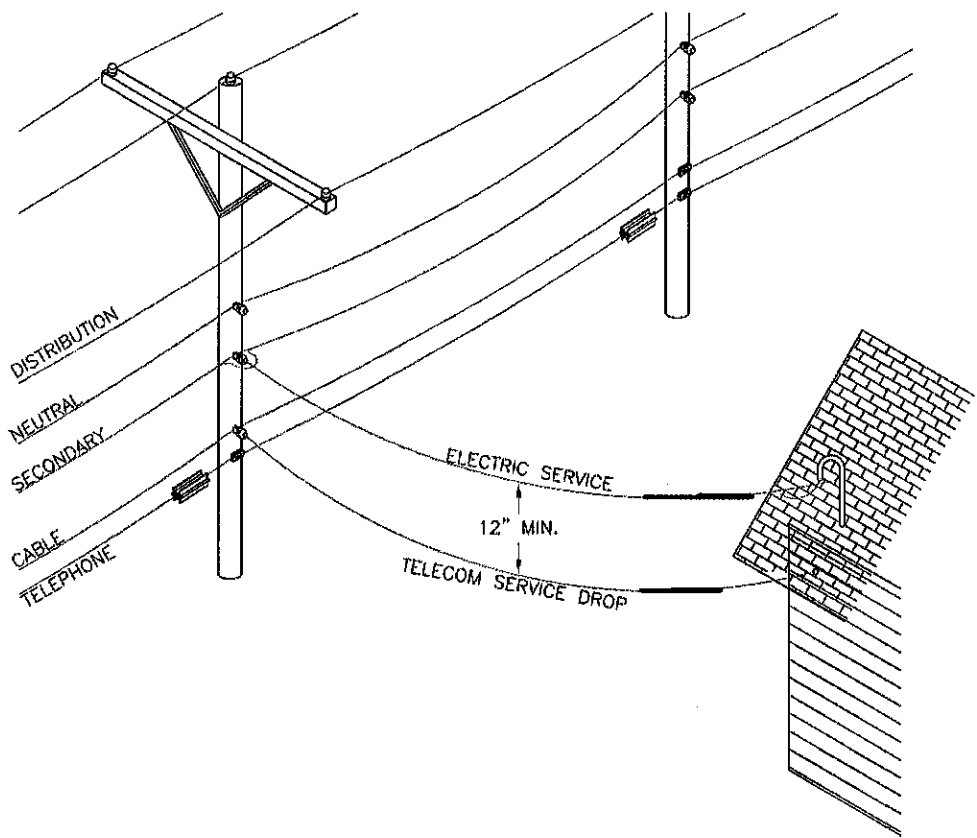
	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCES		
NTS		A-07

Drawing A-08—Minimum Clearance at Pole/Midspan from Primary



	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCES		
NTS		A-08

Drawing A-09—Midspan Service Drop Clearance from Electric Service

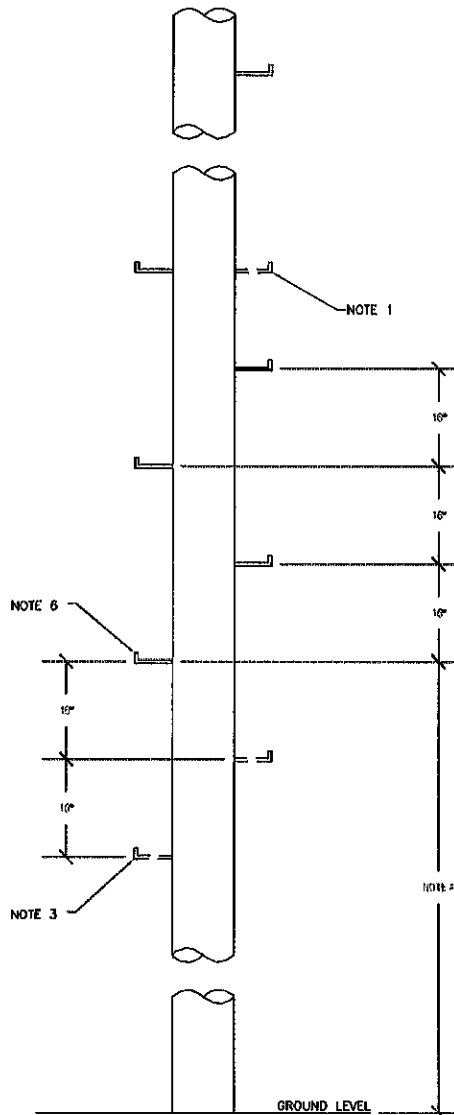


	A	03/15/2013
POLE ATTACHMENTS		
MINIMUM CLEARANCE SERVICE AND ROADWAY		
NTS	A-09	

Drawing A-10—Pole Step Requirements

NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.



POLE STEPS MUST BE AUTHORIZED BY THE UTILITY BEFORE INSTALLATION.

NOTE 1:

1. AN ADDITIONAL STEP SHALL BE PLACED OPPOSITE A STEP LOCATED WHERE WORK IS FREQUENTLY PERFORMED.

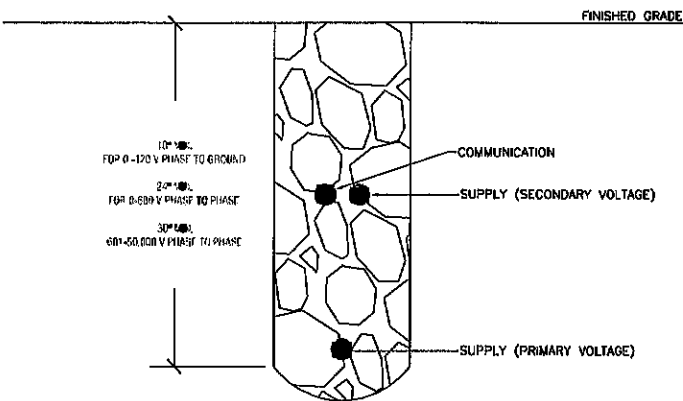
2. WHERE POLE IS SET CLOSE TO A BUILDING WITH AN ACCESSIBLE ROOF USE DETACHABLE STEPS FROM THE ROOF LEVEL UP TO A LEVEL 8 FT. ABOVE THE ROOF.

3. USE DETACHABLE POLE STEPS WHERE STEPS ARE REQUIRED BELOW THE 8 FT. LEVEL.

4. LOCATED LOWEST HOOK POLE STEP 8 FT. ABOVE THE GROUND ON DISTRIBUTION POLES AND 8 FT. ABOVE THE GROUND ON JOINT POLES.

	A	03/15/2013
POLE ATTACHMENTS		
POLE STEP REQUIREMENTS		
NTS	A-10	

Drawing A-11—Joint Trench Requirements



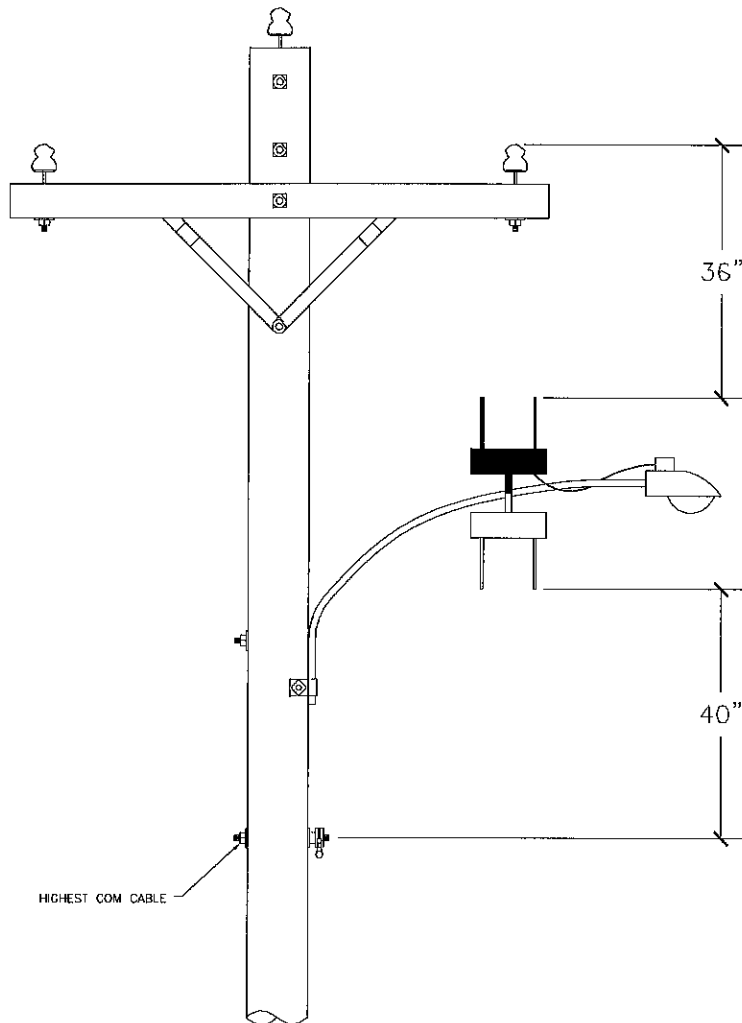
DIRECT BURIED SEPARATION

NOTE 1:
COMMUNICATIONS EQUIPMENT SHALL MEET REQUIREMENTS OF NESC 345D.
COMMUNICATIONS CABLES SHALL BE RANDOM LAID WITH PRIMARY AND SECONDARY CABLES AS SPECIFIED IN NESC 354D.
THE BONDING CONDUCTOR REQUIRED NESC SHALL BE PROVIDED AS PART OF THE COMMUNICATIONS PEDESTAL INSTALLATION. A COMMUNICATIONS BONDING CONDUCTOR CLAMP WITH SUFFICIENT LENGTH FOR ROUTING INTO THE SUPPLY PEDESTAL/TRANSFORMER NEUTRAL CONNECTOR SHALL BE PROVIDED.
INSTALLATION MAY BE BY PLOWING, TRENCHING, OR BACKHOE AS CONDITIONS WARRANT.

	A	03/15/2013
POLE ATTACHMENTS		
JOINT CABLE INSTALLATION		
NTS		A-11

Drawing A-12—DAS Streetlight Arm Attachment

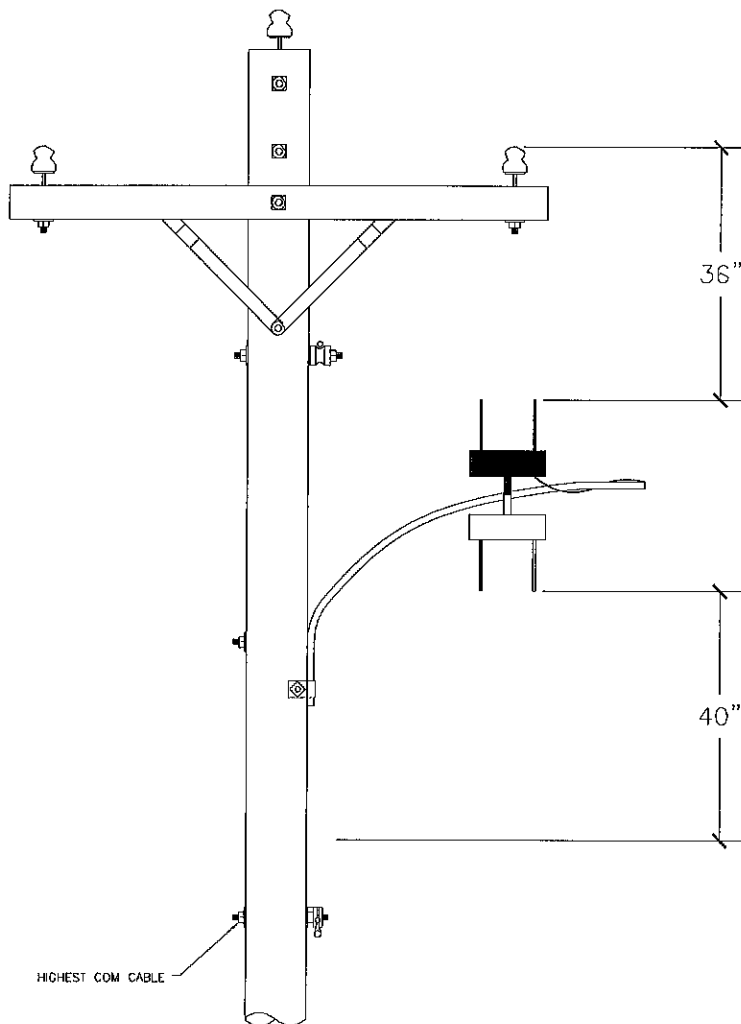
NOTES:
DRAWING DEPICTS ONE OF MANY POSSIBLE SITUATIONS
PLEASE CONTACT YOUR THE POLE OWNER IF YOU HAVE QUESTIONS



A 04/15/2013
DISTRIBUTED ANTENNA SYSTEM
STREET LIGHT
NTS A-12

Drawing A-13—DAS Bracket Arm Attachment

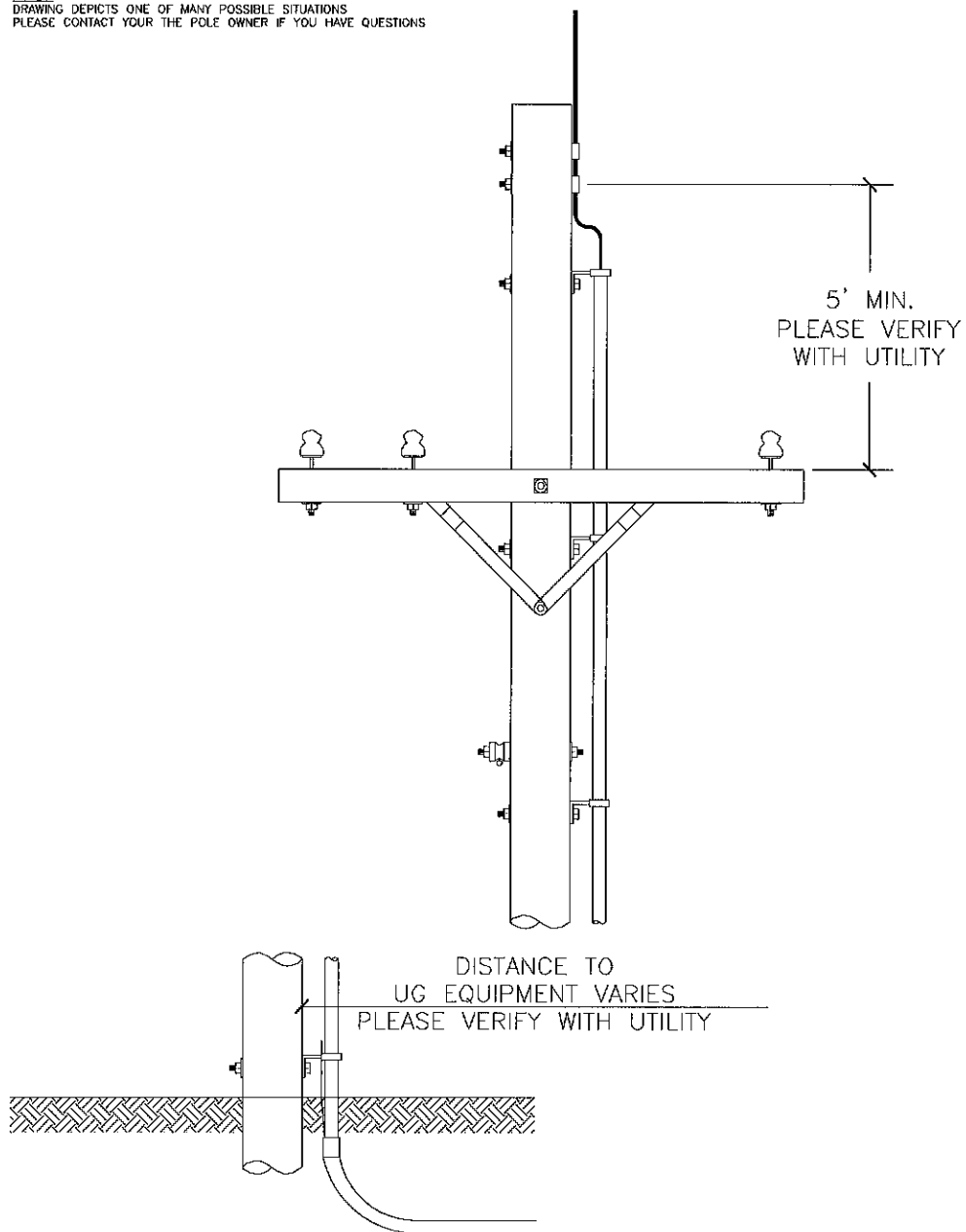
DRAWING DEPICTS ONE OF MANY POSSIBLE SITUATIONS
PLEASE CONTACT YOUR THE POLE OWNER IF YOU HAVE QUESTIONS



A 04/15/2013
DISTRIBUTED ANTENNA SYSTEM
NO STREET LIGHT
NTS A-13

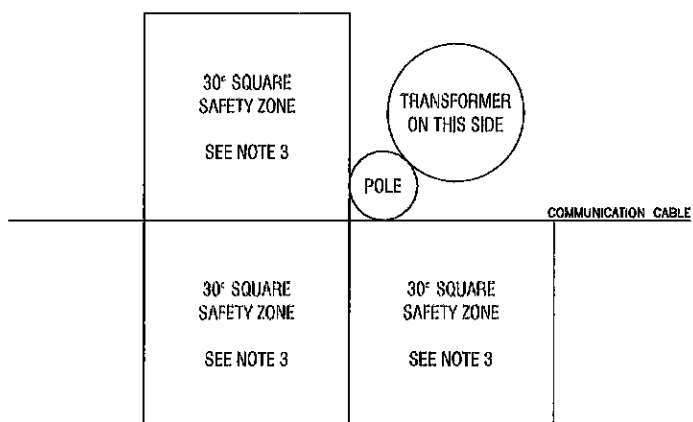
Drawing A-14—DAS Pole Top Antenna

NOTES:
DRAWING DEPICTS ONE OF MANY POSSIBLE SITUATIONS
PLEASE CONTACT YOUR THE POLE OWNER IF YOU HAVE QUESTIONS



A 04/15/2013
DISTRIBUTED ANTENNA SYSTEM
NO STREET LIGHT
NTS A-13

Drawing A-15—Climbing Space Requirements



NO COMMUNICATIONS POWER SUPPLY SHALL BE MOUNTED ON POLES EXCEPT BY PERMISSION OF UTILITY.

LICENSEE'S ATTACHMENTS ON UTILITY POLES, INCLUDING METAL ATTACHMENT CLAMPS AND BOLTS, METAL CROSS ARM SUPPORTS, BOLTS AND OTHER EQUIPMENTS, MUST BE ATTACHED SO AS TO MAINTAIN THE MINIMUM SEPARATIONS SPECIFIED IN THE NESC AND IN THESE DRAWINGS AND SPECIFICATIONS.

NOTE 1:

1. FOR NEW CABLE INSTALLATIONS LOCATE CABLE ON THE SAME SIDE OF THE POLE AS UTILITY'S LOWEST CONDUCTOR.
2. STANDOFF BRACKETS TO MOUNT CABLE TO POLE ARE NOT ALLOWED WITHOUT APPROVAL OF UTILITY.
3. CLIMBING AND WORKSPACE THROUGH THE COMMUNICATION SPACES SHALL EXTEND FROM 40' BELOW THE LOWEST COMMUNICATION CABLE TO THE TOP OF THE POLE.
4. ON TRANSFORMER POLES THE COMMUNICATION SERVICE DROPS SHALL BE LOCATED SO THAT THEY ORIGINATE FROM THE MESSENGER ON THE SIDE OF THE POLE OPPOSITE THE TRANSFORMER.
5. MINIMUM CLEARANCES FOR CLIMBING AND WORKING SPACES SHALL BE FOLLOWED AS PER NESC SECTION 236.

	A	03/15/2013
POLE ATTACHMENTS		
CLIMBING SPACE REQUIREMENTS		
NTS	A-15	



MEMORANDUM

To: Honorable Mayor & City Council

From: Chris H Fredericksen, Public Works Director

Date: November 17, 2016

Subject: **COOPERATIVE AGREEMENT FOR SEWAGE TREATMENT—CITY OF UCON**

The existing Sewage Treatment agreement with the City of Ucon was approved in February of 1986 and will expire at the end of the month. Therefore, attached for your consideration is a Cooperative Agreement for Sewage Treatment for the City of Ucon for the next five (5) years.

Public Works recommends approval of the cooperative agreement; and, authorization for Mayor and City Clerk to sign the necessary documents.

Respectfully,

Chris H Fredericksen, P. E.
Public Works Director

Attachments

CF:jk

c: Mayor
Council
D Smith

2016-122

COOPERATIVE AGREEMENT FOR SEWAGE TREATMENT
CITY OF IDAHO FALLS – CITY OF UCON

THIS COOPERATIVE AGREEMENT FOR SEWAGE TREATMENT (hereinafter “Agreement”), made this 9th day of November, 2016, between the CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, P.O. Box 50220, Idaho Falls, Idaho, hereinafter called “Idaho Falls”, and the CITY OF UCON, IDAHO, a municipal corporation of the State of Idaho, 275 Market Street, Ucon, Idaho, hereinafter called “Ucon”.

WHEREAS, Idaho Falls and Ucon have been under a long term agreement where Idaho Falls has agreed to accept and treat all domestic and commercial sewage effluent flowing from and within the boundaries of Ucon; and

WHEREAS, the term of that long term agreement has ended; and

WHEREAS, Ucon desires to operate and maintain a sanitary sewage collection system to serve all residences, businesses and industrial facilities located within the Ucon Service Area described in Exhibit “A” attached hereto; and

WHEREAS Ucon desires to obtain treatment of sewage generated within the Ucon Service Area, and whereas, Idaho Falls currently owns and operates its own Sewage Treatment Plant and is willing to provide sanitary sewage treatment services to Ucon pursuant to a written agreement; and

WHEREAS, the parties desire to establish a basis for identifying and distributing the costs of treating Ucon sewage; and

WHEREAS, Idaho Falls and Ucon desire to enter into an agreement whereby the sewage to be collected from Ucon shall be placed into the Idaho Falls system for the primary and secondary treatment thereof.

NOW, THEREFORE, it is hereby agreed as follows:

SECTION 1. Definitions

1.1 Flow Measuring Device: A device installed at the Lewisville Measuring Station, which device shall measure the volume of Ucon Sewage.

1.2 Idaho Falls Sewer Ordinance: Title Eight, Chapter One, Idaho Falls City Code, as amended from time to time.

- 1.3 Industrial Wastes: Any flow discharged to the waste water treatment system identified in the current Standard Industrial Classification Manual (non-residential).
- 1.4 Lewisville Measuring Station (L.M.S.): A building, real property, and other equipment, structures, and facilities, including the Flow Measuring Device, owned by Ucon, and located in the proximity of the intersection of Lewisville Road and U.S. Highway 20 in Bonneville County, Idaho.
- 1.5 Sewage Treatment Plant: The sewage treatment plant, equipment, devices, building, real property, and other facilities owned by Idaho Falls and located at 4055 Lower Power Plant Road, Idaho Falls, Idaho, including any future additions, modifications or expansions thereof.
- 1.6 Transport Path: The pipeline or other facility that transports Ucon sewage from the L.M.S. to the Sewage Treatment Plant.
- 1.7 Ucon Service Area: The area described in Exhibit "A" attached hereto.
- 1.8 Ucon Sewer System: All sewer collection lines, interceptors, pumps, lift stations, buildings, equipment and devices, and the Lewisville Measuring Station and all other real or personal property owned by Ucon and used for the purpose of collecting or conveying sewage from the Ucon Service Area.
- 1.9 Ucon Sewage: All sewage originating from the Ucon Service Area.

SECTION 2. Purpose

- 2.1 To provide for an economical and efficient means of providing sanitary sewer service to Idaho Falls and Ucon.
- 2.2 To provide for maximum utilization of the Idaho Falls sewage treatment facilities and the interceptor sewers used to transport sewage to the treatment facility.
- 2.3 To provide for proper operation and maintenance of said facilities.
- 2.4 To establish the basis for identifying and distributing costs to each party.

SECTION 3. Sewer Treatment Facilities

- 3.1. Idaho Falls agrees to accept all sewage from domestic and commercial users from the Ucon Service Area which meet the quality standards of the Idaho Falls sewer ordinances and the Environmental Protection Agency Guidelines and Regulations to transmit said sewage to the existing treatment plant or any future treatment plant which may be constructed by Idaho

Falls to serve the Ucon Service Area, and to provide for treatment and disposal of said sewage, all in accordance with applicable federal, state, and local laws, ordinances, and regulations.

- 3.2. Industrial wastes shall be accepted into the sewer system only upon the execution of a separate permit executed by Idaho Falls, Ucon, if the industrial user is within the Ucon Service Area or will use any sewer within Ucon, and the industrial user generating such wastes. Such separate permit shall fix the nature, quantity, and quality of acceptable wastes. The computation of unit charges for industry users shall be computed in conformance with all federal and state regulations and guidelines pertaining thereto, at such time as industrial wastes are discharged into the facilities of Ucon. Provided that there exists adequate capacity in the sewer system to accommodate additional industrial wastes, it is expressly understood and agreed that Idaho Falls will not unreasonably refuse to enter into such separate permit with an industrial user within the Ucon area, but will give industrial users the same consideration as any other applicant seeking to use the Idaho Falls facilities. Sewer service shall be provided to such industrial users, and payment therefore shall be collected by Ucon and remitted to Idaho Falls, in accordance with Section 6.4.
- 3.3. Idaho Falls agrees to operate and maintain the Sewage Treatment Plant in accordance with the procedures and standards established by the State of Idaho, Department of Health and Welfare, and the Idaho Department of Environmental Quality and in conformity with any applicable federal or state laws or regulations.
- 3.4. Ucon agrees to operate and maintain the Ucon Sewer System in accordance with the standards set forth in the Idaho Falls Sewer Ordinance, Idaho Falls' wastewater and sewage treatment permits, and all relevant state and federal laws, as amended from time to time. Ucon shall also require any commercial or industrial user of the Ucon Sewer System to allow authorized personnel from Idaho Falls and Ucon at all reasonable hours to enter and inspect the sewer facilities of said user, and all records pertaining to the operation thereof, for the purpose of conducting sampling, testing, measuring or other monitoring procedures to determine said user's compliance with all federal, state and local laws, ordinances, rules and regulations. Where practical, Idaho Falls shall give Ucon notice and an opportunity to attend such inspections, unless the circumstances constitute an emergency. All industrial

waste user permits shall include a specific provision requiring the user to comply with all ordinances of Ucon and Idaho Falls that are pertinent to the services.

SECTION 4. Collection System

- 4.1 Ucon shall maintain the entire Ucon Sewer System for the purpose of providing sewage collection services to all of the residents, businesses, and industrial users located within the Ucon Service Area (Exhibit A), who qualify to receive such services; provided, however, that Ucon reserves exclusive discretion to determine at what times and in what manner it shall expand the Ucon Sewer System for the purpose of offering sewer service to additional users in the Ucon Service Area outside the Ucon City limits, as long as such expansion is done in a manner consistent with this Agreement.
- 4.2 Ucon shall maintain the Flow Measuring Device at the Lewisville Measuring Station (Exhibit B). The Flow Measuring Device shall provide for a continuous flow recording and shall permit easy access for operation and maintenance.
- 4.3 The Ucon Sewer System shall be maintained in conformity with all applicable federal, state and local laws, ordinances or regulations, including the regulations of the State of Idaho, Department of Health and Welfare and Idaho Department of Environmental Quality, and further shall be constructed in conformity with standards at least as high as those contained in the latest edition of "Standard Specifications for Sewer Construction" or Idaho Standards for Public Works Construction prepared and published by the City of Idaho Falls, which Standard Specifications are hereby incorporated by reference; provided, however, that existing facilities shall not be required to be replaced, nor shall new facilities be required to be constructed, for the sole purpose of bringing them into conformity with those standards, unless specifically ordered by State or federal mandate. All construction within the Ucon Sewer System and any sewer interceptors, measuring devices or facilities installed or constructed pursuant to the terms hereof shall be properly inspected by Ucon prior to burial or commencement of use thereof, whichever is earlier.
- 4.4 Ucon shall own, operate and maintain the Ucon Sewer System upstream of and including the Lewisville Measuring Station (Exhibit B), including the Station itself. Idaho Falls shall own, operate and maintain the system downstream of the Lewisville Measuring Station, including the Sewage Treatment Plant and the Transport Path.

SECTION 5. Operation and Maintenance

- 5.1 Each of the parties agree that it will operate its respective sewer system and facilities in a manner which will provide for safe, efficient and sound administration, maintenance, and operation thereof. Each of the parties agrees that its designated representatives will meet at such reasonable times and places as may be requested by either of the parties in order to discuss and coordinate the operation of the interceptors, facilities and services contemplated herein. The parties further agree that they may from time to time adopt mutually agreeable operational rules in writing as may be necessary to assure the safe, efficient and sound operation of the system and facilities contemplated hereby.
- 5.2 In the event it becomes necessary to expand, alter, reconstruct, redesign, or replace a portion of the Sewage Treatment Plant or the Transport Path, including the prospect of a continuing peak-flow problem under 5.3, below, Ucon shall participate in the payment of all design, construction and other costs of any kind or nature associated therewith in proportion to the total volume of all Ucon Sewage flowing through the Sewage Treatment Plant and the Transport Path as compared to the total volume of all sewage flowing through the Sewage Treatment Plant or the Transport Path, based upon the average daily flow for the ninety (90) day period immediately preceding the commencement of such design and construction. For the purpose of determining the percentage of costs to be shared by each party, the proportion shall be computed separately for the Sewage Treatment Plant and each segment or portion of the Transport Path having a different relative proportion of Ucon-Idaho Falls sewage flowing there through. Nothing herein shall be construed to require Ucon to pay any separate costs of maintaining said Sewage Treatment Plant or Transport Path.
- 5.3 In the event any Idaho Falls interceptor carrying Ucon Sewage exceeds pipe capacity and becomes surcharged at any time as a result of "peak flows" from the Ucon Sewer System, Ucon shall design and construct, in a manner acceptable to Idaho Falls and at Ucon's cost, a holding and pumping facility to provide for the transport of Ucon Sewage through Idaho Falls interceptor lines at times other than during periods of peak flow. Ucon shall acquire all property and rights of way for the construction of said holding facility and shall construct the same in accordance with Idaho Falls' design standards and any other standards required by federal, state or local law.

- 5.4 In the event that Ucon Sewage enters the Idaho falls system with a dissolved oxygen content less than 0.5 Mg/L and in a septic condition Ucon shall upon request by Idaho Falls, design and construct a sewage freshening facility to treat such septic sewage and render the same in a condition which meets all sewage pretreatment standards of the Idaho Falls Sewer Ordinance and any federal or state laws or regulations.

SECTION 6. Sewer Service Charges

- 6.1. Ucon agrees to pay Idaho Falls a monthly sewage treatment charge for waste based upon the total volume of Ucon Sewage entering the Idaho Falls sewer system at the Flow Measuring Device after deducting there from the volume of sewage generated by industrial waste dischargers or other users for which a separate charge and permit has been mutually agreed upon. The monthly sewage treatment charge for waste shall be based upon each 1000 gallons of sewage measured at the flow measuring device, and shall be computed in the manner set forth in Section 6.3 below.
- 6.2. Idaho Falls shall at all times have access to the Flow Measuring device for the purpose of reading the same, and shall submit a monthly statement to Ucon setting forth the total monthly sewage treatment charges for the preceding calendar month. Payment for such statement shall be due and payable within thirty (30) days following the date of each billing. In the event the Flow Measuring Device becomes inoperable or otherwise inaccurately measures the volume of Ucon Sewage flowing there through, then the sewage treatment charges shall be estimated and billed by Idaho Falls, based upon average daily flows as determined by the Flow Measuring Device for the six-month period of time immediately preceding the date Idaho Falls determines that the Flow Measuring Device became inoperable or began malfunctioning.
- 6.3. The parties agree that the sewage treatment charge for waste shall be established and may be adjusted annually by Idaho Falls in accordance with the following method: On or before August 1 of each year during the term hereof, Idaho Falls shall determine its average cost of treating a gallon of sewage at the Sewage Treatment Plant for the preceding Fiscal Year. In determining such cost, Idaho Falls may take into consideration its annual costs of operation and maintenance and debt service (but excluding the costs of any project or activity jointly financed by Idaho Falls and Ucon under Section 5.2, above) attributable to

the operation of the Sewage Treatment Plant, net of any portion thereof reasonably attributable to the treatment of industrial wastes. Such per gallon cost shall be computed in substantially the same manner in which Idaho Falls determines its per gallon sewage treatment charge for Iona Bonneville Sewer Districts. On or before August 1 of each Year Idaho Falls shall notify Ucon of such average cost per gallon and such cost shall constitute the sewer service charge for each gallon of sewage (excluding industrial wastes which are charged separately) passing through the Flow Measuring Device for the succeeding calendar year. In addition to the sewage treatment charge set forth above, Ucon agrees to pay the separate sewage treatment charge for industrial waste dischargers computed in the manner set forth in Sections 3.2 and 6.4, herein. Ucon shall be allowed access at all reasonable times for inspection of all financial records and information necessary to confirm the amount of all sewage treatment charges under this Agreement.

- 6.4. Ucon agrees that it will not permit nor allow any industrial waste discharger to connect to or otherwise use the Ucon Sewer System without first requiring such industrial waste discharger to execute a separate Industrial Waste Acceptance Permit among such user, Ucon and Idaho Falls. Such permit shall specify the nature, quality and quantity of industrial waste which the industrial waste discharger shall be permitted to discharge into the Ucon Sewer System. Such permit shall also require the industrial waste discharger to install a flow measuring device on the sewer line connecting the property of such industrial waste discharger to the Ucon Sewer System. No person or entity shall be entitled or allowed to discharge industrial wastes into the Ucon Sewer System which does not meet the pretreatment standards of the Idaho Falls Sewer Ordinance or the rules and regulations of the U.S Environmental Protection Agency or any other state or federal agency having jurisdiction over the operations of the Sewage Treatment Plant. Ucon agrees to pay to Idaho Falls all industrial waste disposal charges computed in accordance with the Idaho Falls City Code and Fee Resolution. Such industrial waste unit charges shall be billed to Ucon by Idaho Falls on a monthly basis and shall be due and payable within thirty (30) days after the date of the billing. Notwithstanding the foregoing, nothing herein shall be deemed to prohibit Ucon from charging and collecting a reasonable fee from the industrial waste discharger in addition to the unit charges computed in accordance with the Idaho Falls City Code. Idaho Falls may periodically adjust the unit charges for industrial waste

dischargers in accordance with the method set forth in the Idaho Falls Sewer Ordinance. All industrial waste user permits shall include provisions authorizing such adjustment of service charges in accordance with this Agreement. Ucon agrees to adopt and diligently enforce an ordinance regulating industrial waste dischargers that is at least as stringent and as broad in scope as the corresponding ordinance of the City of Idaho Falls from time to time.

- 6.5. Ucon will establish and collect such sewer service charges and fees which should be sufficient to prudently operate and maintain the Ucon Sewer System and to pay Idaho Falls. Ucon further agrees that all of the fees, charges and obligations set forth herein shall be deemed to be an ordinary and necessary expense for the maintenance and operation of the Ucon Sewer System.

SECTION 7. Written Consent for Connection

- 7.1 Ucon agrees that it will not permit or allow any person or entity not physically located within the Ucon Service Area as shown in Exhibit A to connect to or otherwise use the Ucon Sewer System, without the express written consent of Idaho Falls.

SECTION 8. Term of Contract, Review, Renewal

- 8.1. This agreement shall be binding upon the parties hereto, their successors, and assigns for the Effective Agreement Period established in Section 10.
- 8.2. Upon full and faithful performance of its obligations hereunder, Ucon shall be entitled to continued service through the Idaho Falls sewer system during the life, and under the terms, of this cooperative agreement, subject to any amendments hereof, or adjustments of use charges, made pursuant to the terms of this cooperative agreement, or by mutual agreement following renegotiation.

SECTION 9. Miscellaneous Provisions

- 9.1. It is agreed that this Agreement shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that proper venue shall be the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville.

- 9.2. In the event either party incurs legal expenses to enforce the terms and conditions of this Agreement, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.
- 9.3. This Agreement shall constitute the entire agreement and understanding of the parties with respect to the subject matter thereof, and supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this Agreement shall be in writing and executed by the authorized representatives of the parties.
- 9.4. In the event that any part of this Agreement is found to be illegal, or in violation of public policy, or for any other reason unenforceable, such finding shall in no event invalidate or render unenforceable the other parts of this Agreement, unless such finding defeats the essential purpose of this Agreement.
- 9.5. Each party agrees to aid and assist the other in accomplishing the objectives of this agreement, including, but not limited to, using its efforts in communication, supplying requested information and considering all recommendations.
- 9.6. Each party agrees to obtain and keep in force and effect during the life of this Agreement a policy or policies of public liability insurance covering loss or damage to the sewer system of the other party, or to third parties, by act or omission of the party insured. Idaho Falls' liability coverage is provided through the Idaho Counties Risk Management Program ("ICRMP"). Limits of liability with respect to claims covered by the Idaho Tort Claims Act, are five hundred thousand dollars (\$500,000) Combined Single Limits, which amount is Idaho Falls' limit of liability under the Idaho Tort Claims Act. Idaho Falls shall maintain its insurance through ICRMP throughout the term of this Agreement and any extension thereof. Ucon shall obtain a liability insurance policy with combined single limits in the amount of five hundred thousand dollars (\$500,000).
- 9.7. As a specific condition of this Agreement, Ucon agrees to enact, amend, and diligently enforce during the life of this Agreement a sewer ordinance, or ordinances, which is or are as stringent and as broad in scope as the Idaho Falls Sewer Ordinance, or ordinances, presently in force or hereafter enacted, establishing standards for quality of sewage entering the sewer system and otherwise governing all aspects of the construction, maintenance, and operation of the Ucon Sewer System. Ucon further agrees to take the necessary steps properly to police and enforce those provisions which relate to the

discharge of waters and waste into the sewer system. Ucon's ordinances and the enforcement thereof shall comply in all respects with all relevant requirements of the Idaho Falls Sewer Ordinance, Idaho Falls' wastewater and sewage treatment permits, and all relevant state and federal laws, as amended from time to time.

- 9.8. Each party agrees that it will keep and maintain in force and effect throughout the term of this Agreement a policy or policies of public liability insurance insuring loss or damage to the sewer system or property of the other party or any third party, arising from any negligent act or omission of the party insured in conjunction with the construction, operation or maintenance of the respective sewer systems of the parties hereto. Such insurance policy shall be in an amount of not less than \$500,000 single limit for a bodily injury and \$100,000 per occurrence for property damage. Notwithstanding the foregoing, in the event such liability insurance is not reasonably obtainable from the municipal insurance market, then and in such event, each of the parties agrees that to extent permitted by law, it will establish such reserves as may be reasonably necessary to provide for self-insurance to the extent of the liability limits set forth herein. The establishment of such reserves shall be in accordance with regularly established standards or practices of the municipal insurance underwriting business within the state of Idaho.
- 9.9. Ucon agrees to indemnify, defend and hold Idaho Falls harmless from any and all claims, actions, causes of action, fees, costs, or claims of any kind or nature arising from any act or omission of Ucon, or its agents, employees or contractors, arising from the maintenance and operation of the Ucon Sewer System.
- 9.10. In the event either party breaches its covenants and obligations set forth herein, the non-breaching party may terminate this Agreement, provided that the party desiring to terminate this agreement shall first give written Notice of Default to the other party specifying the manner in which the other party is in default of the terms hereof. In the event the breach is for failure to pay any monetary obligation, and defaulting party fails to remedy or cure said default within thirty (30) days after the date the Notice of Default is delivered, then, and in such event, the non-defaulting party may terminate this Agreement. In the event the default is for any other failure to fully and completely perform the terms and conditions hereof, the defaulting party shall acknowledge and substantially and in good-faith commence to cure said default within thirty (30) days after the date written

notice is given. In the event the defaulting party should fail to diligently prosecute and fully and completely cure said default within a reasonable time after said written notice is acknowledged, then, and in such event, the non-defaulting party may terminate this Agreement.

9.11. In the event either party breaches its covenants and obligations set forth herein, either party may pursue any other remedy available at law or in equity.

SECTION 10. Effective Agreement Period

10.1. This Agreement shall commence upon the execution hereof and shall continue to and until November 30, 2021.

10.2. The parties acknowledge that this Agreement is not a Joint Powers Agreement under the Idaho Code, and will not be interpreted as such.

In WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year first above written.

ATTEST:

CITY OF IDAHO FALLS

Rebecca L. Noah Casper, Mayor

Kathy Hampton, City Clerk

(SEAL)

ATTEST:

CITY OF UCON

David Blain, Mayor

Ronda Deason, City Clerk

(SEAL)

EXHIBIT "A" Ucon Service Area

LEGAL DESCRIPTION OF UCON SEWER SERVICE AREA

The Ucon Sewer Service Area shall be that area enclosed within the following described boundary, all of which is located within T.3N., R.38E., B.M.:

Commencing at the Northeast corner of Section 12 then proceeding west along the section line to the north quarter corner of Section 9; thence south along the quarter section line to the center of section 21; thence east along the quarter section line to the east quarter corner of section 24; thence north along the section line to the northeast corner of section 12, which point is also the point of beginning.

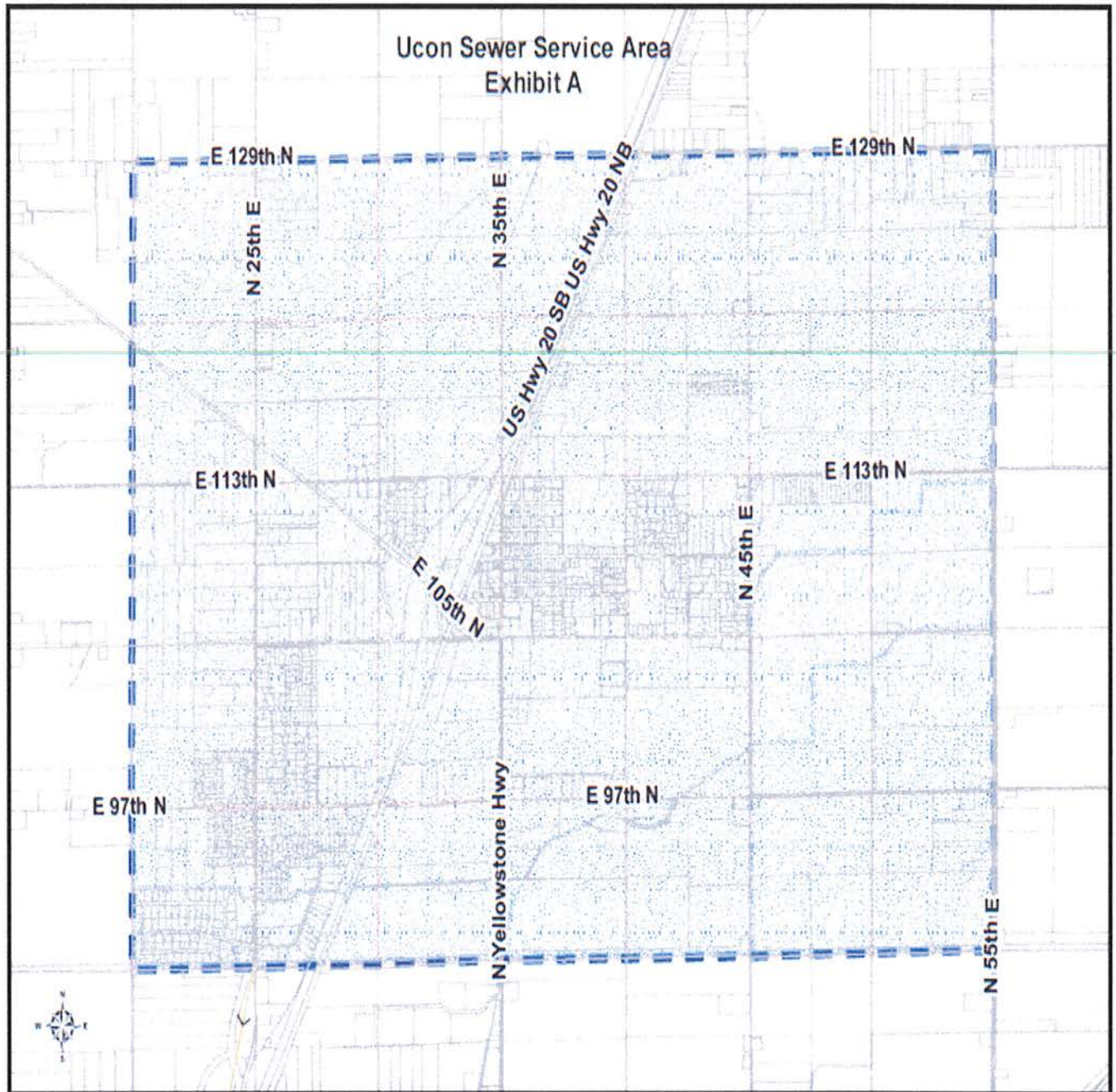
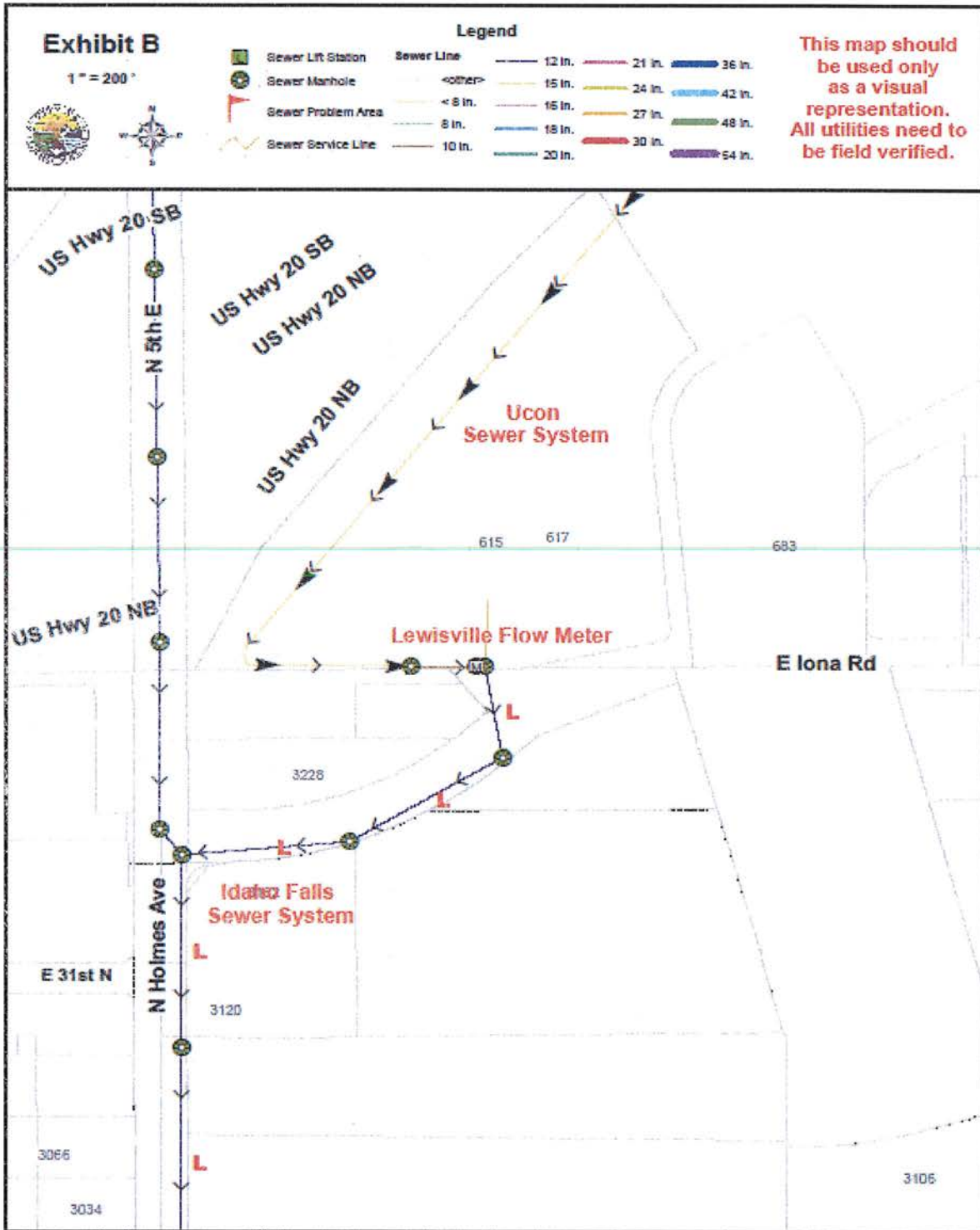


EXHIBIT "B" Lewisville Measuring Station





MEMORANDUM

To: Honorable Mayor & City Council

From: Chris H Fredericksen, Public Works Director

Date: November 14, 2016

Subject: **17TH STREET AND 25TH E (HITT ROAD) INTERSECTION
IMPROVEMENT PROJECT – JOINT POWERS AGREEMENT WITH
THE CITY OF AMMON**

Attached for consideration is a Joint Powers Agreement with the City of Ammon for proposed roadway improvements to 17th Street and 25th E (Hitt Road). The agreement addresses shared costs and other applicable items associated with improvements to the intersection of 17th Street and 25th E (Hitt Road). The agreement was prepared by the City Attorney in conjunction with the Department of Public Works.

Public Works recommends approval of this agreement; and, authorization for Mayor and City Clerk to sign the documents.

Respectfully,

Chris H Fredericksen
Public Works Director

CF:jk

c: Mayor
Council
Fugal

2-38-22-3-STR-2010-14

**JOINT POWERS AGREEMENT FOR THE
RECONSTRUCTION OF 17TH STREET AND 25TH EAST (HITT
ROAD) INTERSECTION BETWEEN CITY OF IDAHO
FALLS, IDAHO AND AMMON, IDAHO**

THIS JOINT POWERS AGREEMENT FOR THE RECONSTRUCTION OF 17TH STREET AND 25TH EAST (HITT ROAD) INTERSECTION BETWEEN CITY OF IDAHO FALLS, IDAHO AND AMMON, IDAHO (hereinafter "JPA"), is made this ____ day of _____, 2016, by and between CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, (hereinafter "IDAHO FALLS"), whose address is P.O. Box 50220, Idaho Falls, Idaho 83405, and CITY OF AMMON, IDAHO, a municipal corporation of the State of Idaho, whose address is (hereinafter "AMMON"), whose address is 2135 South Ammon Road, Ammon, Idaho 83406 (collectively hereinafter the PARTIES).

EXERCISE OF JOINT POWERS BY THE PARTIES

1.1 The purpose of this JPA is to provide for financing, design, construction management, and construction of a project between the two PARTIES consisting of improvements to the intersection of 17th Street and 25th East (Hitt Road) further described in this JPA at 2.1.

1.2 City of Idaho Falls, Idaho, is a municipal corporation of the State of Idaho, duly established under the laws of the State of Idaho.

1.3 City of Ammon, Idaho is a municipal corporation of the State of Idaho, duly established under the laws of the State of Idaho.

1.4 Both IDAHO FALLS and AMMON have authority granted to them by the Idaho Constitution and by Title 50, Chapter 3 of the Idaho Code; specifically including §§ 50-301, 50-311, 50-312, 50-313, 50-314, 50-315, and 50-316.

1.5 As municipal corporations of the State of Idaho, IDAHO FALLS and AMMON have been granted, and specifically assert, herein the authority for each to contract and be contracted with; to acquire, hold, lease, and convey property, real and personal; to erect structures of any kind, needful for the uses or purposes of the City; and to exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws of the Constitution of the State of Idaho.

1.6 Idaho Code § 67-2326 through § 67-2333, provide that public agencies (such as IDAHO FALLS and AMMON) may enter into agreements with one another for joint or cooperative action which includes, but is not limited to, joint use, ownership, or operation agreements and interagency contracts for service, activity and undertakings. This JPA is, and shall be construed as a JPA and active pursuant to Idaho Code § 67-2326 through § 67-2333.

1.7 It is not the intent that this JPA, or that IDAHO FALLS or AMMON, establish a separate legal entity to conduct the joint or cooperative undertaking described in this JPA.

1.8 Neither party to this JPA intends by this JPA to limit its respective power, jurisdiction, or authority in any way other than specifically contemplated and set out in this JPA.

1.9 The PARTIES to this JPA specifically intend it to be interpreted separately and apart from any other Agreement, Memorandum of Understanding, contract, or arrangement between the PARTIES.

1.10 The PARTIES do not intend this JPA to govern, control, manage, or relate to maintenance or operations of the intersection of 17th Street and 25th East (Hitt Road) or signalization of that intersection following construction and acceptance of the Project by the PARTIES. Maintenance and operations of the intersection of 17th Street and 25th East (Hitt Road) or signalization of that intersection shall be governed by a separate agreement of the PARTIES, if any.

1.11 Duration of JPA. This JPA shall be in effect from the date of its signing by both PARTIES, and shall be in effect until the expiration of the warranty period for the construction of the Project.

ARTICLE 2. THE PROJECT

2.1 The Project. This Project encompasses the construction and financing of the improvements to the intersection of 17th Street and 25th East (Hitt Road), and modification of the existing traffic signal. Improvements will be included along 25th East (Hitt Road) from five hundred feet (500 ft.) north of the intersection south to 25th Street and along 17th Street from approximately five hundred feet (500 ft.) east of the intersection west to Ashment Ave. Project improvements include modifying the existing traffic signal, removing and replacing curb, gutter, sidewalk, constructing turn lanes, street paving, installation of median safety curb and other associated items of work.

2.2 Project Construction Costs within the 25th East (Hitt Road) and 17th Street Rights-of-Way will be provided by IDAHO FALLS and AMMON. IDAHO FALLS shall provide for the project One Million Seven Hundred Eighteen Thousand Six Hundred Seventy-Four Dollars and Fifty Cents (\$1,718,674.50) and AMMON shall provide for the project Nine Hundred Five Thousand Nine Hundred Thirty-Two Dollars and Fifty Cents (\$905,932.50). AMMON's total maximum share of the Project costs, including the power pole relocation expense, shall not exceed One Million Dollars (\$1,000,000.00). IDAHO FALLS shall be financially responsible for any amount in excess of the Total Project costs of Two Million Eight Hundred Twelve Thousand Seven Hundred Forty-Two Dollars (\$2,812,742.00).

2.3 Estimated Project Costs.

Costs:	Amount:
Estimated Total Project Costs	\$2,812,742
Estimated Total Construction Costs	\$2,624,607

Estimated Pole Relocation Cost	\$188,135
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ARTICLE 3. PRECONSTRUCTION CONTINGENCIES (South 161kV Transmission Power Line Relocation)

3.1 The PARTIES understand and agree that, prior to construction of the Project, Rocky Mountain Power relocated three (3) poles east of 25th EAST supporting the 161kV transmission power line along Hitt Road (which poles also bear Idaho Falls Power distribution attachments) in order to provide sufficient space and safety for Project construction.

3.2 Power Relocation Costs. AMMON'S payment of the relocation cost of Ninety-Four Thousand Sixty-Seven Dollars and Fifty Cents (\$94,067.50) shall be credited against AMMON's total maximum share of Project costs of One Million Dollars (\$1,000,000).

ARTICLE 4. PROJECT DESIGN, CONSTRUCTION, MANAGEMENT, CONSTRUCTION AND COMPLETION

4.1 Project Construction. IDAHO FALLS agrees to engineer and design the Project and to solicit, award and administer various construction contracts necessary for such work, all as may be determined in accordance with the terms and conditions set forth in this JPA.

4.2 Construction Drawing Approval. IDAHO FALLS will provide AMMON with copies of its construction drawings for the Project prior to the commencement of the Project and shall provide AMMON an opportunity to review and comment thereupon.

4.3 Project Timelines and Completion Dates. Within thirty (30) days after the execution of this JPA, IDAHO FALLS and AMMON will meet and establish Project timelines, performance deadlines, and other significant milestone deadlines, which shall be documented in writing prior to the commencement of the Project. The PARTIES shall meet at such intervals thereafter as may be necessary to complete the Project.

4.4 Regulatory Approvals. Should IDAHO FALLS be required to file this JPA, or any subsequent amendments, with any regulatory agency, AMMON agrees to support such filing(s), and to provide any information, including the filing of testimony, reasonably required by IDAHO FALLS to comply with applicable filing requirements.

4.5 Initial Deposition of Project Monies. Following execution of JPA and prior to the bid award on the Project, AMMON and IDAHO FALLS shall each deposit their respective cost in accordance with Paragraph 2.2 of this JPA for such construction in an interest-bearing account administered by IDAHO FALLS. IDAHO FALLS shall be credited, as part of its share of project costs, the value of any materials supplied for the project. The Administrator of the Project has sole authority to withdraw the said funds for the Project. Such deposit amount shall be based upon the pre-bid estimate of the total construction cost, currently estimated to be Two Million Six Hundred Twenty-Four Thousand Six Hundred Seven Dollars (\$2,624,607).

4.6 Bidding Documents. IDAHO FALLS shall draft and prepare all bidding documents for joint use and shall include any documents prepared by AMMON as necessary to solicit construction bids for the Project and shall solicit bids pursuant to Idaho law from reputable, responsible and competent contractors or subcontractors for each portion of the Project to be awarded directly by IDAHO FALLS. The bidding documents shall include, without limitation, all general specifications, technical specifications, design drawings, contract forms, an invitation to bid form, and other bidding documents necessary to fully and accurately describe the Project and otherwise protect the interests of IDAHO FALLS and AMMON. IDAHO FALLS shall open all bids and evaluate the same and provide copies of such bids and its evaluation to AMMON as soon as possible after the bids are opened and evaluated. IDAHO FALLS shall also provide AMMON with its recommendation as to which contractor and subcontractors bids will best serve the interests of IDAHO FALLS and AMMON on the Project.

4.7 Award of Construction Contract. IDAHO FALLS shall award the construction contract to the contractor and subcontractors which it deems, in its best judgment and experience, will provide and represent the best interests of the PARTIES, provided, however, before making such award, IDAHO FALLS shall obtain the written approval of AMMON for such award. AMMON may withhold such approval only upon a showing of good cause.

IDAHO FALLS shall include provisions within the construction contract requiring and acknowledging that AMMON shall be considered as a third party beneficiary of the contract. Upon request, AMMON may inspect the Project at any time during Project construction and shall notify IDAHO FALLS in the event any discrepancies are discovered between the construction work performed and the contract documents or design specifications, and IDAHO FALLS shall thereafter forthwith instruct the contractor(s) or subcontractor(s) for the Project to correct the same.

4.8 Change Orders. IDAHO FALLS may from time to time issue, approve and execute change orders with respect to any phase of the Project, as necessary and determined to be in the best interest of the PARTIES. Prior to the issuance of such change orders, IDAHO FALLS shall provide AMMON with copies of change order documentation substantiating the need for any change order and shall consult with AMMON with respect to any change order which alters or changes the scope of the Project in any material respect.

AMMON and IDAHO FALLS shall grant authority to IDAHO FALLS staff to process Change Orders up to one hundred fifteen percent (115%) of the bid award.

4.9 Project Billing Escrow. IDAHO FALLS shall pay for the construction costs of the Project, including contractor progress payments, material, and permit fees and all other direct and indirect costs during the Project and arising from the performance of this JPA and completion of the Project. IDAHO FALLS will submit payment records to AMMON including progress payments paid to contractors.

4.10 Retainage. IDAHO FALLS shall retain five percent (5%) of the general contractor progress billings as retainage and security for the satisfactory completion and performance of the work on the Project. Such retainage shall not be released until the contractor has provided satisfactory proof to IDAHO FALLS of the contractor's payments to

subcontractors and suppliers and payment of all federal and state sales and excise taxes.

4.11 Insurance. IDAHO FALLS will include provisions within its agreement with its contractor requiring the contractor to maintain workers compensation insurance, as required by the laws of the state of Idaho, and further obtaining and maintaining a policy of general commercial liability insurance at all times during the performance of the work, as required by IDAHO FALLS' standard insurance requirements for such a public works project.

4.12 Project Inspection, Completion and Final Inspection. AMMON may inspect the work associated with the Project and IDAHO FALLS' financial records and transactions related to the Project, at any time during construction and shall notify IDAHO FALLS of any concerns, errors or omissions discovered during construction.

IDAHO FALLS shall notify AMMON upon substantial completion of the Project. AMMON shall perform a final inspection within ten (10) days after notice by IDAHO FALLS or such longer period of time as may be agreed upon by the PARTIES. Within ten (10) days after final inspection, AMMON shall provide IDAHO FALLS with a punch list of any of elements of the Project completed to IDAHO FALLS's reasonable satisfaction. Both AMMON and IDAHO FALLS shall sign a Notice of Substantial Completion and a Contractor's Certificate of Final Completion after all inspections and final approvals have been made and the Project has been completed to the PARTIES' satisfaction.

IDAHO FALLS shall compile a final Project cost following completion of the Project that shall include all construction costs. In the event that Total Construction Costs after final acceptance fall below Two Million Six Hundred Twenty-Four Thousand Six Hundred Seven Dollars (\$2,624,607) saving shall be refunded at a ratio of thirty-five and one-half percent (35.5%) to AMMON and sixty-four and one-half percent (64.5%) retained by IDAHO FALLS. Final payment history and other financial transaction records shall be made available to AMMON by IDAHO FALLS. Such final Project cost summary and payment records shall detail any additional funds or refunds due to AMMON. If a refund is due AMMON, IDAHO FALLS agrees to pay such refund to AMMON within thirty (30) days of compilation of final Project cost.

ARTICLE 5. MISCELLANEOUS PROVISIONS

5.1.A AMMON Warranty of Authority. As further consideration and as an inducement to entering into this JPA, AMMON covenants and warrants to IDAHO FALLS that it has the full right, power, and authority to execute this JPA and that the execution and performance thereof will not violate any applicable laws, ordinances or covenants, or the provisions of any binding agreement.

5.1.B IDAHO FALLS Warranty of Authority. As further consideration and as an inducement to entering into this JPA, IDAHO FALLS covenants and warrants to AMMON that it has the full right, power, and authority to execute this JPA and that the execution and performance thereof will not violate any applicable laws, ordinances or covenants, or the provisions of any binding agreement.

5.2 Assignment. This JPA shall be binding upon and shall inure to the benefit

of the PARTIES hereto, their successors and assigns.

5.3 Notices. Except as specifically provided elsewhere in this JPA for telephonic or facsimile notice, all notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed, certified mail, return receipt requested, or sent by overnight carrier to the addresses set forth herein. Addresses for notice may be changed by giving ten days (10) written notice of the change in the manner set forth herein.

If to IDAHO FALLS:

Chris H Fredericksen, P.E. Public Works Director
P.O. Box 50220
Idaho Falls, Idaho 83405-0220
Telephone Number: (208) 612-8256
Fax Number: (208) 612-8570
Email: pwd@idahofallsidaho.gov

If to AMMON:

Ron Folsom City Administrator
2135 South Ammon Road Ammon, Idaho 83406
Telephone Number: (208) 612-4050
Fax Number: (208) 612-4009
E-mail: rfolsom@ci.ammon.id.us

5.4 Dispute Resolution. IDAHO FALLS and AMMON mutually endorse the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disagreements that may occur during the Project construction or during the term of this JPA. The PARTIES, through their respective City staffs, commit to attempt, in good faith, to negotiate any disagreement quickly, fairly, and amicably. If such attempts fail to resolve the matter within fifteen (15) days of the first attempt to resolve the disagreement, the Public Works director for each City and no more than two (2) Council members from each City shall meet to discuss and resolve the disagreement within fifteen (15) days of such failure to resolve the disagreement. If that fails to resolve the matter, the dispute shall be submitted to mandatory, non-binding mediation.

5.5 Integration. This JPA shall constitute the entire agreement and understanding of the PARTIES with respect to the subject matter thereof, and supersede all offers, negotiations and other agreements with respect thereto. Any amendment to this JPA shall be in writing and executed by the authorized representatives of the PARTIES.

5.6 Severability. In the event that any part of this JPA is found to be illegal, or in violation of public policy, or for any other reason unenforceable, such finding shall in no event invalidate or render unenforceable the other parts of this JPA.

5.7 Attorney's Fees. The prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorney fees and court costs, including fees and costs

incurred through any applicable appeal process.

5.8 Agreement Construction. It is the intention and agreement of the PARTIES hereto that the language, terms and conditions of this JPA are not to be construed in any way against or in favor of any party by reason of the responsibilities in connection with the preparation of this JPA. In construction of this JPA, the singular includes the plural, and the plural the singular, and words in the present tense include the future tense, as the context requires; section headings are for convenience only, and shall not be considered in construction of the text.

5.9 Venue and Applicable Laws. This JPA is governed by the laws of the State of Idaho. The venue for any action or suit arising from the terms and conditions of this Agreement shall be in the District Court of the Seventh Judicial District, Bonneville County, State of Idaho.

5.10 Force Majeure. Neither party shall be subject to any liability or damages for inability to meet its obligations under this JPA to the extent that such failure shall be due to causes beyond the control of either IDAHO FALLS or AMMON, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by the public service commission, Rocky Mountain Power, the balancing authority to which Idaho Falls Power is subject, any municipality, or governmental agency of the United States, (including NERC, FERC, and FCC), or subdivision thereof (so long as the claiming party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such government action); (b) restraining order, injunction or similar decree of any court; (c) war; (d) flood; (e) earthquake; (f) Act of God; (g) civil disturbance; or (h) strikes or boycotts. Provided, the party claiming Force Majeure shall make every reasonable attempt to remedy the cause thereof as diligently and as expeditiously as possible. Except for the obligation to pay amounts owed when due, time periods for performance obligations of the PARTIES herein shall be extended for the period during which Force Majeure is in effect.

5.11 Waiver. Any waiver of a PARTY's rights with respect to any breach of this JPA, or with respect to any other matter arising in connection with this JPA, shall not constitute a waiver with respect to any other breach or matter arising in connection with this JPA. All waivers must be in writing and signed by an authorized representative of the PARTY granting the waiver.

5.12 Signatory Authority. Each party represents that its representative who executes this JPA has been duly authorized to do so by appropriate action.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement as of the date first written above.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

By _____

By _____

Kathy Hampton, Clerk

Rebecca L. Noah Casper, Mayor

ATTEST:

CITY OF AMMON, IDAHO

By _____

By _____

Clerk

Dana Kirkham, Mayor

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____

By: _____

Randall D. Fife
Idaho Falls City Attorney

Scott R. Hall
Ammon City Attorney

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2016, 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 she is 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.

Notary Public for Idaho
Residing at Idaho Falls
My Commission Expires: _____

(SEAL)

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Dana Kirkham, known to me to be the Mayor of the City of Ammon, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that she is 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.

Notary Public for Idaho
Residing at Idaho Falls
My Commission Expires: _____

(SEAL)



MEMORANDUM

To: Honorable Mayor & City Council

From: Chris H Fredericksen, Public Works Director

Date: November 17, 2016

Subject: **REQUEST TO NEGOTIATE PROFESSIONAL SERVICES WITH
MURRAY, SMITH AND ASSOCIATES TO DESIGN WELL NO. 1
UPGRADES**

Proposals were solicited and received for design services for the Well No. 1 Upgrades Project. Responses to the request were evaluated by a panel of Public Works employees.

Based upon those evaluations, Public Works recommends selecting Murray, Smith and Associates to perform design services, and authorize Public Works to negotiate a scope of work and fee structure.

Respectfully,

Chris H Fredericksen, P. E.
Public Works Director

CF:jk

c: Mayor
Council
D. Richards

2-38-19-4-WTR-2017-13

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