



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

**CITY COUNCIL MEETING**  
**Tuesday, November 20, 2018**  
**7:30 p.m.**

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*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. Public 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. Regularly-scheduled City Council Meetings are live streamed at [www.idahofallsidaho.gov](http://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 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 Municipal Services:**

- 1) Treasurer's Report for the month of September, 2018
- 2) Bid IF-19-B, Replacement Ambulances for Idaho Falls Fire Department
- 3) Professional Services Agreement – Request for Proposal 18-0055, Specialty Vehicle Up-fit for Public Safety
- 4) Design Services for Idaho Falls Power Fiber Home Pilot Project
- 5) Contract Renewal for Line Location Services for Idaho Falls Power
- 6) Conductor Purchase for Idaho Falls Power

**B. Items from the City Clerk:**

- 1) Expenditure Summary for the month of October, 2018
- 2) Minutes from the October 25, 2018 Idaho Falls Power Board Meeting
- 3) License Applications, all carrying the required approvals

RECOMMENDED ACTION: To approve, accept, or receive all items on the Consent Agenda according to the recommendations presented (or take other action deemed appropriate).

5. **Regular Agenda.**

**A. Fire Department**

**1) Imagetrend Contract:** The Fire Department has evaluated a new Emergency Medical Services (EMS) Reporting Software to use that incorporates new federal requirements. After review, we selected Imagetrend. This contract has been reviewed by the City Attorney's office and was approved for purchase in the 2018-2019 budget.

RECOMMENDED ACTION: To approve the Imagetrend Contract, and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

## **B. Public Works**

**1) Supplemental Professional Services Agreement with Six Mile Engineering for Design Services of the 17th Street and Woodruff Avenue Intersection Improvements:** For consideration is a Supplemental Professional Services Agreement for Six Mile Engineering to provide services for the development of right-of-way and final design plans for the 17th Street and Woodruff Avenue Intersection Improvements. Under the agreement, Six Mile Engineering will provide engineering services as necessary for a not-to-exceed amount of \$99,400.00. The City will be responsible for \$7,295.96, which is 7.34% of this amount.

RECOMMENDED ACTION: To approve the Supplemental Professional Services Agreement for Six Mile Engineering for the 17th Street and Woodruff Avenue Intersection Improvements, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

**2) Settlement Agreement between Surface Water Coalition, the Idaho Ground Water Appropriators, and Signatory Cities:** For consideration is an agreement with the Surface Water Coalition, participating members of the Idaho Ground Water Appropriators, Inc, and signatory cities (Settlement Agreement). The Settlement Agreement establishes a method for cities located within the Eastern Snake Plain Aquifer to mitigate their groundwater use; provides cities safe harbor from future water calls by the Surface Water Coalition for a period of 35 years; establishes methods for mitigation efforts required; and identifies reporting procedures for required mitigation efforts performed by cities. The Settlement Agreement is in conjunction with the Internal City Mitigation Allocation Agreement that identifies how mitigation obligations will be distributed between signatory and participating cities.

RECOMMENDED ACTION: To approve the Settlement Agreement, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

**3) Internal City Mitigation Allocation Agreement:** For consideration is an Internal City Mitigation Allocation Agreement (Internal City Agreement) between the Signatory Cities of the Settlement Agreement between Surface Water Coalition, the Idaho Ground Water Appropriators, and Signatory Cities (Settlement Agreement). The Internal City Agreement identifies how mitigation obligations will be distributed among the signatory and participating cities as established in the Settlement Agreement.

RECOMMENDED ACTION: To approve the Internal City Mitigation Allocation Agreement, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

**4) Idaho Transportation Department State/Local Agreement for the Idaho Unified Certification Program:** For consideration is a State/Local Agreement with the Idaho Transportation Department Office of Civil Rights and accompanying Resolution with respect to the Idaho Unified Certification Program. This agreement requires the City to enter into a Unified Certification Program as part of each recipient's Disadvantaged Business Enterprise (DBE) program.

RECOMMENDED ACTION: To approve the State/Local Agreement with the Idaho Transportation Department Office of Civil Rights, and the accompanying Resolution, for the Unified Certification Program, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

**5) Idaho Transportation Department State/Local Agreement for the Signal Head Visibility Improvements Project:** For consideration is a State/Local Agreement with the Idaho Transportation Department and accompanying Resolution with respect to the Signal Head Visibility Improvements project. This agreement requires the City to provide contract administration and inspection services as a credit toward our match rate of 7.34%. No match is required at this time.

RECOMMENDED ACTION: To approve State/Local Agreement with the Idaho Transportation Department, and the accompanying Resolution, for the Signal Head Visibility Improvements project, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

**6) Grant Application Resolution for the Higbee Avenue Bridge:** For consideration is a resolution for authorization to apply for a grant aiming to replace seriously deteriorated bridges within Idaho Falls city limits. The bridge on Higbee Avenue over the Butte Arm Canal has been the selected as the prime structure based on the poorest condition. This resolution reinforces the commitment of the City of Idaho Falls to match 7.34% of the total project cost. This amount is approximately \$84,000.00 of the estimated \$1,150,000.00.

RECOMMENDED ACTION: To approve the Grant Application Resolution for the Higbee Avenue Bridge, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

#### **C. Parks and Recreation**

**1) Donation of \$100,000.00 for Dog Park Improvements by the William J. and Shirley A. Maeck Family Foundation:** For consideration is a Memorandum of Understanding which outlines the terms and conditions of a \$100,000.00 donation from the Maeck Family Foundation for the purpose of constructing improvements to the Idaho Falls Dog Park.

RECOMMENDED ACTION: To approve the Memorandum of Understanding from the Maeck Family Foundation, and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

**2) Gift Deed of Property – Groberg Pocket Park:** For consideration is a gift deed of property from Joseph and Jeanne Groberg to the City of Idaho Falls. The property is located on Lot 15, Block 15 of the Packer Addition, Division No. 3. The City of Idaho Falls was approached by the Groberg family offering a donation of property for the development of a pocket park for the citizens of Idaho Falls.

RECOMMENDED ACTION: To approve the Gift Deed from Joseph and Jeanne Groberg (or take other action deemed appropriate).

#### **6. Announcements and Adjournment.**

**CONSENT**

**AGENDA:**



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Municipal Services Department

**DATE:** November 15, 2018

**RE:** Treasurer's Report for September 2018

Pursuant to Resolution 2018-06, attached for review is the Treasurer's Report for September 2018. Highlights for the September Treasurer's Report include:

- Total investments reconciled to the September bank investment statements were reported at \$92M, of which \$6.2M is cash or equivalent and a total of \$85.8M were in invested funds.
- Total revenue (receipts) received and reconciled to the general ledger were reported at \$9.8M.
- Total expenses reconciled to the general ledger were reported at \$23.9M and includes salary and benefits of \$8.1M, operating costs of \$8.5M and capital costs of \$7.3M.
- Please note the October Treasurer's Report will include 2017/18 fiscal year-end accounting adjustments.

Respectfully,

A handwritten signature in black ink that reads "Pamela Alexander". The signature is fluid and cursive, with the first name "Pamela" being more prominent.

Pamela Alexander  
Municipal Services Director

**CITY OF IDAHO FALLS MONTHLY TREASURER'S REPORT  
SEPTEMBER, 2018**

FUND	BEGINNING CASH AND INVESTMENTS	TOTAL RECEIPTS	TOTAL EXPENSES	NEW INVESTMENTS	ENDING BALANCE CASH AND INVESTMENTS
GENERAL	8,646,220.72	1,018,723.94	5,382,985.15	-	4,281,959.51
HEALTH & ACCIDENT INSUR.	2,472,573.43	-	-	-	2,472,573.43
STREET	3,101,292.56	5,954.00	2,602,427.08	-	504,819.48
RECREATION	11,934.88	80,797.02	216,060.37	-	(123,328.47)
LIBRARY	2,469,887.25	12,283.82	394,089.29	-	2,088,081.78
AIRPORT PFC FUND	-	-	-	-	-
MUNICIPAL EQUIP. REPLCMT.	15,504,350.54	152,172.77	695,990.23	-	14,960,533.08
EL. LT. WEATHERIZATION FD	2,637,733.23	283,594.18	93,931.00	-	2,827,396.41
BUSINESS IMPRV. DISTRICT	112,660.38	1,669.52	-	-	114,329.90
GOLF	(68,983.80)	244,196.84	315,313.71	-	(140,100.67)
GOLF CAPITAL IMPROVEMENT	154,866.17	-	-	-	154,866.17
SELF-INSURANCE FD.	2,998,462.84	163,053.00	(36,362.22)	-	3,197,878.06
SANITARY SEWER CAP IMP.	1,839,874.07	37,101.80	-	-	1,876,975.87
MUNICIPAL CAPITAL IMP.	1,402,274.72	-	414,678.84	-	987,595.88
STREET CAPITAL IMPROVEMENT	1,018,436.94	4,635.62	92,424.52	-	930,648.04
BRIDGE & ARTERIAL STREET	489,528.24	11,300.16	-	-	500,828.40
WATER CAPITAL IMPROVEMENT	3,299,985.13	63,787.50	193,407.68	-	3,170,364.95
SURFACE DRAINAGE	107,468.14	3,720.03	-	-	111,188.17
TRAFFIC LIGHT CAPITAL IMPRV.	1,208,491.91	39,079.57	93,410.39	-	1,154,161.09
PARKS CAPITAL IMPROVEMENT	226,677.79	1,220.98	40,153.50	-	187,745.27
FIRE CAPITAL IMPROVEMENT	(3,255,937.79)	-	-	-	(3,255,937.79)
ZOO CAPITAL IMPROVEMENT	837,148.77	-	258,815.69	-	578,333.08
CIVIC AUDITORIUM CAPITAL IMP.	454,886.20	-	173,695.99	-	281,190.21
AIRPORT	1,100,729.33	330,637.14	2,102,453.15	-	(671,086.68)
WATER	8,486,383.04	<sup>1</sup> 865,692.61	2,326,879.43	-	7,025,196.22
SANITATION	2,294,257.14	405,346.95	359,852.45	-	2,339,751.64
AMBULANCE	(1,312,541.35)	492,840.03	995,701.81	-	(1,815,403.13)
IDAHO FALLS POWER	17,562,296.71	<sup>2</sup> 4,891,255.62	5,767,707.84	-	16,685,844.49
IFP RATE STABILIZATION FD	20,482,563.81	<sup>3</sup> (149,399.33)	-	-	20,333,164.48
IFP CAPITAL IMPROVEMENT	10,498,771.00	<sup>4</sup> (45,589.96)	-	-	10,453,181.04
FIBER	-	-	-	-	-
WASTEWATER	18,567,721.57	<sup>5</sup> 969,473.90	1,485,879.91	-	18,051,315.56
PAYROLL LIABILITY FUND	330,766.33	-	-	-	330,766.33
POOL CASH FUND	(11,886.10)	-	-	-	(11,886.10)
<b>TOTAL ALL FUNDS</b>	<b>123,668,893.80</b>	<b>9,883,547.71</b>	<b>23,969,495.81</b>	<b>-</b>	<b>109,582,945.70</b>

**Footnotes:**

*This report does not include the accounting of 2017/18 year-end adjustments. These adjustments will be reported in the October Treasurer's Report.*

*(1 & 5) - Net increase to cash and investments due to true-up of expenditures (inventory and depreciation) and accounts receivable.*

*2,3&4 Adjustments to Idaho Falls Power beginning cash and investments based on Idaho Falls Power Accountant reconciliation of cash and fund balance beginning February 2018 and reconciled to Key Performance Indicator report for August 31, 2018.*





## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Municipal Services Department

**DATE:** November 13, 2018

**RE:** Bid IF-19-B, Replacement Ambulances for Idaho Falls Fire Department

It is the recommendation of the Fire and Municipal Services Departments to piggyback the Houston-Galveston Area Council (HGAC) purchasing program bid #AM10-18, through the authorized dealer, Braun Northwest Inc. to purchase two (2) 2019 North Star 153-1 Type I Module Ambulance in the amount of \$360,848.00. These ambulances will replace City of Idaho Falls unit 840, a 2010 Ford F450 and unit 841, a 2011 Ford F450 with a McCoy Miller ambulance body. Unit 840 and 841 will be assigned to surplus for sale. Funds to purchase the replacement ambulances are budgeted in the 2018/2019 Fire Department Municipal Equipment Replacement Fund.

Respectfully,

Pamela Alexander  
Municipal Services Director

# BRAUN NW inc.

150 North Star Drive / PO Box 1204 / Chehalis, WA 98532 / 360.748.0195 / 800.245.6303 / fax 360.748.0256

## PROPOSAL

NOVEMBER 9, 2018

IDAHO FALLS FIRE DEPARTMENT  
ATTN: ERIC DAY  
625 SHOUP AVE  
IDAHO FALLS, ID 83402  
[EDAY@IDAHOFALLSIDAHO.GOV](mailto:EDAY@IDAHOFALLSIDAHO.GOV)

RE: TWO 2018 NORTH STAR 153-1 TYPE I MODULE AMBULANCES

BRAUN NORTHWEST IS PLEASED TO OFFER THE FOLLOWING PROPOSAL WHICH IS BASED UPON HGAC CONTRACT AM10-18:

TWO (2) 2018 NORTH STAR 153-1 AMBULANCE ON A 2019 FORD F450 4X4, EXTENDED CAB, DIESEL AMBULANCE PREP CHASSIS BASED UPON ENCLOSED IDAHO FALLS FIRE DEPARTMENT "AS BUILT" UNIT #2661-1 SPECIFICATIONS DATED 4/20/18 AND DRAWINGS DATED 4/26/18 WITH FOLLOWING CHANGE:

- Utilize 2019 Ford F450 4x4, extended cab, diesel chassis

BASE HGAC PRICE CA05.....	\$170,661.00
PUBLISHED/UNPUBLISHED OPTIONS TAKEN .....	\$ 10,763.00
TOTAL FOR ONE VEHICLE .....	\$181,424.00
MULTI-VEHICLE DISCOUNT.....	DEDUCT <\$ 1,500.00>
SUB TOTAL FOR ONE VEHICLE.....	\$179,924.00
TOTAL FOR TWO VEHICLES.....	\$359,848.00
HGAC FEE .....	\$ 1,000.00
TOTAL FOR TWO VEHICLES F.O.B. CHEHALIS, WA .....	<u>\$360,848.00</u>

Sales tax not included

F.O.B.: CHEHALIS, WASHINGTON

DELIVERY: APPROXIMATELY TWO HUNDRED FORTY (240) DAYS ARO

TERMS: NINETY PERCENT (90%) PAYMENT DUE UPON RECEIPT OF VEHICLE. BALANCE DUE IN THIRTY (30) DAYS.

*Braun Northwest, Inc. is a Washington dealer (0991-A) with insurance information available upon request.*

Respectfully Submitted by:

BRAUN NORTHWEST, INC.

We agree to accept the above proposal:  
IDAHO FALLS FIRE DEPARTMENT

  
Tami McCallum, V.P. Sales

Date: 11/9/2018

Signature

Date

Printed Name

Title



EMERGENCY VEHICLES

TM/sel  
cc PB

Enclosures: Options, specifications, drawings

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



**OPTIONS  
FOR  
Idaho Falls Fire Department  
Idaho Falls, Idaho**

Please indicate if you want the following options by initialing in the space provided and checking the appropriate "yes" or "no" box, then sign where indicated below. After completion, please return this original form to our office along with the original proposal.

Thank you!

1. Utilize 30 day / 3,000 miles Demo discount for one of the vehicles  
DELETE ..... <\$1,500.00>  
Do you want this option?      ☐ Yes ☐ No      \_\_\_\_\_ initials

***(NOTE: THIS PRICING DOES NOT INCLUDE SALES TAX.)***

APPROVED BY:      *(Please initial above choice (s) & sign below)*

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)



## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Municipal Services Department

**DATE:** November 13, 2018

**RE:** Professional Services Agreement - Request for Proposal 18-0055, Specialty Vehicle Up-fit for Public Safety

Attached is the tabulation for the above subject request for proposal. It is the recommendation of Municipal Services and the Police Department to enter into a professional services agreement with Vehicle Lighting Solutions for specialty vehicle up-fit of public safety units as proposed in the agreement. The agreement has been reviewed and approved by the City Attorney. Funds for the professional services are budgeted in the 2018/2019 Police Department Municipal Equipment Replacement Fund.

Respectfully,

Pamela Alexander  
Municipal Services Director

	FORMAT				CRITERION 1				CRITERION 2				CRITERION 3				CRITERION 4				CRITERION 5			
	PAGE TOTAL, SIZE OF PAGE, TYPE STYLE, DISCUSSION ONLY				COMPANY EXPERIENCE AND QUALIFICATIONS				COST				REFERENCES				UP-FIT LOCATION				MAINTENANCE/WARRANTY WORK FACILITY			
	#1	#2	#3	#4	#1	#2	#3	#4	#1	#2	#3	#4	#1	#2	#3	#4	#1	#2	#3	#4	#1	#2	#3	#4
Emergency Responder Services, Inc	0	0	0	0	350	350	200	325	200	100	100	125	100	100	100	100	200	100	100	200	200	100	200	0
Vehicle Lighting Solutions	0	0	0	0	350	350	300	350	250	200	200	250	100	100	100	100	250	150	200	250	250	300	300	300

Totals	100 Maximum				Average				
	#1	#2	#3	#4					
Emergency Responder Services, Inc	1050	750	700	750	813				
Vehicle Lighting Solutions	1200	1100	1100	1250	1163				

	ERS	VLS
Model 1	\$ 57,113.04	\$ 46,883.56
Model 2	\$ 21,574.86	\$ 19,023.39
Model 3	\$ 20,293.86	\$ 18,976.85
Model 4	\$ 21,418.16	\$ 18,834.31
Model 5	\$ 21,742.26	\$ 18,342.42
Model 6	\$ 19,388.86	\$ 17,221.83
Model 7	\$ 20,545.86	\$ 18,347.45

Totals | \$ 182,076.90 | \$ 157,629.81

TEARDOWNS  
PER UNIT \$ 1,092.00 \$ 275.00

Price Includes freight on each

## **AGREEMENT FOR PROFESSIONAL SERVICES RELATED TO SPECIALTY VEHICLE UP-FITTING**

THIS AGREEMENT FOR PROFESSIONAL SERVICES RELATED TO SPECIALTY VEHICLE UP-FITTING (hereinafter "Agreement"), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, P.O. Box 50220, Idaho Falls, Idaho 83405 (hereinafter "CITY"), and the \_\_\_\_\_, (hereinafter "CONTRACTOR").

WITNESSETH:

### **SECTION I: SCOPE OF WORK**

A. CONTRACTOR will up-fit up to twenty (20) police vehicles annually (current model year Dodge Durango, Chevrolet Tahoe, Chevrolet Silverado 2500, and Chevrolet 3500), which includes vehicle pick-up, delivery, labor, installation of equipment (light-bar, overheads, emergency lighting, siren speaker, prisoner partition, weapons mount, MDT computer mount, communications antennae, and interior lighting) and incidentals. CONTRACTOR shall perform all services, and comply in all respects, as described herein for the consideration stipulated, and in compliance with State and City Codes.

### **SECTION II:**

A. Independent Contractor.

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

B. Fees and Conditions for Professional Services.

1. Payment for all services described in this Agreement is provided in accordance with Section II.B.2. of this Agreement.

2. The cost for the CITY's four (4) Dodge Durango SSV Unmarked up-fits is a total not to exceed forty-six thousand eight hundred eighty-three dollars and fifty-six cents (\$46,883.56). The cost for the Dodge Durango SSV marked is nineteen thousand twenty-three dollars and thirty-nine cents (\$19,023.39). The cost for the Chevrolet Tahoe SSV K9 is eighteen thousand nine hundred seventy-six dollars and eighty-five cents (\$18,976.85). The cost for the Chevrolet Tahoe SSV is eighteen thousand eight hundred thirty-four dollars and thirty-one cents (\$18,834.31). The cost for the Chevrolet Tahoe SSV Unmarked is eighteen thousand three hundred forty-two dollars and forty-two cents. The cost for the Chevrolet Silverado 2500 is seventeen thousand two hundred twenty-one dollars and eighty-three cents (\$17,221.83). The cost for the Chevrolet Silverado 3500 is

eighteen thousand three hundred forty-seven dollars and forty-five cents (\$18,347.45). The cost for tear-down of eight (8) vehicles is seven hundred twenty dollars (\$720).

3. CONTRACTOR will invoice the City's Municipal Services Department for all current amounts earned under this Agreement.

4. Vehicle completion shall be ten (10) days and final delivery within fifteen (15) working days upon vendor receipt of City of Idaho Falls supplied "kitted components". Liquidated damages of one hundred dollars (\$100) per day per vehicle may be assessed on late deliveries.

C. Right to Use Images and Published Materials.

CITY and CONTRACTOR agree that CITY, with this Agreement, acquires the right to use the results of CONTRACTOR image(s), including any portion of its image(s). The use of image(s) may include, but is not limited to, electronic and print promotion of CITY sponsored programs and functions. Image(s) may be provided to other entities, such as newspapers or other publishers, for inclusion in print advertisements, without cost to CITY or payment to CONTRACTOR for use of such image(s).

Nothing in this section shall constrain CONTRACTOR from using the materials for other trainings or projects with other entities.

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

### **SECTION III:**

#### **A. Termination of Agreement.**

This Agreement may be terminated by CONTRACTOR upon thirty (30) days written notice. CITY may terminate this Agreement with thirty (30) days' notice without cause and without further liability to CONTRACTOR.

#### **B. Extent of Agreement.**

This Agreement may be amended only by written instrument signed by both parties hereto. CITY shall have the right and option to renew this Agreement for one (1) additional consecutive annual term, provided CITY shall first give written notice of its intent to exercise such option.

#### **C. Termination of Project.**

If any portion of the services covered by this Agreement shall be suspended, abated, abandoned, or terminated, CITY shall pay CONTRACTOR for the services rendered to the date of such suspended, abated, abandoned, or terminated work; the payment to be based, insofar as possible, on the amounts established in this Agreement or, where the Agreement

cannot be applied, the payment shall be based upon a reasonable estimate as mutually agreed upon between the two (2) parties as to the percentage of the work completed.

D. Indemnification.

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

E. Costs and Attorney Fees.

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

F. Jurisdiction and Venue.

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

G. Binding of Successors.

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

H. Modification and Assignability of Agreement.

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

I. Ownership and Publication of Materials.

CITY and CONTRACTOR agree that CITY, with this Agreement, acquires the right to use all reports, information, data, and other materials prepared by CONTRACTOR pursuant to this Agreement and shall have the authority to release, publish, or otherwise use them, in whole or in part. Nothing in this section shall constrain CONTRACTOR from using materials for other trainings or projects with other entities.



J. Non-discrimination.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated above.

ATTEST:

“CITY”

City of Idaho Falls, Idaho

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

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

“CONTRACTOR”

By \_\_\_\_\_

STATE OF IDAHO            )  
  ) ss.  
County of Bonneville        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, 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 \_\_\_\_\_        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a notary public, in and for said State, personally appeared \_\_\_\_\_, known or identified to me and whose name is subscribed to the within instrument and acknowledged to me that she is authorized to execute the same for and on behalf of the \_\_\_\_\_.

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)



## MEMORANDUM

**TO:** Mayor and City Council

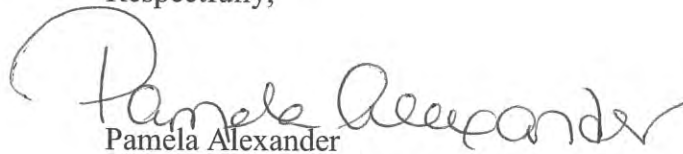
**FROM:** Municipal Services Department

**DATE:** November 13, 2018

**RE:** Design Services for Idaho Falls Power Fiber Home Pilot Project

It is the recommendation of Idaho Falls Power and Municipal Services to purchase design services from Utah Telecommunication Open Infrastructure Agency (UTOPIA) for the fiber to the home pilot project for a contract award total of \$1,650,000. The Joint Powers purchasing agreement with UTOPIA was approved by City Council on September 27, 2018. Funds for the fiber to the home pilot project is within the 2018/19 Idaho Falls Power budget.

Respectfully,

  
Pamela Alexander  
Municipal Services Director



## MEMORANDUM

**TO:** Honorable Mayor and City Council  
**FROM:** Bear Prairie, General Manager *BP*  
**DATE:** September 24, 2018  
**RE:** Approve Joint Powers Agreement with UTOPIA

Attached is a Joint Powers Agreement for the design and execution of the fiber pilot between City of Idaho Falls and Utah Telecommunication Open Infrastructure Agency (UTOPIA). The purpose of the Agreement is to provide for the design and execution of a fiber pilot program in Idaho Falls.

Idaho Falls through this agreement will use UTOPIA to help build and operate an open access model with the purpose of extending fiber optic services to City residents in a pilot area of between 1,500 to 2,000 residents. UTOPIA is a not for profit interlocal entity that has the necessary experience working with other not-for-profit municipal utilities like Idaho Falls in the design and operation of fiber networks.

The City Attorney has reviewed the agreement.

Staff respectfully requests City Council approve the Joint Powers Agreement and authorize the Mayor to execute the document

Attachment

BP/277

C: City Clerk  
City Attorney  
File

COUNCIL MEETING  
SEPTEMBER 27, 2018  
APPROVED 50

**JOINT POWERS AGREEMENT FOR THE DESIGN AND EXECUTION OF A  
FIBER PILOT PROGRAM BETWEEN CITY OF IDAHO FALLS, IDAHO, AND  
UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY**

THIS JOINT POWERS AGREEMENT FOR THE DESIGN AND EXECUTION OF A FIBER PILOT PROGRAM BETWEEN CITY OF IDAHO FALLS, IDAHO, AND UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY (hereinafter "Joint Powers Agreement" or "JPA"), is made this 24 day of September, 2018, 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 UTAH TELECOMMUNICATION OPEN INFRASTRUCTURE AGENCY, (hereinafter "UTOPIA"), an interlocal entity and political subdivision of the State of Utah, whose address is 5858 South 900 East, Murray, Utah 84121 (collectively hereinafter the PARTIES).

**EXERCISE OF JOINT POWERS BY THE PARTIES**

1.1 The purpose of this Joint Powers Agreement is to provide for design and execution of a fiber pilot program in three (3) sample locations within the City limits of the City of Idaho Falls, Idaho, and based upon such project discuss further partnership and options (including construction and materials) for extension of an Active Ethernet fiber network. The network will be built on an open access model with the purpose of extending fiber optic services to City residents.

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

1.3 Utah Telecommunications Open Infrastructure Agency ("UTOPIA") is an interlocal entity and political subdivision formulated by the First Amended and Restated Interlocal Cooperative Agreement of the Utah Telecommunication Open Infrastructure Agency, under the laws of the State of Utah.

1.4 IDAHO FALLS has authority granted to it 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 a municipal corporation of the State of Idaho, IDAHO FALLS has been granted, and specifically asserts, 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 Idaho public agencies (such as IDAHO FALLS) may enter into agreements with other legally authorized entities for joint or cooperative action which includes, but not limited to, joint use, ownership, or operation agreements and interagency contracts for service, activity and undertakings. This Joint Powers Agreement is, and shall be construed as a Joint Powers Agreement and active pursuant to Idaho Code § 67-2326 through § 67-2333 and pursuant to the laws of the State of Idaho.

1.7 The Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, provides that two (2) or more public agencies may, by agreement, jointly exercise any power common to the contracting parties and may share their taxes and other revenue to accomplish their stated objectives, such as identified in this JPA.

1.8 It is not the intent that this Joint Powers Agreement, or that IDAHO FALLS or UTOPIA, establish a separate legal entity to conduct the joint or cooperative undertaking described in this Joint Powers Agreement.

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

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

1.11 The PARTIES do not intend this Joint Powers Agreement to govern, control, manage, or relate to anything other than the subject matter of this Joint Powers Agreement.

## **ARTICLE 2. THE PROJECT**

2.1 The Pilot Project. UTOPIA shall help design and engineer a Fiber to the Premise (FTTP) pilot project in IDAHO FALLS by providing services solely through sub-contracted parties secured by UTOPIA. The Pilot Project will consist of designing an extension of IDAHO FALLS' Fiber Optic Network System that will pass by not to exceed two thousand (2,000) mostly residential customers in the areas that represent common types of design and construction scenarios likely to occur in IDAHO FALLS during a full fiber network system build out.

IDAHO FALLS anticipates at least three (3) common construction methods will need to be designed and engineered in order to create pathways from the IDAHO FALLS' Fiber Optic Network System to install Fiber to the Premise: (1) new aerial construction



pathways on existing electrical poles, (2) existing underground electrical infrastructure already in conduit for pathways, and (3) replacement of existing direct buried electrical lines that will accommodate both fiber and electrical lines. The Pilot Project will design, engineer, and supply certain materials to determine the cost and ability for IDAHO FALLS to use all three (3) of these construction requirements that are currently found throughout Idaho Falls.

The Fiber Optic Network System needs capability of providing up to one (1) gigabit a second speeds to customers using active Ethernet technologies. The Fiber Optic Network System design requires dedicated fiber from the fiber hut site or Point of Presence (PoP) to the customer edge. The final design must accommodate an "open access" infrastructure in which multiple service providers can provide services to customers on the Fiber Optic Network System.

2.2 UTOPIA shall do the following for all three (3) construction methods for the Pilot Project:

a. Work with IDAHO FALLS staff to create and receive designs. Documents that may be received include KMZ files, GIS maps, preliminary bill of materials, and plat data from IDAHO FALLS that will be engineered into a design infrastructure.

b. Design the infrastructure to a suitable scale. Design requirements include, but are not limited to, plotting a running line, identifying the locations of major features such as poles, manhole lids, hydrants, underground utilities, conduit, handholds, and aerial features that would be necessary. Overhead imagery would also be necessary for the design of the plant.

c. Create progress reports on the design of the network. Track and document any and all changes from original design. Changes shall be given to IDAHO FALLS.

d. Create the fiber optic cable distribution and splicing design. Create plans for fiber placement, document fiber aggregation and splice points, create splice diagrams or cutsheets, FAT (fiber allocation table), and identify materials needed for each splice location. Cable tag placement on all cables included with staking sheet.

e. Provide timelines as requested by IDAHO FALLS, in weeks, outlining project ramp-up and phases as they relate to design and engineering, for example, obtaining high-level GIS designs, establishing relationships with local entities, etc.

f. Provide CAD Overview Drawing shape files, PDF design documents, and FAT sheets

g. Work with IDAHO FALLS staff to create a process to populate drawings in a manner that each asset is labeled with a unique identifier.

h. Work with IDAHO FALLS to design the logical aspects of the network including devices, VLAN configuration, QOS, IP management, etc.

i. Create a plan to continue build out in addition to the Pilot Project areas in a logical, cost efficient and fair manner (which may include phasing and financing projections).

j. Supply materials as mutually agreed upon to offer service to customers in the Pilot Project area.

k. When requested by IDAHO FALLS and mutually agreed upon by the Parties, provide an estimate of labor and materials for a City-wide build out.

l. All network designs, plans, and specifications or documents produced as a result of this JPA shall become property of IDAHO FALLS.

m. Work with IDAHO FALLS to operate the open access network after the open access network system is constructed. UTOPIA will configure and monitor the open access network system devices and provide IDAHO FALLS with monitoring statistics. UTOPIA will configure logical services from the fiber hut site to customer edge. These logical services will be based on the requirements of service providers who have customers who sign up.

n. Assist IDAHO FALLS with customer installations.

o. Assist IDAHO FALLS with establishment of a open access network connection presence into IDAHO FALLS' City limits.

2.3 Duration of Joint Powers Agreement. This Joint Powers Agreement shall be in effect from the date of its signing of both PARTIES, and shall be in effect until September 30, 2019, unless mutually extended by agreement of the Parties.

2.4 Cost. UTOPIA will extend to IDAHO FALLS UTOPIA their standard rates for engineering and construction services that would apply to UTOPIA members.

2.5 Project Timelines and Completion Dates. Within thirty (30) days after the execution of this Joint Powers Agreement, IDAHO FALLS and UTOPIA shall 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.

### ARTICLE 3. MISCELLANEOUS PROVISIONS

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

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

3.2 Assignment. This Joint Powers Agreement shall be binding upon and shall inure to the benefit of the PARTIES hereto, their successors and assigns.

3.3 Notices. Except as specifically provided elsewhere in this Joint Powers Agreement 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:

Bear Prairie, Director  
Idaho Falls Power / Idaho Falls Fiber Network  
P.O. Box 50220  
Idaho Falls, Idaho 83405-0220  
Telephone Number: (208) 612-8429  
Fax Number: (208) 612-435  
Email: bprairie@ifpower.org

If to UTOPIA Fiber:

Roger Timmerman  
Chief Executive Office/UTOPIA  
5858 S 900 E Murray UT 84121  
(801) 613-3800  
(801) 613-3860 fax  
rtimmerman@utopiafiber.com

3.4 Dispute Resolution. IDAHO FALLS and UTOPIA 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 Joint Powers Agreement. The PARTIES, through their respective staffs, commit to attempt, in good faith, to negotiate any disagreement quickly, fairly, and amicably. If such attempts fail to resolve the matter within thirty (30) days of the first attempt to resolve the disagreement, the IDAHO FALLS Power Department Director and UTOPIA CEO shall meet to discuss and resolve the disagreement within thirty (30) 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. Any dispute that cannot be resolved by mediation shall then be considered by the parties for submission to binding arbitration.

3.5 Integration. This Joint Powers 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 Joint Powers Agreement shall be in writing and executed by the authorized representatives of the PARTIES.

3.6 Severability. In the event that any part of this Joint Powers 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 Joint Powers Agreement.

3.7 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.

3.8 Agreement Construction. It is the intention and agreement of the PARTIES hereto that the language, terms and conditions of this Joint Powers Agreement 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 Joint Powers Agreement. In construction of this Joint Powers Agreement, 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.

3.9 Venue and Applicable Laws. This Joint Powers Agreement 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.

3.10 Force Majuere. Neither party shall be subject to any liability or damages for inability to meet its obligations under this Joint Powers Agreement to the extent that such failure shall be due to causes beyond the control of either IDAHO FALLS or UTOPIA, including but not limited to the following: (a) the operation and effect of any rules, regulations and orders promulgated by the public service commission, PacifiCorp, Rocky Mountain Power, 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 Majuere 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 Majuere is in effect.

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

3.12 Signatory Authority. Each party represents that its representative who executes this Joint Powers Agreement 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 Kathy Hampton  
Kathy Hampton, City Clerk

By Rebecca L. Noah Casper  
Rebecca L. Noah Casper, Mayor

ATTEST:

UTOPIA

By Kellie Jeffrey  
Kellie Jeffrey, Secretary

By Roger Timmerman  
Roger Timmerman, Executive Director

APPROVED AS TO FORM:

By Randall D. Fife  
Randall D. Fife  
Idaho Falls City Attorney



STATE OF IDAHO )  
 ) ss.  
County of Bonneville )

On this 27 day of SEPTEMBER, 2018, 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.



*Linda Lundquist*  
Notary Public for Idaho  
Residing at Idaho Falls  
My Commission Expires: 7/25/2024

STATE OF UTAH )  
 ) ss.  
County of Salt Lake )

On this 24<sup>th</sup> day of September, 2018, before me, the undersigned, a notary public for Utah, personally appeared Roger Timmerman, known to me to be the Executive Director of Utah Telecommunications Open Infrastructure Agency, the interlocal entity and political subdivision of the State of Utah that executed the foregoing document, and acknowledged to me that he is authorized to execute the same for and on behalf of said entity.

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



*Kellie Marie Jeffrey*  
Notary Public for Utah  
My Commission Expires: Aug 24, 2020





## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Municipal Services Department

**DATE:** November 13, 2018

**RE:** Contract Renewal for Line Location Services for Idaho Falls Power

It is the recommendation of the Idaho Falls Power and Municipal Services Departments to renew the contract with One Call Locators, LTD for an additional one-year term for line location services. Idaho Falls Power intends to advertise for services during the 2019 Calendar year. Last fiscal year the total costs incurred for line locations services through One Call Locators was \$104,822.53. Funds for line locator services are budgeted in the 2018/19 Idaho Falls Power budget.

Respectfully,

Pamela Alexander

Municipal Services Director

# IDAHO FALLS POWER

## Service Agreement Modification #1

Contract Date: January 1, 2012

To: ELM Locating & Utility Services  
3021 Palmer, Suite C  
Missoula, MT 59808

**DESCRIPTION:**

Locating Company's underground utilities and facilities (upon request by the company), prior to excavation as described in the original contract.

**ATTENTION:**

1. Description of the change: *Modification of contract term language.*
2. Payment Adjustment: *Three percent increase.*

Response	Unit Type	Rate
Locate (L)	Footage	\$15.45
Priority Locate (PL)	Footage	\$25.75
Emergency Locate (EL)	Flat Rate	\$51.50
Design Locate (DL)	Hourly - 2 hour minimum	\$43.26
Hourly (H)	Hourly	\$43.26
After Hours (AH)	Hourly	\$64.89
Standby & Monitor (SM)	Hourly	\$43.26

3. Contract completion date adjustment: *December 31, 2013 with automatic one-year extensions with a 3% price increase unless either party is notified in writing 30 days prior to the termination date of a desire to not renew the contract.*
4. Other: *None.*

The above payment, termination, and/or time adjustments shall constitute the entire and complete adjustment for the above modifications to the herein referenced contract.

IDAHO FALLS POWER ("Company")

By: [Signature]  
Name: Layne Maxfield  
Title: Electrical Engineer  
Date: 1-11-13

ELM LOCATING & UTILITY SERVICES ("Contractor")

By: [Signature]  
Name: Josh Hinrichs  
Title: Chief Operating Officer  
Date: 1/11/13



## MEMORANDUM

**TO:** Mayor and City Council

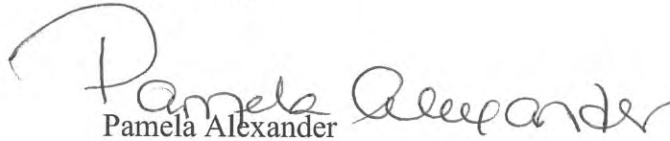
**FROM:** Municipal Services Department

**DATE:** November 13, 2018

**RE:** Conductor Purchase for Idaho Falls Power

It is the recommendation of Idaho Falls Power and Municipal Services Departments to purchase additional conductor cable through Codale Electric Supply, Inc., with prices honored from Purchase Order #09531 dated September 18, 2018. The total cost \$77,220.00 is under the \$200,000.00 threshold for Public Works projects, as per State Statute §67-2805. Funds to purchase the additional conductor cable is budgeted in the Idaho Falls Power 2018/2019 budget.

Respectfully,

  
Pamela Alexander  
Municipal Services Director



5225 W. 2400 S.  
Salt Lake City, UT 84120  
P.O. Box 702070  
Salt Lake City, UT 84170-2070  
Phone (801) 975-7300  
Fax (801) 977-8833

**\*\* Quotation \*\***

Send P/O To:

Codale Electric Supply, Inc.  
5225 WEST 2400 SOUTH  
SALT LAKE CITY, UT 84120  
Phone # : 801-975-7300

Bid #: S6540314  
Page #: 1

Bid To:

CITY OF IDAHO FALLS  
PO BOX 50220  
ACCOUNTS PAYABLE  
IDAHO FALLS, ID 83405  
Phone # : (208)529-1224

Ship To:

CITY OF IDAHO FALLS/ POWER WAREHOUS  
140 S CAPITAL  
IDAHO FALLS POWER WAREHOUSE  
IDAHO FALLS, ID 83402  
JOB: 1100 OKONITE

Bid-Date-Expr-Date-Writer	Salesman	Ship Via
11/30/18 11/01/18 John Grace	Joe Arnold	MF MOTOR FRGHT

Qty	Description	Net Prc	Ext Prc
***** QUOTE VALID THRU END NOVEMBER 2018 *****			
9750	OKONITE 160-23-9590 1100MCM ALUMINUM 15KV URD EPR 1/6 NEUTRAL 220MIL 133% INSULATION ***** 3 CONDUCTOR CABLE MADE AT FACTORY VARIOUS PUTUPS AS SPECIFIED BY CITY OF IDAHO FALLS. 1ST NUMBER IS 3C TOTAL EACH REEL 2ND NUMBER IS LINEAR TOTAL EA REEL ***** 2 REEL @ 690FT EA/ 3C 2070' EACH ** REEL DIMENSIONS 72X48X36 ** ***** 2 REEL @ 660FT EA/ 3C 1980' EACH ** REEL DIMENSIONS 72X48X36 ** ***** 1 REEL @ 550FT EA/ 3C 1650' EACH ** REEL DIMENSIONS 72X48X36 ** ***** Pn: 3416374	7920.000M	77220.00
5	OKONITE PARALLEL CHARGE N/S Item: Mfg Return Policy Applies Pn: 4167165	0.000EA	0.00

\*\*\* Continued on Next Page \*\*\*

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All Sales subject to Codale's Terms and Conditions (T&C's) available at  
[www.codale.com/terms](http://www.codale.com/terms). Price listed on this quotation are subject to change  
without notice beyond expiration date. Sales Tax is not included in any Bid.  
Payment terms are subject to approved credit. Prices are exclusive of  
applicable taxes unless noted.





5225 W. 2400 S.  
Salt Lake City, UT 84120  
P.O. Box 702070  
Salt Lake City, UT 84170-2070  
Phone (801) 975-7300  
Fax (801) 977-8833

**\*\* Quotation \*\***

Send P/O To:

Codale Electric Supply, Inc.  
5225 WEST 2400 SOUTH  
SALT LAKE CITY, UT 84120  
Phone # : 801-975-7300

Bid #: S6540314  
Page #: 2

Bid To:

CITY OF IDAHO FALLS  
PO BOX 50220  
ACCOUNTS PAYABLE  
IDAHO FALLS, ID 83405  
Phone # : (208)529-1224

Ship To:

CITY OF IDAHO FALLS/ POWER WAREHOUS  
140 S CAPITAL  
IDAHO FALLS POWER WAREHOUSE  
IDAHO FALLS, ID 83402  
JOB: 1100 OKONITE

Bid-Date-Expr-Date-Writer	Salesman	Ship Via
11/30/18 11/01/18 John Grace	Joe Arnold	MF MOTOR FRGHT

Qty	Description	Net Prc	Ext Prc
-----	-------------	---------	---------

\*\*\*\*\*  
THERE IS SPACE ON THE 12-8-18  
PRODUCTION IN SANTA MARIA, CA  
\*\*\*\*\*

Bid Total	77220.00
Bid Amount	77220.00

.. Reprint .. Reprint .. Reprint .. Reprint ..  
All Sales subject to Codale's Terms and Conditions (T&C's) available at  
[www.codale.com/terms](http://www.codale.com/terms). Price listed on this quotation are subject to change  
without notice beyond expiration date. Sales Tax is not included in any Bid.  
Payment terms are subject to approved credit. Prices are exclusive of  
applicable taxes unless noted.

City of Idaho Falls  
Expenditure Summary  
From 10/01/2018 To 10/31/2018

Fund	Total Expenditure
General Fund	1,499,279.69
Street Fund	754,617.97
Recreation Fund	57,508.17
Library Fund	145,184.15
MERF Fund	101,239.95
EL Public Purpose Fund	68,925.26
Bus Improvement District	25,000.00
Golf Fund	19,017.75
Self-Insurance Fund	237,064.82
Municipal Capital Imp F	327,434.41
Street Capital Imp Fund	20,981.77
Traffic Light Cap Imp F	86,923.73
ZOO CAPITAL IMPROVEMENT	154,213.66
Civic Auditorium CIP	105,255.04
Airport Fund	330,956.74
Water Fund	1,246,787.81
Sanitation Fund	13,139.17
Ambulance Fund	63,187.86
Electric Light Fund	2,569,349.76
Wastewater Fund	460,136.38
Payroll Liability Fund	2,078,732.66
	10,364,936.75



## October 25, 2018 - Unapproved

The City Council of the City of Idaho Falls met in Special Meeting (Idaho Falls Power Board), Thursday, October 25, 2018, at Idaho Falls Power Conference Room, 140 S. Capital, Idaho Falls, Idaho at 7:00 a.m.

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

There were present:

Mayor Rebecca L. Noah Casper  
Councilmember Thomas Hally  
Councilmember Jim Francis  
Councilmember Jim Freeman  
Councilmember John Radford  
Councilmember Shelly Smede  
Councilmember Michelle Ziel-Dingman

Also present:

Bear Prairie, Idaho Falls Power General Manager  
Stephen Boorman, Idaho Falls Power Assistant General Manager  
Randy Fife, City Attorney  
Kathy Hampton, City Clerk

Mayor Casper called the meeting to order at 7:02 a.m. with the following items:

### Calendar, Announcements, and Events Update:

Mayor Casper briefly reviewed highlights from the recent public meeting regarding fiber to homes. It was noted approximately 10% of potential residents were in attendance. Brief comments followed, including the cost of fiber infrastructure and services. Director Prairie stated the Idaho Consumer Owned Utilities Association (ICUA) legislative meeting will be held in January, 2019.

### Updates from Board Members:

Councilmember Francis stated the Senior Citizen Center is in need of an energy audit.

### Executive Assistant/Staffing Levels:

Director Prairie stated Idaho Falls Power (IFP) is needing additional administrative assistance due to the excessive workload of the current Administrative Assistant. He will be posting an Executive Assistant position. Mayor Casper indicated the current Administrative Assistant will be transitioning to a part-time position prior to possible retirement in the next 1-2 years. Director Prairie stated funding will be available due to an unfilled hydro mechanic apprentice position.

### Updated Fee Waiver Resolution and Map:

Director Prairie reviewed the proposed changes to the Fee Waiver Resolution which will limit the IFP labor portion of fee waivers up to fifty percent (50%) for electric line extension. This update will allow consistency for all fee waiver requests. Director Prairie briefly reviewed the map for identifying locations. The map should be reviewed on an annual basis per the resolution. General discussion followed regarding greenfill, infill, incentivizing redevelopment, locations with current electrical services, economic development, and coordination with Community Development Services Department. This item will be included on the October 25 Council Meeting agenda.

### Joint Powers Agreement (JPA) with City of Ammon for College of Eastern Idaho (CEI) Connection:

Director Prairie stated this connection will bring the high speed education network for all State colleges and will bring the Idaho Regional Optical Network (IRON) into CEI. This connection will also assist the Idaho National Laboratory (INL) and the Bonneville County Sheriff's Department. Mayor Casper stated conversation regarding Bonneville County fiber occurred several years ago including the concern of cost of service. She believes fiber is now being viewed broadly and having fiber connection is inevitable and desirable. She also believes the transition of CEI has been beneficial. Mr. Fife stated the JPA will allow the City of Ammon the right to cross into Idaho Falls in

## October 25, 2018 - Unapproved

order to bring Ammon-owned fiber into points of presence that provide specific regional benefits. Director Prairie stated the JPA clarifies the specific locations. He also stated neither entity will use these connections to provide or enable another entity to provide retail services. This JPA is not being used to compete against each other. Brief comments followed regarding Dillon's Rule, County services, rural communities, and, State legislature and litigation. Councilmember Francis questioned the elements of the JPA. Mr. Fife stated the City can terminate the agreement with sufficient notice. The JPA will allow Idaho Falls to continue to control the right-of-ways. Mayor Casper questioned the difference of a Memorandum of Understanding (MOU) versus a JPA. Director Prairie stated a MOU could be requested by any entity. Mr. Fife indicated a MOU is not considered a contract. A JPA is specifically recognized by State legislature which allows cities (governments) to function and cooperate together. This item will be included on the October 25 Council Meeting agenda.

### Federal Communications Commission (FCC) Rule-making and Small Cell Deployment:

Mr. Fife stated he recently attended a legal/regulatory conference for the American Public Power Association (APPA) which included a presentation regarding the regulation and additional location of power poles for cellular coverage. He indicated the FCC has created a one-touch make-ready rule that allows one person to perform work for other utilities in different spaces on a pole. The rule would also create a shot clock. It was questionable whether this rule would apply to public power utility poles and lights. Mr. Fife also indicated the FCC issued a declaratory rule regarding the removal of barriers to wireless deployments/infrastructure investment. Cities cannot establish a moratorium to look at their regulations to prevent developers from requesting the utilization of City infrastructure. This would include public power poles, street lights, and public structures within the right-of-way. Mr. Fife believes this discussion will occur for several years and will be ligated thoroughly. He stated this rule will establish one-time fees for placement of infrastructure and annual fees thereafter established by the Federal government. It preempts aesthetic requirements, does not grandfather any existing agreements, preempts inconsistent State laws unless more strict than the FCC ruling, and, extends the shot clock to grant, or consider granting, the application. This would include a variety of permits (building, electrical, road closure, architectural, engineering). The rule does not indicate if the shot clock applies to pole attachment and make-ready permits. Mr. Fife stated this rule would need to be worked out in the court system. This rule puts pressure on the utility and City staff to concentrate on applications that have a shot clock. It was noted this greatly affects the City as the City owns its infrastructure. Director Prairie stated this ruling relates to 5G services even though 5G is years away from actually going into service or being a reality. He also stated this infrastructure will be used for the current 4G networks in areas of high usage in cities. Mr. Fife stated the ruling applies to the locations. Mayor Casper believes additional staff will be needed if this ruling passes to ensure the shot clock is met. General discussion followed. Director Prairie expressed his concern for the larger telecommunications company selling point for the small antennas when electronic equipment is also required. Brief discussion followed regarding the current power poles in the downtown area relative to the small cell pole attachment.

### Vegetation Management/Tree Trimming:

Mayor Casper stated several departments experience tree problems.

Assistant Director Boorman stated the majority of tree trimming for IFP occurs on homeowners' properties, with no charge to the homeowner. He presented the following with general discussion throughout:

Goals of tree trimming:

- Public safety – minimize places where children can climb trees and contact overhead power lines; minimize potential of branches becoming energized that can be reached by the public; and minimize fire hazards
- Optimize reliability – trees are one of leading causes of unscheduled outages; tree-related outages predominantly occur during bad weather
- Maximize return on investment – comprehensive programs are more efficient than reactive spot programs; comprehensive programs catch hidden spots; the more tree removed the longer between trimmings; and the more tree removed the greater the system reliability
- Minimize public impact – tree trimming is always controversial; some customers will not want any tree trimming while some customers will want tree trimming beyond what is necessary for utility operations; removal of more material has a greater visual impact
- Start a four-year proactive rotation

## October 25, 2018 - Unapproved

Assistant Director Boorman reviewed several examples of trees within and/or surrounding power lines. Brief discussion followed regarding the availability of educational material for tree planting as well as the recently-approved contract with Davey Tree Company. It was noted the expense for removing private trees on the right-of-way is the homeowner responsibility.

### Energy Imbalance Market (EIM) Uplift Charges and Bulb Billing Dispute with Bonneville Power Administration (BPA):

Director Prairie stated he is continuing to work with BPA regarding the billing dispute of transmission service for the bulb turbines. He has been disputing this issue since December 2016. He stated, per agreements and contracts, this issue went to a region public comment period. Comments received were favorable to IFP, therefore, the administrators ruled in Spring 2018 that BPA should be paying the costs. Since that time BPA has been in discussion with PacifiCorp how to get this included in the transmission agreement. In the meantime, IFP is continuing to pay the bill to Utah Associated Municipal Power Systems (UAMPS), ~\$80,000-\$90,000/month. Director Prairie believes IFP should be reimbursed for these costs and he is continuing to seek reimbursement, which in total since 2016 amounts to approximately \$1.5m. Director Prairie stated IFP is the only utility that has two (2) network transmission contracts (UAMPS and BPA). He stated BPA believes there should be direct charging for IFP for EIM charges. He is continuing to dispute the legal and contractual basis. He briefly reviewed monthly bulb and EIM expenses. EIM costs since September 2017 = \$250,044.

### BPA Fish Accords and Integrated Program Review (IPR):

Director Prairie stated the IPR process has been attempting to reduce costs. IPR only covers a portion of BPA costs. The savings are primarily from the Fish and Wildlife program. However, additional costs include investments to strengthen BPA's financial health through two (2) financial health policies – the Financial Reserves Policy and the new Leverage Policy. Director Prairie expressed concern for financing versus paying in full. He reviewed the rate process with the final rate projected in spring. He believes a tremendous amount of money is being spent on Bureau of Reclamation projects. Brief comments followed. Director Prairie stated an agreement signed in 2008 provided states and tribes more than \$900m to implement projects for improvements at federal dams. A Fish Accord extension, running through September 2022, will set aside additional money for fish and wildlife mitigation and protection.

### Billing and Past Due Accounts:

Director Prairie reviewed the number of total delinquent payments, total accounts disconnected, total utility payments, total account payments, and, % of total payments from delinquent accounts for the previous year. He noted all categories have increased since the revised utility policy has been in effect. Director Prairie believes the new policy has improved utility payments. He indicated non-remote disconnect meters are being replaced. This policy may need reviewed in Spring 2019. Following brief comments, there was consensus to review the utility payment data on a quarterly basis.

### Standing Reports:

Generation – natural gas pipeline rupture in Canada, repair will be at 80% of capacity. This will affect power prices. Transmission & Distribution – continue to work on Sugar Mill to Paine 161 KV line, slightly behind schedule due to PacifiCorp. Conditional Use Permit (CUP) request for Bonneville County will potentially occur in January 2019.

Operations Technology – multiplier metering issue was discovered by the Water Division, \$345,000 was transferred from IFP to Public Works to cover the cost of error.

Engineering – Public Works staff member has been hired to replace Josh Roos, who has been appointed as City Treasurer.

Energy Services/Customer Service – in process of converting Prestwich Estates residents from Rocky Mountain Power (RMP) to IFP, this has been a 3-year process. Not all Prestwich Estates are in favor of converting to IFP.

Fiber – recent public open house occurred.

Federal and State Regulation/Litigation – Presidential directive regarding consideration of locally developed plans in hydroelectric projects licensing, and, streamlining regulatory processes and removing unnecessary burdens on the Columbia River Basin water infrastructure.

**October 25, 2018 - Unapproved**

**Organizational Membership Reports:**

Utah Associated Municipal Power Systems – continuing to work to keep costs down

Northwest River Partners – in process of hiring a new Executive Director

American Public Power Association – paperwork will be submitted to include Councilmember Radford on the Policy Makers Board

Brief discussion followed regarding the December 2018 and January 2019 IFP Board Meeting schedule as well as meeting discussion topics.

There being no further business, the meeting adjourned at 10:42 a.m.

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CITY CLERK

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MAYOR

**REGULAR**

**AGENDA:**

FIRE DEPARTMENT

Dave Hanneman CFO, M. Ed., MIFireE | *Fire Chief*  
Office (208) 612-8495  
Fax (208) 612-8513

IDAHO FALLS  
**FIRE**

## MEMORANDUM

**TO:** Mayor and Council Members  
**FROM:** Dave Hanneman, Fire Chief  
**DATE:** Nov. 14, 2017  
**RE:** Council Item for Nov. 20th Meeting (Imagetrend Contract)

Mayor and Council Members,

The Fire Dept. has evaluated a new EMS Reporting Software to use that incorporates new federal requirements. After review, we selected Imagetrend. Attached please find the contract between the CITY and Imagetrend. This contract has been reviewed by the City Attorney's office and was approved for purchase in the 2018-2019 budget.

I respectfully request approval of this contract with Imagetrend and the CITY..

Dave W Hanneman



# **SOFTWARE LICENSING AGREEMENT**

**CONTRACT No.: 336221**

**BETWEEN**

**CITY OF IDAHO FALLS  
308 CONSTITUTION  
IDAHO FALLS, ID 83402**

**AND**

**IMAGETREND, INC.  
20855 KENSINGTON BLVD.  
LAKEVILLE, MN 55044**

**IMAGETREND®**

**THIS AGREEMENT** is made and entered into on the date last written below, by and between the ImageTrend, Inc., a Minnesota corporation (hereinafter "IMAGETREND"), and City of Idaho Falls (hereinafter "CLIENT").

## **RECITALS**

**WHEREAS**, IMAGETREND owns the software system known SOFTWARE; and

**WHEREAS**, CLIENT desires to obtain the license of the Software mentioned above; and

**WHEREAS**, IMAGETREND is willing to provide CLIENT with a non-exclusive license of the Software on the terms and conditions contained herein;

**NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

### **SECTION 1. DEFINITIONS.**

**"Authorized personnel"** means employees of CLIENT that use the Software in the scope of their employment, or CLIENT's contractors where the contractor's services must necessarily require access to the Software. Personnel who intend to: reverse engineer, disclose, or use or acquire for any purpose not in the scope of the personnel's employment or necessary for contractor services, any Confidential Information are not Authorized Personnel.

**"Confidential information"** means the proprietary products and trade secrets of IMAGETREND and/or its suppliers, including, but not limited to, computer software, code, technical parameters, price lists, customer lists, designs, software documentations, manuals, models and account tables, and any and all information maintained or developed by CLIENT pursuant to this AGREEMENT which is deemed confidential under existing state and/or federal law.

**"Custom Development"** means that CLIENT contracts IMAGETREND through a signed and accepted Statement of Work to customize the software. Each CLIENT shall have the non-exclusive license to utilize such software. Such software may then become a part of the core product and be distributed. Custom Development may require ongoing support and/or hosting and shall be subject to support and/or hosting fee increases. IMAGETREND maintains ownership of all Custom Development.

**"ePCR"** means an Electronic Patient Care Report.

**"ImageTrend Elite Data Marts"** means the relational database(s) that contain an enhanced and simplified reporting-ready format of the transactional data collected within ImageTrend Elite. The Elite Data Marts are available for use with the ImageTrend Elite Reporting Tools.

**"ImageTrend Elite Reporting Tools"** means the Transactional Report Writer, Visual Informatics, Analytical Chart Reporting Tool and Analytical Tabular Reporting Tool in the Software that are based on a set of Elite Data Marts.

**"Incident"** means any time the CLIENT sends a vehicle to a potential or actual patient.

**"License"** means an unlimited use license of the software, without rights for resale, for the duration of the contract, defined as Software as a Service (SaaS) which expires when this AGREEMENT expires.

**“Licensed Information”** means any information pertaining to the Software which is owned by IMAGETREND and is licensed to CLIENT. Licensed Information includes such information as input form, user manuals and user documentation, interface format and input/output format, and any other materials pertaining to the Software.

**“Reference”** means referral in the promotion of IMAGETREND’S software to other potential CLIENTS.

**“Run(s)”** means an incident where the CLIENTS sends a vehicle to a potential or actual patient.

**“Software”** means the computer program(s) in machine readable object code form listed in Exhibit “A”, including the executable processing programs comprising the various modules from the Software and the Licensed Information.

**“Statement of Work”** means the technical document which outlines mutually agreed upon system specification for Custom Development and associated costs, payment terms and acceptance procedures. This document requires CLIENT acceptance and signature prior to beginning work.

**“Support”** means interactive telephone and e-mail support, computer based online training, product upgrades and enhancements, along with defect corrections, delivered from IMAGETREND’s offices.

**“Upgraded Version”** means the Licensed Software and/or Licensed Information to which updates, enhancements, corrections, installations of patches or other changes have been made. The exterior form of the Updated Version is reflected by changes to the version numbers.

## **SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be one year(s) from signature date, subject to Section 13 of this AGREEMENT. This AGREEMENT shall be subject to automatic annual renewal unless terminated by either party as provided in Section 13, below.

## **SECTION 3. GRANT OF LICENSE.**

### **A. NON-EXCLUSIVE USE LICENSE.**

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant to CLIENT and CLIENT agrees to accept a non-transferable and non-exclusive use license of the Software for the term of this Agreement. During the term of the AGREEMENT, the CLIENT shall have access to the Software, which will be installed on servers at the IMAGETREND hosting facility and subject to the Service Level Agreement attached as Exhibit B. CLIENT expressly acknowledges that all copies of the Software and/or Licensed Information in any form provided by IMAGETREND to CLIENT hereunder are the sole property of IMAGETREND and/or its suppliers, and that CLIENT shall not have any right, title, or interest to any such Software and/or Licensed Information or copies thereof except as provided in this AGREEMENT.

### **B. IMAGETREND ELITE DATA MARTS NON-EXCLUSIVE USE LICENSE**

In accordance with the terms and conditions hereof, IMAGETREND agrees to grant the use of the ImageTrend Elite Data Marts only via ImageTrend Elite Reporting Tools as included and detailed in Exhibit A. This AGREEMENT does not give the CLIENT the rights to access and query the ImageTrend Elite Data Marts directly using SQL query tools, reporting tools, ETL tools, or any other tools or mechanisms. Direct access to ImageTrend Elite Data Marts is available via separately-priced

product and service offerings from IMAGETREND. This Section 3.B, is subject to the Non-Exclusive Use License as covered in Section 3.A and terms of this AGREEMENT.

**C. PROTECTION OF SOFTWARE AND LICENSED INFORMATION.**

CLIENT agrees to respect and not to, nor permit any third-party to, remove, obliterate, or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the Software or Licensed Information, and to reproduce and include the same on each authorized copy of the Software and Licensed Information.

CLIENT shall not nor shall CLIENT permit any third-party to, copy or duplicate the Software or any part thereof except for the purposes of system backup, testing, maintenance, or recovery. CLIENT may duplicate the Licensed Information only for internal training, provided that all the names, trademark rights, product names, copyright statement, and other proprietary right statements of IMAGETREND are reserved. IMAGETREND reserves all rights which are not expressly granted to CLIENT in this AGREEMENT.

CLIENT shall not, nor shall CLIENT permit any third-party to, modify, reverse engineer, disassemble, or decompile the Software, or any portion thereof, and shall not use the software or portion thereof for purposes other than as intended and provided for in this AGREEMENT.

**D. DATA OWNERSHIP AND DATA PROTECTION.**

All CLIENT data collected with IMAGETREND Software remains at all times the property of the CLIENT. IMAGETREND will not to use or make available any personally identifiable information other than for administering the CLIENT's account and collecting usage statistics in order to improve our products and services specifications. During the term of this AGREEMENT and after termination or expiration of this AGREEMENT, IMAGETREND will not in any way transfer to any third party or use in direct or indirect competition with the other party any information or data posted by CLIENT's and others on IMAGETREND's website and acknowledges that all such information is confidential.

CLIENT shall have access to creative tools within the Elite Software platform. Use of these features is conditioned upon assignment to IMAGETREND of all copyrights in any work created within and using the Elite software platform, the terms of use for such creative tool features will prompt all users upon first use to agree to terms of use; those terms are hereby incorporated as part of this AGREEMENT and valid whether accepted before or after execution of this AGREEMENT. Please contact IMAGETREND for a copy of these terms prior to final acceptance of this AGREEMENT, if necessary.

**E. CLIENT DATA.**

Within thirty (30) days after the expiration of this AGREEMENT, the termination of this AGREEMENT, or IMAGETREND is no longer in business, IMAGETREND will deliver to the CLIENT its data, in machine readable format, on appropriate media, at the CLIENT's option. If the CLIENT wants the data to be delivered in a medium other than tape or CD, IMAGETREND shall do its best to accommodate the CLIENT, provided the CLIENT shall provide the medium on which the data is to be provided and shall pay for any additional cost incurred by IMAGETREND in accommodating this request.

**SECTION 4. SOFTWARE ABSTRACT.**

A. The IMAGETREND Elite contains and stores the data elements of an emergency medical database, including data schema and values that may originate from traditional computer aided dispatch (CAD) sources and data values that may be used in billing from pre-hospital patient

care. The emergency medical database may contain certain vehicle transport information but does not contain data elements and/or values specific to the vehicle path tracking such as automatic vehicle location (AVL) or third party AVL integrations. The emergency medical database does support integrations to third party CAD and billing solutions. The emergency medical database does not support any AVL, CAD or billing functions executed directly from the database. CLIENT shall not use IMAGETREND Software to integrate patient information from a clinical encounter associated with a patient incident requiring emergency medical care by the emergency transport crew with flight information relating to an emergency transport crew dispatch to produce an encounter record indicative of the patient's clinical encounter.

- B. The IMAGETREND Elite contains and stores the data elements of an emergency medical database as defined, described and mandated by the National EMS Information System (NEMSIS). The dataset was adopted by IMAGETREND for State and local regulatory authorities as required by NEMSIS. The NEMSIS data schema and elements are the sole work of the NEMSIS organization in conjunction with the National Highway Traffic Safety Administration (NHTSA). The NEMSIS dataset contains data elements and data structures originating and potentially owned by a number of nonprofit third party organizations and government agencies such as the World Health Organization (ICD 9 and ICD 10), International Health Terminology Standards Development Organization (SNOMED), U.S Department of the Interior and U.S. Geological Survey (GNIS), National Institute of Standards and Technology (FIPS), Health Level Seven International (HL7), Joint APCO/NENA Data Standardization Working Group (AACN). The NEMSIS dataset offers customer driven extensibility that allows the end user to extend and define the dataset at their own discretion.

## **SECTION 5. SERVICES PROVIDED BY IMAGETREND.**

### **A. SUPPLY OF SOFTWARE AND LICENSED INFORMATION.**

IMAGETREND shall provide CLIENT software and services as detailed in Exhibit A.

### **B. MODIFICATIONS, IMPROVEMENTS AND ENHANCEMENTS.**

During the terms of this AGREEMENT and any extensions under Section 2, IMAGETREND will provide CLIENT with error corrections, bug fixes, patches or other updates to the Software in object code form, to the extent available in accordance with IMAGETREND's release schedule. If CLIENT desires to add new functions or make enhancements to the Software, CLIENT must, for additional consideration, negotiate with IMAGETREND to develop new functions or improvements to the existing Software. All such error corrections, bug fixes, patches, updates, or other improvements or modifications shall be the sole property of IMAGETREND.

### **C. IMPLEMENTATION SERVICES**

1. IMAGETREND shall provide CLIENT with initial services such as the system configuration and installation into the IMAGETREND hosting infrastructure.
2. "Train-the-trainer" training for administrators as detailed in Exhibit A. Additionally, online training videos and user guides in electronic format will be made available.

## **SECTION 6. MAINTAINENCE AND SUPPORT.**

### **A. Application use support as detailed in Service Level Agreement Exhibit B.**

- B. Server hosting environment is monitored and supported 24/7. Emergency support information is available on the IMAGETREND Support site for emergency purposes. Non-emergency related

contact may be charged to the CLIENT.

- C. Maintenance of IMAGETREND software, which includes scheduled updates and new releases, as well as defect correction as needed, is included. Specific out-of-scope system enhancement requests will be reviewed with the CLIENT and subject to approval if additional charges are necessary.

#### **SECTION 7. FEES.**

- A. Except as otherwise provided in this AGREEMENT, IMAGETREND shall offer the Products and the Services at the prices set forth on Exhibit A.
  - (i) IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 2. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.
- B. The fees for this contract are as detailed in the attached Exhibit A.
- C. At any time during this AGREEMENT, the CLIENT may contract with IMAGETREND for additional software and services not covered in this AGREEMENT with fees to be negotiated on an item-by-item basis. The CLIENT may contract Custom Development by IMAGETREND for additional fees as outlined and agreed to in a signed and accepted Statement of Work.
- D. If there is a delay in acceptance on the remaining items for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule.

#### **SECTION 8. PROTECTION AND CONFIDENTIALITY.**

##### **A. ACKNOWLEDGEMENT.**

CLIENT hereby acknowledges and agrees that the Software and Licensed Information provided hereunder constitute and contain valuable proprietary products and trade secrets of IMAGETREND and/or its suppliers, embodying substantial creative efforts and confidential information, ideas and expressions. Accordingly, CLIENT agrees to treat (and take precautions to ensure that its authorized personnel treat) the Software and Licensed Information as confidential in accordance with the confidentiality requirements and conditions set forth below. CLIENT acknowledges and agrees that CLIENT shall not permit any non-Authorized User from accessing the Software made available to the CLIENT.

##### **B. MAINTENANCE OF CONFIDENTIAL INFORMATION.**

Each party agrees to keep confidential all confidential information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof in the same manner it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of confidential information); provided, however, that the provisions of this Section 8 shall not apply to information which: (i) is in the public domain; (ii) has been acquired by CLIENT by normal means upon the disclosure of the information by IMAGETREND; (iii) is duly obtained by CLIENT directly or indirectly from a third party who has independently developed the information and is entitled to disclose the information to CLIENT, and such disclosure does not directly or indirectly violate the confidentiality obligation of such third party; or (iv) becomes known publicly, without fault on the part of CLIENT, subsequent to the receipt of the information by CLIENT.



C. SURVIVAL.

This Section 8 shall survive the termination of this AGREEMENT or of any license granted under this AGREEMENT.

**SECTION 9. WARRANTIES.**

A. PERFORMANCE.

IMAGETREND warrants that the Software will conform to the specifications as set forth in the Licensed Information. However, this warranty shall be revoked in the event that any person other than IMAGETREND and its agents make any unauthorized amendment or change to the Software in any manner.

B. OWNERSHIP.

IMAGETREND represents that it is the owner of the entire right, title, and interests in and to the Software, and that it has the sole right to grant licenses thereunder, and that it has not knowingly granted licenses thereunder to any other entity that would restrict rights granted hereunder to CLIENT.

C. LIMITATIONS ON WARRANTY.

All of IMAGETREND's obligations under this Section 9 shall be contingent on CLIENT's use of the Software in accordance with this AGREEMENT and in accordance with IMAGETREND's instructions as provided by IMAGETREND in the Licensed Information, and as such instructions may be amended, supplemented, or modified by IMAGETREND from time to time. IMAGETREND shall have no warranty obligations with respect to any failures of the Software which are the result of accident, abuse, misapplication, extreme power surge or extreme electromagnetic field.

The express warranties provided herein are the only warranties made by IMAGETREND with respect to the Software and supersede all other express or implied warranties, including, but not limited to, any warranties of merchantability and warranties for any special purpose.

**SECTION 10. LIMITATION OF LIABILITY.**

Unless otherwise provided in this Section 10, CLIENT's exclusive remedy for any damages or losses arising out of IMAGETREND's breach of warranties shall be, at IMAGETREND's option, either (i) immediate release from the AGREEMENT; or (ii) repair of the Software.

**SECTION 11. INDEMNIFICATION.**

A. INDEMNITY

IMAGETREND (which includes its agents, employees and subcontractors, if any) agrees to indemnify CLIENT, as well as any agents thereof from all damages, judgments, loss and expenses, but not including consequential or incidental damages arising out of:

- (i) any personal injuries, property damage, or death that CLIENT may sustain while using IMAGETREND's, as well as any agents thereof, controlled property or equipment in the performance of this AGREEMENT; or
- (ii) any personal injury or death which results or increases by any action taken to medically treat CLIENT agents, employees and subcontractors; or
- (iii) any personal injury, property damage or death that CLIENT may sustain from any claim or action brought against CLIENT, as well as any agents thereof arising out of the negligence or recklessness of IMAGETREND in the performance of this AGREEMENT,

Except for the foregoing claims, CLIENT, as well as any agents thereof agrees to indemnify, defend, and hold harmless IMAGETREND from all claims, lawsuits, damages, judgments, loss, liability, or expenses, arising out of any claim or action brought against IMAGETREND arising out of the negligence or recklessness of CLIENT, as well as any agents thereof in the performance of this AGREEMENT.

#### B. ENTIRE LIABILITY

SECTION 11 (A) ABOVE STATES THE PARTIES ENTIRE LIABILITY THE PARTIES SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INDEMNIFICATION. SECTION 9 OF THIS AGREEMENT STATES THE FULL EXTENT OF IMAGETREND'S WARRANTY AND SECTION 11(A) PROVIDES NO ADDITIONAL WARRANTY OF ANY KIND. ANY OTHER WARRANTY, EXPRESS OR IMPLIED OUTSIDE OF THIS AGREEMENT, INCLUDING THOSE ARISING OUT OF THE UNIFORM COMMERCIAL CODE, ARE WAIVED.

#### **SECTION 12. INSURANCE REQUIREMENTS.**

IMAGETREND will provide standard insurance coverage as detailed in a Certificate of Insurance, if requested.

#### **SECTION 13. TERMINATION.**

##### A. TERMINATION WITHOUT CAUSE.

Following the expiration of the original term of this AGREEMENT, either party shall have the right to terminate this AGREEMENT, without cause, by giving not less than sixty (60) days written notice of termination.

##### B. CUSTOM DEVELOPMENT TERMINATION

Either party shall have the right to terminate any Custom Development portion(s) of this AGREEMENT, without cause, by giving not less than thirty (30) days written notice of termination.

##### C. TERMINATION FOR CAUSE.

This AGREEMENT may be terminated by the non-defaulting party by giving not less than thirty (30) days written notice of termination if any of the following events of default occur: (i) if a party materially fails to perform or comply with this AGREEMENT or any provision hereof; (ii) if either party fails to strictly comply with the provisions of Section 8, above, or makes an assignment in violation of Section 15, below; (iii) if a party becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; (iv) if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended from time to time, is filed by a party; or (v) if such a petition is filed by any third party, or an application for a receiver is made by anyone and such petition or application is not resolved favorably within ninety (90) days.

#### **SECTION 14. COOPERATIVE USE**

Public and nonprofit agencies that have entered into a Cooperative Purchasing Agreement with the CLIENT are eligible to participate in any subsequent Agreement. The parties agree that these lists are subject to change. Any such usage by other municipalities and government agencies must be in accord with the ordinance, charter, rules and regulations of the respective political entity and with applicable State and Federal laws.

Any orders placed to, or services required from IMAGETREND will be requested by each participating agency. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The CLIENT shall not be responsible for any disputes arising out of transactions

made by others. IMAGETREND shall be responsible for correctly administering this Agreement in accordance with all terms, conditions, requirements, and approved pricing to any eligible procurement unit.

**SECTION 15. NONASSIGNABILITY.**

CLIENT shall not assign this AGREEMENT or its rights hereunder without the prior written consent of IMAGETREND.

**SECTION 16. GOVERNING LAW.**

The parties agree that the law governing this AGREEMENT shall be that of the State of Minnesota without regard to its conflict of laws principles.

**SECTION 17. COMPLIANCE WITH LAWS.**

IMAGETREND shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 18. WAIVER.**

Any waiver by either party of any default or breach hereunder shall not constitute a waiver of any provision of this AGREEMENT or of any subsequent default or breach of the same or a different kind.

**SECTION 19. NOTICES.**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

**TO CLIENT:**

City of Idaho Falls  
308 Constitution  
Idaho Falls, ID 83402

ATTENTION: Lisa Jones

**TO IMAGETREND:**

ImageTrend, Inc.  
20855 Kensington Blvd.  
Lakeville, MN 55044

ATTENTION: Mike McBrady

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 20. FORCE MAJEURE.**

Neither party shall be liable in damages or have the right to terminate this AGREEMENT for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**SECTION 21. ARBITRATION.**

Any dispute between IMAGETREND and CLIENT under this AGREEMENT shall be resolved by arbitration by an arbitrator selected under the rules of the American Arbitration Association (MINNESOTA) and the arbitration shall be conducted in that same location under the rules of said Association. If an arbitrator cannot be agreed upon by the parties, IMAGETREND and CLIENT shall each choose an arbitrator, and those two chosen arbitrators shall choose a third arbitrator, who shall preside over any dispute. IMAGETREND and CLIENT shall each be entitled to present evidence and argument to the arbitrator. The arbitrator shall have the right only to interpret and apply the provisions of this AGREEMENT and may not change any of its provisions. The arbitrator shall permit reasonable pre-hearing discovery of facts, to the extent necessary to establish a claim or a defense to a claim, subject to supervision by the arbitrator. The determination of the arbitrator shall be conclusive, final and binding upon the parties and judgment upon the same may be entered in any Minnesota court having jurisdiction thereof. The arbitrator shall give written notice to the parties stating his determination, and shall furnish to each party a signed copy of such determination. IMAGETREND and CLIENT shall equally share the cost of the arbitrator(s) fees. The arbitrator may award reasonable costs and expenses, including reasonable attorney fees, to the prevailing party.

**SECTION 22. INTERPRETATION.**

This AGREEMENT has been negotiated between persons sophisticated and knowledgeable in the matters dealt with in this AGREEMENT. Each party further acknowledges that it has not been influenced to any extent whatsoever in executing this AGREEMENT by any other party hereto or by any person representing it, or both. Accordingly, any rule or law or legal decision that would require interpretation of any ambiguities in this AGREEMENT against the party that has drafted it is not applicable and is waived. The provisions of this AGREEMENT shall be interpreted in a reasonable manner to effect the purpose of the parties and this AGREEMENT.

**SECTION 23. SIGNATOR'S WARRANTY AND ACCEPTANCE BY PERFORMANCE.**

Each party warrants to each other party that he or she is fully authorized and competent to enter into this AGREEMENT, in the capacity indicated by his or her signature and agrees to be bound by this AGREEMENT. CLIENT understands and agrees that if CLIENT accepts any Software, goods, or services from IMAGETREND prior to IMAGETREND receiving a final, mutually signed copy of this AGREEMENT, that CLIENT has accepted this AGREEMENT and all of its terms and conditions.

**SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**WITNESS THE EXECUTION HEREOF** on the day and year last written below.

APPROVED AS:

"CLIENT"

"IMAGETREND"

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

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

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

Name: Michael J. McBrady

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

Title: President

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

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

## **EXHIBITS**

**EXHIBIT A** – Pricing Agreement

**EXHIBIT B** – Service Level Agreement

**EXHIBIT C** – HIPAA Business Associate Agreement

**EXHIBIT D** – Insurance Certificate

**EXHIBIT E** – Tax Exemption Certificate



## EXHIBIT A – PRICING AGREEMENT

IMAGETREND's license and annual support are based upon 12,000 annual incidents as provided by CLIENT. IMAGETREND reserves the right to audit the annual incident volume and the option to increase future support costs, with prior notification to the CLIENT, if the number of annual incidents increases by more than ten percent (10%) and has a resulting effect of increased support calls to IMAGETREND.

### Pricing Agreement

Description	Units	Price	Extended
ImageTrend Elite™ EMS Setup Fee	1	\$3,435.00	\$3,450.00
Legacy Data Conversion	35	\$175.00	\$6,125.00
Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours)	2	\$350.00	\$700.00
Training Sessions – Onsite (Full Day M-F)	4	\$1,400.00	\$5,600.00
Travel per Trainer for Onsite Training	2	\$1,750.00	\$3,500.00
Add CAD NFIRS to Existing CAD Feed	1	\$1,750.00	\$1,750.00
Continuum Setup Fee	1	\$1,500.00	\$1,500.00

**TOTAL One-Time Fees**

**\$22,610.00**

Recurring Fees	Units	Price	Extended
ImageTrend Elite™ EMS Annual SaaS Fee <i>Includes Statewide \$4,120.00 Credit for Statewide Elite Field</i>	1	\$17,165.00	\$13,045.00
Continuum™ Recurring Fee	1	\$7,500.00	\$7,500.00
EMS w/ NFIRS Tab Recurring Fee	1	\$3,665.00	\$3,665.00
Visual Informatics™ <i>EMS Cube</i>	1	\$4,000.00	\$4,000.00
CAD Distribution <i>Vendor: New World/Tyler Technologies</i>	1	\$5,000.00	\$5,000.00
Hospital Hub™ Recurring Fee	1	\$3,000.00	\$3,000.00

**TOTAL Recurring Fees**

**\$36,210.00**

**TOTAL Year 1**

**\$58,820.00**

Optional*	Units	Price	Extended
Out of Scope billed at \$175/Hour		\$175.00	
Mapping and Reporting Systems (MARS) Recurring Fee		\$6,000.00	
CrewSense Distribution Recurring Fee		\$3,500.00	
Community Health™ Add-On Recurring Fee		\$7,500.00	
Community Health™ Add-On Setup Fee		\$1,500.00	
Target Solutions Distribution Recurring Fee		\$3,500.00	
Onsite Training Sessions @ \$1,000/day		\$1,000.00	
Travel per Trainer (for Onsite Training at Client's Facility Training) @ \$1,750/trainer/trip		\$1,750.00	
Webinar Training Sessions (2 hour session M-F during ImageTrend's Standard Business Hours) \$250/session		\$250.00	

\*The CLIENT may elect to purchase additional services as set forth in the options identified above at any time during the contract term. The CLIENT shall exercise said options by written notice to IMAGETREND. The prices above are valid for one year from contract signature.

**Payment Terms:**

- a. The above mentioned items will be invoiced upon Contract signature with payment terms of Net 30 Days.
- b. Project completion occurs upon receipt of the product.
- c. If there is a delay in acceptance on the remaining items for longer than 60 days, IMAGETREND has the option to invoice the remaining balance on any or all of the open items for Year 1 and begin the Recurring Fees schedule.
- d. CLIENT agrees IMAGETREND may, in IMAGETREND's discretion, cease to provide access, hosting, support or otherwise disable the Software listed in Exhibit A due to CLIENT's breach of contract, overdue payments, or missed payments.
- e. CLIENT agrees IMAGETREND may charge to CLIENT a late fee of 1.5% per month, or the highest rate allowed under the law, whichever is lower, on any overdue amounts. CLIENT also agrees IMAGETREND may charge to CLIENT all reasonable costs and expenses of collection, including attorneys' fees where, in IMAGETREND's discretion, payments are consistently deficient or late.
- f. IMAGETREND will invoice sales tax to non-exempt CLIENTS where applicable.

*Note: ImageTrend is not responsible for any CAD Vendor requirements and any associated fees*

*Note: CAD data will only be available for 60 days in the dispatch database; which may impact CAD Recon Reports*

**Pricing escalation factors:**

- a. IMAGETREND will perform price increases of the recurring fees. The first price increase will occur with the fees due for Year 2. These price increases will occur once every year and may not exceed 3% of the price then currently in effect.
- b. All Annual SaaS Fees are based upon anticipated usage and are subject to an annual usage audit, which may affect future fees.
- c. All hosting fees are based upon anticipated usage and includes 30 GB of Storage total. These fees are subject to annual usage audits, which may affect future fees at an increase of \$15/10GB/month for Storage.

**Statements/Invoices should be mailed to:**

Eric Day  
Idaho Falls Fire Department  
PO Box 50220  
Idaho Falls Fire Department  
Phone: 208-270-0544  
Email: eday@idahofallsidaho.gov

**ImageTrend Salesperson Contact:**

Joe Robinson  
952-469-1589  
jrobinson@imagetrend.com  
contracts@imagetrend.com

## **EXHIBIT B – SERVICE LEVEL AGREEMENT**

### **SOFTWARE AS A SERVICE (SAAS)**

#### **VERSION 4.0**

This agreement exists for the purpose of creating an understanding between IMAGETREND and CLIENT who elect to host the application on IMAGETREND's servers. It is part of our guarantee for exceptional service levels for as long as the system annual support fee is contracted. The Service Level Agreement guarantees your web application's availability, reliability and performance. This Service Level Agreement (SLA) applies to any site or application hosted on our network as SaaS.

#### **1. Hosting at the ImageTrend's Datacenter**

IMAGETREND's hosting environment provides **99.9% availability** and is comprised of state-of-the-art Blade Servers and SAN storage that are configured with the no single point of failure through software and infrastructure virtualization, blade enclosure redundancies and backup storage policies. Our Compellent SAN has a fiber channel backend, currently hosts 8TB of storage, has dual storage controllers with redundant power supplies and redundant paths to disk, and hot swappable drives. We do offsite replication to disk on a second SAN. Scheduled maintenance and upgrades do not apply to the system availability calculation and all CLIENTs are properly notified of such scheduled occurrences to minimize accessibility interruptions.

##### ***Hardware***

IMAGETREND server hardware is configured to prevent data loss due to hardware failure and utilize the following to ensure a quick recovery from any hardware related problems.

- Independent Application and Database Servers
  - Microsoft SQL Server 2012
  - Microsoft Windows Server 2012
- Redundant Power Supplies
- Off-Site Idle Emergency Backup Servers (optional)
- Sonicwall VPN Firewall
- Redundant Disk configuration
- Disk Space allocation and Bandwidth as contracted

##### ***Physical Facility***

The IMAGETREND hosting facilities are located in downtown Minneapolis and Chicago with every industry standard requirement for hosting not only being met, but exceeded. Requirements such as power supply and power conditioning, normal and peak bandwidth capacity, security and fail over locations are all part of an overall strategy to provide the most reliable hosting facility possible.

- Redundant, high-speed Internet connections over fiber optics.
- Power protection via an in-line 80kVa UPS with a 150 KW backup diesel generator
- Temperature controlled
- Waterless Fire Protection and Clean agent fire suppression
- Secured site access
- Steel Vault Doors
- 21" concrete walls and ceiling

### ***Data Integrity***

IMAGETREND applications are backed up daily allowing for complete recovery of data to the most recent backup:

- Daily Scheduled Database and Application Backups.
- Daily Scheduled backup Success/Failure notification to IMAGETREND staff

## **2. Application and Hosting Support**

IMAGETREND provides ongoing support as contracted for their applications and hosting services, including infrastructure. This includes continued attention to product performance and general maintenance needed to ensure application availability. Support includes technical diagnosis and fixes of technology issues involving IMAGETREND software. IMAGETREND has a broad range of technical support services available in the areas of:

- Web Application Hosting and Support
- Subject Matter Expert Application Usage Support
- Web Application Development/Enhancement
- Database Administration/Support
- Project Management
- Systems Engineering/Architecture

IMAGETREND offers multi-level technical support, based on level-two user support by accommodating both the general inquiries of the administrators and those of the system users. We will give the administrators the ability to field support for the system as the first level of contact while providing them the option to refer inquiries directly to IMAGETREND.

IMAGETREND's Support Team is available Monday through Friday from 7:00 am to 6:00 pm CST via the Support Suite, email or telephone.

Support Suite: [www.imagetrend.com/support](http://www.imagetrend.com/support)

Email: [support@imagetrend.com](mailto:support@imagetrend.com)

Toll Free: 1-888-730-3255

Phone: 952-469-1589

### ***Online Support***

IMAGETREND offers an online support system which incorporates around-the-clock incident reporting of all submitted tickets to IMAGETREND's application support specialists. Once a CLIENT submits a support ticket, he or she can track the progress with a secure login to the support application. The system promotes speedy resolution by offering keyword-based self-help services and articles in the knowledgebase, should CLIENTS wish to bypass traditional support services. Ticket tracking further enhances the efforts of Support Desk personnel by allowing IMAGETREND to identify patterns which can then be utilized for improvements in production, documentation, education and frequently asked questions to populate the knowledgebase. The support ticket tracking system ensures efficient workflow for the support desk specialists while keeping users informed of their incident's status. Support patterns can be referenced to populate additional knowledgebase articles.

### ***Incident Reporting Malfunctions***

IMAGETREND takes all efforts to correct malfunctions that are documented and reported by the CLIENT. IMAGETREND acknowledges receipt of a malfunction report from a CLIENT and acknowledges the disposition and possible resolution thereof according to the chart below.

<b>Severity Level</b>	<b>Examples of each Severity Level:</b>	<b>Notification Acknowledgement: IMAGETREND Return Call to Licensee after initial notification of an Error</b>	<b>Action Expectation: Anticipated Error resolution notification after IMAGETREND Return Call to Licensee of Notification Acknowledgement of an error.</b>
High/Site Down	<ul style="list-style-type: none"> <li>- Complete shutdown or partial shutdown of one or more Software functions</li> <li>- Access to one or more Software functions not available</li> <li>- Major subset of Software application impacted</li> </ul>	Within one (1) hour of initial notification during business hours or via support.imagetrend.com	Six hours
Medium	<ul style="list-style-type: none"> <li>- Minor subsystem failure</li> <li>-Data entry or access impaired on a limited basis – usually can be delegated to local client contact as a first level or response for resolution – usually user error (i.e. training) or forgotten passwords</li> </ul>	Within four (4) hours of initial notification	24 Business hours
Low	<ul style="list-style-type: none"> <li>- System operational with minor issues; suggested enhancements as mutually agreed upon – typically covered in a future release as mutually agreed upon.</li> </ul>	Same day or next business day of initial notification	Future Release

#### ***Service Requests (enhancements)***

Any service requests that are deemed to be product enhancements are detailed and presented to the development staff, where the assessment is made as to whether these should be added to the future product releases and with a priority rating. If an enhancement request is specific to one CLIENT and deemed to be outside of the original scope of the product, then a change order is written and presented to the CLIENT. These requests are subject to our standard rates and mutual agreement. CLIENTS review and approve the scope, specification and cost before work is started to ensure goals are properly communicated.

Product release management is handled by IMAGETREND using standard development tools and methodologies. Work items including, tasks, issues, and scenarios are all captured within the system. Releases are based on one or more iterations during a schedule development phase. This includes but not limited to: development, architecture, testing, documentation, builds, test and use cases. Submissions of issues or requests are documented within our Product Management system and from there workflow is created to track the path from initial request to resolution.

#### ***Out of Scope***

CLIENT may contract with IMAGETREND for Out of Scope services. This will require a separate Statement of Work and will be billed at IMAGETREND's standard hourly rate.

#### ***Maintenance and Upgrades***

System/product maintenance and upgrades, if applicable, are included in the ongoing support and warranty as contracted. These ensure continued attention to product performance and general maintenance. Scheduled product upgrades include enhancements and minor and major product changes. Customers are notified in advance of scheduled maintenance. It is the CLIENT's responsibility to accept all offered updates and upgrades to the system. If the CLIENT does not accept these, CLIENT should be advised that IMAGETREND, at its discretion, may offer limited support for previous versions. All code releases also maintain the integrity of any CLIENT specific configurations (i.e. templates, addresses, staff information, active protocols, etc.) that have been implemented either by IMAGETREND's implementation staff or the CLIENT's administrative staff.

**Escalation**

Our support staff is committed to resolving your issues as fast as possible. If they cannot resolve your issue, they will identify the course of action that they will be taking and indicate when an answer will be available. They in turn will seek assistance from the designated developer. The next level of escalation goes to the Project Manager, who also addresses all operational issues on an ongoing basis and reviews the issue log regularly to assess product performance and service levels. Senior Management will handle issues requiring further discussion and resolution. Any issues to be determined to be of a critical nature are immediately escalated accordingly.



## EXHIBIT C – HIPAA BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") dated \_\_\_\_\_, 2018 (the "Effective Date"), is entered into by and between Idaho Falls Fire Department, an Idaho corporation (the "Covered Entity") and ImageTrend, Inc. a Minnesota corporation (the "Business Associate").

**WHEREAS**, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements") pursuant to which Business Associate may provide products and/or services for Covered Entity that require Business Associate to access, create and use health information that is protected by state and/or federal law; and

**WHEREAS**, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the U.S. Department of Health & Human Services ("HHS") promulgated the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Standards"), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a "Covered Entity", or collectively, "Covered Entities") to protect the privacy of certain individually identifiable health information ("Protected Health Information", or "PHI"); and

**WHEREAS**, pursuant to HIPAA, HHS has issued the Security Standards (the "Security Standards"), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information ("E PHI"); and

**WHEREAS**, in order to protect the privacy and security of PHI, including E PHI, created or maintained by or on behalf of the Covered Entity, the Privacy Standards and Security Standards require a Covered Entity to enter into a "business associate agreement" with certain individuals and entities providing services for or on behalf of the Covered Entity if such services require the use or disclosure of PHI or E PHI; and

**WHEREAS**, on February 17, 2009, the federal Health Information Technology for Economic and Clinical Health Act was signed into law (the "HITECH Act"), and the HITECH Act imposes certain privacy and security obligations on Covered Entities in addition to the obligations created by the Privacy Standards and Security Standards; and

**WHEREAS**, the HITECH Act revises many of the requirements of the Privacy Standards and Security Standards concerning the confidentiality of PHI and E PHI, including extending certain HIPAA and HITECH Act requirements directly to business associates; and

**WHEREAS**, Business Associate and Covered Entity desire to enter into this Business Associate Agreement;

**NOW THEREFORE**, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Business Associate Obligations.** Business Associate may receive from Covered Entity, or create or receive on behalf of Covered Entity, health information that is protected under applicable state and/or federal law, including without limitation, PHI and E PHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards, Security Standards or the HITECH Act, as applicable (collectively referred to hereinafter as the "Confidentiality Requirements"). All references to PHI herein shall be construed to include E PHI. Business

Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the Confidentiality Requirements if the PHI were used or disclosed by Covered Entity in the same manner.

2. **Use of PHI.** Except as otherwise required by law, Business Associate shall use PHI in compliance with 45 C.F.R. § 164.504(e). Furthermore, Business Associate shall use PHI (i) solely for Covered Entity's benefit and only for the purpose of performing services for Covered Entity as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Covered Entity shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by Business Associate are not permitted unless expressly authorized in writing by Covered Entity.
3. **Disclosure of PHI.** Subject to any limitations in this Agreement, Business Associate may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement and as permitted or required by applicable federal or state law. Further, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that (i) such disclosures are required by law, or (ii) Business Associate: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify Business Associate of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Confidentiality Requirements. Additionally, Business Associate shall ensure that all disclosures of PHI by Business Associate and the third party comply with the principle of "minimum necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed; provided further, Business Associate shall comply with Section 13405(b) of the HITECH Act, and any regulations or guidance issued by HHS concerning such provision, regarding the minimum necessary standard and the use and disclosure (if applicable) of Limited Data Sets. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the Business Associate under this Agreement. Business Associate shall report to Covered Entity any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within three (3) business days of the Business Associate becoming aware of such use or disclosure. In addition to Business Associate's obligations under Section 9, Business Associate agrees to mitigate, to the extent practical and unless otherwise requested by Covered Entity in writing or as directed by or as a result of a request by Covered Entity to disclose to Recipients, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI by Business Associate or Recipients in violation of this Agreement.
4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity or, as directed by Covered Entity, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) days of such request and shall make any amendment requested by Covered Entity within ten (10) days of such request. Any information requested under this Section 4 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) days of receipt of any request for access or amendment by an individual. Covered Entity shall

determine whether to grant or deny any access or amendment requested by the individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

5. **Accounting of Disclosures.** Business Associate shall make available to Covered Entity in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual in accordance with 45 CFR §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision. Business Associate shall provide to Covered Entity such information necessary to provide an accounting within thirty (30) days of Covered Entity's request or such shorter time as may be required by state or federal law. Such accounting must be provided without cost to the individual or to Covered Entity if it is the first accounting requested by an individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, Business Associate may charge a reasonable fee based upon the Business Associate's labor costs in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies) so long as Business Associate informs the Covered Entity and the Covered Entity informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as Business Associate maintains PHI.
6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Confidentiality Requirements expressly applies.
7. **Records and Audit.** Business Associate shall make available to the U.S. Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Covered Entity for the purpose of determining Covered Entity's compliance with the Confidentiality Requirements or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by or on behalf of any and all federal, state and local government authorities served upon Business Associate for PHI.
8. **Implementation of Security Standards; Notice of Security Incidents.** Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement. Business Associate will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate acknowledges that the HITECH Act requires Business Associate to comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, 164.314, and 164.316 as if Business Associate were a Covered Entity, and Business Associate agrees to comply with these provisions of the Security Standards and all additional security provisions of the HITECH Act. Furthermore, **to the extent feasible, Business Associate will use commercially reasonable efforts** to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009), or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology ("NIST") concerning the protection of identifiable data such as PHI. Business Associate acknowledges and agrees that the HIPAA Omnibus Rule finalized January 25, 2013 at 78 Fed. Reg. 5566 requires Business Associate to comply with new and modified obligations imposed by that rule under 45 C.F.R. §164.306, 45 C.F.R. § 164.308, 45 C.F.R. § 163.310, 45 C.F.R. § 164.312,

45 C.F.R. § 164.316, 45 C.F.R. § 164.502, 45 C.F.R. § 164.504. Lastly, Business Associate will promptly report to Covered Entity any successful Security Incident of which it becomes aware. At the request of Covered Entity, Business Associate shall identify: the date of the Security Incident, the scope of the Security Incident, the Business Associate's response to the Security Incident and the identification of the party responsible for causing the Security Incident, if known. Business Associate and Covered Entity shall take reasonable measures to ensure the availability of all affirmative defenses under the HITECH Act, HIPAA, and other state and federal laws and regulations governing PHI and EPHI.

9. **Data Breach Notification and Mitigation.**

- a. **HIPAA Data Breach Notification and Mitigation.** Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any "breach" of "unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "HIPAA Breach"). The parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section 9.1, governs the determination of the date of a HIPAA Breach. In the event of any conflict between this Section 9.1 and the Confidentiality Requirements, the more stringent requirements shall govern. Business Associate will, following the discovery of a HIPAA Breach, notify Covered Entity immediately and in no event later than three (3) business days after Business Associate discovers such HIPAA Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a HIPAA Breach to Covered Entity, the discovery of a HIPAA Breach shall occur as of the first day on which such HIPAA Breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business Associate. Business Associate will be considered to have had knowledge of a HIPAA Breach if the HIPAA Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the HIPAA Breach) who is an employee, officer or other agent of the Business Associate. No later than seven (7) business days following a HIPAA Breach, Business Associate shall provide Covered Entity with sufficient information to permit Covered Entity to comply with the HIPAA Breach notification requirements set forth at 45 C.F.R. §164.400 *et seq.* Specifically, if the following information is known to (or can be reasonably obtained by) the Business Associate, Business Associate will provide Covered Entity with: (i) contact information for individuals who were or who may have been impacted by the HIPAA Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the HIPAA Breach, including the date of the HIPAA Breach and date of discovery; (iii) a description of the types of unsecured PHI involved in the HIPAA Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the HIPAA Breach, mitigate harm to the individual impacted by the HIPAA Breach, and protect against future HIPAA Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions or learn additional information concerning the HIPAA Breach. Following a HIPAA Breach, Business Associate will have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the HIPAA Breach, including but not limited to the information described in items (i) through (v), above.
- b. **Data Breach Notification and Mitigation Under Other Laws.** In addition to the requirements of Section 9.1, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI, and referred to hereinafter as "Individually Identifiable Information") that, if misused, disclosed, lost or stolen, Covered Entity believes would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information is lost, stolen, used or disclosed in violation of

one or more State data breach notification laws, Business Associate shall promptly: (i) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iii) comply with Covered Entity's determinations regarding Covered Entity's and Business Associate's obligations to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (iv) assist with the implementation of any decision by Covered Entity or any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach.

- c. **Breach Indemnification.** Business Associate shall indemnify, defend and hold Covered Entity and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Business Associate in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Business Associate. If Business Associate assumes the defense of an Information Disclosure Claim, Covered Entity shall have the right, at its expense and without indemnification notwithstanding the previous sentence, to participate in the defense of such Information Disclosure Claim. Business Associate shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Covered Entity. Covered Entity likewise shall not take any final action with respect to any Information Disclosure Claim without the prior written consent of Business Associate. To the extent permitted by law and except when caused by an act of Covered Entity or resulting from a disclosure to a Recipient required or directed by Covered Entity to receive the information, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions.

- i. Covered Entity shall indemnify, defend and hold Business Associate and its officers, directors, employees, agents, successors and assigns harmless, from and against all reasonable losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees actually incurred) (collectively, "Information Disclosure Claims") arising from or related to: (i) the use or disclosure of Individually Identifiable Information (including PHI) by Covered Entity, its subcontractors, agents, or employees in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Breach of Individually Identifiable Information by Covered Entity, its subcontractors, agents, or employees.
- ii. Covered Entity and Business Associate shall seek to keep costs or expenses that the other may be liable for under this Section 9, including Information Disclosure Claims, to the minimum reasonably required to comply with the HITECH Act and HIPAA. Covered Entity and Business Associate shall timely raise all applicable affirmative defenses in the event a violation of this Agreement, or a use or disclosure of PHI or EPHI in violation of the terms of this Agreement or applicable law occurs.

#### 10. **Term and Termination.**

- a. This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 10, provided, however, that termination shall not affect the respective obligations or rights of the parties arising under this

Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

- b. Covered Entity shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.
  - c. Covered Entity, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate if any of the following events shall have occurred and be continuing:
    - i. Business Associate fails to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to the Business Associate by Covered Entity; or
    - ii. A violation by the Business Associate of any provision of the Confidentiality Requirements or other applicable federal or state privacy law relating to the obligations of the Business Associate under this Agreement.
  - d. Termination of this Agreement for either of the two reasons set forth in Section 10.c above shall be cause for Covered Entity to immediately terminate for cause any Business Arrangement pursuant to which Business Associate is entitled to receive PHI from Covered Entity.
  - e. Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.
  - f. Upon termination of this Agreement for any reason, Business Associate agrees either to return to Covered Entity or to destroy all PHI received from Covered Entity or otherwise through the performance of services for Covered Entity, that is in the possession or control of Business Associate or its agents. In the case of PHI which is not feasible to "return or destroy," Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.
11. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Ineligible Persons.** Business Associate represents and warrants to Covered Entity that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Covered Entity of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Covered Entity the right to terminate this Agreement immediately for cause.
13. **Miscellaneous.**
- a. **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United



States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

If to Covered Entity:

Compliance Office

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

If to Business Associate:

ImageTrend, Inc.  
Attn: Michael J. McBrady  
20855 Kensington Blvd.  
Lakeville, MN 55044

14. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.
15. **Assignment.** Neither Party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.
16. **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.
17. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Confidentiality Requirements, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party; provided, however, that upon the enactment of any law, regulation, court decision or relevant government publication and/or interpretive guidance or policy that the Covered Entity believes in good faith will adversely impact the use or disclosure of PHI under this Agreement, Covered Entity may amend the Agreement to comply with such law, regulation, court decision or government publication, guidance or policy by delivering a written amendment to Business Associate which shall be effective thirty (30) days after receipt. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.
18. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws

of the state in which Business Associate is located, excluding its conflicts of laws provisions. Jurisdiction and venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Business Associate is located.

19. **Equitable Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any PHI in violation of this Agreement will cause the other irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the injured party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the injured party shall deem appropriate. Such right is to be in addition to the remedies otherwise available to the parties at law or in equity. Each party expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond.
20. **Nature of Agreement; Independent Contractor.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. Business Associate is an independent contractor, and not an agent of Covered Entity. This Agreement does not express or imply any commitment to purchase or sell goods or services.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

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

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

\_\_\_\_\_  
(Print or Type Name)

Michael J. McBrady  
\_\_\_\_\_  
(Print or Type Name)

\_\_\_\_\_  
(Title)

President  
\_\_\_\_\_  
(Title)

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

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

## **EXHIBIT D – INSURANCE CERTIFICATE**

Intentionally left blank

## **EXHIBIT E –TAX EXEMPTION CERTIFICATE**

CLIENT to provide completed Tax Exemption Form, Tax Exemption Certificate, or other applicable documentation from the State Department regarding their Tax Exemption Status.



## MEMORANDUM

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**TO:** Honorable Mayor & City Council

**FROM:** Chris H Fredericksen

**DATE:** November 5, 2018

**RE:** Supplemental Professional Services Agreement with Six Mile Engineering for Design Services of the 17th Street and Woodruff Avenue Intersection Improvements

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Attached for consideration is a Supplemental Professional Services Agreement for Six Mile Engineering to provide services for the development of right-of-way and final design plans for the 17<sup>th</sup> Street and Woodruff Avenue Intersection Improvements.

Under the agreement, which has been reviewed by the City Attorney, Six Mile Engineering will provide engineering services as necessary for a not-to-exceed amount of \$99,400.00. The City will be responsible for \$7,295.96, which is 7.34% of this amount.

Public Works recommends approval of this Supplemental Professional Services Agreement, and, authorization for the Mayor and City Clerk to sign the document.



## Supplemental Agreement

ITD 2113 (Rev. 10-15)

Key Number(s)	Project Name(s)	Project Number(s)
14024	INT E 17TH ST & S WOODRUFF AVE. IDAHO FALLS	A014(024)

Consultant Name	Agreement Number	Date Authorized	Supplemental Number
SIX MILE ENGINEERING, PA	94467		1335

	Not-to-Exceed (NTE) Amount	Additional Services Amount	Agreement Amount	Fixed Fee Amount (Included in NTE)
Original Agreement	\$250,000.00	\$0.00	\$250,000.00	\$24,442.00
Previous Supplementals	\$0.00	\$0.00	\$0.00	\$0.00
This Supplemental	\$99,400.00	\$0.00	\$99,400.00	\$12,116.00
<b>New Totals</b>	<b>\$349,400.00</b>	<b>\$0.00</b>	<b>\$349,400.00</b>	<b>\$36,558.00</b>

The Agreement dated 5/30/2017 between the State and Consultant is hereby modified as the parties hereto mutually agree.

The Consultant will develop right-of-way plans and provide final design services as outlined in the attached Scope of Work.

The Agreement Amounts are revised as shown in the table above.

The undersigned Consultant hereby agrees that if this Supplemental Agreement is approved, they will perform the work detailed above and accept payment at the prices shown for the respective items in accordance with the terms of the original Agreement, except as herein provided. **This Supplemental Agreement is not effective until approved by the Chief Engineer or his authorized representative.**

By reason of this proposed change, completion time will be adjusted as follows: New Completion Date is 1/6/2020	Approved by Local Sponsor  CITY OF IDAHO FALLS
Accepted By  SIX MILE ENGINEERING, PA	Local Sponsor Signature Showing Approval  Title:
Signature   Title: LARRY WHITE PRESIDENT	Signature (Approved for the State of Idaho)  Title:

## SCOPE OF WORK

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### Int 17<sup>th</sup> St & Woodruff Ave, Idaho Falls

Project No. A014(024)

Key No. 14024

### Scope of Work – Supplemental No. 1

#### Introduction

The City of Idaho Falls is the sponsor of this federal aid project to improve vehicle capacity and operations at the intersection of 17<sup>th</sup> Street and Woodruff Avenue in Idaho Falls. The project design was initially negotiated in 2017; however, project funding was not available for the entire project development process. As a result, project tasks to develop right-of-way plans (Task 8) and final design (Task 9) were removed from the design contract executed in June 2017. While work was progressing on the original contract, the City secured additional funding to complete the project development. Supplemental No. 1 is for the remaining work on the project that was not included in the original contract:

- Task 1 – Project Management (for the remaining duration of the project)
- Task 8 – Right-of-Way (to develop right-of-way plans for acquisition by the City)
- Task 9 – Final Design (to develop bid documents)

The work and deliverables for these tasks are described below.

#### Project Task List

The following list summarizes the work tasks and subtasks for the project. The project team member responsible for each major work task is noted below. For major tasks with more than one team member sharing the work, the members responsible for each subtask are specified. A detailed description of each task is included in the Project Description section.

##### **TASK 1 – PROJECT MANAGEMENT (6ME)**

- 1.1 Project Coordination and Meetings
- 1.2 Monthly Invoices

##### **TASK 8 – RIGHT-OF-WAY (6ME and City)**

- 8.1 Preliminary R/W Plans (6ME)
- 8.2 Property Owner Contacts (City)
- 8.3 Legal Descriptions (City)
- 8.4 Final R/W Plans (6ME)

##### **TASK 9 – FINAL DESIGN (6ME)**

- 9.1 Utility Coordination
- 9.2 Roadway Design
- 9.3 Drainage Design
- 9.4 Traffic Design
- 9.5 Supporting Plan Sheets
- 9.6 Special Provisions
- 9.7 Construction Cost Estimate
- 9.8 Final Design Review Submittal



## SCOPE OF WORK

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- 9.9 Final Design Review Meeting
- 9.10 PS&E Submittal
- 9.11 Resident's File

### Description of Project Tasks

This section provides a description of the work anticipated and deliverables associated with each task.

#### TASK 1 – PROJECT MANAGEMENT (6ME)

- 1.1 **Project Coordination and Meetings:** Coordinate with the City for data requests, project procedures and design questions. Coordinate with project team members and respond to inquiries from agencies.
- 1.2 **Monthly Invoices:** 6ME will prepare and submit monthly invoices and status reports meeting current ITD invoicing requirements, and will provide general project oversight and administration of our work.

6ME will coordinate with the subconsultants on monthly invoicing, track project progress with a Gantt chart tracking schedule, and provide schedule updates to the City.

Assumptions:

- The project duration will be an additional nine months from the original contract. This totals 27 months, which is the assumed project length during negotiations for the initial contract.

Deliverables:

- Monthly Invoices with Project Status Reports, PSAs and Tracking Schedule Updates

#### TASK 8 – RIGHT-OF-WAY PLANS (6ME and City)

- 8.1 **Preliminary R/W Plans (6ME):** 6ME will prepare the Draft Right-of-Way Plans for the project showing the property to be purchased and temporary and permanent easements. The drawings will be in accordance with ITD standards at a scale of 1" = 40' for size 11" by 17" sheets. The drawings will be submitted to the City for review.

Deliverables:

- 1 – Preliminary Color Right-of-Way Title Sheet
- 2 – Preliminary Color Total Ownership Maps
- 9 – Preliminary Color Right-of-Way Removal and Utility Plan Sheets
- 9 – Preliminary Color Right-of-Way Plan Sheets
- 9 – Preliminary Profile Sheets
- ITD 0131 R/W Plans Checklist

- 8.2 **Property Owner Contacts (City)**

- 8.3 **Legal Descriptions (City)**

## SCOPE OF WORK

- 8.4 **Final R/W Plans (6ME):** The Final Design Review R/W Plans will be revised from the property owner meetings and preliminary design review and compared to the legal descriptions prior to internal review and submittal. Submit R/W Plans to City for approval prior to R/W appraisals and acquisition.

Deliverables:

- 1 – Color Right-of-Way Title Sheet
- 2 – Color Total Ownership Maps
- 9 – Color Right-of-Way Removal and Utility Plan Sheets
- 9 – Color Right-of-Way Plan Sheets
- 9 – Profile Sheets
- ITD 0131 R/W Plans Checklist
- Legal descriptions (Task 8.3)

### TASK 9 – FINAL DESIGN (6ME)

- 9.1 **Utility Coordination:** This task continues coordination with the utility companies to obtain the locations of their proposed utility relocates. Draft utility info for display on plan and profile, if available, sheets. A description of the relocation work required, with a schedule and duration, will be included in the Special Provisions. Utility relocate information will be incorporated into the final design plans and will be sent to the utility companies for verification prior to submitting PS&E.

Assumptions:

- Potholing existing utilities at potential conflict points and at other key points to determine utility elevations, if needed, will be conducted under an Additional Services Agreement.

Deliverables:

- Description of relocation work, schedule and duration for each utility for inclusion in the Special Provisions
- Utility Plans, as needed for coordination

- 9.2 **Roadway Design:** The preliminary design will be finalized by addressing comments not addressed in Task 7.9 and by adding details for intersection grading and other roadway features. Bid items will be checked and quantities re-calculated.

Deliverables:

- 4 – Typical Section Sheets (for submittal in Task 9.8)
- 9 – Removal and Utility Plan Sheets (for submittal in Task 9.8)
- 9 – Plan Sheets (for submittal in Task 9.8)
- 9 – Profile Sheets (for submittal in Task 9.8)
- 1 – Intersection Grading Plan Sheets (for submittal in Task 9.8)
- 2 – Roadway Details Sheets (for submittal in Task 9.8)
- Quantities and construction cost estimate (for submittal in Task 9.8)

## SCOPE OF WORK

- 9.3 Drainage Design:** Address comments from the preliminary design review meeting and make the necessary changes to the roadway plans and drainage profile sheets. Prepare drainage details and sewer pipe summary sheets. The drainage special provisions, inserts and construction cost estimate will also be prepared. An internal drainage design memo will be prepared to document the design.

Prepare the Sediment and Erosion Control plans using ITD's "Erosion and Sediment Control – Best Management Practices" catalog. Prepare the SWPPP narrative, if the disturbed ground exceeds one acre, using the EPA's SWPPP narrative template that will be included in the project specifications.

**Assumptions:**

- The City will be the NPDES permittee, and the NOI will be filed by the General Contractor and the City.
- The project is able to gain coverage under the NPDES General Construction Permit (GCP).

**Deliverables:**

- 1 – Sewer Pipe Summary Sheet (for submittal in Task 9.8)
- 5 – Drainage Profile Sheets (for submittal in Task 9.8)
- 2 – Drainage Details Sheets (for submittal in Task 9.8)
- 9 – Sediment and Erosion Control Plans (for submittal in Task 9.8)
- SWPPP Narrative (for submittal in Task 9.8)
- Quantities and construction cost estimate (for submittal in Task 9.8)

- 9.4 Traffic Design:** Address the Preliminary Design Review comments, and finalize design of the traffic signal, illumination, interconnect, signing, pavement markings and construction phasing. The Materials List sheets, Traffic Signal Details, Illumination and IC Details and Signing Erection Specifications sheets will be prepared for inclusion in the Final Design Review Submittal.

**Assumptions:**

- The City will provide approved equipment manufacturer and model numbers that differ from ITD's equipment requirements.

**Deliverables:**

- 2 – Traffic Signal Materials List Sheet (for submittal in Task 9.8)
- 1 – Traffic Signal Plan Sheet (for submittal in Task 9.8)
- 1 – Traffic Signal Phasing Details (for submittal in Task 9.8)
- 1 – Traffic Signal Conduit Diagram Sheet (for submittal in Task 9.8)
- 1 – Traffic Signal Wiring Diagram (for submittal in Task 9.8)
- 1 – Traffic Signal Detection Wiring Diagram (for submittal in Task 9.8)
- 4 – Traffic Signal Mast Arm Detail Sheet (for submittal in Task 9.8)
- 1 – Traffic Signal Mast Arm Sign Detail Sheet (for submittal in Task 9.8)
- 4 – Traffic Standard Drawing Insert Sheets (for submittal in Task 9.8)
- 1 – Street Lighting and Interconnect Materials List Sheet (for submittal in Task 9.8)
- 9 – Street Lighting and Interconnect Plan Sheets (for submittal in Task 9.8)

## SCOPE OF WORK

- 2 – Signing Erection Specification Sheets (for submittal in Task 9.8)
- 9 – Signing and Pavement Markings Plan Sheets (for submittal in Task 9.8)
- 1 – Traffic Control Plan Quantities and General Notes (for submittal in Task 9.8)
- 4 – Construction Phasing Plan Sheets (for submittal in Task 9.8)
- 2 – Detour Routing Plan Sheets (for submittal in Task 9.8)
- Quantities and construction cost estimate (for submittal in Task 9.8)

**9.5 Supporting Plan Sheets:** Prepare the following supporting plan sheets for inclusion in the preliminary design review submittal.

Deliverables:

- 1 – Title Sheet (for submittal in Task 9.8)
- 1 – Project Clearance Summary Sheet (for submittal in Task 9.8)
- 2 – Total Ownership Maps (for submittal in Task 9.8)

**9.6 Special Provisions:** Prepare the Special Provisions (Bid Proposal) for the project. Incorporate current ITD bid inserts and special provisions and the approved pavement materials special provisions into the project Special Provisions. Prepare the Contract Time Determination Schedule for the project.

Deliverables:

- Special Provisions (for submittal in Task 9.8)
- Contract Time Determination Schedule (for submittal in Task 9.8)

**9.7 Construction Cost Estimate:** Calculate the estimated quantities, draft the Roadway Summary Sheets, and prepare an engineer's construction cost estimate for the project. The unit costs will be based on the ITD Average Unit Price report. The estimate will be prepared using the "Estimator" software program.

Deliverables:

- 4 – Roadway Summary Sheets (for submittal in Task 9.8)
- Construction Cost Estimate (for submittal in Task 9.8)

**9.8 Final Design Review Submittal:** Perform an internal review of the entire final design review package (plans, Special Provisions and construction cost estimate) prior to submitting for the Final Design Review. Revisions from the internal review will be made and the plans, Special Provisions and construction cost estimate will be prepared for the Final Design Review submittal.

Deliverables:

- Final Design review Submittal consisting of:
  - 1 – Title Sheet
  - 1 – Project Clearance Summary Sheet
  - 2 – Total Ownership Maps
  - 4 – Typical Section Sheets
  - 4 – Roadway Summary Sheets
  - 1 – Sewer Pipe Summary Sheet
  - 9 – Removal and Utility Plan Sheets

## SCOPE OF WORK

- 9 – Plan Sheets
- 9 – Profile Sheets
- 1 – Intersection Grading Plan Sheet
- 2 – Roadway Details Sheets
- 5 – Drainage Profile Sheets
- 2 – Drainage Details Sheets
- 1 – Lighting and Interconnect Materials List Sheet
- 9 – Lighting and Interconnect Plan Sheets
- 2 – Traffic Signal Materials List Sheet
- 1 – Traffic Signal Plan Sheet
- 1 – Traffic Signal Phasing Sheet
- 1 – Traffic Signal Conduit Diagram Sheet
- 1 – Traffic Signal Wiring Diagram
- 1 – Traffic Signal Detection Wiring Diagram
- 4 – Traffic Signal Mast Arm Detail Sheets
- 1 – Traffic Signal Mast Arm Sign Detail Sheet
- 4 – Traffic Standard Drawing Insert Sheets
- 2 – Signing Erection Specification Sheets
- 9 – Signing and Pavement Markings Plan Sheets
- 1 – Traffic Control Plan Quantities and General Notes
- 4 – Construction Phasing Plan Sheets
- 2 – Detour Routing Plan Sheets
- 9 – Sediment and Erosion Control Plans
- SWPPP Narrative
- Special Provisions
- Contract Time Determination Schedule
- Construction Cost Estimate
- Summary of Preliminary Design Review Comments with Resolutions

- 9.9 Final Design Review Meeting:** Attend the Final Design Review Meeting. Prepare meeting notes that summarize the review comments obtained from the meeting.

Deliverables:

- Final Design Review Meeting Notes

- 9.10 PS&E Submittal:** Update quantities for final design review comments and make changes required from right-of-way negotiations. Revise the plans, specifications and estimate as needed for ITD's annually updated specifications and standards. Summarize and resolve Final Design Review comments, and revise plans as needed. Conduct an internal review of the plans, Special Provisions and construction cost estimate, and prepare the bid-ready documents for the PS&E submittal.

Deliverables:

- PS&E Submittal consisting of:
  - Plans
  - Special Provisions (Word file)
  - Construction Cost Estimate (Estimator file)
  - Contract Time Determination Schedule

## SCOPE OF WORK

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- 9.11 Resident's File:** 6ME will compile the Resident's File meeting as described in Section 920.04 of the ITD Design Manual. CADD files of each plan sheet will be prepared in DWG (for City) and DGN (for ITD) format.

Deliverables:

- Resident's File
- CADD Files



## Schedule - Supplemental No. 1

**Int 17th St & Woodruff Ave, Idaho Falls**  
**Project No. A014(024), Key No. 14024**

ID	Task Number	Task Name	Duration	Start	Finish	% Complete	Quarter 3rd	Quarter 4th	Quarter 1st	Quarter 2nd	Quarter 3rd	Quarter 4th	Quarter 1st	Quarter 2nd	Quarter 3rd	Quarter 4th	Quarter 1st	Quarter 2nd	Quarter 3rd	Quarter 4th
1		<b>Int 17th St &amp; Woodruff Ave, Idaho Falls</b>	<b>657 days</b>	<b>6/30/17</b>	<b>1/6/20</b>	<b>45%</b>														
2		<b>NOTICE TO PROCEED</b>	<b>0 days</b>	<b>6/30/17</b>	<b>6/30/17</b>	<b>100%</b>														
3																				
4																				
5	<b>TASK 1</b>	<b>PROJECT MANAGEMENT (6ME)</b>	<b>656 days</b>	<b>6/30/17</b>	<b>1/3/20</b>	<b>36%</b>														
6	1.1	Project Coordination and Meetings	656 days	6/30/17	1/3/20	36%														
7	1.2	Monthly Invoices	656 days	6/30/17	1/3/20	36%														
8																				
9	<b>TASK 2</b>	<b>CONCEPT DESIGN (6ME)</b>	<b>274 days</b>	<b>6/30/17</b>	<b>7/18/18</b>	<b>94%</b>														
10	2.1	Traffic and Safety Analysis	203 days	6/30/17	4/10/18	100%														
11		Compile Historic Counts	15 days	6/30/17	7/20/17	100%														
12		Obtain and Review Traffic Forecasts	15 days	6/30/17	7/20/17	100%														
13		Develop K-Factors and Forecasted Peak Hour Traffic	5 days	7/21/17	7/27/17	100%														
14		Intersection Traffic Analysis	5 days	7/28/17	8/3/17	100%														
15		Obtain and Review Crash History	70 days	6/30/17	10/5/17	100%														
16		Conduct Safety Analysis	10 days	10/6/17	10/19/17	100%														
17		<b>DELAY TO RECEIVE TRAFFIC COUNTS FROM CITY</b>	<b>56 days</b>	<b>8/31/17</b>	<b>11/16/17</b>	<b>100%</b>														
18		Revise and Finalize Forecasted Peak Hour Traffic	35 days	11/17/17	1/4/18	100%														
19		VISSIM Traffic Analysis and Simulations	45 days	12/19/17	2/19/18	100%														
20		Draft Traffic and Safety Analysis Report (ICE Summary)	55 days	12/8/17	2/22/18	100%														
21		Internal Review, Revise and Submit Final Report with Concept	5 days	4/4/18	4/10/18	100%														
22	2.2	Develop Conventional Intersection Alternatives	78 days	9/1/17	12/19/17	100%														
23		Develop Initial Intersection Alternatives	5 days	9/1/17	9/7/17	100%														
24		Prepare Intersection Exhibits	15 days	11/8/17	11/28/17	100%														
25		<b>CITY REVIEW</b>	<b>15 days</b>	<b>11/29/17</b>	<b>12/19/17</b>	<b>100%</b>														
26		Summarize and Resolve Review Comments	0 days	12/19/17	12/19/17	100%														
27		Revise Intersection Exhibits	0 days	12/19/17	12/19/17	100%														
28		<b>CITY REVIEW</b>	<b>0 days</b>	<b>12/19/17</b>	<b>12/19/17</b>	<b>100%</b>														
29		Summarize and Resolve Review Comments	0 days	12/19/17	12/19/17	100%														
30		Revise Intersection Alternatives	0 days	12/19/17	12/19/17	100%														
31		<b>CITY REVIEW</b>	<b>0 days</b>	<b>12/19/17</b>	<b>12/19/17</b>	<b>100%</b>														
32	2.3	Develop Innovative Intersection Alternatives	147 days	9/8/17	4/2/18	100%														
33		High-level Screening of Intersection Alternatives	50 days	9/8/17	11/16/17	100%														
34		Develop Initial Intersection Alternatives	10 days	11/3/17	11/16/17	100%														
35		Prepare Intersection Exhibits	8 days	11/17/17	11/28/17	100%														
36		<b>CITY REVIEW</b>	<b>15 days</b>	<b>11/29/17</b>	<b>12/19/17</b>	<b>100%</b>														
37		Summarize and Resolve Review Comments	1 day	12/20/17	12/20/17	100%														
38		Revise Intersection Exhibits	1 day	12/21/17	12/21/17	100%														
39		<b>CITY REVIEW</b>	<b>1 day</b>	<b>12/22/17</b>	<b>12/22/17</b>	<b>100%</b>														
40		Summarize and Resolve Review Comments	6 days	12/25/17	1/1/18	100%														
41		Revise Intersection Alternatives	2 days	1/2/18	1/3/18	100%														
42		<b>CITY REVIEW</b>	<b>3 days</b>	<b>1/4/18</b>	<b>1/8/18</b>	<b>100%</b>														
43		Revise Intersection Exhibits	33 days	1/9/18	2/22/18	100%														
44		<b>CITY REVIEW</b>	<b>27 days</b>	<b>2/23/18</b>	<b>4/2/18</b>	<b>100%</b>														
45	2.4	Concept Design	28 days	4/3/18	5/10/18	100%														
46		Selection of Preferred Alternative by Project Team	1 day	4/3/18	4/3/18	100%														
47		Presentation of Preferred Alternative to City Elected Officials for Concurrence	0 days	4/3/18	4/3/18	100%														
48		<b>APPROVAL OF PREFERRED ALTERNATIVE</b>	<b>0 days</b>	<b>4/3/18</b>	<b>4/3/18</b>	<b>100%</b>														
49		Concept Design of Selected Alternative	25 days	4/4/18	5/8/18	100%														
50		Develop Concept-Level Construction Cost Estimate	2 days	5/9/18	5/10/18	100%														
51	2.5	Project Charter	87 days	3/20/18	7/18/18	61%														
52		Prepare ITD 0332 Project Charter	15 days	5/11/18	5/31/18	95%														
53		Narrative	60 days	3/20/18	6/11/18	80%														



**Int 17th St & Woodruff Ave, Idaho Falls**  
**Project No. A014(024), Key No. 14024**

Six Mile Engineering, PA

## Schedule - Supplemental No. 1

**Int 17th St & Woodruff Ave, Idaho Falls**  
**Project No. A014(024), Key No. 14024**

ID	Task Number	Task Name	Duration	Start	Finish	% Complete	Quarter1 Mar	Quarter2 Jun	Quarter3 Sep	Quarter4 Dec	Quarter1 Mar	Quarter2 Jun	Quarter3 Sep	Quarter4 Dec	Quarter1 Mar	Quarter2 Jun	Quarter3 Sep	Quarter4 Dec	Quarter1 Mar	Quarter2 Jun	Quarter3 Sep	Quarter4 Dec
109		No Effect Statement	20 days	7/11/18	8/7/18	0%																
110	5.8	Environmental Evaluation	130 days	9/21/18	3/21/19	0%																
111		Environmental Evaluation	20 days	9/21/18	10/18/18	0%																
112		PROJECT TEAM REVIEW	10 days	10/19/18	11/1/18	0%																
113		Comment Response	10 days	11/2/18	11/15/18	0%																
114		ITD DISTRICT REVIEW	20 days	11/16/18	12/13/18	0%																
115		Comment Response	10 days	12/14/18	12/27/18	0%																
116		ITD HQ REVIEW	20 days	12/28/18	1/24/19	0%																
117		Comment Response	10 days	1/25/19	2/7/19	0%																
118		ITD HQ REVIEW	5 days	2/8/19	2/14/19	0%																
119		FHWA REVIEW	15 days	2/15/19	3/7/19	0%																
120		Comment Response	5 days	3/8/19	3/14/19	0%																
121		FHWA REVIEW	5 days	3/15/19	3/21/19	0%																
122		EE APPROVAL	0 days	3/21/19	3/21/19	0%																
123	5.9	Administration and Task Management	369 days	8/4/17	1/2/19	58%																
124																						
125	TASK 6	PUBLIC OUTREACH (6ME and City)	310 days	6/30/17	9/6/18	41%																
126	6.1	Stakeholder Meeting (6ME and City)	71 days	4/4/18	7/11/18	62%																
127		Coordinate Meeting	50 days	4/4/18	6/12/18	75%																
128		Draft Meeting Exhibits	50 days	4/4/18	6/12/18	75%																
129		CITY REVIEW	5 days	6/13/18	6/19/18	0%																
130		Final Meeting Exhibits	5 days	6/20/18	6/26/18	0%																
131		Attend Meeting	1 day	6/27/18	6/27/18	0%																
132		Summarize Comments and Prepare Draft Responses	10 days	6/28/18	7/11/18	0%																
133	6.2	Public Hearing (6ME and City)	41 days	7/12/18	9/6/18	0%																
134		Advertise Hearing	20 days	7/12/18	8/8/18	0%																
135		Revise Stakeholder Exhibits	5 days	7/12/18	7/18/18	0%																
136		CITY REVIEW	5 days	7/19/18	7/25/18	0%																
137		Final Hearing Exhibits	5 days	7/26/18	8/1/18	0%																
138		Attend Hearing	1 day	8/2/18	8/2/18	0%																
139		Summarize Comments and Prepare Draft Responses	25 days	8/3/18	9/6/18	0%																
140	6.3	Public Information Meeting (Not Included)	0 days	6/30/17	6/30/17	100%																
141																						
142	TASK 7	PRELIMINARY DESIGN (6ME)	278 days	4/4/18	4/26/19	8%																
143	7.1	Utility Coordination	211 days	4/4/18	1/23/19	38%																
144		Initial Utility Letters	50 days	4/4/18	6/12/18	75%																
145		Receive Facility Maps	30 days	6/13/18	7/24/18	0%																
146		Compare Facility Maps to Survey	5 days	7/25/18	7/31/18	0%																
147		Draft Preliminary Design Utility Plans	10 days	1/3/19	1/16/19	0%																
148		Preliminary Design Utility Letters	5 days	1/17/19	1/23/19	0%																
149	7.2	Roadway Design	80 days	7/19/18	11/7/18	0%																
150		Intersection and Roadway Horizontal Geometrics	30 days	7/19/18	8/29/18	0%																
151		Grading	15 days	8/30/18	9/19/18	0%																
152		Draft Roadway Plans	30 days	9/20/18	10/31/18	0%																
153		Quantities	5 days	11/1/18	11/7/18	0%																
154	7.3	Drainage Design	65 days	9/20/18	12/19/18	0%																
155		Preliminary Drainage Design	40 days	9/20/18	11/14/18	0%																
156		Draft Drainage Plans	20 days	11/15/18	12/12/18	0%																
157		Quantities	5 days	12/13/18	12/19/18	0%																
158	7.4	Traffic Design	75 days	8/30/18	12/12/18	0%																
159		Design Signal Layout and Phasing	20 days	8/30/18	9/26/18	0%																
160		Design Lighting Illuminance and Plan	20 days	8/30/18	9/26/18	0%																
161		Service Coordination	5 days	9/27/18	10/3/18	0%																
162		Design IC	20 days	8/30/18	9/26/18	0%																

## Schedule - Supplemental No. 1

Int 17th St & Woodruff Ave, Idaho Falls  
Project No. A014(024), Key No. 14024

ID	Task Number	Task Name	Duration	Start	Finish	% Complete	Quarter3	Quarter4	Quarter1	Quarter2	Quarter3	Quarter4	Quarter1	Quarter2	Quarter3	Quarter4	Quarter1	Quarter2	Quarter3	Quarter4
							May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
163		Design Signing and Pavement Markings	20 days	8/30/18	9/26/18	0%														
164		Develop Construction Phasing and Routing Plan	10 days	11/1/18	11/14/18	0%														
165		Draft Traffic Plans	50 days	9/27/18	12/5/18	0%														
166		Quantities	5 days	12/6/18	12/12/18	0%														
167	7.5	Supporting Plan Sheets	5 days	12/13/18	12/19/18	0%														
168		Draft Title Sheet and Total Ownership Map	5 days	12/13/18	12/19/18	0%														
169	7.6	Construction Cost Estimate	15 days	12/20/18	1/9/19	0%														
170		Compile and Review Quantities	10 days	12/20/18	1/2/19	0%														
171		Establish Unit Costs and Create Estimator File	5 days	1/3/19	1/9/19	0%														
172	7.7	Preliminary Design Review Submittal	10 days	12/20/18	1/2/19	0%														
173		Internal Review, Revise and Submit	10 days	12/20/18	1/2/19	0%														
174		PRELIMINARY DESIGN REVIEW SUBMITTAL	0 days	1/2/19	1/2/19	0%														
175	7.8	Preliminary Design Review Meeting	21 days	1/3/19	1/31/19	0%														
176		ITD AND CITY REVIEW	20 days	1/3/19	1/30/19	0%														
177		Attend Meeting	1 day	1/31/19	1/31/19	0%														
178	7.9	Summarize and Resolve Review Comments	20 days	2/1/19	2/28/19	0%														
179		Summarize and Resolve Review Comments	5 days	2/1/19	2/7/19	0%														
180		Revise Plans from PDR Comments for Use by City for Preparation of R/W Plans	15 days	2/8/19	2/28/19	0%														
181	7.10	Design Study Report	26 days	3/22/19	4/26/19	0%														
182		Draft Design Study Report	5 days	3/22/19	3/28/19	0%														
183		Internal Review, Revise and Submit	5 days	3/29/19	4/4/19	0%														
184		ITD AND CITY REVIEW	7 days	4/5/19	4/15/19	0%														
185		Summarize and Resolve Review Comments	4 days	4/16/19	4/19/19	0%														
186		ITD AND CITY REVIEW AND APPROVAL	5 days	4/22/19	4/26/19	0%														
187		DESIGN APPROVAL	0 days	4/26/19	4/26/19	0%														
188																				
189	TASK 8	RIGHT-OF-WAY (6ME and City)	141 days	3/1/19	9/13/19	0%														
190	8.1	Preliminary R/W Plans (6ME)	14 days	3/1/19	3/20/19	0%														
191		Draft R/W Plans	5 days	3/1/19	3/7/19	0%														
192		Internal Review, Revise and Submit	2 days	3/8/19	3/11/19	0%														
193		CITY REVIEW	5 days	3/12/19	3/18/19	0%														
194		Summarize and Resolve Review Comments	2 days	3/19/19	3/20/19	0%														
195		PRELIMINARY PLANS FOR PROPERTY OWNER CONTACTS	0 days	3/20/19	3/20/19	0%														
196	8.2	Property Owner Contacts (City)	10 days	3/21/19	4/3/19	0%														
197	8.3	Legal Descriptions (City)	10 days	3/21/19	4/3/19	0%														
198	8.4	Final R/W Plans (6ME)	117 days	4/4/19	9/13/19	0%														
199		Revise Plans from Property Owner Meetings and PDR	3 days	4/4/19	4/8/19	0%														
200		Compare to Legals	2 days	4/4/19	4/5/19	0%														
201		Internal Review, Revise and Submit	1 day	4/8/19	4/8/19	0%														
202		CITY REVIEW	5 days	4/9/19	4/15/19	0%														
203		Summarize and Resolve Review Comments	2 days	4/16/19	4/17/19	0%														
204		R/W PLAN APPROVAL	0 days	4/17/19	4/17/19	0%														
205																				
206		RIGHT-OF-WAY ACQUISITION (City)	100 days	4/29/19	9/13/19	0%														
207																				
208	TASK 9	FINAL DESIGN (6ME)	222 days	3/1/19	1/6/20	0%														
209	9.1	Utility Coordination	120 days	3/1/19	8/15/19	0%														
210		Utility Coordination (6ME)	60 days	3/1/19	5/23/19	0%														
211		Utility Agreements (City)	60 days	5/24/19	8/15/19	0%														
212	9.2	Roadway Design	40 days	4/29/19	6/21/19	0%														
213		Address PDR Comments	20 days	4/29/19	5/24/19	0%														
214		Finalize Grading	10 days	5/27/19	6/7/19	0%														
215		Draft Roadway Details	5 days	6/10/19	6/14/19	0%														



## Schedule - Supplemental No. 1

Int 17th St & Woodruff Ave, Idaho Falls  
Project No. A014(024), Key No. 14024

ID	Task Number	Task Name	Duration	Start	Finish	% Complete	Quarter1 May	Quarter2 Jun	Quarter3 Jul	Quarter4 Aug	Quarter1 Sep	Quarter2 Oct	Quarter3 Nov	Quarter4 Dec	Quarter1 Jan	Quarter2 Feb	Quarter3 Mar	Quarter4 Apr	Quarter1 May	Quarter2 Jun	Quarter3 Jul	Quarter4 Aug	Quarter1 Sep	Quarter2 Oct	Quarter3 Nov	Quarter4 Dec	Quarter1 Jan	Quarter2 Feb	Quarter3 Mar	Quarter4 Apr
216		Roadway Quantities	5 days	6/10/19	6/14/19	0%																								
217		Roadway Special Provisions and Inserts	5 days	6/17/19	6/21/19	0%																								
218	9.3	<b>Drainage Design</b>	80 days	4/29/19	8/16/19	0%																								
219		Address PDR Comments	10 days	4/29/19	5/10/19	0%																								
220		Finalize Drainage Design	10 days	5/13/19	5/24/19	0%																								
221		Develop Erosion Control Plan	15 days	5/27/19	6/14/19	0%																								
222		SWPPP Narrative	20 days	6/17/19	7/12/19	0%																								
223		Draft Drainage Plans	15 days	7/15/19	8/2/19	0%																								
224		Drainage Quantities	5 days	8/5/19	8/9/19	0%																								
225		Drainage Special Provisions and Inserts	5 days	8/12/19	8/16/19	0%																								
226	9.4	<b>Traffic Design</b>	60 days	4/29/19	7/19/19	0%																								
227		Address PDR Comments	10 days	4/29/19	5/10/19	0%																								
228		Draft Signal Details and Materials List	20 days	5/13/19	6/7/19	0%																								
229		Draft Lighting and IC Details	10 days	5/13/19	5/24/19	0%																								
230		Signing Erection Sheet	5 days	5/13/19	5/17/19	0%																								
231		Finalize Phasing and Routing Plan	5 days	6/10/19	6/14/19	0%																								
232		Finalize Detour Plan	5 days	6/17/19	6/21/19	0%																								
233		Draft Construction Traffic Control Plans	10 days	6/24/19	7/5/19	0%																								
234		Traffic Quantities	5 days	7/8/19	7/12/19	0%																								
235		Traffic Special Provisions and Inserts	5 days	7/15/19	7/19/19	0%																								
236	9.5	<b>Supporting Plan Sheets</b>	5 days	8/5/19	8/9/19	0%																								
237		Draft Standard Drawing Index and Project Clearance Summary	5 days	8/5/19	8/9/19	0%																								
238	9.6	<b>Special Provisions</b>	15 days	8/19/19	9/6/19	0%																								
239		Compile and Review Discipline Special Provisions	5 days	8/19/19	8/23/19	0%																								
240		Update Inserts	5 days	8/26/19	8/30/19	0%																								
241		Prepare Contract Time Determination Schedule	5 days	8/26/19	8/30/19	0%																								
242		Prepare Special Provisions	5 days	9/2/19	9/6/19	0%																								
243	9.7	<b>Construction Cost Estimate</b>	15 days	8/12/19	8/30/19	0%																								
244		Compile and Review Quantities	10 days	8/12/19	8/23/19	0%																								
245		Update Unit Costs and Estimator File	5 days	8/26/19	8/30/19	0%																								
246		Draft Roadway Summaries	5 days	8/26/19	8/30/19	0%																								
247	9.8	<b>Final Design Review Submittal</b>	15 days	9/16/19	10/4/19	0%																								
248		Internal Review, Revise and Submit	15 days	9/16/19	10/4/19	0%																								
249		FINAL DESIGN REVIEW SUBMITTAL	0 days	10/4/19	10/4/19	0%																								
250	9.9	<b>Final Design Review Meeting</b>	31 days	10/7/19	11/18/19	0%																								
251		ITD AND CITY REVIEW	20 days	10/7/19	11/1/19	0%																								
252		Attend Meeting	1 day	11/4/19	11/4/19	0%																								
253		Prepare Meeting Notes	10 days	11/5/19	11/18/19	0%																								
254	9.10	<b>PS&amp;E Submittal</b>	25 days	11/19/19	12/23/19	0%																								
255		Summarize and Resolve Review Comments	20 days	11/19/19	12/16/19	0%																								
256		Revisions from R/W and Standards Changes	20 days	11/19/19	12/16/19	0%																								
257		Internal Review, Revise and Submit	5 days	12/17/19	12/23/19	0%																								
258		PS&E SUBMITTAL	0 days	12/23/19	12/23/19	0%																								
259	9.11	<b>Resident's File</b>	10 days	12/24/19	1/6/20	0%																								
260		Compile Project Info for Resident's File	10 days	12/24/19	1/6/20	0%																								
261		Compile CADD Files	10 days	12/24/19	1/6/20	0%																								
262																														
263		DESIGN CONTRACT COMPLETE	0 days	1/6/20	1/6/20	0%																								

# Budget - Six Mile Engineering

Int 17th St Woodruff Ave, Idaho Falls  
Project No. A014(024), Key No. 14024

LABOR			
<b>A. RAW LABOR</b>			
LABOR	LABOR HOURS	RAW LABOR RATE	TOTAL RAW LABOR
Project Manager (L. White)	88	\$ 48.00	\$ 4,224
Senior Roadway Engineer (J. Jones)	78	\$ 45.50	\$ 3,549
Senior Traffic Engineer (L. Kelsey)	101	\$ 44.00	\$ 4,444
Senior Drainage Engineer (J. Hupp)	33	\$ 42.00	\$ 1,386
Roadway Design Engineer (L. Starchman)	236.5	\$ 34.00	\$ 8,041
Staff Engineer (B. Kohring)	325.5	\$ 28.50	\$ 9,277
	862		
<b>A. TOTAL RAW LABOR</b>			<b>\$ 30,921</b>
<b>B. PAYROLL AND OVERHEAD</b>			
Total Raw Labor		\$	30,921
Overhead Rate (Approved April 13, 2018)			179.88%
<b>B. TOTAL PAYROLL AND OVERHEAD</b>			<b>\$ 55,620</b>
<b>C. NET FEE</b>			
Total Raw Labor Plus Total Payroll and Overhead		\$	86,541
Negotiated Fee (from Original Contract)			14.00%
<b>C. NET FEE</b>			<b>\$ 12,116</b>
<b>TOTAL LABOR (A + B + C)</b>			<b>\$ 98,657</b>
EXPENSES			
<b>D. DIRECT EXPENSES</b>			
DIRECT EXPENSE	ESTIMATED AMOUNT	UNIT COST	TOTAL DIRECT EXPENSE
Printing	1	\$ 100.00	\$ 100
Mileage	620	\$ 0.535	\$ 332
Per Diem	2	\$ 142.00	\$ 284
<b>D. TOTAL DIRECT EXPENSES</b>			<b>\$ 716</b>
<b>E. SUBCONSULTANTS</b>			
N/A			\$ -
<b>E. TOTAL SUBCONSULTANTS</b>			<b>\$ -</b>
<b>F. SALARY ESCALATION</b>			
N/A			
<b>F. TOTAL SALARY ESCALATION</b>			<b>\$ -</b>
<b>TOTAL EXPENSES (D + E + F)</b>			<b>\$ 716</b>
<b>TOTAL LABOR AND EXPENSES</b>			<b>\$ 99,373</b>

# Labor Hour Estimate - Six Mile Engineering

Int 17th St Woodruff Ave, Idaho Falls  
Project No. A014(024), Key No. 14024

LABOR HOURS						
TASK 1	PROJECT MANAGEMENT (6ME)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	1.1 Project Coordination and Meetings	9	0	0	0	9
	1.2 Monthly Invoices	13.5	9	0	0	22.5
	TASK TOTAL	22.5	9	0	0	31.5
TASK 2	CONCEPT DESIGN (Original Contract)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	TASK TOTAL	0	0	0	0	0
TASK 3	FIELD SURVEYS (Original Contract)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	TASK TOTAL	0	0	0	0	0
TASK 4	MATERIALS REPORTS (Original Contract)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	TASK TOTAL	0	0	0	0	0
TASK 5	ENVIRONMENTAL EVALUATION (Original Contract)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	TASK TOTAL	0	0	0	0	0
TASK 6	PUBLIC INVOLVEMENT SUPPORT (Original Contract)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	TASK TOTAL	0	0	0	0	0
TASK 7	PRELIMINARY DESIGN (Original Contract)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	TASK TOTAL	0	0	0	0	0
TASK 8	RIGHT-OF-WAY (6ME and CITY)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	8.1 Preliminary R/W Plans	2	9	29	48.5	88.5
	8.2 Property Owner Contacts (City)	0	0	0	0	0
	8.3 Legal Descriptions (City)	0	0	0	0	0
	8.4 Final R/W Plans	2	8	12	18	40
	TASK TOTAL	4	17	41	66.5	128.5
TASK 9	FINAL DESIGN (6ME)	PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
	9.1 Utility Coordination	0	1.5	16	0	17.5
	9.2 Roadway Design	2	28	62.5	74	166.5
	9.3 Drainage Design	0	33	8	77	118
	9.4 Traffic Design	3	41	78	55	177
	9.5 Supporting Plan Sheets	0	1.5	2	3	6.5
	9.6 Special Provisions	5.5	18	0	0	23.5
	9.7 Construction Cost Estimate	1	7	6	8	22
	9.8 Final Design Review Submittal	24	19	5	10	58
	9.9 Final Design Review Meeting	11	13	0	0	24
	9.10 PS&E Submittal	15	22	18	26	81
	9.11 Resident's File	0	2	0	6	8
	TASK TOTAL	61.5	186	195.5	259	702
		PROJECT MANAGER	SENIOR ENGINEER	DESIGN ENGINEER	STAFF ENGINEER	TOTAL
TOTAL LABOR HOURS		88	212	236.5	325.5	862



## MEMORANDUM

**TO:** Honorable Mayor & City Council

**FROM:** Chris H Fredericksen, Public Works Director

**DATE:** November 13, 2018

**RE:** Settlement Agreement between Surface Water Coalition, the Idaho Ground Water Appropriators, and Signatory Cities

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Attached for consideration is an agreement with the Surface Water Coalition, participating members of the Idaho Ground Water Appropriators, Inc, and signatory cities (Settlement Agreement).

The Settlement Agreement establishes a method for cities located within the Eastern Snake Plain Aquifer to mitigate their groundwater use; provides cities safe harbor from future water calls by the Surface Water Coalition for a period of 35 years; establishes methods for mitigation efforts required; and identifies reporting procedures for required mitigation efforts performed by cities. The Settlement Agreement is in conjunction with the Internal City Mitigation Allocation Agreement that identifies how mitigation obligations will be distributed between signatory and participating cities.

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

**SETTLEMENT AGREEMENT (“AGREEMENT”) BETWEEN THE SURFACE WATER  
COALITION<sup>1</sup>, PARTICIPATING MEMBERS OF IDAHO GROUND WATER  
APPROPRIATORS, INC.<sup>2</sup>, AND SIGNATORY CITIES<sup>3</sup>**

WHEREAS, Idaho water rights are constitutional property rights defined by the prior appropriation doctrine; and

WHEREAS, the Idaho Department of Water Resources (“IDWR”) administers ground water and surface water rights under the prior appropriation doctrine, the Conjunctive Management Rules (“CM Rules”; IDAPA 37.03.11 et seq.), statutes, and decisional law; and

WHEREAS, the SWC owns surface water rights for irrigation purposes; and

WHEREAS, IGWA’s members own ground water rights for irrigation and other purposes; and

WHEREAS, IGWA owns spring water rights for fish propagation; and

WHEREAS, the Cities own municipal ground water rights, some of which are junior to water rights owned by the SWC or IGWA; and

WHEREAS, the SWC filed a delivery call in 2005 with IDWR under the CM Rules; and

WHEREAS, ground water rights of the Cities and IGWA members have been subject to IDWR administration, including curtailment, as a result of the SWC delivery call; and

WHEREAS, in the Rangen, Inc. delivery call as part of assessing an individual city’s mitigation obligation, IDWR determined the amount of a city’s pumping that was junior to the

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<sup>1</sup> The Surface Water Coalition (“SWC”) consists of A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company.

<sup>2</sup> The participating members of Idaho Ground Water Appropriators, Inc. are Aberdeen-American Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry’s Fork Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, and Southwest Irrigation District. The acronym “IGWA” is used in this Agreement to refer to all of these Districts collectively.

<sup>3</sup> The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone, and Wendell are referred to in this Agreement individually as a “Signatory City” and collectively as the “Signatory Cities.” The Signatory Cities and additional cities who participate in this Agreement in the future, pursuant to section I.B, are referred to herein individually as a “City” and collectively as the “Cities.” The SWC, IGWA, and Signatory Cities are referred to herein individually as “Party” and collectively as the “Parties.”



curtailment date, if any, based on the city's 5-year average annual pumping volume less the maximum annual diversion volume authorized by the city's water rights that were senior to the curtailment date<sup>4</sup>; and

WHEREAS, pursuant to Idaho Code § 42-233(b) IDWR designated the Eastern Snake Plain Aquifer ("ESPA")<sup>5</sup> as a Ground Water Management Area ("GWMA") on November 2, 2016—the largest GWMA established to date; and

WHEREAS, the Cities perceive substantial uncertainty regarding IDWR's administration of municipal water rights in the ESPA-GWMA; and

WHEREAS, IGWA and the SWC entered into a settlement agreement on June 30, 2015, to mitigate the obligations of IGWA members under the SWC delivery call. This agreement was the subject of addenda on October 19, 2015, and December 14, 2016, and was approved by the Director of IDWR as a CM Rule 43 mitigation plan ("CM Rule 43 Plan") on May 9, 2017. Collectively these documents are referred to herein as the "IGWA-SWC Settlement Agreement"; and

WHEREAS, the Cities are not parties to the IGWA-SWC Settlement Agreement; and

WHEREAS, the Cities desire to implement a long-term resolution to mitigation obligations under both the SWC Delivery Call and the ESPA-GWMA that allows for cities to continue to grow and develop and use additional water;

NOW THEREFORE, in settlement of litigation involving the distribution of water to the members of the SWC and the establishment of the ESPA-GWMA pursuant to Idaho Code § 42-233b, the Parties agree as follows:

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<sup>4</sup> Memorandum from Jennifer Sukow, P.E., P.G. to Director Gary Spackman, *Technical Review of Coalition of Cities' Second Mitigation Plan*, January 2015. Available at <https://idwr.idaho.gov/files/legal/CM-MP-2014-007/CM-MP-2014-007-20150123-Staff-Memo-Cities-2nd.pdf> (last visited August 28, 2018).

<sup>5</sup> For purposes of this Agreement the ESPA is the aquifer as designated by the IDWR Director's November 2, 2016 ESPA- GWMA Order.

## **I. CITIES OBLIGATED UNDER THIS AGREEMENT:**

- A. The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone, and Wendell (“Signatory Cities”) are obligated to satisfy the terms of this Agreement. In the Signatory Cities’ sole discretion, they shall determine the proper distribution of this Agreement’s obligations among themselves.
- B. Additional cities that divert water from the ESPA may participate in this Agreement upon written notice to IDWR and the Parties. Such notice must be given by January 15 for a city to participate in a given year. These cities are referred to herein individually as a “Participating City” and collectively as the “Participating Cities”. The Signatory Cities at their sole discretion shall establish the terms by which any Participating City, may participate in the obligations of the Signatory Cities under this Agreement.

## **II. SIGNATORY CITIES’ MITIGATION OBLIGATION:**

- A. Initial Mitigation Obligation: The Signatory Cities will collectively supply average annual mitigation water in the amount of 7,650 acre-feet per year (“AF/y”), with a minimum requirement to supply 1,000 AF/y, commencing January 1, 2019, with compliance as set forth in section II.C.
  - 1. All mitigation water will be used for aquifer enhancement projects on the ESPA unless the Parties agree otherwise in writing.
  - 2. The following activities will count 1:1 towards meeting the Signatory Cities’ mitigation obligations:
    - a. Delivery of water to the Idaho Water Resource Board (“IWRB”) for managed aquifer recharge of the ESPA;
    - b. Managed aquifer recharge of the ESPA accomplished by entities other than IWRB provided: (1) a minimum of 50% of the volume is recharged east of the Great Rift; (2) the recharge occurs at any of the sites identified in Table 12 of the McVay Report<sup>6</sup> or any other recharge site having an average minimum simulated retention period greater than or equal to 17.5% after five years consistent with analysis methods in the McVay Report; and (3) the water to

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<sup>6</sup> Michael McVay, P.E., P.G., *Incorporating Recharge Limitation into the Prioritization of Aquifer Recharge Sites Based on Hydrologic Benefits Using ESPAM 2.1*, November 2015.

be recharged pursuant to this subsection would not otherwise incidentally recharge the ESPA, excluding municipal wastewater;

- c. Ground water to surface water conversions within the boundaries of the ESPA;
  - d. Temporary or permanent dry up (i.e. retirement) of irrigated lands within the boundaries of the ESPA; or
  - e. Other activities agreed to by the Parties.
- 3. The Signatory Cities' decisions regarding aquifer enhancement activities described in section II.A.2 is in their sole discretion.
  - 4. Aquifer enhancement activities performed by the Signatory Cities under this Agreement shall be in addition to aquifer enhancement activities performed by IGWA under the IGWA-SWC Settlement Agreement or by the IWRB under Idaho Senate Concurrent Resolution no. 136 (2016).

B. Changes in Mitigation Obligation:

- 1. In the event IGWA's required annual mitigation obligation as set forth in paragraph 3.a.i of the IGWA-SWC Settlement Agreement equals or exceeds 340,000 AF/y and the goals as set forth in paragraph 3.e. of the IGWA-SWC Settlement Agreement are not met, the Signatory Cities' collective annual mitigation obligation will increase from 7,650 AF/y to 9,640 AF/y commencing January 1 following notice of the increase.
- 2. In the event IGWA's annual mitigation obligation equals or exceeds 340,000 AF/y, but then is subsequently reduced below 340,000 AF/y, the Signatory Cities' annual mitigation obligation will be reduced back down to 7,650 AF/y commencing on January 1 following notice of the decrease.

C. Compliance with Average Annual Mitigation Obligation: The Cities will be judged to be in compliance with the mitigation requirement set forth herein so long as the five-year rolling average mitigation volume computed each year equals or exceeds the average annual Mitigation Obligation. The Cities will commence reporting under section III beginning in 2020 but compliance with the average annual mitigation obligation will first be assessed in 2024 for the period 2019-2023. Thereafter, compliance with the average annual mitigation obligation will be assessed annually.

D. Costs of activities: The Signatory Cities will pay for all costs (i.e., wheeling fees) related to their own aquifer enhancement projects and recharge.

### **III. REPORTING AND INFORMATION SHARING:**

- A. Prior to April 1 of each year, the Signatory Cities will compile and share with IGWA, the SWC and IDWR an annual report that includes: (1) the volume of ground water diverted by each City individually and the Cities collectively in each of the prior five calendar years, (2) the average annual volume of ground water diverted by the Cities collectively during the prior five calendar years, (3) a description of the mitigation activities accomplished by the Cities during the prior calendar year, (4) the volume of mitigation water provided by the Cities in each of the prior five calendar years, (5) the average annual volume of mitigation water provided by the Cities during the prior five calendar years, and (6) anticipated mitigation activities to be undertaken by the Cities during the current year.
- B. The Parties will request that IDWR analyze the data contained in the Signatory Cities' annual report to confirm the accuracy of the data. IDWR's analysis shall be provided to the Parties no later than July 1 following the Signatory Cities' April 1 submittal of the annual report.
- C. For purposes of sharing of information and coordinating aquifer enhancement activities, IGWA and SWC agree to: (1) deliver to the Signatory Cities the IGWA April 1 report required under the Second Addendum to the IGWA-SWC Settlement Agreement ("Report"); (2) deliver IDWR's review of the Report to the Cities; (3) upon request of any Party, host a meeting to discuss implementation of this Agreement; and (4) invite the Signatory Cities to attend any Steering Committee meeting that discusses increasing IGWA's mitigation obligation to equal or exceed 340,000 AF/y.

### **IV. INCORPORATION INTO ESPA GROUND WATER MANAGEMENT PLAN:**

- A. The Signatory Cities will withdraw their opposition to the ESPA-GWMA Order that is subject to a contested case before IDWR (Docket No. AA-GWMA-2016-001), provided, however, that all Parties may remain as parties to the contested case to monitor the proceedings and participate as necessary.
- B. At such time as IDWR undertakes to develop a ground water management plan for the ESPA-GWMA, the mitigation obligations set forth in section II of this Agreement will be submitted to IDWR for approval as a ground water management plan for the Cities. The Parties agree to support a ground water management plan that incorporates such obligations.
  - 1. If the ground water management plan imposes mitigation obligations that are materially greater or more burdensome than the obligations set forth in section II of this Agreement, section IV of this Agreement shall be of no force and effect and the cities reserve all right to challenge the ESPA-GWMA ground water management plan.
- C. At such time as IDWR undertakes to develop a ground water management plan for the ESPA-GWMA, the mitigation obligations set forth in the IGWA-SWC

Settlement Agreement will be submitted to IDWR for approval as a ground water management plan for IGWA members. The Parties agree to support a ground water management plan that incorporates such obligations.

- D. In the event a ground water management plan is not implemented for the ESPA-GWMA or the ESPA-GWMA is dissolved for any reason, such action or inaction shall have no effect upon this Agreement as an approved CM Rule 43 Plan for the SWC delivery call proceeding.

**V. SAFE HARBOR FROM IGWA SPRING RIGHTS:**

- A. During the term of this Agreement, IGWA agrees to not assert a delivery call requesting priority administration against any City based on any of IGWA's spring water rights so long as the Signatory Cities are in compliance with the mitigation obligations set forth in section II of this Agreement.

**VI. CM RULE 43 MITIGATION PLAN:**

- A. This Agreement will be submitted to IDWR for approval, and will be supported by IGWA and the SWC, as a CM Rule 43 Plan in the SWC delivery call proceedings.
- B. In the event this Agreement is not approved as a CM Rule 43 Plan in the SWC delivery call proceedings, this Agreement shall be of no further effect unless the Parties agree otherwise.

**VII. EFFECT ON GROUND WATER DISTRICT ASSESMENTS:**

- A. This Agreement does not waive, cancel, or otherwise affect assessment obligations of any City that belongs to an IGWA ground water district with respect to existing mitigation plans and activities in the Thousand Springs area.
- B. Upon IDWR's approval of this Agreement as a CM Rule 43 Plan, Cities that are members of an IGWA ground water district or that participate in mitigation activities of an IGWA ground water district by contract under Idaho Code § 42-5259 shall have the right to be relieved from future monetary assessments associated with the SWC delivery call while this Agreement is in effect. Each City that desires to be relieved from such assessments shall, if the City is a member of the district, file a petition under Idaho Code § 42-5251, or shall, if the City has contracted with the district, file a written request with the district, to be excluded from the district for all purposes except for existing mitigation plans and activities in the Thousand Springs area, and the board of directors of such district will grant the petition or request. Any City may file such petition in advance of IDWR approval of this Agreement as a CM Rule 43 Plan, with such City's exclusion conditional upon IDWR approval of this Agreement as a CM Rule 43 Plan.

- C. This section VII does not otherwise affect any rights available to Cities under Chapter 52, Title 42, Idaho Code, including but not limited to the right to petition a ground water district to be excluded from existing mitigation plans and activities in the Thousand Springs area, which will be considered by the board of directors of such district on a case by case basis.

#### **VIII. LEGISLATION AND SUPPORT FOR STATE-SPONSORED RECHARGE:**

- A. Upon execution, the Parties shall provide this Agreement to Idaho's Senate Resources and Environment Committee. The Parties agree to use their best efforts to seek passage of a Senate Concurrent Resolution to approve this Agreement, similar to *Senate Concurrent Resolution 135* (2016).
- B. The Signatory Cities agree to support continued funding of state-sponsored managed aquifer recharge of the ESPA.

#### **IX. TERM:**

- A. The term of this Agreement shall be until the average annual ESPA pumping of the Cities reaches 120,000 AF/y as determined by a five-year rolling average, or December 31, 2053, whichever is earlier.
- B. Notwithstanding any other provision or provisions of this Agreement, the Signatory Cities do not commit to a legal or other obligation to make payments or to incur any liability beyond the revenue and income provided during their then fiscal years. In the event a Signatory City's governing body fails to include in its proposed budget or related documents for the ensuing fiscal year or fails to appropriate sufficient funds to fully fund all of lessee's obligations hereunder for any future fiscal year, or otherwise chooses to terminate this Agreement, then the Signatory City will immediately notify all parties to this agreement and said notice will terminate this Agreement as to the notifying Signatory City as of September 30 of the fiscal year in which the failure to appropriate or other terminating event occurs. In such case, the liability and obligations and remedies against the notifying Signatory City will be limited to recovery only of funds appropriated for payments for the then current fiscal year.

#### **X. DISPUTE RESOLUTION:**

- A. Written notice of a dispute arising from or relating to this Agreement, or any alleged breach thereof, shall be provided to all Parties. The Parties shall thereafter attempt to resolve the matter within thirty (30) days of receiving written notice of the dispute through negotiations between the Parties. If the dispute is not resolved through negotiations, the Parties will attempt to resolve the dispute through non-binding mediation with the use of a mediator mutually agreed to by the Parties before resorting to litigation. If the Parties cannot agree to a mediator, the Director of IDWR shall appoint the mediator.

- B. In the event the Parties cannot resolve their dispute via mediation, any one of them may seek judicial relief in district court to seek resolution of the dispute. The provision of this remedy shall not excuse the Parties from participating in good faith negotiations and mediation as set forth above.

## **XI. GENERAL PROVISIONS:**

- A. Entire Agreement. This Agreement sets forth all understandings between the Parties with respect to the subject matter hereof. There are no understandings, covenants, promises, agreements, or conditions, either oral or written between the Parties other than those contained herein.
- B. Binding Date; Effective Date. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns, and shall be effective when it is signed by all of the Parties.
- C. Reservation of Rights. The Parties expressly reserve all rights not modified by this Agreement.
- D. Headings. Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.
- E. Amendment. This Agreement may be amended at any time in writing signed by all Parties.
- F. Waiver. No term of this Agreement shall be deemed waived and no performance shall be excused hereunder unless prior waiver or consent shall be given in writing signed by the Party against whom it is sought to be enforced. Any waiver of any default by any Party shall not constitute a waiver of the same or different default on a separate occasion.
- G. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one and the same agreement.
- H. Electronic signatures. Signatures to this Agreement transmitted by facsimile or email shall be valid and effective to bind the Party so signing.

[End of Agreement; Signatures Below]

**PARTICIPATING MEMBERS OF  
IDAHO GROUND WATER APPROPRIATORS, INC.**

**ABERDEEN-AMERICAN FALLS GROUND WATER DISTRICT**

\_\_\_\_\_  
Nick Behrend, Chairman

\_\_\_\_\_  
Date

**BINGHAM GROUND WATER DISTRICT**

\_\_\_\_\_  
Craig Evans, Chairman

\_\_\_\_\_  
Date

**BONNEVILLE-JEFFERSON GROUND WATER DISTRICT**

\_\_\_\_\_  
Carl Taylor, Chairman

\_\_\_\_\_  
Date

**CAREY VALLEY GROUND WATER DISTRICT**

\_\_\_\_\_  
Leta Hansen, Chairman

\_\_\_\_\_  
Date

**JEFFERSON CLARK GROUND WATER DISTRICT**

\_\_\_\_\_  
Kirk Jacobs, Chairman

\_\_\_\_\_  
Date



MADISON GROUND WATER DISTRICT

\_\_\_\_\_  
Jason Webster, Chairman

\_\_\_\_\_  
Date

MAGIC VALLEY GROUND WATER DISTRICT

\_\_\_\_\_  
Dean Stevenson, Chairman

\_\_\_\_\_  
Date

NORTH SNAKE GROUND WATER DISTRICT

\_\_\_\_\_  
Lynn Carlquist, Chairman

\_\_\_\_\_  
Date

HENRY'S FORK GROUND WATER DISTRICT

\_\_\_\_\_  
Jeff Raybould, Chairman

\_\_\_\_\_  
Date

SOUTHWEST IRRIGATION DISTRICT

\_\_\_\_\_  
Randy Brown, Chairman

\_\_\_\_\_  
Date

AMERICAN FALLS RESERVOIR DISTRICT NO. 2

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Ellis Gooch  
Chairman

Date

A&B IRRIGATION DISTRICT

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Harold Mohlman	Date
Chairman	

BURLEY IRRIGATION DISTRICT

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Dean Edgar  
Chairman

Date

MILNER IRRIGATION DISTRICT

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Scott Breeding  
Chairman

Date

MINIDOKA IRRIGATION DISTRICT

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Ron Kowitz  
Chairman

Date

NORTH SIDE CANAL COMPANY

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John Beukers  
Chairman

Date

TWIN FALLS CANAL COMPANY

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Roger Blass  
Chairman

Date



## SIGNATORY CITIES

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CITY OF BLISS	Date
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CITY OF IDAHO FALLS	Date
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CITY OF BURLEY	Date
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CITY OF JEROME	Date
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CITY OF CAREY	Date
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CITY OF PAUL	Date
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CITY OF DECLO	Date
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CITY OF POCA TELLO	Date
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CITY OF DIETRICH	Date
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CITY OF RICHFIELD	Date
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CITY OF BLISS	Date
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CITY OF RUPERT	Date
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CITY OF GOODING	Date
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CITY OF SHOSHONE	Date
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CITY OF HAZELTON	Date
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CITY OF WENDELL	Date
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CITY OF HEYBURN	Date
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## MEMORANDUM

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**TO:** Honorable Mayor & City Council

**FROM:** Chris H Fredericksen, Public Works Director

**DATE:** November 13, 2018

**RE:** Internal City Mitigation Allocation Agreement

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Attached for consideration is an Internal City Mitigation Allocation Agreement (Internal City Agreement) between the Signatory Cities of the Settlement Agreement between Surface Water Coalition, the Idaho Ground Water Appropriators, and Signatory Cities (Settlement Agreement). The Internal City Agreement identifies how mitigation obligations will be distributed among the signatory and participating cities as established in the Settlement Agreement.

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

## INTERNAL CITY MITIGATION ALLOCATION AGREEMENT

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THIS INTERNAL CITY MITIGATION ALLOCATION AGREEMENT (this “Agreement”) is made and entered into to be effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the undersigned municipal corporations.

### **RECITALS:**

Cities entering into this Agreement own municipal water rights for diversion of ground water from the Eastern Snake Plain Aquifer (“ESPA”) and/or its tributary basins.

On \_\_\_\_, 2019, certain cities<sup>1</sup> (the “Signatory Cities”) entered into a *Settlement Agreement Between the Surface Water Coalition, Participating Members of Idaho Ground Water Appropriators, Inc., and Signatory Cities* (“Final Settlement Agreement” a copy of which is attached as **Exhibit 1**), to resolve disputes regarding the designation of the Eastern Snake Plain Aquifer Ground Water Management Area (“GWMA”) and the Surface Water Coalition<sup>2</sup> delivery call.

The terms of the Final Settlement Agreement obligate the Signatory Cities to supply 7,650 af/year of mitigation water for aquifer enhancement projects when the Idaho Ground Water Appropriators, Inc. (“IGWA”) obligation is 240,000 acre-feet per year (“af/yr”) or the Signatory Cities to supply 9,640/af yr of mitigation water for aquifer enhancement projects when the IGWA obligation is 340,000 af/yr (*see* paragraph II.B. of the Final Settlement Agreement). These mitigation water amounts are referred to herein as the “Mitigation Obligation” associated with the Signatory Cities’ duties under the Final Settlement Agreement. Upon satisfaction of the terms of the Final Settlement Agreement, the Signatory Cities will avoid curtailment of ESPA Wells during the 35-year term of the Final Settlement Agreement.

The Mitigation Obligation is a negotiated volume of water that the parties to the Final Settlement Agreement agreed, if supplied pursuant to the terms of the Final Settlement Agreement, will mitigate for any impacts to ESPA levels associated with pumping of **all** municipal ground water rights in the ESPA.

While the Signatory Cities willingly accepted responsibility for supplying the Mitigation Obligation to assist with impacts to the ESPA aquifer levels that might be associated with municipal pumping, the Signatory Cities themselves are not responsible for 100% of the municipal pumping on the ESPA.

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1 The cities obligated under the Final Settlement Agreement are the cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Idaho Falls, Jerome, Paul, Pocatello, Richfield, Rupert, Shoshone. These are referred to in the Final Settlement Agreement, and may also be referred to here, as the “Signatory Cities”.

2 The Surface Water Coalition (“SWC”) consists of A&B Irrigation District, American Falls Reservoir District No. 2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company

Based on available municipal pumping data from IDWR, a small portion of municipal pumping on the ESPA is associated with cities that do not execute the Final Settlement Agreement.

ESPA cities that do not execute the Final Settlement Agreement are still subject to priority administration and/or other types of administration that IDWR may impose under an approved ESPA-GWMA that are unrelated to the doctrine of prior appropriation. Stated another way, ESPA cities that do not execute the Final Settlement Agreement could be curtailed.

The Signatory Cities desire to clarify their roles and responsibilities in satisfying the Mitigation Obligation under the Final Settlement Agreement.

The Signatory Cities also desire to create a mechanism to extend the protections of the Final Settlement Agreement as agreed therein by all parties to other cities on the ESPA who are not parties to the Final Settlement Agreement, including protection from curtailment. Cities who did not execute the Final Settlement Agreement but which execute an agreement afterward with Signatory Cities will be referred to herein as “Participating Cities.”

### **AGREEMENT:**

For and in consideration of the mutual covenants and promises set forth below, the Signatory Cities and any Participating Cities agree:

1. Term. The term of this Agreement shall match the term of the Final Settlement Agreement (*see* paragraph IX.A of the Final Settlement Agreement), which shall be for a period of: (a) 120,000 af/yr year of total municipal pumping; or (b) thirty-five (35) years beginning on or around January 1, 2019 and ending on December 31, 2053, unless the Final Settlement Agreement is terminated early as provided by its terms, whichever is earlier. In such case, the term of this Agreement shall likewise terminate early.
2. Parties. The Parties to this Agreement shall be the Signatory Cities. Cities who execute a Notice of Intent to Participate are referred to herein as “Participating Cities”. Participating Cities shall be bound by the terms of this agreement the same as if they signed concurrently with the Signatory Cities.
3. Facilitation of the Satisfaction of Mitigation Obligation.
  - a. The Signatory Cities’ Mitigation Obligation is set forth in paragraph II.A. of the Final Settlement Agreement.
  - b. Determination of Signatory Cities’ proportional amount of the Mitigation Obligation.
    - i. The Signatory Cities have determined their initial individual obligation associated with the entire Mitigation Obligation on a basis that equally accounts for the individual city’s water right priority dates and the volumetric pumping amounts reported by an individual city or reported to

IDWR by an individual city through IDWR's WMIS program. *See*, **Exhibit 2** attached.

- ii. Upon execution of a timely provided Notice of Intent to Participate (**Exhibits 3 and 4**) by any Participating City with Signatory Cities, the proportional amounts of the Mitigation Obligation each individual Participating City must provide will be derived using the same methods as those used to develop **Exhibit 2**.
  - iii. Exhibit 3 will be updated once every 3 years starting on January 1, 2022 to re-determine the Signatory Cities and the Participating Cities' proportional amounts to be supplied as part of the entire Mitigation Obligation.
- c. Cooperation.
- i. The Signatory Cities and Participating Cities agree to cooperate in ensuring that the Mitigation Obligation is satisfied every year, whether or not a Signatory City is leasing water from the City of Pocatello ("Pocatello"), the Water District 01 ("WD01") Rental Pool, or other supplier, or supplying mitigation through its own aquifer enhancement project(s) which is defined in paragraph II.A.2 of the Final Settlement Agreement.
  - ii. The Signatory Cities and Participating Cities agree to provide pumping information and data as may be required in order to satisfy any reporting requirements in the Final Settlement Agreement. This information will be provided to Greg Sullivan at Spronk Water Engineers, Inc., 1000 Logan St., Denver, CO 80203 or via email to no later than February 15 each year for the prior years' pumping. The Signatory Cities and Participating Cities agree to pay in equal amounts any fee associated with Spronk's reporting of the information as required by the Final Settlement Agreement.
  - iii. Any Signatory or Participating Cities that elects not to lease Pocatello storage water as described herein to meet the entirety of its mitigation obligation and instead decides to engage in its own aquifer enhancement activities, acknowledges that:
    - (1) any such independent action to satisfy its mitigation obligation is limited to the approved list of aquifer enhancement activities described in paragraph II.A.2 of the Final Settlement Agreement;
    - (2) It must comply with the terms of this Internal Agreement (specifically paragraph 3(c));
    - (3) It must obtain the approval of the parties to the Final Agreement for aquifer enhancement projects it seeks to undertake;

- d. The City of Pocatello agrees as follows:
- i. Pocatello will make available up to 7,650 (or 9,640) af/yr of storage water for lease to Signatory Cities, and Participating Cities, from its Palisades storage account. The main lease terms and price calculator are included below.
  - ii. Pocatello avoids this obligation to lease storage water only due to “Act of God” or as a result of actions from the United States Bureau of Reclamation (“BOR”) or the Committee of Nine (under the WD01 Rental Pool Procedures or otherwise) imposing restrictions on the use of Pocatello’s storage water that were not in place on the date of the Final Agreement.
  - iii. Pocatello’s obligation to lease storage water is limited to supplying the amount necessary to ensure the Signatory Cities and Participating Cities (if any) supply the full Mitigation Obligation. In other words, if a Signatory City or Participating City determines to provide its own mitigation water and not to lease from Pocatello, the proportional amount associated with that individual Signatory City or Participating City will be subtracted from the amount Pocatello must supply under this Agreement.
  - iv. Storage water leases will be for a term of three years which shall match the three-year periods for recalculating each Signatory City’s mitigation obligation described in paragraph 3.b herein, with payment for all three years of leased storage water made up front by any Signatory City. In the event a Participating City elects to participate in the Final Settlement Agreement and enters an agreement in the middle of a three-year term, the Participating City shall make payments as provided under the Notice of Intent to Join Mid-Term.
  - v. All leases executed under paragraph 3.b.iv shall automatically extend in increments of three years at a time until it is terminated by providing notice of intent to terminate on or before January 31 of the last year of the lease.
  - vi. Notice of lease renewal will include the following:
    - (1) An “intent to participate” which, if executed, obligates a city to pay at least \$\_\_\_ [city surcharge] plus its portion of the lease price, set forth below in section 3.b.vi.(3) relating to its individual portion of the Mitigation Obligation calculated in **Exhibit 2**. *See, Exhibit 2.*
    - (2) Lease for the subsequent three-year term.
    - (3) The lease renewal will also include the lease price (determined under the algorithm below).

- (a) Years 1-3 lease rate shall be: WD01 tier 3 dry-year storage water lease rate + wheeling fees + \$1.30 per AF (WD01 administrative fee which may be adjusted from time to time in accordance with the Rental Pool Procedures) + Pocatello surcharge for cost recovery associated with managing the leases and coordinating with WD01 (to be determined by Pocatello).
  - (b) Years 4-6 lease rate and thereafter shall be: WD01 tier 3 dry-year storage water lease rate + wheeling fees + current WD01 administrative fee + current Pocatello surcharge (to be determined), subject to an **adjustment** based on actual water conditions and associated dry-year or wet year storage water lease rates in years 1-3.
- vii. To ensure the amount leased is made available for aquifer enhancement projects as set forth in the Final Settlement Agreement. Towards this end, Pocatello commits to:
  - (1) Work with WD01 and the Idaho Water Resource Board (“IWRB”) to ensure the leased block of Pocatello storage water by the Signatory and Participating Cities is assigned and actions taken to satisfy the Final Settlement Agreement requirements regarding aquifer enhancement projects.
  - (2) Account for mitigation actions taken and track the 5-year rolling average amount supplied for aquifer enhancement projects as set forth in the Final Settlement Agreement and compile the Signatory Cities’ annual report as set forth in paragraph III of the Final Settlement Agreement.
    - (a) Pocatello must meet the 5-year rolling average but the way in which it accomplishes the same is within its sole discretion. Pocatello agrees, however, to deliver mitigation in a manner that includes a minimum of 1,000 af/y as set forth in paragraph II.A. of the Final Settlement Agreement.
  - (3) Compile and report Signatory Cities and Participating Cities pumping data, including updated pumping data, for purposes of the annual report and for recalculating each Signatory Cities and Participating Cities’ obligations to supply their proportional amount of the 7,650/9,640 af/yr.
  - (4) To the extent the obligation becomes 9,640 af/year, the City of Pocatello agrees to ensure that the proper amount is delivered for aquifer enhancement. The Signatory and Participating Cities

agree to work with Pocatello to provide timely, additional payment based on circumstances.

- e. Signatory Cities will require of Participating Cities' the following responsibilities, in addition to the foregoing:
  - i. To remit the Intent to Participate form along proof of compliance with the terms therein no later than December 15 of the year prior to when the Participating Cities intends to be covered by this Agreement and the Final Settlement Agreement.
  - ii. To provide reporting as needed for compliance with the Final Settlement Agreement.
- 4. Participating Cities Joining in the Middle of a Three-Year Term. Notwithstanding the foregoing, paragraph 3.e.i., a Participating City that decides to join in the middle of any three-year term will do so pursuant to the terms of the attached Notice of Intent to Participate.
- 5. Default. Should any Party, whether a Signatory City or a Participating City, default in the performance of any of the covenants or agreements contained herein, other than non-appropriation, such defaulting party shall pay to the injured party or parties all costs and expenses, including, but not limited to, a reasonable attorney's fee, including such fees on an appeal, which the offended Party may incur in enforcing this agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise. Upon default, the Signatory Cities and Participating Cities not in default, may 1) exclude the defaulting City from participating further in this Agreement and may 2) provide notice to IDWR regarding any City who is in default that the defaulting City is no longer being covered by the mitigation contained herein or in compliance with The Final Settlement Agreement.
- 6. Non-Appropriations. Notwithstanding any other provision or provisions of this Agreement, the Signatory Cities do not commit to a legal or other obligation to make payments or to incur any liability beyond the revenue and income provided during their then fiscal years. In the event a Signatory City's governing body fails to include in its proposed budget or related documents for the ensuing fiscal year or fails to appropriate sufficient funds to fully fund all the obligations hereunder for any future fiscal year, or otherwise chooses to terminate this Agreement, then the Signature City will immediately notify all parties to this Agreement and said notice will terminate this Agreement as to the notifying Signature City as of September 30 of the fiscal year in which the failure to appropriate or other terminating event occurs. In such case, the liability and obligations and remedies against the notifying Signature City will be limited to recovery only of funds appropriated for payments for the then-current fiscal year.
- 7. Not Joint Powers Agreement or Loan Agreement. The Parties understand and agree that this Agreement is not a joint powers agreement and should not be interpreted as such. Additionally, nothing herein shall be interpreted as a loan of credit or insurance for



another Signatory or Participating City or the collective group of Signatory and Participating Cities.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the successors in interest and assigns of the Parties hereto.
9. Merger Clause. This writing evidences the complete and final agreement of the parties hereto of this subject matter and no other prior statement, representation, or understanding shall be binding, except as expressly set forth herein.
10. Mistakes Clause. In the event that Pocatello makes a mistake in the amount of water delivered for aquifer enhancement activities, or there is an unanticipated issue that arises, the Parties to this Agreement agree to negotiate in good faith in resolution thereof.
11. Dispute Resolution. If a dispute arises from this Agreement, written notice of the dispute shall be provided to all Signatory and Participating Cities that are then covered by this Agreement and the Final Settlement Agreement. The Signatory and Participating Cities will then attempt to resolve the dispute within 30 days and if the dispute is not resolved through such negotiation then the dispute shall be referred to meditation. In the event the Parties cannot resolve their dispute via mediation, any one of them may seek judicial relief in district court to seek resolution of the dispute. The provision of this remedy shall not excuse the Parties from participating in good faith negotiations and mediation.
12. Headings. Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.
13. Amendment. This Agreement may be amended at any time in writing signed by all Parties.
14. Waiver. No term of this Agreement shall be deemed waived and no performance shall be excused hereunder unless prior waiver or consent shall be given in writing signed by the Party against whom it is sought to be enforced. Any waiver of any default by any Party shall not constitute a waiver of the same or different default on a separate occasion.
15. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one and the same agreement.
16. Electronic Signatures. Signatures to this Agreement transmitted by facsimile or email shall be valid and effective to bind the Party so signing.

IN WITNESS WHEREOF, the parties have each caused their names to be appropriately affixed by duly authorized representatives the day and year first above written.

CITY OF BLISS Date \_\_\_\_\_

CITY OF IDAHO FALLS Date \_\_\_\_\_

CITY OF BURLEY
Date

CITY OF JEROME
Date

CITY OF CAREY Date \_\_\_\_\_

CITY OF PAUL \_\_\_\_\_ Date \_\_\_\_\_

CITY OF DECLO
Date

CITY OF POCA TELLO
Date

CITY OF DIETRICH
Date

CITY OF RICHFIELD
Date

CITY OF GOODING
Date

CITY OF RUPERT
Date

CITY OF HAZELTON Date \_\_\_\_\_

CITY OF SHOSHONE
Date

CITY OF HEYBURN Date \_\_\_\_\_

CITY OF WENDELL
Date

**EXHIBIT 1**

Final Settlement Agreement

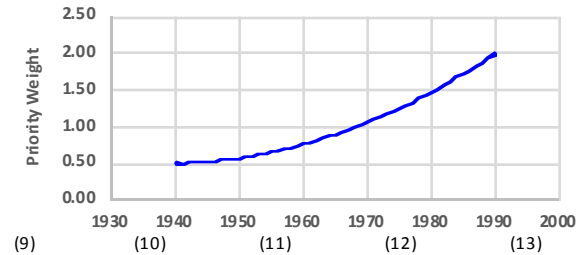
**EXHIBIT 2**

Mitigation Obligation Calculation

**Proposed Allocation of Mitigation Obligation Among Participating Cities**  
**Proposed Cities, IWGA, and SWC Settlement Framework**

Annual Mitigation Volume (af)	7,650
Weighted by Pumping (%)	50%
Weighted by Priority (%)	50%

Priority Weighting	
Year	Weight
1940	0.5
1990	2.0



(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
City	2011 - 2015 Average Pumping (af/y)	Proportion of Total Pumping (%)	Mitigation Volume by Pumping (af/y)	Avg Annual Pumping Rate (cfs)	Peak Month Pumping Rate (cfs)	Weighted Priority Date of Peak Month Pumping (cfs)	Priority Weight	Priority Weighted Pumping (af/y)	Proportion of Total Priority Weighted Pumping (%)	Mitigation Volume by Priority (af/y)	Total Mitigation Volume (af/y)	Proportion of Total Mitigation Volume (%)
Bliss	52.9	0.1%	3.2	0.1	0.1	8/1/1960	0.8	40.4	0.1%	3.7	6.9	0.1%
Burley	6,416.2	10.3%	392.8	8.9	17.0	10/1/1935	0.5	3,208.1	7.6%	290.3	683.1	8.9%
Carey	120.1	0.2%	7.4	0.2	0.4	2/21/1979	1.4	171.7	0.4%	15.5	22.9	0.3%
Declo	122.9	0.2%	7.5	0.2	0.3	10/17/1954	0.6	78.4	0.2%	7.1	14.6	0.2%
Dietrich	60.5	0.1%	3.7	0.1	0.2	12/31/1910	0.5	30.2	0.1%	2.7	6.4	0.1%
Gooding	1,074.1	1.7%	65.8	1.5	2.9	9/17/1930	0.5	537.1	1.3%	48.6	114.4	1.5%
Heyburn	501.6	0.8%	30.7	0.7	1.5	8/27/1989	1.9	974.3	2.3%	88.2	118.9	1.6%
Hazelton	98.7	0.2%	6.0	0.1	0.2	6/21/1917	0.5	49.3	0.1%	4.5	10.5	0.1%
Idaho Falls	27,407.3	43.9%	1,677.9	37.8	82.5	8/27/1961	0.8	21,623.3	51.2%	1,956.8	3,634.7	47.5%
Jerome	3,270.4	5.2%	200.2	4.5	7.7	2/5/1945	0.5	1,713.7	4.1%	155.1	355.3	4.6%
Paul	397.7	0.6%	24.3	0.5	1.1	2/6/1935	0.5	198.8	0.5%	18.0	42.3	0.6%
Pocatello	14,960.3	23.9%	915.9	20.6	42.5	3/9/1939	0.5	7,480.1	17.7%	676.9	1,592.8	20.8%
Pocatello (irr)	3,173.9	5.1%	194.3	n/a	n/a	5/31/1967	1.0	3,054.1	7.2%	276.4	470.7	6.2%
Richfield	805.2	1.3%	49.3	1.1	1.2	12/14/1975	1.3	1,011.4	2.4%	91.5	140.8	1.8%
Rupert	2,516.8	4.0%	154.1	3.5	8.1	1/8/1927	0.5	1,258.4	3.0%	113.9	268.0	3.5%
Shoshone	783.2	1.3%	47.9	1.1	2.1	10/1/1951	0.6	461.9	1.1%	41.8	89.7	1.2%
Wendell	716.9	1.1%	43.9	1.0	2.1	5/15/1945	0.5	375.7	0.9%	34.0	77.9	1.0%
<b>Total</b>	<b>62,478.7</b>	<b>100.0%</b>	<b>3,825.0</b>					<b>42,266.9</b>	<b>100.0%</b>	<b>3,825.0</b>	<b>7,650.0</b>	<b>100.0%</b>
Total Pocatello	18,134.2	29.0%	1,110.2					10,534.2	24.9%	953.3	2,063.5	27.0%

**Notes:**

- (1) Participating cities in ESPA Cities Settlement Agreement.
- (2) Five-year average annual pumping data provided by cities.
- (3) 2011 - 2015 Average Pumping (2) for City / Total 2011 - 2015 Average Pumping.
- (4) Proportion of Total Pumping (3) x Annual Mitigation Volume (af) x 50%.
- (5) 2011 - 2015 Average Pumping (2) / 365.25 days / 1.9835 af/cfs.
- (6) Avg Annual Pumping Rate (5) x Peaking Factor.
- (7) Weighted Priority Date of Peak Month Pumping.
- (8) Priority weight computed using Non-Linear Weighting method.
- (9) 2011 - 2015 Average Pumping (2) x Priority Weight (8).
- (10) Priority Weighted Pumping (9) for City / Total Priority Weighted Pumping.
- (11) Proportion of Total Priority Weighted Pumping (10) x Annual Mitigation Volume (af) x 50%.
- (12) Mitigation Volume by Pumping (4) + Mitigation Volume by Priority (11).
- (13) Total Mitigation Volume (12) for City / Total Mitigation Volume.

**EXHIBIT 3**  
Notice of Intent to Participate

**ESPA CITY**  
**NOTICE OF INTENT TO PARTICIPATE**

As permitted under the terms and conditions of the *Settlement Agreement Between the Surface Water Coalition, Participating Members of Idaho Ground Water Appropriators, Inc., and Signatory Cities* (the “Final Settlement Agreement” attached hereto as **Exhibit 1**) and the terms of an associated agreement—the *Internal Mitigation Allocation Agreement* (the “Internal Agreement” attached hereto as **Exhibit 2**)—the **City of ESPA City** (“ESPA City”) hereby provides the following notice.

1. **Legal Effect of Notice.** ESPA City agrees to fully participate and become legally bound as though ESPA City was a party to the Final Settlement Agreement and the Internal Agreement.
2. **Responsibility To Perform Aquifer Enhancement Actions.** In providing this notice, ESPA City understands and agrees that it will be responsible to undertake its allocated share of aquifer enhancement actions as described in paragraph II.A of the Final Settlement Agreement.
3. **Calculation of Aquifer Enhancement Obligation.** ESPA City agrees to the methodology used to determine its yearly aquifer enhancement obligation calculated pursuant paragraph 3.b of the Internal Agreement.
4. **Lease of Pocatello Storage Water.** Pursuant to paragraph 3.d of the Internal Agreement, ESPA City understands that the City of Pocatello (“Pocatello”) has agreed to make storage water—which is allocated to Pocatello under its contract with the United States Bureau of Reclamation—available to ESPA cities who are parties to the Final Settlement Agreement and the Internal Agreement in order to meet the aquifer enhancement mitigation obligations required under the Final Settlement Agreement. ESPA City understands that use of Pocatello’s storage water will require execution of a private lease agreement with Pocatello. ESPA City hereby provides notice that ESPA City \_\_\_\_\_ IS or \_\_\_\_\_ IS NOT interested in leasing storage water from Pocatello to meet all or a portion of ESPA City’s mitigation obligation. To the extent ESPA City is interested in leasing Pocatello storage water, ESPA City will contact Pocatello and enter into a private lease agreement for such storage water.
5. **Other Aquifer Enhancement Activities.** ESPA City understands that if it elects not to lease Pocatello storage water to meet the entirety of its mitigation obligation and instead decides to engage in its own aquifer enhancement activities, that the approved list of aquifer enhancement activities is described in paragraph II.A.2 of the Final Settlement Agreement and to ensure compliance with the Final Settlement Agreement and the Internal Agreement will:

- a. Comply with the provision of the Internal Agreement (specifically paragraph 3.c) to inform the Signatory and Participating Cities of the aquifer enhancement projects ESPA City undertakes; and
- b. Will seek approval from the parties to the Final Agreement for aquifer enhancement projects that are not described in paragraph II.A.2 of the Final Settlement Agreement.

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CITY OF [NAME OF CITY] Date

**EXHIBIT 1**  
Final Settlement Agreement

**EXHIBIT 2**  
Internal Agreement

**EXHIBIT 4**  
Notice of Intent to Participate Mid-Term

**ESPA CITY**  
**NOTICE OF INTENT TO PARTICIPATE**  
**(Mid-term)**

As permitted under the terms and conditions of the *Settlement Agreement Between the Surface Water Coalition, Participating Members of Idaho Ground Water Appropriators, Inc., and Signatory Cities* (the “Final Settlement Agreement” attached hereto as **Exhibit 1**) and the terms of an associated agreement—the *Internal Mitigation Allocation Agreement* (the “Internal Agreement” attached hereto as **Exhibit 2**)—the **City of ESPA City** (“ESPA City”) hereby provides the following notice.

1. **Legal Effect of Notice.** ESPA City agrees to fully participate and become legally bound as though ESPA City was a party to the Final Settlement Agreement and the Internal Agreement.
2. **Responsibility To Perform Aquifer Enhancement Actions.** In providing this notice, ESPA City understands and agrees that it will be responsible to undertake its allocated share of aquifer enhancement actions as described in paragraph II.A of the Final Settlement Agreement.
3. **Calculation of Aquifer Enhancement Obligation.** ESPA City agrees to the methodology used to determine its yearly aquifer enhancement obligation calculated pursuant paragraph 3.b of the Internal Agreement.
4. **Lease of Pocatello Storage Water.**
  - a. **Background.** Pursuant to paragraph 3.d of the Internal Agreement, ESPA City understands that the City of Pocatello (“Pocatello”) has agreed to make storage water—which is allocated to Pocatello under its contract with the United States Bureau of Reclamation—available to ESPA cities who are parties to the Final Settlement Agreement and the Internal Agreement in order to meet the aquifer enhancement mitigation obligations required under the Final Settlement Agreement.
  - b. **Mid-Term Notice and Requirement to Lease Pocatello Storage.** Because ESPA City is providing this notice during a three-year term as described in the Internal Agreement, as a condition of filing this *ESPA City Notice of Intent to Participate*, ESPA City hereby agrees that in order to meet its mitigation obligation for the remaining portion of the current three-year time period where each Signatory or Participating City’s mitigation obligation is calculated, ESPA City must lease storage water from Pocatello to meet such City’s mitigation obligations.



- c. **Recalculation of Signatory and Participating City's Mitigation Obligations.** ESPA City understands that the result of its participation will be a recalculation of each Signatory and Participating City's mitigation obligation as provided in the Internal Agreement. Some or all of the Signatory or Participating Cities have already entered into lease agreements for a three-year supply of storage water from Pocatello to be used for mitigation purposes to meet such Cities' obligations, which amounts will be adjusted downward with ESPA City's participation.
- d. **Payments to Existing Signatory and Participating Cities.** ESPA City agrees that the reduced amounts allocated to the Signatory and Participating Cities resulting from ESPA City's participation are the source of ESPA City's mitigation supply, and therefore, agrees to provide payment to each Participating City for the cost of such Participating City's reduced amount of leased Pocatello storage water as described on **Exhibit 3** attached hereto.
- e. **Inclusion of Cover Letter.** ESPA City shall include a cover letter in substantially the same form as **Exhibit 4** to be provided to each Participating City with said payment.
- f. **Mitigation After End of Current Three-year Mitigation Period.** ESPA City understand that at the end of the current three-year time period where each Signatory or Participating City's mitigation obligation is calculated, ESPA City will need to enter into a lease agreement with Pocatello if ESPA City intends to use Pocatello storage water as its mitigation supply for the succeeding three-year term.

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CITY OF [NAME OF CITY]

Date

**EXHIBIT 1**

Final Settlement Agreement

**EXHIBIT 2**

Internal Agreement

**EXHIBIT 3**

Adjusted Mitigation Obligations

**EXHIBIT 4**  
Cover Letter

[DATE]

City of \_\_\_\_\_  
[ADDRESS]

***RE: Reimbursement to Your City of Funds Paid to Lease Pocatello Storage Water.***

Dear \_\_\_\_\_:

The City of ESPA City recently submitted an *ESPA City Notice of Intent to Participate* (the “Notice”) in the *Settlement Agreement Between the Surface Water Coalition, Participating Members of Idaho Ground Water Appropriators, Inc., and Signatory Cities* (the “Final Settlement Agreement”) and the terms of an associated agreement—the *Internal Mitigation Allocation Agreement* (the “Internal Agreement”).

Pursuant to the Internal Agreement, ESPA City’s recent participation requires a recalculation of all of the Signatory and Participating City’s mitigation obligations. This recalculation has reduced the mitigation obligation originally calculated for your city. However, because you have already entered into lease agreement with the City of Pocatello for storage water to meet your mitigation obligation, it is necessary for ESPA City to reimburse you for the difference between what you originally leased and what you are now obligated to lease. Accordingly, enclosed with this letter is a check in the amount of \$\_\_\_\_\_ payable to your city.

If you have any questions or concerns regarding this letter or refund, you can contact one of the following attorneys who are familiar with the provision of the Final Agreement and Internal Agreement and this reimbursement process: (1) Candice McHugh and Chris Bromley of the law firm McHugh Bromley, PLLC, at (208) 287-0991; (2) Sarah Klahn of the law firm Somach Simmons & Dunn, at (720) 279-7868; or (3) Rob Harris of the law firm of Holden, Kidwell, Hahn & Crapo, P.L.L.C., at (208) 523-0620.

Sincerely,

\_\_\_\_\_  
[Title]





## MEMORANDUM

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**TO:** Honorable Mayor & City Council

**FROM:** Chris H Fredericksen, Public Works Director

**DATE:** November 13, 2018

**RE:** Idaho Transportation Department State/Local Agreement for the Idaho Unified Certification Program

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Attached is a State/Local Agreement with the Idaho Transportation Department Office of Civil Rights and accompanying Resolution with respect to the Idaho Unified Certification Program.

This agreement requires the City to enter into a Unified Certification Program as part of each recipient's Disadvantaged Business Enterprise (DBE) program.

This program provides for the authorization process for certification, recertification, and decertification of firms in the DBE program for the State of Idaho.

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

RESOLUTION NO. 2018-

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, TO CREATE A UNIFIED CERTIFICATION PROGRAM; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE.

WHEREAS, 49 CFR §26.81 requires federal transportation fund recipients of a State to create a Unified Certification Program (UCP) as part of each recipient's Disadvantaged Business Enterprise (DBE) program; and

WHEREAS, the parties require certification, renewal, and decertification of firms as a DBE; and

WHEREAS, all recipients of federal transportation funds in this state are covered by the requirements of 49 CFR §26.81, and are also required to participate in a UCP; and

WHEREAS, the City of Idaho Falls, Idaho, and the Idaho Transportation Department desire to join together for cooperative action pursuant to carrying out the requirements of 49 CFR §26 and to establish an Idaho Unified Certification Program (IUCP); and

WHEREAS, the Idaho Falls City Council has, by this Resolution, authorized the entering into of the Agreement and the establishment of the IUCP; and

WHEREAS, by that Agreement, the City is bound by the requirements of the IUCP and agrees to abide by the requirements of the IUCP, which is a continuation of the ITD current and previous process.

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

1. The Unified Certification Program process developed and implemented by the Idaho Transportation Department for the State of Idaho has been reviewed by the City of Idaho Falls. The City of Idaho Falls acknowledges the IUPC Agreement is made and entered into by and between the City and the Idaho Transportation Department.
2. Parties recognize this program as the authorizing process for certification, recertification, and decertification of firms in the Disadvantaged Business Enterprise Program for the State of Idaho as required by 49 CFR §26.81.

ADOPTED and effective this \_\_\_\_\_ day of November, 2018.

CITY OF IDAHO FALLS, IDAHO

---

Rebecca L. Noah Casper, Mayor

ATTEST:

---

Kathy Hampton, City Clerk

(SEAL)

STATE OF IDAHO )

) ss:

County of Bonneville )

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO, DO  
HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Resolution  
entitled, "A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A  
MUNICIPAL CORPORATION OF THE STATE OF IDAHO, TO CREATE A  
UNIFIED CERTIFICATION PROGRAM; AND PROVIDING THAT THIS  
RESOLUTION BE EFFECTIVE UPON ITS PASSAGE."

---

Kathy Hampton, City Clerk

(SEAL)

**STATEMENT OF AGREEMENT**  
**Idaho Unified Certification Program**  
**Attachment to IUPC Agreement**

The Unified Certification Program process developed and implemented by the Idaho Transportation Department for the State of Idaho has been reviewed by the agency listed below. We acknowledge the IUPC Agreement is made and entered into by and between the participating agency noted below and the Idaho Transportation Department.

We recognize this program as the authorizing process for certification, recertification and decertification of firms in the Disadvantaged Business Enterprise Program for the State of Idaho as required by 49 CFR §26.81.

BY: \_\_\_\_\_

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

AGENCY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

**RETURN STATEMENT OF AGREEMENT TO:**

[civilrights@itd.idaho.gov](mailto:civilrights@itd.idaho.gov)

**Office of Civil Rights**  
**Idaho Transportation Department**  
**P.O. Box 7129**  
**Boise, Idaho 83703-1129**



**Agreement Establishing  
The Idaho Unified Certification Program  
For the Disadvantaged Business Enterprise Program  
in the State of Idaho**

THIS AGREEMENT is made and entered into by and between the attached listed Recipients and the Idaho Transportation Department (ITD), each a recipient as that term is defined by 49 CFR §26.81 and in accordance with the ITD approved Disadvantaged Business Enterprise (DBE) Program.

WHEREAS, 49 CFR §26.81 requires federal transportation fund recipients of a state to create a Unified Certification Program (UCP) as part of each recipient's DBE program; and

WHEREAS, the parties require certification, renewal, and decertification of firms as a DBE; and

WHEREAS, all recipients of federal transportation funds in this state are covered by the requirements of 49 CFR §26.81, and are also required to participate in a Unified Certification Program; and

WHEREAS, the parties desire to join together for cooperative action pursuant to carrying out the requirements of 49 CFR §26 and to establish an Idaho Unified Certification Program (IUCP); and

WHEREAS, the governing board of each party has by resolution authorized the entering into of the Agreement and the establishment of the IUCP; and

WHEREAS, by that agreement each current recipient and/or future recipients identified by the ITD are bound by the requirements of the IUCP and agree to abide by the requirements of the IUCP which is a continuation of the ITD current and previous process.

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive therefrom, the parties agree as follows:

## **ARTICLE I: PURPOSES**

The parties have entered into this Agreement for the purposes of creating an Idaho Unified Certification Program (IUCP) to be administered by the Idaho Transportation Department Office of Civil Rights (OCR). The ITD OCR will oversee the process for designation of a Certification Committee as stated in the approved ITD DBE Program under section III DBE Certification Process, A. Certification Committee. This Certification Committee will perform DBE certification, renewal, and decertification for Idaho recipients.

## **ARTICLE II: SERVICES**

### **Section 2.1. Idaho Unified Certification Program**

The IUCP is hereby created and implemented in accordance with 49 CFR §26.81, as amended.

- a. The IUCP will follow all certification, renewal, and decertification procedures in accordance with the certification standards of CFR 49, Subpart D of §26, the certification procedures of Subpart E of §26 and Subpart C of §23 as applied by the ITD in its DBE Program. This is addressed in the DBE Program Plan in Subpart E – DBE Certification Procedures. The Application Procedure for Certification as follows:
- i. Applications are conducted online at: <https://itd.dbesystem.com>
  - ii. The ITD DBE Program Coordinator reviews the application and documentation to verify that the information is complete and then requests that the appropriate district Safety Compliance Officer (SCO) perform an on-site review.
  - iii. The Certification Committee will meet every thirty (30) days or sooner if necessary. The Certification Committee will make eligibility decisions within 90 days of receipt of all required information.
  - iv. Out of state firms applying for certification must be certified within their home state to qualify for the Idaho program. On-site-reviews from the out-of-state applicant will be accepted from the home state certification entity. See Subpart E.4, "Interstate Certification", in the DBE Program Plan.
  - v. A firm that believes that they have been wrongly denied certification may appeal in writing to the United States Department of Transportation, Departmental Office of Civil Rights, External Civil Rights Program Division, 1200 New Jersey Avenue SE, Washington, D.C. 20590. Appeals must be submitted within ninety (90) days after certification has been denied.
  - vi. A firm that receives a Notice of Intent to Decertify may request an informal hearing by the selected Hearing Officer. Requests for an oral hearing must be submitted within 10 days of the notification and will be conducted within 30 days of receipt of the request. A hearing request for written arguments must be submitted within 30 days and then the selected Hearing Officer will make a decision within 30 days from receipt of the request. Any request for a hearing must be directed to Office of Civil Rights Manager (OCRM) at the Idaho Transportation Department, 3311 West State Street, Boise, Idaho 83703-1129.
  - vii. The Idaho electronic DBE Directory located on the ITD website will be updated with additions, deletions, and other changes as they occur. In addition to this update, upon request interested members of the IUCP will be notified of changes as they occur.
- b. The IUCP will cooperate fully with oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.

- c. The IUCP will implement USDOT directives and guidance concerning certification, renewal, and decertification procedures in accordance with the certification standards of CFR 49, Subpart D of §26, the certification procedures of Subpart E of §26 and Subpart C of §23 as applied by the approved ITD DBE Program Plan.
- d. Each recipient party to this Agreement shall ensure that the IUCP has sufficient resources and expertise to carry out the requirements of 49 CFR §26 and §23. The ITD Office of Civil Rights is currently receiving appropriate resources to provide the needed actions to meet the requirements of 49 CFR §26 in the establishment and implementation of the IUCP.
- e. The IUCP will be fully implemented within 120 days of the Secretary's approval of the IUCP on the following schedule:
  - i. Within 90 days of the Secretary's approval of the IUCP, each party to this agreement will begin to utilize the unified procedures set forth in the IUCP Agreement.
  - ii. Within 120 days after the Secretary's approval of the IUCP, the Committee will begin to meet on a regular basis as required to certify DBE applicants.
  - iii. Within 60 days after the Secretary's approval the IUCP will post the unified DBE Directory on its website.

## **Section 2.2. Idaho Unified Certification Committee**

The ITD/OCRM is identified as the administrator of the IUCP and responsible for the process for designation of the Certification Committee (Committee) which is established to administer the IUCP certifications as required by the approved ITD DBE Program Plan and CFR 49 §26, Subpart D and Subpart E and §23, Subpart C.

## **Section 2.3. DBE Directory**

An online DBE Directory will be maintained by the ITD/OCR at <https://itd.dbesystem.com>.

## **Section 2.4. Classification of Business and Financial Information**

Each recipient under this Agreement shall safeguard from disclosure to unauthorized person information that may reasonably be considered confidential business information consistent with Federal, State and local law.

# **ARTICLE III: TERM AND SCOPE OF AGREEMENT**

## **Section 3.1. Term**

This agreement shall be effective immediately upon its execution by all the parties hereto and the approval of the IUCP by the Secretary of the USDOT. This Agreement

and the IUCP shall continue in force as long as required by federal laws and regulations, unless terminated pursuant to Section 3.2. of the Agreement.

**Section 3.2. Early Termination**


Any party to this Agreement may terminate its relationship to the IUCP upon a showing of non-recipient status, provided approval is given by USDOT for such termination.

**Section 3.3. Limited Agreement**

This Agreement is limited in scope and nothing contained in this Agreement shall imply any relationship between any of the signing parties beyond the creation and implementation of the IUCP.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below and attached:

**IDAHO TRANSPORTATION DEPARTMENT**

BY:   
BRIAN W. NESS, Director

DATE: 10/12/2017



## MEMORANDUM

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**TO:** Honorable Mayor & City Council

**FROM:** Chris H Fredericksen, Public Works Director

**DATE:** November 13, 2018

**RE:** Idaho Transportation Department State/Local Agreement for the Signal Head Visibility Improvements Project

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Attached is a State/Local Agreement with the Idaho Transportation Department and accompanying Resolution with respect to the Signal Head Visibility Improvements project.

This agreement requires the City to provide contract administration and inspection services as a credit toward our match rate of 7.34%. The billing for the project will be resolved at the conclusion of the project. No match is required at this time.

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

**STATE/LOCAL AGREEMENT  
(CONSTRUCTION)  
PROJECT NO. A020(067)  
SIGNAL HEAD VISIBILITY IMPROVEMENTS, IDAHO FALLS  
BONNEVILLE COUNTY  
KEY NO. 20067**

**PARTIES**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the **IDAHO TRANSPORTATION BOARD** by and through the **IDAHO TRANSPORTATION DEPARTMENT**, hereafter called the State, and the **CITY OF IDAHO FALLS**, acting by and through its Mayor and Council, hereafter called the Sponsor.

**PURPOSE**

The Sponsor has requested federal participation in the costs of improving signalized intersection safety by increasing signal head visibility, which has been designated as Project No. A020(067). This Agreement sets out the responsibilities of the parties in the construction and maintenance of the project.

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

The Parties agree as follows:

**SECTION I. GENERAL**

1. This Agreement is entered into for the purpose of complying with certain provisions of the Federal-Aid Highway Act in obtaining federal participation in the construction of the project.
2. Federal participation in the costs of the project will be governed by the applicable sections of Title 23, U.S. Code (Highways) and rules and regulations prescribed or promulgated by the Federal Highway Administration.
3. Funds owed by the Sponsor shall be remitted to the State through the ITD payment portal at:  
<https://apps.itd.idaho.gov/PayITD> .

4. All information, regulatory and warning signs, pavement or other markings, and traffic signals, the cost of which is not provided for in the plans and estimates, must be erected at the sole expense of the Sponsor upon the completion of the project.
5. The location, form and character of all signs, markings and signals installed on the project, initially or in the future, shall be in conformity with the Manual of Uniform Traffic Control Devices as adopted by the State.
6. This State/Local Agreement (Construction) upon its execution by both Parties, supplements the State/Local Agreement (Project Development) by and between the same parties, dated December 29, 2016.
7. The Sponsor has obtained approval to perform in-kind work on this project as shown on the Request for Approval of In-kind Work by Local Sponsor on Federal-aid Projects, attached to the Project Development agreement referenced in Paragraph 6 above.
8. Sufficient Appropriation. It is understood and agreed that the State is a governmental agency, and this Agreement shall in no way be construed so as to bind or obligate the State beyond the term of any particular appropriation of funds by the Federal Government or the State Legislature as may exist from time to time. The State reserves the right to terminate this Agreement if, in its sole judgment, the Federal Government or the legislature of the State of Idaho fails, neglects or refuses to appropriate sufficient funds as may be required for the State to continue payments. Any such termination shall take effect immediately upon notice and be otherwise effective as provided in this Agreement.

**SECTION II.** That the State shall:

1. Enter into an Agreement with the Federal Highway Administration covering the federal government's pro rata share of construction costs.
2. Advertise, open bids, prepare a contract estimate of cost based on the successful low bid and notify the Sponsor thereof.

3. Award a contract for construction of the project, based on the successful low bid, if it does not exceed the State's estimate of cost of construction by more than ten (10) percent. If the low bid exceeds the estimate by more than 10%, the bid will be evaluated, and if justified, the contract will be awarded and the Sponsor will be notified.
4. Obtain concurrence of the Sponsor before awarding the contract if the Sponsor's share of the low bid amount exceeds the amount set forth in Section III, Paragraph 1 by more than ten (10) percent.
5. Provide to the Sponsor sufficient copies of the Contract Proposal, Notice to Contractors, and approved construction plans.
6. Designate a resident engineer as the State deems necessary to supervise and oversee the overall progress and construction of the project in accordance with the plans and specifications in the manner required by applicable state and federal regulations. This engineer, or his authorized representatives, will review and approve all monthly and final contract estimates and change orders.
7. Appoint the Local Highway Technical Assistance Council as the contract administrator for the State.
8. Authorize the Sponsor to administer the project and make any necessary changes and decisions within the general scope of the plans and specifications. Prior approval of the State will be obtained if it is necessary to deviate from the plans and specifications during the life of the construction contract.
9. Authorize the Sponsor to provide construction inspection, sampling and testing (IS&T) services on the project. Requirements for IS&T Services are detailed in Exhibit B to this Agreement.
10. Within sixty (60) days of receipt of invoices from the Sponsor for the Sponsor's contract administration and inspection costs, review and credit the federal participating amount towards the sponsors match.



11. Upon receipt of contract estimates of construction costs from the Sponsor, process and make payment to the general contractor.
12. Review the materials certification documentation, make appropriate determination of participation, and prepare the materials certification in accordance with the State's Quality Assurance Manual.
13. Maintain complete accounts of all project funds received and disbursed, which accounting will determine the final project costs.
14. Conduct a final cost accounting of the project, which will reconcile eligibility for federal reimbursement with the costs recorded in the project program. The district records inspector will submit a report of expenditures, and a report of completion that will include materials certification, a final invoice, detail of final estimate, change order summary, and any contractor claims.

The final cost accounting will determine if overpayments must be recovered from the Sponsor, or if final reimbursements are due to the Sponsor. Any excess funds transmitted by the Sponsor and not required for the project will be applied to any outstanding balance the Sponsor may have on a previously completed project. If no such outstanding balance exists, the excess funds will be returned to the Sponsor.

15. Perform a final inspection of the project upon completion of construction.
16. Upon satisfactory inspection and project closeout, execute a Certification and Acceptance of Project, and provide a copy to the Sponsor.
17. Subject to the limitations hereinafter set forth, State shall indemnify, defend and save harmless Sponsor from and against any and all demands, claims or liabilities caused by or arising out of any negligent acts by State, or State's officers, agents, and employees while acting within the course and scope of

their employment, which arise from this project. Any such indemnification hereunder by State is subject to the limitations of the Idaho Tort Claims Act (currently codified at chapter 9, title 6, Idaho Code). Such indemnification hereunder by State shall in no event cause the liability of State for any such negligent act to exceed the liability limits set forth in the Idaho Tort Claims Act. Such indemnification shall in no event exceed the amount of loss, damages, expenses or attorney fees attributable to such negligent act, and shall not apply to loss, damages, expenses or attorney fees attributable to the negligence of Sponsor.

**SECTION III.** That the Sponsor shall:

1. Be responsible for its share of the cost for construction plus preliminary engineering, and construction engineering & inspection (CE&I). These costs and the Sponsor's match are detailed in the attached *Worksheet for State/Local Construction Agreements* marked Exhibit A. The actual cost to the Sponsor will be determined from the total quantities obtained by measurement plus the actual cost of engineering and contingencies required to complete the work. Construction engineering and contingencies will be approximately 20.25% of total construction cost.
2. Upon approval of the lowest qualified bid received, if the Sponsor's share exceeds the amount set forth in Section III, Paragraph 1, transmit to the State the Sponsor's portion of such excess cost.
3. Designate Chris Canfield, Assistant Public Works Director, as its agent to administer the project in accordance with the plans and specifications in the manner required by applicable state and federal regulations. The designated agent will prepare all monthly and final contract estimates and change orders, and submit all change orders to the State for their review and approval.

4. Designate Sponsor personnel to provide construction inspection, sampling and testing (IS&T) services on the project as detailed in Exhibit B to this Agreement.
5. Estimate the anticipated project completion costs when construction costs reach 85% of the funds that have been obligated for the project. The Sponsor shall monitor construction costs, and if costs are anticipated to exceed 105% of the total project costs, provide for additional funding necessary to complete the project.
6. Submit invoices to the State on a monthly basis for the contract administration costs of this project, to be credited toward the Sponsor's match per Section II, Paragraph 10 of this Agreement.
7. Submit contract estimates of construction costs to the State on a monthly basis.
8. Upon receipt of the statement referred to in Section II, Paragraph 14 indicating an adjustment in cost against the Sponsor, promptly remit such amount to the State.
9. Maintain the project upon completion to the satisfaction of the State. Such maintenance includes, but is not limited to, preservation of the entire roadway surface, shoulders, roadside cut and fill slopes, drainage structures, and such traffic control devices as are necessary for its safe and efficient utilization. Failure to maintain the project in a satisfactory manner will jeopardize the future allotment of federal-aid highway funds for projects within the Sponsor's jurisdiction.
10. To the extent provided by the Idaho Tort Claims Act, indemnify, save harmless, and defend, regardless of outcome the State from expenses of, and against suits, actions, claims, or losses of every kind, nature, and description, including costs, expenses, and attorney fees that may be incurred by reason of any negligence of the Sponsor in the work which is the subject of this Agreement.

**EXECUTION**

This Agreement is executed for the State by its Engineering Services Division Administrator, and executed for the Sponsor by the Mayor, attested to by the City Clerk, with the imprinted corporate seal of the City of Idaho Falls.

**IDAHO TRANSPORTATION DEPARTMENT**

\_\_\_\_\_  
Engineering Services  
Division Administrator

ATTEST:

**CITY OF IDAHO FALLS**

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

\_\_\_\_\_  
Mayor

(SEAL)

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

hm:20067 SLAConst.docx

RESOLUTION NO. 2018-

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ADOPTING THE FEDERAL AID HIGHWAY SYSTEM PROJECT; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Idaho Transportation Department (hereafter "STATE") has submitted an Agreement stating obligations of the STATE and the CITY OF IDAHO FALLS (hereafter "CITY") for construction of signal head visibility improvements; and

WHEREAS, the STATE is responsible for obtaining compliance with laws, standards, and procedural policies in the development, construction, and maintenance of improvements made to the Federal Aid Highway System when there is Federal participation in the costs; and

WHEREAS, certain functions to be performed by the STATE involve the expenditure of funds as set forth in the Agreement; and

WHEREAS, The STATE can only pay for work associated with the State Highway system; and

WHEREAS, the CITY is fully responsible for its share of project costs; and

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

1. That the Agreement for Federal Aid Highway Project A020(067) is hereby approved.
2. That the Mayor and the City Clerk are hereby authorized to execute the Agreement on behalf of the CITY.
3. That duly certified copies of the Resolution shall be furnished to the Idaho Transportation Department.

ADOPTED and effective this \_\_\_\_\_ day of November, 2018.

CITY OF IDAHO FALLS, IDAHO

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

ATTEST:

Kathy Hampton, City Clerk  
(SEAL)

STATE OF IDAHO )  
 ) ss:  
County of Bonneville )

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO,  
DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Resolution entitled, “A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ADOPTING THE FEDERAL AID HIGHWAY SYSTEM PROJECT; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.”

(SEAL) Kathy Hampton, City Clerk

# **WORKSHEET FOR STATE / LOCAL CONSTRUCTION AGREEMENTS**

Key No: 20067

Project No: A020(067)

Project Name: Signal Head Visibility Improvements

Sponsor: City of Idaho Falls

Description of work: This project will improve signalized intersection safety at traffic citywide by increasing signal head visibility with the following improvements: Reflectorized Back Plates with retroreflective sheeting and side mounted signal heads on the signal poles.

Date of State/Local Agreement for Project Development: 12/29/2016

<b>TOTAL ESTIMATED COST OF CONSTRUCTION Includes E&amp;C</b>	\$209,893		
<b>APPROVED FORCE ACCOUNT WORK</b>	\$31,650		
<b>PLUS PE BY STATE (from 2101)</b>	\$1,000		
<b>PLUS PC BY LHTAC (from 2101)</b>	\$10,000		
<b>PLUS PC (from PC Agreements)</b>	\$0		
<b>MINUS ALL NON-PARTICIPATING</b>	\$0		
<b>PARTICIPATING TOTAL</b>	<b>\$252,543</b>		
<b>MATCH PERCENTAGES</b>			
<b>PERCENTAGE AMOUNTS</b>			
<b>MINUS FEDERAL MAXIMUM</b>			
<b>ADD OVERAGE ( If Any To Local )</b>			
<b>LOCAL SHARE OF CONSTRUCTION AMOUNT</b>			

**FEDERAL**

**LOCAL**

92.66%

7.34%

\$234,006.34

\$18,536.66

\$0

234,006

\$0

\$18,537

## **ADJUSTMENTS**

<b>PLUS ALL NON-PARTICIPATING (From above if work by contract)</b>	\$0
<b>MINUS FUNDS ADVANCED BY THE SPONSOR FOR STATE PE (from PD Agreement)</b>	\$1,000
<b>MINUS APPROVED FORCE ACCOUNT WORK (From above)</b>	\$31,650
<b>MINUS PRELIMINARY ENGINEERING PAID BY LOCAL</b>	\$0

(If LPA has not rec'd reimbursement, use actual PC dollars paid by LPA)

(If LPA has rec'd reimbursement, use local match % of actual PC dollars paid by LPA)

(Amounts must be supported by District Records Inspector Audit)

**CONSTRUCTION AMOUNT REQUIRED FROM SPONSOR AFTER ADJUSTMENTS** **-\$14,113**

Comments:

The city has approval to provide in-kind services for construction engineering & inspection, in the total estimated \$31,650. Cost for these services that are exceed the match required on the project are not eligible for reimbursement.

PREPARED BY: Heather Parker

Date: 11/4/2018

**EXHIBIT A**

## EXHIBIT B

### Construction Inspection, Sampling and Testing Services

The Sponsor shall provide services relating to office and field documentation, Verification Sampling & Testing of materials and inspection staff. The Sponsor shall provide oversight and coordination activities of the project staff which will include Sampler/Testers with the necessary Western Alliance for Quality Transportation Construction (WAQTC) qualifications and skills to perform all associated tests for Aggregate, Embankment & Base/In-Place Density, Asphalt and Concrete. Inspectors shall be IQP (ITD) Certified Inspectors with sufficient skills and experience to assist in administration of this construction project, from project start up, throughout the duration of the construction activities and through project closeout. The project will be administered to ensure compliance with the following contract documents: Special Provisions, sealed Project Drawings and Plans; 2012 (or current) Idaho Standard Specifications for Highway Construction; January 2013 (or current) Supplemental Specifications; July 2013 (or current) QC/QA Special Provisions (QASP); SP-SA Special Provisions- Federal Aid; and all addenda issued prior to bid opening.

The Sponsor shall provide the qualified personnel as necessary to effectively carry out its responsibilities under this agreement.

*The work required by this project is as follows:*

#### I. Construction Administration

This consists of all necessary efforts to administer the project construction contract under the direction of the Idaho Transportation Department (ITD). The Sponsor will be responsible to ensure the project is completed and accepted by the ITD and the Federal Highway Administration (FHWA). This will require interpretation of the plans, coordination of changes to the project, assistance in processing change orders, resolving disputes, claims analysis, and all other engineering tasks normally handled by a Project Engineer/Manager. In addition, the Sponsor shall provide photographic equipment, safety equipment as well as any other necessary items to perform the work. Quality and quantity of these items shall meet with ITD approval. Sponsor is to provide all necessary personnel safety equipment in accordance with OSHA, MSHA, Department of Labor, FHWA, MUTCD and ITD standards and conduct safety reviews/inspections as necessary to ensure a safe work environment.

The Sponsor shall:

1. Under the direction of ITD, act as the Resident Engineer's authorized representative as defined in the Contract Documents. The extent and limitation of the duties, responsibilities and authority of the Engineer as assigned in said Contract Documents shall not be modified, except as the Engineer may otherwise agree in writing. Serve as ITD's liaison with the Contractor, working principally through the Contractor's superintendent and assist in understanding the intent of the Contract Documents.
2. Provide general contract administration on the construction contract in accordance with the ITD Contract Administration Manual, and assist the Project Manager in monitoring Contractor's compliance with contract requirements. Notify Resident Engineer when Contractor is found in non-compliance.
3. Analyze the plans, specifications, special provisions and other contract documents, and recommend to the ITD any necessary or desirable changes to accomplish the project in accordance with the plans and specifications.
4. Attend and assist in the facilitation of pre-construction conferences, partnering meetings, job conferences, weekly coordination meetings, pre-operational meetings, public information meetings, and other project related meetings. Take and maintain notes of all meetings and conferences and then distribute copies to participants within one week.
5. Document any project delay or potential delay caused by conflicts or utilities.



6. Analyze the Contractor's work schedule (Critical Path Diagram, CPM) when submitted and make recommendations to the ITD regarding any changes, or needed changes, to the schedule. Monitor the Contractor's adherence to the work schedule during construction.
7. Maintain a complete set of project records, including daily diaries, quantities for pay items, progress estimates, material deliveries and correspondence.
8. Maintain a daily record of each pay item for the progress estimate. Quantities will be based on daily records and calculations. All such records will be retained.
9. Prepare pay items for posting to ledgers in accordance with established procedures and submit to the ITD with recommendation for payment. The recommendation will be based on such observations and review that, to the best of the Sponsor's knowledge, information and belief, the contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents, and the conditions precedent to the Contractor's being entitled to such payment appear to have been fulfilled.
10. Track and maintain a log on all shop drawing and/or sample submittal and encourage all reviewers to complete their review in a timely manner. Deficiencies will be immediately reported to the ITD.
11. Identify and monitor all project permit requirements and notify the Contractor and ITD immediately when violations or potential violations occur.
12. Upon notice by the Contractor of pending claims for extra work or work beyond the original scope, maintain accurate records showing actual cost of such work.
13. Analyze and make recommendations to the ITD on all requests received from the Contractor for time extensions, contract changes, and extra work.
14. Coordinate all contract changes with the Contractor, ITD, and others as required.
15. Monitor and reinforce each Contractor's compliance with contract provisions in regard to payment of predetermined wage rates in accordance with ITD procedures. This includes verifying Contractor and Subcontractor's payrolls for format classification, pay scale, timely submissions, and concurrence with field reviews. Maintain filing system for payrolls and labor interviews and notify contractors on incorrect classification, pay scales, etc.
16. Monitor and reinforce each Contractor's compliance with contract provisions in regard to Equal Employment Opportunity and Affirmative Action and check job site at least once to verify bulletin board and posters adhere to the contract. Coordinate corrective actions with the ITD.
17. Monitor and reinforce each Contractor's compliance with contract provisions in regard to environmental provisions and permits.
18. Assist ITD in preparing for any litigation or other action that may arise. Prepare claim package in accordance with Memo No. 28 of the Contract Administration Manual on all claims of ITD and Contractor relating to the acceptability of the Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Contractor's work.

## **II. Survey Control**

The Sponsor shall be responsible for verifying the existence and accuracy of location for all reference points and baseline control points indicated on the plans. In performing verification surveys of construction layout, the Sponsor shall:

1. Make and record such measurements as necessary to calculate and document quantities for pay items.
2. Do independent check and verify line, grade, and structure layout.
3. Perform incidental engineering surveys as directed to carry out the services covered by this agreement and to verify and confirm the accuracy of the contractor's survey layout work. All survey work shall be performed under the supervision of a Surveyor registered in Idaho.

### **III. Project Inspection**

There are four distinct and independent areas of inspection and materials testing associated with this project which is as follows:

- Materials Quality Control (QC) and acceptance sampling and testing and inspection when materials are installed into the work by the Contractor.
- Materials verification sampling and testing and inspection to verify the results of the acceptance testing and inspection performed by the Contractor.
- Independent Assurance evaluations will be performed by ITD Materials Section.
- Dispute resolution sampling and testing.

The Sponsor shall coordinate any IA inspections that may be required with ITD.

This includes all work necessary to monitor the Contractor's work in progress to verify the work is in substantial conformance with the Contract Documents. ITD must approve all the inspectors working under this agreement before doing any work on this project. All inspectors will meet the requirements outlined in the Contract Administration Manual, Section 114. Inspectors shall be IQP (ITD) certified Inspectors with sufficient skills and experience to assist in administration of this construction project, from project start up, throughout the duration of the construction activities and through project closeout.

The Sponsor shall provide construction inspection as needed to ensure a quality project. Senior inspectors shall be high school graduates (or GED equivalent) with a minimum of eight (8) years of experience in construction inspection. Inspectors shall be high school graduates (or GED equivalent) with at least three (3) years experience in construction inspection. Inspectors in charge of reviewing the contractor's traffic control shall be TCI IQP certified.

The Sponsor shall:

1. Conduct on-site inspection of the Contractor's work in progress to determine if the work is in accordance with the Contract Documents. Prepare daily reports on ITD forms recording the Contractor's hours on the site, weather conditions, data relative to questions of change orders, field orders, or changed conditions, site visitors, daily activities, decisions, observations in general, and specific observations in more detail as the case of observing test procedures; maintain in the project files, and send copies to ITD on a weekly basis.
2. Assist in enforcing the current ITD safety policy and the safety provisions of the contract. Take immediate action if warranted and report immediately to ITD the occurrence of: safety deficiencies, incidences, hazardous environmental conditions, emergencies, or acts of God endangering: personnel, work, property or the environment.
3. Report to ITD whenever part of the Contractor's work in progress may not produce a completed project that conforms to the Contract Documents or may prejudice the integrity of the design concept of the completed project as a functioning whole as indicated in the Contract Documents.

4. Identify and recommend corrections for any omissions, substitutions, defects and deficiencies in the work of the Contractor.
5. Receive and review all certificates of inspections, tests, and approvals required by the Contract Documents.
6. Check measurements of pay quantities for accuracy, as requested by the ITD, and prepare required documentation for processing of payment to the Contractor.

The frequency and scope of inspections will vary with the work activity being performed; however, the Sponsor shall perform inspection services in accordance with ITD's procedures, policies, directives and industry-accepted standards.

#### *IV. Material Testing*

This task includes all work to determine that the materials supplied and constructed by the Contractor meet the conditions set forth in the contract documents. All sampling and testing personnel working under this agreement must meet the requirements outlined in the Contract Administration Manual, Section 114, for testing and sampling which they perform. All samplers and testers must be accepted by the ITD before performing any work on this project. All testing must be performed at a laboratory qualified through the ITD Laboratory Qualification Program.

The Sponsor shall provide oversight and coordinate the activities of their staff which will include Sampler/Testers with the necessary WAQTC qualifications and skills to perform all associated tests. ITD will provide IA Inspectors and IA testing will be performed by ITD. Materials Verification Testing and inspection duties shall include, but not be limited to asphalt pavement, soils, aggregate, structural and non-structural concrete, conduit installation, incidental items and traffic control operations, and preparation of QC/QA data analysis and review. All work shall be performed in accordance with the project plans, special provisions, ITD Standard Specifications, ITD QA-SP, the ITD Quality Manual and other appropriate standards. The Sponsor will provide all sampling equipment, disposable molds for casting concrete cylinders, sample cartons, sample bags, and other expendable type testing supplies.

The Sponsor shall:

1. Perform project on-site sampling and testing of component materials and completed work items to verify that the materials and workmanship incorporated in each project are in substantial conformity with the plans, specifications and contract provisions. The Sponsor shall meet the minimum sampling frequencies and other provisions as contained in the contract documents, QA Special Provision, ITD Quality Manual, and as required due to project phasing, or other factors which could affect minimum testing frequencies.
2. Keep ITD informed about schedules for sampling and testing on each project and ensure that all documentation reports on sampling and testing are completed and submitted the same week the work is done or as otherwise directed.
3. Monitor the Contractor's Quality Control Plan pursuant to QC/QA Special Provisions. Insert the acceptance and verification testing results into the electronic QC/QA statistical analysis spreadsheet for aggregates and asphalt pavement pay items and forward this spreadsheet via email to the proper ITD representative.
4. Be responsible for transporting samples to be tested in an ITD laboratory or other laboratory to the appropriate laboratory.
5. The responsibility for control of concrete production is assigned to the Contractor. The Sponsor shall provide daily monitoring of the Contractor's Quality Control activities at the project site and perform acceptance sampling and testing at the specified frequency.

6. Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by the Contractor. Make recommendations to the ITD for change orders before allowing any substitutes.
7. Compile and maintain in current status, the Materials Summary Log and applicable QC/QA data entry in accordance with the ITD Policy (MAP's Program).

## **V. Project Closeout**

This task involves acquiring and preparing the necessary project closeout documents, which shall include all supporting records. The Sponsor shall:

1. Verify to ITD that all the necessary documents have been received for submission of contractor's affidavit of payment.
2. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, including certificates of inspection, tests and approvals, shop drawings, samples, and the annotated record documents which are to be assembled by the Contractor in accordance with the Contract Documents to obtain final payment.
3. Promptly conduct an inspection after notice from the Contractor that the entire work is ready for its intended use, in the company of ITD and the Contractor, to determine if the work is Substantially Complete. If there are no objections from ITD and the Sponsor considers the work substantially complete, the Sponsor shall deliver a certificate of substantial completion to ITD and the Contractor.
4. Participate in a final inspection, to include representatives from ITD, to determine if the completed work by the contractor is acceptable so that the Sponsor may recommend in writing, final payment to the Contractor. Accompanying the recommendation for final payment, the Sponsor shall also provide a notice that the work is acceptable to the best of their knowledge, information and belief and based on the extent of the services provided under this agreement.
5. Prepare and furnish to ITD record plans showing appropriate record information based on project annotated documents received from the Contractor. Supply two (2) sets of red marked plans depicting all changes to the original contract will be supplied to ITD.



## MEMORANDUM

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**TO:** Honorable Mayor & City Council

**FROM:** Chris H Fredericksen, Public Works Director

**DATE:** November 13, 2018

**RE:** Grant Application Resolution for the Higbee Avenue Bridge

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Attached for consideration is a resolution for authorization to apply for a grant aiming to replace seriously deteriorated bridges within Idaho Falls city limits. The bridge on Higbee Avenue over the Butte Arm Canal has been the selected as the prime structure based on the poorest condition. This resolution reinforces the commitment of the City of Idaho Falls to match 7.34% of the total project cost. This amount is approximately \$84,000.00 of the estimated \$1,150,000.00.

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

**RESOLUTION NO. 2018-**

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, GRANTING THE MAYOR SPECIFIC AUTHORITY TO APPROVE THE HIGBEE AVENUE BRIDGE GRANT APPLICATION; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Idaho Falls has a Structurally Deficient Bridge located at Higbee Avenue and the Butte Arm Canal; and

WHEREAS, the City of Idaho Falls recognizes a value to seek Federal Aid funding to accomplish the replacement of the structure; and

WHEREAS, the City of Idaho Falls can apply to receive grant funds from, the Local Highway Technical Assistance Council (LHTAC) to replace the bridge at Higbee Avenue and the Butte Arm Canal.

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

1. That the City of Idaho Falls submit to LHTAC a grant application for the replacement of the bridge structure located at Higbee Avenue and the Butte Arm Canal in the amount of \$1,150,000 to include a local match amount of \$84,000 (7.34%).
2. That the Mayor is hereby authorized and directed to sign the Project Application Packet and submit to LHTAC for prioritization.

ADOPTED and effective this \_\_\_\_\_ day of November, 2018.

CITY OF IDAHO FALLS, IDAHO

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

ATTEST:

\_\_\_\_\_  
Kathy Hampton, City Clerk  
(SEAL)

## **Higbee Ave. Bridge over the Butte Arm Canal, Idaho Falls**

This irrigation canal bridge structure over the Butte Arm Canal in Idaho Falls is over 50 years old and consists of a concrete structure with an asphalt wearing surface. It has a load rating from the Idaho Transportation Department field inspection report that requires posting for loads greater than 5 tons. Subsequent to the load rating, the sufficiency rating for the structure has fallen to 35.7.

### System Connectivity

Higbee Avenue is an important collector roadway in Idaho Falls. It carries traffic from the adjoining neighborhoods to E. 1st St to the north and E. 17<sup>th</sup> St to the south, both of which are arterial roadways. Continuing east of Woodruff Ave., this corridor provides direct access to such locations as College of Eastern Idaho and the Grand Teton Mall. Additionally, Higbee Ave. provides a valuable alternative to congested parallel routes (Holmes and Boulevard).

As this bridge continues to deteriorate with age, it is already affecting our City's system connectivity by limiting school bus route options due to the load restrictions. (see the attached letter from the Idaho Falls School District 91). The same is true for the City's Sanitation Division. Replacement of the bridge will restore connectivity for school busing, garbage collection, and other heavy vehicles serving the City of Idaho Falls infrastructure.

### School Bus Route

This bridge is on multiple desired bus routes for the school district. The district does not currently route busses over the bridge due to the load restrictions, as stated in their letter (attached). There are 2 schools within a mile that are served by this structure.

### Postal Service Route

This bridge is on postal delivery routes and integral to the service to the neighborhoods to the East side of Idaho Falls in this area.

### Need for the Bridge

If this bridge is not replaced in the future and more traffic is forced to detour to other arterials or residential streets, we anticipate a domino effect where alternate routes become more congested, traffic delays become more frequent, and residential safety is impacted due to increased traffic. ADA accessibility and pedestrian safety are also concerns with the current railing and sidewalk. Replacing the bridge will allow those concerns to be addressed as well.

Due to the issues outlined above, this bridge is deemed the most critical for replacement within the corporate limits of the City of Idaho Falls. Therefore, your consideration in adding this project to the Federal Aid Bridge program is greatly appreciated.



## MEMORANDUM

**TO:** Honorable Mayor and City Council

**FROM:** Greg A. Weitzel, Director of Parks and Recreation Department

**DATE:** November 14, 2018

**RE:** Donation of \$100,000.00 for Dog Park Improvements by the William J. and Shirley A. Maeck Family Foundation

Attached for your consideration is a Memorandum of Understanding. This Memorandum of Understanding outlines the terms and conditions of a \$100,000.00 donation from the Maeck Family Foundation for the purpose of constructing improvements to the Idaho Falls Dog Park.

This Memorandum of Understanding has been reviewed and prepared by the Legal Department.

The Parks and Recreation Department respectfully requests approval and authorization for the Mayor and City Clerk to sign and execute said document.

Respectfully,

A handwritten signature in blue ink, appearing to read "Greg A. Weitzel", is written over a faint, larger blue outline of the same signature.

Greg A. Weitzel

Department of Parks and Recreation



## **MEMORANDUM OF UNDERSTANDING**

### **DOG PARK DONATION**

MEMORANDUM OF UNDERSTANDING made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, whose mailing address is P.O. Box 50220, Idaho Falls, Idaho, 83405, hereafter referred to as “City”, and William J. and Shirely A Maeck Family Foundation, a charitable foundation, whose mailing address is 4220 W. 17<sup>th</sup> S., Idaho Falls, Idaho, 83402, hereafter referred to as the “Donor” or “Foundation.”

#### **WITNESSETH**

1. Donation by Donor. In consideration of the terms and conditions of this Memorandum of Understanding, Donor hereby commits and agrees to donate the sum of One Hundred Thousand Dollars (\$100,000.00) to the City for the purpose of constructing improvements to the Idaho Falls Dog Park (hereafter “Dog Park”) located at 2878-3140 Lindsey Boulevard in Idaho Falls. Such improvements are generally described as \_\_\_\_\_.

2. Recognition. The City agrees to design and install a metal plaque recognizing the William J. and Shirley A. Maeck Family Foundation donation and to install such plaque in a prominent space on or near the location of improvements. Such plaque shall be kept and maintained for the useful life of the improvements. Notwithstanding the foregoing, nothing herein shall restrict or preclude the City of appropriately recognizing other donors who make similar donations.

3. Use of Donated Funds. City agrees to deposit Donor’s donation into the City’s General Fund account with an earmarked designation such that Donor’s donation will not be used for General Fund purposes other than to defray expenses for the design or construction of the dog park improvements. City also agrees that any future donations made by private donors (other than Donor) to such fund, which are specifically designated for deposit into such earmarked fund, shall also be similarly restricted and used solely for such purposes. In the event the total amount of such third-party donations, when combined with the Donor’s donation, exceed the total amount necessary to fully and completely construct improvements, City shall designate and earmark such excess donated funds (from any source and in any amount) for the development of the dog park.

4. Publicity. Donor recognizes that City and other civic clubs may conduct fund-raising projects for the purpose of raising funds to support design and construction of dog park improvements and in conjunction therewith, flyers, promotional media and other written solicitations may be published in news media or mailed directly to potential donors. City agrees that all such solicitations, media events or promotional materials which use or refer to the Foundation, and which are conducted by or are under the control of the City, will not be conducted, published or released to the general public unless and until Donor has expressly approved the use of the Foundation’s name in such promotions.

5. Restriction on Uses of Earmarked Funds. City agrees that the donation contemplated herein, as well as any future donations made by private donors to the earmarked fund will not be used for the operational or maintenance costs of the dog park and will be used solely for the capital costs associated with the design and construction of the dog park.

6. Acknowledgment of Donation. City agrees that it will, upon request of Donor, execute a written acknowledgment of its receipt of the donation by Donor and will otherwise cooperate with Donor in making claims for appropriate and lawful deductions from Donor's income reported to the U.S. Internal Revenue Service or the State of Idaho Tax Commission for income tax purposes.

7. Binding Effect. This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto. City further agrees that the covenants and conditions set forth herein shall run with and be binding upon City's dog park property.

8. Remedies. In the event either party materially breaches any term or provision of this Agreement, the parties agree that the non-breaching party's remedy shall be limited solely to equitable or injunctive relief and neither party shall have any right to seek damages for such breach.

9. Complete Agreement. This writing evidences the complete and final agreement of the parties regarding Donor's dog park donation, and no other statement, representation or understanding shall be binding except as expressly set forth herein or except as expressly set forth in an independent writing signed by both of the parties.

CITY OF IDAHO FALLS

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

Rebecca L. Noah Casper

Mayor

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

Terry Fricke

STATE OF IDAHO            )  
  )ss.  
County of Bonneville        )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, 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, the municipal corporation that executed the foregoing document, and acknowledged to me that such City executed the same.

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, Idaho  
My Commission Expires: \_\_\_\_\_

(seal)



## MEMORANDUM

**TO:** Honorable Mayor and City Council

**FROM:** Greg A. Weitzel, Director of Parks and Recreation Department

**DATE:** November 14, 2018

**RE:** Gift Deed of Property – Groberg Pocket Park

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Attached for your consideration is a gift deed of property from Joseph and Jeanne Groberg to the City of Idaho Falls.

The property is located on Lot 15, Block 15 of the Packer Addition, Division No. 3. This deed has been reviewed and prepared by the Legal Department.

The City of Idaho Falls was approached by the Groberg family offering a donation of property for the development of a pocket park for the citizens of Idaho Falls. The City Council approved this gift of property in an executive session.

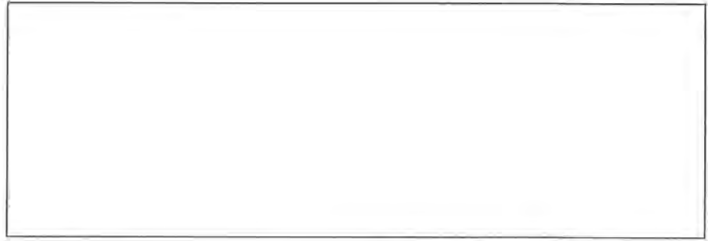
The Parks and Recreation Department respectfully requests approval and authorization for the Mayor and City Clerk to sign and execute the necessary documents.

Respectfully,

A handwritten signature in blue ink, appearing to read "Greg A. Weitzel", is written over a large, stylized blue oval.

Greg A. Weitzel  
Department of Parks and Recreation

# GIFT DEED



Joseph H. and Jeanne T. Groberg, husband and wife, hereby voluntarily give, donate, grant, and convey on \_\_\_\_\_, 2018, to the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho located in Bonneville County, State of Idaho, whose mailing address is P.O. Box 50220, Idaho Falls, Idaho 83405 for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real property located in Bonneville County, Idaho:

See Attached Exhibit "A"

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto GRANTEE and to its heirs and assigns forever.

IN WITNESS WHEREOF, GRANTORS have hereunto subscribed their hands and seals on this day and year first above written.

BY \_\_\_\_\_  
Joseph H. Groberg

BY \_\_\_\_\_  
Jeanne T. Groberg

STATE OF IDAHO                     )  
County of BONNEVILLE         ) ss:  
  )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2018, before me, a notary public in and for said state, personally appeared Joseph H. Groberg known or identified to me to be the person who executed the foregoing instrument and acknowledged to me that he executed the same.

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

Notary Public for Idaho.  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO )  
 ) ss:  
County of BONNEVILLE )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeanne T. Groberg, known or identified to me to be the person who executed the foregoing instrument and acknowledged to me that she executed the same.

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

Notary Public for Idaho.  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## **Exhibit "A"**

### **JOSEPH H. AND JEANNE T. GORBERG – CITY OF IDAHO FALLS**

All that portion of Lot 15, Block 15, first amended plat, Packer Addition, Division No. 3, to the City of Idaho Falls, County of Bonneville, State of Idaho, lying West of the following described line: Beginning at a point on the North line of said Lot 15 which is 94 feet, more or less, East from the Northwest Corner of said Lot 15; said point also being the point at which the extended line of the westerly edge of the parking lot cement curb running in a North/South direction intersects the North line of said Lot 15; running thence South along and parallel to the westerly edge of the parking lot cement curb a distance of 293 feet, more or less, to the southerly boundary of said Lot 15.

Subject to easements, rights-of-way, rights, assessments, reservations, conditions, restrictions and covenants of record or enforceable in law or equity.

Provided, however, that this conveyance is made and accepted on each of the following express conditions, viz:

1. No alcoholic beverages or intoxicating liquors shall be manufactured, kept for sale, or sold on said premises.
2. No place of public entertainment or amusement shall be carried on or permitted to operate on said premises.
3. No nuisance or offensive trade, business, or activity shall be permitted on the land conveyed.
4. No noxious, noisy, or offensive business, trade, or activity shall be carried on or permitted on said premises, nor shall anything be done thereon which shall become an annoyance or a nuisance to a Church or private dwelling located up the adjoining property or in the neighborhood.

Provided that a breach of any of the foregoing conditions shall cause said premises to revert to the said GRANTOR, who shall have the right of immediate re-entry upon said premises in the event of any such breach.

Provided also that a breach of any of the foregoing conditions or re-entry by reason of such breach shall not defer or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said premises or any part thereof, but said conditions shall be binding upon and effective against any owner of said premises whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

Provided further that all and each of the restrictions, conditions and covenants herein

contained shall in all respects terminate and end and be of no further effect either legal or equitable and shall be enforceable after 2080.



and Lots 1 thru 8, Block 15.

TO THE CITY OF IDAHO FALLS, IDAHO

Part of

SW 1/4 of Sec 21, T.2N., R.38E.B.M.

