

AGENDA ITEM SUMMARY

DATE: 3-4-13

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____

SUBJECT:

Consideration of Contract for Services with SIRCOMM and Intergovernmental Agreement between the Cities of Hailey, Bellevue and Sun Valley

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

See attached agreements

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments:

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	_____
___ Safety Committee	___ P & Z Commission	___ Police	_____
___ Streets	___ Public Works, Parks	___ Mayor	_____

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Discuss the proposed contracts and if satisfactory, make a motion to approve and authorize the mayor to sign.

FOLLOW-UP REMARKS:

CITY OF HAILEY
RESOLUTION NO. 2013-15

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF A CONTRACT FOR SERVICES WITH
SOUTHERN IDAHO REGIONAL COMMUNICATIONS CENTER (SIRCOMM)**

WHEREAS, the City of Hailey desires to enter into an agreement, by and between Southern Idaho Regional Communications Center (SIRCOMM) and the Cities of Hailey, Bellevue and SunValley.

WHEREAS, the SIRCOMM agrees to provide non-emergency communications services to Cities in the manner set forth in the attached agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Contract for Services between the City of Hailey and SIRCOMM. and that the Mayor is authorized to execute the attached Agreement,

Passed this 4th day of March, 2013.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

CONTRACT FOR SERVICES

This AGREEMENT is made and entered into as of the date of the last signature of the parties below ("Effective Date") by and between Southern Idaho Regional Communications Center ("SIRCOMM") and the Cities of Hailey, Bellevue and Sun Valley (individually referred to as "City" and collectively referred to as "Cities"). Notwithstanding the Effective Date, the parties agree that this contract shall be deemed to commence on October 1, 2013.

RECITALS

- A. SIRCOMM is a separate legal entity created by the counties of Twin Falls, Jerome, Gooding and Lincoln pursuant to Idaho Code § 67-2328 and is authorized to enter into this agreement under its Joint Powers Agreement;
- B. SIRCOMM operates a consolidated emergency communications system for various fire protection, emergency medical and law enforcement agencies within the Counties of Twin Falls, Jerome, Gooding and Lincoln;
- C. Each City is a municipal corporation possessing all powers granted to municipalities under the applicable provisions of the Idaho Code, including the power to enter into this Agreement;
- D. The Cities have requested SIRCOMM to provide a proposal for dispatch services and SIRCOMM has submitted a proposal to provide dispatch services to the Cities; and
- E. Subject to the terms and conditions of this Agreement, the parties wish to enter into this Agreement to provide dispatch services.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Services: SIRCOMM agrees to provide non-emergency communications services to Cities in the manner set forth in this Agreement, which include:
 - a. Provide a local non-emergency phone number routed directly to SIRCOMM.
 - b. Answer all non-emergency phone calls.
 - c. Record and maintain phone and radio communications for the Cities using the current logging system. These recordings will be available to the Cities by requesting such recordings *pursuant to an* audio request form.
 - d. Dispatch the appropriate agency of *the* City to calls for service.

- e. Provide general dispatch assistance to agencies of the Cities in all non-emergency events, such as traffic stops and citizen contacts.
- f. Answer calls for the various public works departments for each City and make after hours contact as needed.
- g. Provide online access to SIRCOMM Web Reporting (access to event chronologies).
- h. Provide National Crime Information Center ("NCIC") and Idaho Public Safety and Security Information System ("ILETS") checks for Cities that possess current agreements for NCIC or ILETS access and use.
- i. Provide one Communications Dispatcher per twelve hour shift to provide coverage for the Cities.
- j. Provide other Communications Dispatchers to assist as needed.
- k. Maintain Calls-for-Service ("CFS") separate from those of the agencies currently served by SIRCOMM.
- l. Meet monthly with agency heads of each City as needed.
- m. Maintain and provide CFS data by day, week, or month as needed.
- n. Provide CFS data to each City upon request.
- o. Maintain a list of emergency contact numbers for businesses in each City, as provided by the Cities.
- p. Maintain a database of call history by address or business name.
- q. Provide access to regional database of traffic stops and contacts.
- r. Provide assistance in locating a calling party based on Geographic Information System ("GIS") data if current data is available from the agencies in the Cities. If necessary, a canned map may be used.
- s. Provide observation time for officers.
- t. Assist in radio communication training for new officers.

2. MDT Controllers. SIRCOMM shall provide agencies within the Cities access to the Mobile Data Terminal ("MDT") System maintained by SIRCOMM, provided that each City is solely responsible for the purchase of the equipment, software, and the connectivity required, at its sole cost and expense as set forth in Section 3. With MDT access, officers in the field from an agency within a City will have the ability to run NCIC/ILETS checks and to obtain information for a CFS which access and availability shall be subject to the terms of this Agreement. Data from other agencies served by SIRCOMM and messaging between officers and dispatch would also be available on the MDT.

3. Cities' Obligations. The Cities are obligated, at their own expense, to obtain an 800 MHz frequency; to purchase (as necessary) radio equipment, repeater, antenna, laptops and compatible software for the MDT system; and pay any costs associated with their installation. The Cities shall be responsible for obtaining all approvals, submitting to SIRCOMM all required information and documentation, and complying with all legal requirements necessary to access the MDT System and utilize its available information.

4. Consideration. Cities collectively agree to pay SIRCOMM One Hundred Seventy Five Thousand Dollars (\$175,000.00) for the services outlined in this Agreement during the first term of this Agreement. Payment for the services shall be paid to SIRCOMM quarterly in equal

installments on the first day of each quarter during the term as provided herein. The City of Hailey shall be responsible and submit payment for 51% of the total amount due each quarter; the City of Sun Valley shall be responsible and submit payment for 39.6% of the total amount due each quarter; and the City of Bellevue shall be responsible and submit payment for 9.4% of the total amount due each quarter.

5. Term: The term of this Agreement shall be for twelve (12) months and shall commence on October 1, 2013 ("Commencement Date").

This Agreement will terminate and expire on September 30, 2014 at 11:59 p.m. unless the parties agree to renew this Agreement in writing. The parties agree to negotiate in good faith in the event a party requests any changes to the terms of this Agreement to be effective in a new term. In the event there is a court order declaring that all or a part of the Agreement is illegal or that the Agreement violates Idaho law, either party may exercise the right to terminate this Agreement upon written notice provided to the other party, in which case the Agreement is null and void and performance by the parties under the Agreement shall terminate effective thirty (30) days after the notice.

In the event this Agreement is terminated based upon a court decision as set forth in this section, Cities agree to reimburse SIRCOMM Thirty-Five Thousand Forty-One Dollars (\$35,041.00) for the costs and expenses incurred in hiring and training dispatchers to provide the services set forth in this Agreement.

6. Mutual Indemnification, Hold Harmless and Duty to Defend: SIRCOMM hereby covenants and agrees to indemnify, defend and hold the Cities harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any wrongful act or omission on the part of SIRCOMM, its agents or employees, related to damages or bodily injury, property damage, personal injury and death that arise out of SIRCOMM's actions or omissions associated with the dispatch services or duties described in this Agreement. SIRCOMM shall have the duty to tender the defense without cost or expense to the Cities if the claim is solely related to the actions of SIRCOMM.

The Cities hereby covenant and agree to indemnify, defend and hold SIRCOMM harmless from and against any and all claims, demands, causes of action, suits, losses, liabilities, damages, costs and expenses, including attorney fees, that may accrue, directly or indirectly, by reason of any wrongful act or omission on the part of the Cities, its agents or employees, related to damages or bodily injury, property damage, personal injury and death that arise out of the Cities' actions or omissions associated with the dispatch services or its law enforcement or governmental duties and actions or duties described in this Agreement, or by reason of lawsuit seeking injunctive relief or damages by Blaine County related to the authority of the City to enter into this Agreement. The Cities shall have the duty to tender the defense without cost or expense to SIRCOMM if the claim is solely related to the actions of the City.

7. Insurance Requirements. SIRCOMM shall maintain in full force and effect, at its sole cost and expense, during the term of this Agreement, comprehensive general liability

insurance for the purpose of protecting the Cities against liability for loss or damage, for bodily injury, property damage, personal injury, death, civil rights violations, and errors and omissions, relating to the acts of SIRCOMM under this Agreement. Such policy shall provide insurance against property damage in an amount not less than \$500,000.00 and bodily injury with limits of not less than \$500,000.00 per each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of each City are increased pursuant to the Idaho Tort Claims Act (*Idaho Code Sections 6-901, et seq.*). Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Cities. SIRCOMM shall also secure and maintain at least the statutory amounts of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho. Such insurance shall provide at least thirty (30) days written notice to each City before such policy is suspended, canceled, amended or terminated. SIRCOMM shall provide evidence of acceptable insurance at limits listed above to City Clerk of each City.

The Cities shall maintain in full force and effect, at their sole costs and expense, during the term of this Agreement, comprehensive general liability insurance for the purpose of protecting SIRCOMM against liability for loss or damage, for bodily injury, property damage, personal injury, death, civil rights violations, and errors and omissions, relating to the acts of the Cities under this Agreement. Such policy shall provide insurance against property damage in an amount not less than \$500,000.00 and bodily injury with limits of not less than \$500,000.00 for each occurrence; provided, however, the minimum limits of insurance as set forth herein shall be automatically increased at any time the liability limits of each City are increased pursuant to the Idaho Tort Claims Act (*Idaho Code Sections 6-901, et seq.*). Such insurance shall be noncancellable except upon thirty (30) days prior written notice to SIRCOMM. The Cities shall also secure and maintain at least the statutory amount of worker's compensation, disability benefits, and unemployment insurance in accordance with the laws of the State of Idaho. Such insurance shall provide at least thirty (30) days written notice to SIRCOMM before such policy is suspended, canceled, amended or terminated. The Cities shall provide evidence of acceptable insurance at limits listed above to SIRCOMM.

8. Notices All notices, demands and communications hereunder shall be in writing, and shall be served or given either in person or by certified or registered mail, addressed as follows:

City of Hailey, Idaho
115 Main Street South, Suite H
Hailey, Idaho 83333

City of Bellevue
P.O. Box 825
Bellevue, Idaho 83313

City of Sun Valley
P.O. Box 416
Sun Valley, Idaho 83353

SIRCOMM
c/o John Moore
P.O. Box 504
911 E. Avenue H
Jerome, Idaho 83338

Any notice given hereunder by mail shall be deemed delivered when received.

9. Miscellaneous Provisions.

a. Waiver. The waiver by either party of the breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach.

b. Assignment. Except as otherwise provided within this Agreement, neither party hereto may transfer or assign this Agreement without prior written consent of the other party.

c. Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho.

a. Attorney's Fees. In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding.

e. Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

f. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

g. Agreement Binding. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

h. Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

i. Good Faith, Cooperation and Due Diligence. The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties

pursuant to this Agreement. All promises and covenants are mutual and dependent.

j. Counterparts. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

k. Facsimile. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be same as delivery of the original.

l. Parties in Interest. Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

m. Remedies. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

n. Severability. Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

o. Authority. Each signatory agrees that he or she has full authority and consent to sign this Agreement.

p. Amendment. This Agreement may be revised, amended, or canceled in whole or in part, only by means of a written instrument executed by both parties hereto.

EXECUTED and effective as of the Effective Date provided herein.

“SIRCOMM”

By _____
Tom Faulkner, Gooding County Commissioner
Board Member

By _____
Charles Howell, Jerome County Commissioner
Board Member

By _____
Cresley McConnell, Lincoln County
Commissioner
Board Member

By _____
Leon Mills, Twin Falls County Commissioner
Board Member

“CITIES”

“CITY OF HAILEY”

By _____
Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, Hailey City Clerk

"CITY OF BELLEVUE"

By _____
Christopher Koch, Mayor

ATTEST:

Dorothy Barton, Bellevue City Clerk

"CITY OF SUN VALLEY"

By _____
Dewayne Briscoe, Mayor

ATTEST:

Julia Kinsey-Lovey, Sun Valley Deputy City Clerk

CITY OF HAILEY
RESOLUTION NO. 2013-16

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT
WITH THE CITY OF BELLEVUE AND THE CITY OF SUN VALLEY**

WHEREAS, the City of Hailey desires to enter into an intergovernmental agreement with the City of Bellevue and the City of Sun Valley.

WHEREAS, the agreement will allow the three (3) cities to enter into a contract for services with SIRCOMM to provide non-emergency communications services and the allocation for the contract as outlined in the attached agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Intergovernmental Agreement with the City of Bellevue and the City of Sun and that the Mayor is authorized to execute the attached Agreement,

Passed this 4th day of March, 2013.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

INTERGOVERNMENTAL AGREEMENT

(Non-Emergency Dispatch)

This Intergovernmental Agreement ("Agreement") is made this ____ day of March, 2013, by and between **CITY OF BELLEVUE**, a Chartered City ("Bellevue"), **CITY OF HAILEY**, a municipal corporation ("Hailey"), and **CITY OF SUN VALLEY**, a municipal corporation ("Sun Valley"), collectively ("Cities").

RECITALS

A. Bellevue is a political subdivision of the State of Idaho. Christopher Koch is the duly elected and acting mayor of the City of Bellevue, and has been duly authorized to execute this Agreement.

B. Hailey is a political subdivision of the State of Idaho. Fritz X. Haemmerle is the duly elected and acting mayor of the City of Hailey, and has been duly authorized to execute this Agreement.

C. Sun Valley is a political subdivision of the State of Idaho. Dewayne Briscoe is the duly elected and acting mayor of the City of Sun Valley, and has been duly authorized to execute this Agreement.

D. Pursuant to Idaho Code §67-2332, a municipality is authorized to enter into a contract with one or more municipalities to perform any governmental service, activity or undertaking which each entity is authorized by law to perform including joint contracting for services. Furthermore, Idaho Code § 50-301 grants an Idaho municipality the power to contract.

E. The Cities have determined that they are able to contract for non-emergency dispatch services at considerably less cost than the costs charged by Blaine County for comparable services.

F. The Cities have entered into a Contract for Services with the Southern Idaho Regional Communications Center ("SIRCOMM") to provide non-emergency dispatch services beginning October 1, 2013.

G. The Cities wish to memorialize an allocation of the costs charged by SIRCOMM.

H. Subject to the terms and conditions of this Agreement, the Cities are desirous of entering into this Agreement.

AGREEMENT

NOW, THEREFORE, based good and valuable consideration, the receipt of which is hereby acknowledged, and upon the foregoing recitals which are incorporated in this Agreement below as though set forth in full, the parties agree, as follows:

INTERGOVERNMENTAL AGREEMENT/1

1. Allocation of SIRCOMM Contract Costs. Bellevue shall pay SIRCOMM 9.4% of the total amount due SIRCOMM in four (4) equal quarterly payments on or before October 1, 2013, January 1, 2014, April 1, 2014, and July 1, 2014. Hailey shall pay SIRCOMM 51% of the total amount due SIRCOMM in four (4) equal quarterly payments on or before October 1, 2013, January 1, 2014, April 1, 2014, and July 1, 2014. Sun Valley shall pay SIRCOMM 39.6% of the total amount due SIRCOMM in four (4) equal quarterly payments on or before October 1, 2013, January 1, 2014, April 1, 2014, and July 1, 2014.

2. Allocation of Termination Costs. Bellevue shall pay SIRCOMM 9.4% of the costs associated with termination of the Contract for Services, if any, within thirty (30) days after the effective date of any termination. Hailey shall pay SIRCOMM 51% of the costs associated with termination of the Contract for Services, if any, within thirty (30) days after the effective date of any termination. Sun Valley shall pay SIRCOMM 39.6% of the costs associated with termination of the Contract for Services, if any, within thirty (30) days after the effective date of any termination.

3. Term. The term of this Agreement shall be one (1) year, commencing October 1, 2013, and expiring September 30, 2014 ("Original Term"), and shall automatically renew for successive one (1) year periods ("Renewal Term") thereafter, unless one or more parties notify the other parties of an intent to terminate on or before June 1 immediately preceding the expiration of the Original Term or Renewal Term, as the case may be.

4. Miscellaneous Provisions.

a) Final Agreement. This Agreement represents the final agreement between the parties and merges and supersedes all prior negotiations, whether written or oral, with respect thereto.

b) Modification. This Agreement cannot be modified, changed, discharged, or terminated, except by writing signed by the Cities.

c) Time is of the Essence. Time and timely performance is of the essence of this Agreement.

d) Applicable Law. This Agreement shall be construed and enforced under the laws of the State of Idaho.

e) Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by either party.

f) Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

g) Authority. Each signatory has full authority and consent to sign this Agreement.

INTERGOVERNMENTAL AGREEMENT/2

h) Severability. The invalidity or illegality of any provision shall not affect the remainder of this Agreement.

IN WITNESS WHEREOF, the parties, having been duly authorized, have hereunto caused this Intergovernmental Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

BELLEVUE:

CITY OF BELLEVUE, a Chartered City under the laws of the State of Idaho

ATTEST:

By: _____
Dorothy Barton, City Clerk

By: _____
Christopher Koch, Mayor

HAILEY:

CITY OF HAILEY, an Idaho municipal corporation

ATTEST:

By: _____
Mary Cone, City Clerk

By: _____
Fritz X. Haemmerle, Mayor

SUN VALLEY:

CITY OF SUN VALLEY, an Idaho municipal corporation

ATTEST:

By: _____
Hannah Stauts, City Clerk

By: _____
Dewayne Briscoe, Mayor

AGENDA ITEM SUMMARY

DATE: 3/4/13 DEPARTMENT: PW - Water DEPT. HEAD SIGNATURE: 

SUBJECT: Discussion of proposed ordinance amending Municipal Code Title 13, to place the responsibility for frozen water services on the property owners rather than the City of Hailey.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

See attached memo and proposed ordinance changes. Council discussion on the merits of this proposed revision and direction on whether to proceed.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:

Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---------------------------------------------|----------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Benefits Committee |
| <input type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor | <input type="checkbox"/> Streets |
| <input type="checkbox"/> City Clerk | <input type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agrmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

*Additional/Exceptional Originals to: _____
Copies (AIS only)

Public Works Memo

To: Mayor Fritz Haemmerle
City Council Members

CC: Heather Dawson, City Administrator
Ned Williamson, City Attorney
Cole Balis, Water Division Manager

From: Tom Hellen, Public Works Director/City Engineer 

Date: March 4, 2013

Re: Frozen Water Service Lines

During the recent two week cold snap in January Water Division employees responded to 42 calls for frozen water service lines. While most calls were for lines frozen on private property there were 18 calls for lines frozen on the city ROW side of the meter vault. Current municipal code calls for this portion of a water service to be maintained by the city. This has led to additional time and expense to the water department to address these frozen services. Because the city has no control over maintaining even a minimal flow to keep water services from freezing this leads to an expense that is shared by all property owners.

Attached is an ordinance revising the responsibility for protecting against a frozen water service to the property owner (Section 13.04.040, sub-paragraph D). While the Water Division would still answer calls to assist with determining the location of the freeze it would no longer be our responsibility to unthaw the service, regardless of where the frozen area is. It is the recommendation of the Public Works Department to proceed with a revision of the municipal code to address this issue.

A spreadsheet showing the frozen water services and the determined problem is also attached.

HAILEY ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, AMENDING THE HAILEY MUNICIPAL CODE BY AMENDING SECTION 13.02.010, TO AMEND _____; BY AMENDING 13.04.040 TO _____; BY PROVIDING A SEVERABILITY CLAUSE; BY PROVIDING FOR A REPEALER CLAUSE; AND BY PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS,

13.02.010 Definitions.

13.02.010 Definitions. Unless the context specifically indicates otherwise, the meaning of capitalized terms used in this Title 13 shall be as follows:

B. Water.

7. "Municipal Water Service Line" shall mean that portion of an individual water service line that runs from its connection with the Water Main to and including the corporation stop, Meter Vault, Water Meter and radio signaling unit that is installed on the service line. It will be installed within the limits of the public right-of-way or utility easement, ~~and, after installation, it is owned and maintained by the City.~~

10. "Private Water Service Line" shall mean the portion of the water service line that runs from the limits of the building being served to the point of connection with the Municipal Water Service Line.

14. "Water Meter" shall mean a device to measure water use and shall include the radio signal unit and, irrespective of its location, shall be owned and maintained by the city.

13.04.040 Water service lines and water service connections. All materials used and workmanship performed in the installation of a Private Water Service Line and connections to the Municipal Water Service Line shall conform to the following regulations:

A. No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any Water Main, Municipal Water Service Line, or appurtenance thereof, without first obtaining a water connection permit from the City. The permit shall not be issued until all water connection fees have been paid in full. If a building permit is required for a building requiring a water hookup, the Owner shall concurrently apply for a water connection permit. Water services and all Water User fees will commence upon submission of a "Request for Commencement/Discontinuance of Water Service" form. Any attempt by the Owner or

Owner's agent to utilize water service to the Property by means other than the Water Service Line will result in immediate activation of the owner's account and the required commencement of payment of monthly water and wastewater fees.

B. To obtain municipal water services, the Owner or his agent shall make application on a special form furnished by the City. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the City. A permit and inspection fee as established by the City Council in resolution shall be paid to the City at the time the application is filed.

C. All costs and expenses incident to the installation of the Municipal Water Service Line and the connection to the Water Main shall be borne by the Owner. The Municipal Water Service Line shall be installed in accordance with Standards. The Owner shall indemnify the City from any loss or damage that may directly or indirectly be caused by the installation of the Municipal Water Service Line and the connection to the Water Main.

D. The owner shall be responsible for all costs of installation, maintenance and repair of the private water line and private fire service connection line. It shall be the sole responsibility of each owner to keep the water service line from freezing, and in the event the water service line at any point from its connection with the municipal water main freezes, the owner shall clear same at his or her sole expense.

E. D. Except as otherwise provided herein, a separate and independent Municipal Water Service Line and connection shall be provided for every separate Property or for contiguous Properties owned by the same Person regardless of the number of buildings on the Property. If a Property consists of multiple buildings with divisible condominiums or townhomes and if the Property is managed by a owner's association, a separate and independent Municipal Water Service Line shall serve the multiple buildings, with a billing for the water services in accordance with this chapter to the owner's association, unless the Owners of the condominium or townhome units install, at their expense, separate and independent Municipal Water Service Lines, in which case each Owner will be billed for water services in accordance with this chapter.

F. E. Existing Private Water Service Lines may be used in connection with new buildings only when they are found, on examination and testing as required by the City, to meet all requirements of this chapter.

G. F. The materials of construction of the Private Water Service Line and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the retirements of the applicable Standards, State plumbing codes, and applicable AWWA/ANSI.NSF standards.

H. G. The Private Water Service Line shall not be smaller than a three-quarter inch (3/4") inside diameter pipe and shall be laid in a trench of such depth so that the minimum cover over the pipe from finished grade shall be five feet (5'). The alignment of the Private Water Service Line and the Municipal Water Service Line to the Water Main shall be reasonably

straight and shall be located such that the distance between the Private and Municipal Water Service Lines and the Building Wastewater System line shall be a minimum of ten feet (10').

I. H. It shall be unlawful for a person to make or permit the cross-connection of any Private Water System to a water line that is served by the Municipal Water System, except as provided in Section 13.04.060, Cross Connections.

J. I. All connections to the Municipal Water Service Line shall require a Water and Wastewater permit and shall conform to the requirements of the applicable Standards and State plumbing codes.

K. J. The applicant for the water connection permit shall notify the City when the connection of the Private Water Service Line to the Municipal Water Service Line is ready for inspection and obtain approval from the City before receiving municipal water.

L. K. All excavations for the Private Water Service Line installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

M. L. The installation of a Private Fire Service Connection shall comply in all respects to the requirements for a Municipal Water Service Line, Building and Fire codes. The Owner or his agent will be required to pay all costs for connection and extension of the Private Fire Service Connection from the Water Main. The Owner shall also provide an easement to the City for access to any meter installed within private property for operation and maintenance purposes. Failure to provide an easement shall constitute grounds to disconnect water service to a Property.

N. M. The installation of a permanent Irrigation System, connected to the Private Water Service Line, shall require a separate irrigation permit and inspection. The Owner shall obtain this permit prior to installation, shall adhere to all Standards including Section 13.04.060, Cross Connections, and shall notify the City for inspection prior to operating the system.

O. N. The connection of the Private Water Service Line to the Municipal Water Service Line and the connection of a Private Fire Service Connection to the Water Main shall be made by a plumber holding a valid state plumber's license.

Winter of 2012 - 2013 Frozen Water

Service Restored	Date	Cust. / City side	#	Notes
X	12/19/2012	Cust. Side	15 19	leaking on our side
X	12/19/2012	Cust. Side	15 19	leaking on our side
	12/20/2012	Cust. Side	#15	leaking on our side
X	1/7/2013	Cust. Side	#15	Big Wood Plg. Has thaw box
	1/14/2013	Cust. side	#15, 20	leaking on our side
	1/12/2013	Cust. side	12	water is off at the meter
	1/13/2013	Cust. side	12	home owner left water running
	1/13/2013	Cust. Side	12	water is off at the meter
X	1/13/2013	Cust. Side	12	
X	1/14/2013	Cust. Side	12, 19	frozen in bldg'
X	1/17/2013	City side	20 19	ground thaw machine/ thawed 1/30
X	1/17/2013	City side	19	used welder to thaw
	1/18/2013	City Side	19	ran a hose from the neighbors hose bib
X	1/18/2013	Cust. Side	20	left leaking on our side
	1/19/2013	Cust. Side	19	left leaking on our side
X	1/19/2013	City side	19	frozen in the vault, thawed out
X	21-Jan	Cust. Side	15	left leaking on our side
X	1/21/2013	City side	19	frozen in the vault, thawed out
X	1/21/2013	City side	19	thawed w/ welder
X	1/23/2013	City side	19	frozen in the vault, thawed out
X	1/23/2013	City side	12	ran a line from 421's vault
X	1/23/2013	City side	12	thawed w/ welder
X	1/23/2013	Cust. Side	12,15	leaking on our side
X	1/23/2013	Cust. Side	19,15	abandoned meter vault, service off of fire system
	1/23/2013	Cust. Side	12,15	left leaking on our side
X	1/23/132	City side	12,15	ran a line from 221/ thawed 1/29
X	1/23/2013	City side	20	thawed w/ welder
X	1/23/2013	City side	all	ran a line from 121
	1/24/2013	Cust. Side	15,20	ran a hose from the meter
X	1/24/2013	City side	20	ran a line from 3980
X	1/24/2013	City side	20,12	ran a line from 2520/ thawed 1/29
	1/25/2013	Cust. Side	12	hose ran from the vault
	1/25/2013	Cust. Side	12	hose ran from the vault
	1/25/2013	Cust. Side	12	hose ran from the vault
X	1/25/2013	City side	12	Ran a hose from the fire hydt' across St.
X	1/28/2013	City side	20	line ran from 340s meter vault
X	1/28/2013	City side	12,19	thawed in meter vault
	1/28/2013	Cust. Side	12,19	
X	2/1/2013	Cust. Side	20	back in service
X	2/8/2013	City side	12	hose ran from 1875 into vault
	2/11/2013	Cust. Side	15	
	1/26/2013	Cust. Side	12	hose ran from the vault

AGENDA ITEM SUMMARY

DATE: 3/4/13 DEPARTMENT: PW - Water DEPT. HEAD SIGNATURE: 

SUBJECT: Motion to accept the bid from S. Erwin Excavation, Inc. in the amount of \$91,276.00 for the Woodside Surface Water Irrigation Pump Station, and to approve Resolution 2013-17, authorizing a contract with S. Erwin Excavation, Inc. for installation of the Woodside Surface Water Irrigation Pump Station.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

As a part of the overall Woodside Blvd project an irrigation system was installed for the landscape strip with the ultimate goal of using our Hiawatha Canal surface water rights for this irrigation. This work will put in place the pumping station to complete this process.

Five bids were received:

- S. Erwin Excavation, Inc - \$91,276.00
- Conrad Brothers of Idaho, Inc. - \$92,742.65
- Extreme Excavation, Inc. - \$99,109.50
- Sawtooth Construction, Inc. - \$103,000.00
- Clearwater Landscaping - \$116,574.11

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
 Budget Line Item # _____ YTD Line Item Balance \$ _____
 Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
 Staff Contact: _____ Phone # _____
 Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---------------------------------------------|----------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Benefits Committee |
| <input type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor | <input type="checkbox"/> Streets |
| <input type="checkbox"/> City Clerk | <input type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Approve Resolution 2013- _____ and authorize the mayor to sign the contract.

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agrmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

*Additional/Exceptional Originals to: _____
Copies (AIS only)

**CITY OF HAILEY
RESOLUTION NO. 17**

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF CONTRACT WITH S. ERWIN EXCAVATION,
INC.**

WHEREAS, the City of Hailey desires to enter into an agreement with S. Erwin Excavation who will perform and be responsible for installing of the Woodside Surface water irrigation pump station for the City of Hailey.

WHEREAS, the City of Hailey and S. Erwin have agreed to the terms and conditions of the Agreement for Professional Services, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the ISPWC Standard Form of Agreement Between Owner and Contractor on the Basis of a Stipulated Price between the City of Hailey and S. Erwin Excavation and that the Mayor is authorized to execute the attached Agreement,

Passed this 4th day of March, 2013.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

**ISPWC
STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between the City of Hailey (hereinafter called OWNER) and

S. Erwin Excavation, Inc. _____
(hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The work including installation of an irrigation pump station and appurtenances for the City of Hailey Woodside Boulevard Surface Water Irrigation Pump Station and Appurtenances project.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

CITY OF HAILEY
WOODSIDE BOULEVARD SURFACE WATER IRRIGATION PUMP STATION

ARTICLE 3 - ENGINEER

3.01 The Project Engineer is the Hailey City Engineer who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Start of Construction, Substantial Completion and Final Payment*

A. The Work may begin prior to April 1, 2013, will be substantially completed on or before May 3, 2013, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before May 23, 2013.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties

involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER \$500.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 5.01.A below:

A. A. For all Work other than Unit Price Work, a Lump Sum of:

Ninety-One Thousand Two Hundred Seventy-Six and No/100 dollars (\$ 91,276.00)
(use words) (figure)

All specific cash allowances are included in the above price and have been computed in accordance with paragraph 11.02 of the General Conditions.

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 95% of Work completed (with the balance being retainage); and
- b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Work completed, less such amounts as ENGINEER shall determine in accordance with Article 14 of the General Conditions and less 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. If, at Substantial Completion, the character and progress of the work has been satisfactory, the OWNER may, at the OWNER's sole discretion, reduce the amount of retainage being held.

6.03 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - INTEREST

7.01 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 8% per annum.

ARTICLE 8 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site. Contractor acknowledges that Owner does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. The CONTRACTOR is an appropriately licensed public works contractor per Section 54-1902 (Idaho Code).

K. The CONTRACTOR will submit within 30 days of the date of this agreement a Public Works Contract Report (Form WH-5) to the Idaho State Tax Commission in compliance with Section 54-1904A and 63-3624(f), Idaho Code.

ARTICLE 9 - CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive);
2. Performance Bond;
3. Payment Bond;
4. General Conditions – Division 100 of the Idaho Standards for Public Works Construction (not attached)
5. Technical Specifications (pages 1 to 11, inclusive) and Construction Drawings (pages G-1, C-1 to C-3, inclusive);
6. City of Hailey Standard Specifications and Standard Drawings; the Current Edition of the ISPWC (not attached);
7. Addenda (numbers ____ to ____, inclusive);
8. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed;
 - b. CONTRACTOR's Bid;
 - c. Documentation submitted by CONTRACTOR prior to Notice of Award (pages ____ to ____, inclusive);
 - d. _____;

9. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Written Amendments;
- b. Work Change Directives;
- c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

ARTICLE 10 - MISCELLANEOUS

10.01 *Terms*

A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Other Provisions*

A. In an effort to resolve any conflicts that arise during the design or construction of the Work or following the completion of the Work, Owner and Contractor agree that all disputes between them arising out of or relating to the Contract Documents or breach thereof shall be submitted to non-binding mediation, as a condition precedent to litigation, unless the parties mutually agree otherwise. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Blaine County, Idaho, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Owner and Contractor further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Work, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

B. **Attorney's Fees:** In the event any suit or legal action is brought by either party against the other, the prevailing party shall be entitled to recover in such action or proceeding all reasonable attorney's fees, expenses, and costs incurred, including, without limitation, such fees, expenses, and costs on appeal and/or bankruptcy proceeding.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

NOTE TO USER

1. See I-21 and correlate procedures for format and signing between the two documents.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

(If OWNER is a corporation, attach evidence of authority to sign. If OWNER is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of OWNER-CONTRACTOR Agreement.)

License No. _____
(Where applicable)

Agent for service of process: _____

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

Designated Representative:

Designated Representative:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

NOTICE TO PROCEED

Dated March 4, 2013

TO: S. Erwin Excavation, Inc.
(CONTRACTOR)

ADDRESS¹: POB 1112, Bellevue, Idaho 83313

Contract: Woodside Surface Water Irrigation Pump Station
(Insert name of Contract as it appears in the Contract Documents)

You are notified that the Contract Times under the above contract will commence to run on March 8, 2013. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Substantial Completion is May 3, 2013 and the date of readiness for final payment is May 23, 2013.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must
(add other requirements)

(OWNER)

By: _____
(AUTHORIZED SIGNATURE)

(TITLE)

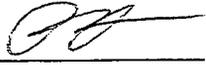
Copy to ENGINEER

(Use Certified Mail, Return Receipt Requested)

EJCDC No. 1910-23 (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

AGENDA ITEM SUMMARY

DATE: 3/4/13 DEPARTMENT: PW - Water

DEPT. HEAD SIGNATURE: 

SUBJECT: Motion to accept the bid from Conrad Brothers in the amount of \$24,855.71 for the Indian Creek Flow Measurement Devices, and to approve Resolution 2013-18, authorizing a contract with Conrad Brothers for installation of the Indian Creek Flow Measurement Devices.

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

As a part of the our water rights agreement with the Indian Creek Ranch Owners Association we are required to install two measuring devices, above and below the pond, to assist in ensuring that minimum stream flows are being maintained in Indian Creek.

Two bids were received; Erwin Excavating - \$32,169 and Conrad Brothers - \$24,855.71.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____

Budget Line Item # _____ YTD Line Item Balance \$ _____

Estimated Hours Spent to Date: _____ Estimated Completion Date: _____

Staff Contact: _____ Phone # _____

Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---------------------------------------------|----------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Benefits Committee |
| <input type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor | <input type="checkbox"/> Streets |
| <input type="checkbox"/> City Clerk | <input type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Approve Resolution 2013- _____ and authorize the mayor to sign the contract.

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

*Ord./Res./Agrmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

*Additional/Exceptional Originals to: _____
Copies (AIS only)

CITY OF HAILEY
RESOLUTION NO. 18

**RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF HAILEY
AUTHORIZING THE EXECUTION OF A CONTRACT WITH CONRAD BROTHERS
FOR INSTALLATION OF THE INDIAN CREEK FLOW MEASUREMENT DEVICES.**

WHEREAS, the City of Hailey desires to enter into an agreement with Conrad Brothers under which Conrad Brothers will install two measuring devices, above and below the pond, to assist in ensuring that minimum stream flows are being maintained in Indian Creek.

WHEREAS, the City of Hailey and Conrad Brothers have agreed to the terms and conditions of the Agreement for Professional Services, a copy of which is attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, that the City of Hailey approves the Standard Form of Agreement Between Owner and Contractor on the Basis of Stipulated Price, between the City of Hailey and Conrad Brothers and that the Mayor is authorized to execute the attached Agreement,

Passed this 4th day of March 2013.

City of Hailey

Fritz X. Haemmerle, Mayor

ATTEST:

Mary Cone, City Clerk

**STANDARD FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR
ON THE BASIS OF A STIPULATED PRICE**

THIS AGREEMENT is by and between the City of Hailey (hereinafter called OWNER) and

Conrad Brothers of Idaho (hereinafter called CONTRACTOR).

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01 CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Furnish and install two Parshall Flume Measuring Devices on Indian Creek.

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**City of Hailey
Indian Creek Measuring Devices
Hailey, Idaho**

ARTICLE 3 - ENGINEER

3.01 The Project Engineer is the Hailey City Engineer who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 - CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before April 26, 2013, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on or before May 1, 2013.

4.03 *Liquidated Damages*

A. CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$250.00 for each day that expires after the time specified in paragraph 4.02 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by

OWNER, CONTRACTOR shall pay OWNER \$250.00 for each day that expires after the time specified in paragraph 4.02 for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 - CONTRACT PRICE

5.01 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraph 5.01.A below:

A. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 5.01.A:

1. Furnish and Install two (2) Parshall Flumes, stilling wells, level-float type stage discharge recorders equipped with float wheel, tape, float, counterweight, solar panel, solar panel charger control, battery, and NEMA 4 enclosures at the locations indicated on the construction drawings. Lump sum @ \$24,855.7.

TOTAL OF ALL ESTIMATED PRICES

\$24,855 and 71/100

Twenty-Four Thousand Eight Hundred and Fifty-Five and 71/100 dollars

ARTICLE 6 - PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in paragraphs 6.02.A.1 and 6.02.A.2 below. All such payments will be measured by the schedule of values established in paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER may determine or OWNER may withhold, in accordance with paragraph 14.02 of the General Conditions:

- a. 95% of Work completed (with the balance being retainage); and
- b. 95% of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

2. Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Work completed, less such amounts as ENGINEER shall determine in accordance with Article 14 of the General Conditions and less 100% of ENGINEER's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion. If, at Substantial Completion, the character and progress of the work has been satisfactory, the OWNER may, at the OWNER's sole discretion, reduce the amount of retainage being held.

6.03 *Prompt Payment*

A. The Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 20 calendar days from receipt of each payment the Contractor receives from the Department. The Contractor shall return retainage to each Subcontractor within 20 calendar days after the Subcontractor's work is satisfactorily completed.

The Contractor shall certify with each estimate payment that payment to Subcontractors has been made within the prescribed time frames. The certification will be made on forms provided by the Department, and returned within 20 calendar days of receiving the estimate payment.

These requirements shall also apply to first or lower tier subcontractors.

6.04 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents.

B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. CONTRACTOR has carefully studied all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site. Contractor acknowledges that Owner does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site.

E. CONTRACTOR does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

F. CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the Site that relates to the Work as indicated in the Contract Documents.

G. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

H. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

J. The CONTRACTOR and their Subcontractors are appropriately licensed public works contractor per Section 54-1902 (Idaho Code).

- K. The CONTRACTOR will submit within 30 days of the date of this agreement a Public Works Contract Report (Form WH-5) to the Idaho State Tax Commission in compliance with Section 54-1904A and 63-3624(f), Idaho Code.

ARTICLE 8 - CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:

1. This Agreement (pages 1 to 6, inclusive);
2. General Conditions – Division 100 of the Idaho Standards for Public Works Construction (not attached)
3. Standard Specifications and Standard Drawings – City of Hailey (not attached);
6. Exhibits to this Agreement (enumerated as follows):
 - a. Notice to Proceed;
 - b. CONTRACTOR's Bid Form;

7. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Written Amendments;
- b. Work Change Directives;
- c. Change Order(s).

B. The documents listed in paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.05 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings indicated in the General Conditions.

10.02 *Assignment of Contract*

A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

A. OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Other Provisions*

A. In an effort to resolve any conflicts that arise during the design or construction of the Work or following the completion of the Work, Owner and Contractor agree that all disputes between them arising out of or relating to the Contract Documents or breach thereof shall be submitted to non-binding mediation, as a condition precedent to litigation, unless the parties mutually agree otherwise. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Blaine County, Idaho, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Owner and Contractor further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Work, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

B. **Attorney's Fees:** In the event any suit or legal action is brought by either party against the other, the prevailing party shall be entitled to recover in such action or proceeding all reasonable attorney's fees, expenses, and costs incurred, including, without limitation, such fees, expenses, and costs on appeal and/or bankruptcy proceeding.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or on their behalf.

NOTE TO USER

- 1. See I-21 and correlate procedures for format and signing between the two documents.

This Agreement will be effective on _____, _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

City of Hailey _____

By: _____

By: _____

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

License No. _____
(Where applicable)

Agent for service of process: _____

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

Designated Representative:

Designated Representative:

Name: Thomas Hellen

Name: _____

Title: Public Works Director/City Engineer

Title: _____

Address: 115 Main St S

Address: _____

Hailey, ID 83333

Phone: 208-788-9830 Ext 14

Phone: _____

Facsimile: 208-788-2924

Facsimile: _____

NOTICE TO PROCEED

Dated March 4, 2013

TO: Conrad Brothers of Idaho
(CONTRACTOR)

ADDRESS¹: POB 3422, Hailey, Idaho

Contract: Indian Creek Measuring Devices

(Insert name of Contract as it appears in the Contract Documents)

You are notified that the Contract Times under the above contract will commence to run on March 8, 2013. By that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Substantial Completion is April 26, 2013 and the date of readiness for final payment is May 1, 2013.

Before you may start any Work at the Site, paragraph 2.05.C of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must
(add other requirements)

Submit a construction management plan that includes Sediment control (SWPPP), work area limits of disturbance, revegetation plan.

(OWNER)

By: _____
(AUTHORIZED SIGNATURE)

(TITLE)

Copy to ENGINEER

(Use Certified Mail, Return Receipt Requested)

EJCDC No. 1910-23 (1996 Edition)
Prepared by the Engineers Joint Contract Documents Committee and endorsed by The Associated General Contractors of America and the Construction Specifications Institute.

