

AGENDA ITEM SUMMARY

DATE: 07/14/08

DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: 

SUBJECT: Findings of Fact, Conclusions of Law, and Decision – Rezone Lots 11 and 12, Block 126 and the north ½ of vacated Cedar Street (Blaine County Senior Center).

BACKGROUND:

See attached draft findings.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Casele # _____
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:

Approve findings as written or as may be amended.

ACTION OF THE CITY COUNCIL:

Date _____

City Clerk _____

FOLLOW-UP:

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

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

Draft 12-30-03

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On June 23, 2008, the Hailey City Council considered an application submitted by the Blaine County Senior Center for an amendment to the Hailey Zoning Map. The Council, having been presented with all information and testimony in favor and in opposition to the proposal, hereby makes the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT

Notice

Notice for the public hearing was published in the Wood River Journal and mailed to property owners within 300 feet and to public agencies and area media on June 4, 2008; and notice was posted on all external boundaries of the property on June 16, 2008.

Application

The proposed amendment would change the zoning for Lots 11 and 12, and the north ½ of vacated Cedar Street (721 3rd Avenue South) from General Residential (GR) to Limited Business (LB), within the Townsite Overlay to allow for parking credits with improvements to the City right-of-way, to allow a greater lot coverage percentage, and to be considered as a permitted use. The use is currently a non-conforming use in the GR district. Currently, the parcels of land occupied by the Blaine County Senior Center are mix zoned. Lots 11 & 12, Block 126 and the north ½ of vacated Cedar Street are zoned GR, while the south ½ of vacated Cedar Street is zoned LB. The rezone request would give all parcels a single zoning classification of LB.

The current use for the property is a Senior Center, which falls under the category of semi-public use. Uses adjacent to the subject property include: a residence, a school, an armory, and a park. The areas to the south and west of the property are zoned LB. Adjacent to the south side of the property is a single family residence zoned LB. To the west of the property is the Wertheimer Park (Rodeo Grounds). The areas to the north and east are zoned GR. Adjacent to the north side of the property is the Silver Creek Alternative School. Adjacent to the east of the property, directly across Third (3rd) Avenue is the Armory. Diagonal (to the southeast, across Third (3rd) Avenue) from the Senior Center is Roberta McKercher Park, zoned Recreational Green Belt.

Procedural History

The applicant has concurrently applied for Design Review for an addition and remodel of an existing building, which was conditionally approved on April 24, 2008 by the Hailey Hearing Examiner. Currently, the Blaine County Senior Center is the lessee of City owned Lots 11 and 12, Block 126 and the north ½ of vacated Cedar Street. The lease agreement will expire in 2080. The Blaine County Senior Center owns the south ½ of vacated Cedar Street. The current building and its use are nonconforming; therefore, Design Review approval is contingent upon the approval of the rezone and preliminary plat applications, which will eliminate the nonconforming issues associated with the subject property.

The project does not propose a change in use. In the GR District a semi-public use, such as the Blaine County Senior Center, is a conditional use, requiring a conditional use permit. In the LB District this use is a permitted use. The Blaine County Senior Center is currently a non-conforming use, without possession of a conditional use permit. Section 13.5 of the Hailey's Zoning Ordinance prohibits the expansion of non-conforming uses; therefore, if the proposed rezone is not approved, a conditional use permit would need to be obtained prior to the issuance of a building permit. The proposed rezone would change the non-conforming use to a conforming use.

The building currently straddles the lot line shared by the north ½ and south ½ of vacated Cedar Street. The building is nonconforming and the proposed addition would increase the degree of nonconformity, requiring the elimination of the lot line. The lot line adjustment, eliminating the lot line between the north (City owned) and south (Senior Center owned) ½ of vacated Cedar Street, requires the Senior Center to deed the south ½ of vacated Cedar Street to the City, with the City's acceptance. The representative of the Senior Center has expressed a willingness to convey title for this property to the City of Hailey.

Analysis and Discussion

The Townsite Overlay District is an overlay district, setting forth bulk regulations and design standards. Where the regulations specified in the Townsite Overlay District differ from corresponding regulations specified for the underlying zoning district, the requirements of the Townsite Overlay District apply and control. The Townsite Overlay requirements do not affect the use regulations of the underlying zoning district.

When considering this rezone the Council evaluated the differences between the two districts; Townsite Overlay bulk regulations with underlying zoning regulations and underlying zoning regulations without the Townsite Overlay District. In the event that the subject property is ever removed from the Townsite Overlay boundary the underlying district regulations would apply.

The substantial differences in use, between GR and LB districts, are listed below.

In addition to the permitted uses allowed in General Residential, Limited Business also allows for the following additional permitted uses:

- lodging establishments
- professional offices
- excluding veterinarians
- health care and social assistance
- real estate and property management companies
- catering services
- arts, entertainment and recreation uses (indoor and outdoor)
- Personal services where retail sales are clearly incidental to the principal use and no outside storage yard or facility is required
- semi public uses
- government offices and public administration, except correctional institutions
- PWSFs or WCFs, attached to street poles, upon the issuance of a wireless permit in

accordance with the provisions of Article VIIA of the Hailey Zoning Ordinance.

Conditional uses allowed in LB and prohibited in GR district are as follows:

- Gasoline Stations and Automotive Repair and Maintenance
- Restaurants
- Wholesale distributors
- Convenience Stores
- Medical personal care stores
- Finance and insurance firms
- Construction contractors' offices with no exterior storage
- PWSF's and WCF's, mounted on any proposed freestanding tower (in GR it can be attached to street poles or mounted on existing buildings or structures, but not freestanding towers)

Accessory Uses allowed in LB, but prohibited in the GR district are as follows:

- Combustible liquid tanks
- PWSF's and WCF's, mounted on existing buildings or structures.

The differences in bulk requirements can be evaluated separately, with and without regard to the Townsite Overlay District.

The difference in bulk requirements without regard to the Townsite Overlay are as follows:

Bulk Regulations	LB	GR
Maximum townhouse sub-lots per acre	20	10
Maximum multi-family residential aggregate density	One (1) dwelling unit per 1/20 of an acre (20 units/acre)	One (1) dwelling unit per 1/10 of an acre (10 units/acre)
Maximum aggregate gross floor area for individual retail/wholesale trade or grouped retail/wholesale trade	36,000 square feet	N/A (Not a permitted use)
Riparian setback	N/A (No riparian setback)	Required
Maximum Lot Coverage	N/A (No maximum)	40%
Size of Detached Accessory Dwelling Unit	N/A (No minimum or maximum)	Minimum gross floor area of 300 square feet and a maximum of 950 square feet

The following are the bulk regulation differences between GR and LB, set forth in the Townsite Overlay District, Section 4.13.6 of the Hailey Zoning Ordinance:

Bulk Requirements	LB in Townsite Overlay	GR in Townsite Overlay
Maximum Building Height	35 feet	30 feet
Maximum Lot Coverage	70%	25-40% depending on building height and whether a garage is on-site
Maximum Lot Size	No maximum	18,000 square feet

The purpose of the LB District is to provide areas for a wide range of residential uses, restricted business uses, and medical facilities. The LB District is intended to allow for commercial uses that would not detract from the established downtown retail businesses, hence general retail is not allowed.

The purpose of the GR District is to provide areas for a variety of residential uses, and a limited number of other uses compatible with this type of residential development. The intent is to preserve the favorable amenities associated with a residential neighborhood.

Standards of Evaluation

Section 14.6 of the Hailey Zoning Ordinance establishes the standards for proposed zoning ordinance map amendments. For each applicable standard (in bold print), the Council makes the following Findings of Fact:

1. The proposed amendment is in accordance with the Comprehensive Plan;
The Comprehensive Plan Land Use Map reflects suitable projected land uses for the City. It considers existing conditions, trends, and desirable future situations, the objective being a balanced mix of land uses for the community and establishes a basis and direction for the expansion and/or location of business, residential, industrial, institutional and green space areas within and adjacent to the City. The Land Use Map depicts the area of the proposed rezone as “Transitional – Mixed use, including residential, providing a buffer between residential neighborhoods and intense business use.” The Council referred back to the purpose of the LB District and determined that rezoning this area to LB is consistent with the Land Use Map. However, the property shall be subject to a Development Agreement, which will eliminate certain uses permitted in the LB District, which are not compatible with the Land Use Map’s definition of “Transitional.” The nature of the Senior Center’s use is neither business or residential and has existed on this site since 1981.

Land Use Districts, Section 5.4 states, “Provide adequate areas for institutional and public facilities, such as schools, senior care, medical, judicial and other community facilities, intergrated within the community.”

- Due to a growing elderly population, the Blaine County Senior Center proposes to expand their facility, which requires a rezone to comply with maximum lot coverage regulations. There are residential dwelling units to the south of the property. The Council considered the impact the rezone may have on the surrounding residential uses as well as whether the expansion will help “provide an adequate” community facility, based on the applicants intentions to expand the current Senior Center. The Senior Center has existed on this site since 1981 and has a 99 year lease with the City of Hailey for the site.

Population Diverstiy, Section 7.2 states, “Encourage proposals that seek to improve Hailey’s social environment, such as educaitional facilites and programs, cultural events, and community amentities.”

- The Council considered how the proposed zone change may improve Hailey’s social environment by providing an adequate sized facility to accommodate its use as a Senior Center.

Community Design, Section 13.0 states, “Encourage in-fill of vacant property in and around the business core.”

- The Council considered the Senior Center’s request for expanding the existing building onto existing vacant areas, thereby in-filling, instead of rebuilding a larger facility in an area further from Hailey’s core, contributing to sprawl and decreasing the ability or convenience of multi-modal transportation access.

Due Process and Public Input, Section 5.8 states, “Proactively amend the Hailey Zone District map to resolve significant conflicts between the Land Use Map and the Zoning Map.”

- The Council determined that the rezone, subject to a Development Agreement is compatible with the Land Use Map given that the property is shown as a “Transitional” area on the Land Use Map and the nature of the existing use.

The applicant has addressed numerous sections of the Comprehensive Plan. The following are a few excerpts from the applicant’s analysis:

- Growth Management, Section 12.0 - “By improving the existing facility and expanding on the existing property, we feel that this is very responsible with regards to growth management; this is based in contrast to moving the facility to another site, potentially further from the city core. By expanding and improving where we are located we are being more responsible to our community since the location is so centrally located and can accommodate the much needed growth for our community’s patrons.”
- Land Use Districts, Section 5.0 - “This facility promotes a higher density type of use that is close to the city core and is within walking distance to many city amenities. This location promotes diverse neighborhoods and adds to the community’s character. The CSCS uses buses to pick up many of the patrons and is also providing bicycle racks and improving sidewalks in the public right of way which promote multi-modal transportation means.”
- Population 7.0 - “As the population increases in Hailey; this facility provides a much-needed social support service and facility for the largest and ever growing senior citizen population. This facility is a not for profit business and does not charge fees for the services that they provide hereby further supporting our local population in need.”

Finding: Based on the above analysis, the City Council determines that the rezone is in accordance with the Comprehensive Plan.

2. Essential public facilities and services are available to support the full range of proposed uses without creating excessive additional requirements at public cost for the public facilities and services;

Block 126, Lots 11 and 12, and the north ½ of vacated Cedar Street, Hailey Townsite are served by all public services.

Finding: The City Council determines that all essential public facilities and services are available to support the full of proposed uses without creating excessive requirements or cost.

3. The proposed uses are compatible with the surrounding area; and

There are a mix of uses and zoning near the Blaine County Senior Center. The areas to the south and west of the property are zoned LB. The LB District extends south to Highway 75 and west to Main Street. The areas to the north and east are zoned GR. The GR District extends north to Elm Street and east to 4th Avenue. The GR District that is contiguous with Block 126, Lots 11 and 12 and the north ½ of vacated Cedar Street comprises a total of eight (8) to nine (9) blocks. It is situated between LR-1, Business, and Transitional districts. The area diagonal (to the southeast, across 3rd Avenue) from the Senior Center is zoned Recreational Green Belt.

Lots 11 and 12, Block 126 and the north ½ of vacated Cedar Street may not remain as its current use in perpetuity; therefore, the rezone application should be evaluated with all permissible LB District uses in mind. As previously stated, the purpose of the LB District is to provide areas for a wide range of residential uses, restricted business uses, and medical facilities. The LB District is intended to allow for commercial uses that would not detract from the established downtown retail businesses, hence general retail is not allowed. In light of the surrounding uses and zoning and based on the purpose and intent of the LB and GR districts and the nature of the existing use, the Council determined that the rezone, subject to a Development Agreement, of this property is compatible with the surrounding uses.

Pursuant to Section 14.8 of the Hailey Zoning Ordinance, the Council approved the rezone subject to a Development Agreement. The development agreement shall limit the permitted uses in the LB and allow for no conditional uses in LB, for the duration of the lease agreement (agreement expires in 2080). This will help ensure the continuation and respect of the residential character of the nearby neighborhood and thereby, limit the perception of the business area encroaching into the residential area.

Finding: The City Council determines that the proposed use is compatible with the surrounding area, yet other LB uses are not.

4. The proposed amendment will promote the public health, safety and general welfare.

Barring any unforeseen circumstances, the use of the property as a Senior Center will remain at least until the lease's expiration in 2080. A connected and supported social environment for all demographics is one aspect of public health. The Council considered whether accommodating a facility (approving the rezone to allow for the proposed expansion) that serves to enhance the elderly population's quality of life will promote the general welfare and social health of the public.

Finding: The City Council determines that the rezone would promote the public health, safety and general welfare.

CONCLUSIONS OF LAW AND DECISION

Based upon the above Findings of Fact, the Council makes the following Conclusions of Law and Decision:

1. Adequate notice, pursuant to Section 14.4.1 of the Hailey Zoning Ordinance No. 532 and Idaho Code, Section 67-6511, was provided.
2. The Zoning Map amendment is in accordance with the Hailey Comprehensive Plan.
3. The Zoning Map amendment shall be approved subject to a Development Agreement.
4. The Development Agreement shall limit the subject property to the following permitted uses within the Limited Business District and allow for no conditional uses for the duration of the lease agreement with Blaine County Senior Center:
 - a. Single Family Dwelling.
 - b. Multiple-Family Dwellings.
 - c. Dwelling Units within Mixed Use Buildings.
 - d. Home Occupations.
 - e. Professional Offices, excluding veterinarians.
 - f. Churches.
 - g. Schools and other educational services.
 - h. Health care and social assistance.
 - i. Catering Services.
 - j. Arts, entertainment and recreation uses (indoor and outdoor).
 - k. Personal Services where retail sales are clearly incidental to the principal use and no outside storage yard or facility is required.
 - l. All Day Care Businesses.
 - m. Manufactured Homes.
 - n. Semi-Public Uses.
 - o. Government offices and public administration, except correctional institutions.
 - p. Parks.

Approved this _____ day of _____, 2008.

Rick Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of _____, 2008, I served a true and correct filed copy of the within and foregoing document upon the parties named below, in the manner noted:

- | | | |
|--------------------------|----------------|-----------------------------|
| <input type="checkbox"/> | U.S. Mail | Blaine County Senior Center |
| <input type="checkbox"/> | Via Facsimile | P.O. Box 28 |
| <input type="checkbox"/> | Hand Delivered | Hailey, ID 83333 |
| <input type="checkbox"/> | U.S. Mail | Jolyon Sawrey, Vital ink |
| <input type="checkbox"/> | Via Facsimile | 30 Wyatt Drive |
| <input type="checkbox"/> | Hand Delivered | Bellevue, ID 83313 |

CITY OF HAILEY

By _____
Becky Mead, Administrative Assistant

AGENDA ITEM SUMMARY

DATE: 7/14/08 DEPARTMENT: Engr DEPT. HEAD SIGNATURE: 

SUBJECT: Approve the award of a contract for the installation of the Countryside Traffic Signal to Power Plus Inc. for \$107,390.

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Bids were opened on July 8 for the installation of the Countryside Traffic Signal from 3 companies. Bids ranged from \$107,390 to \$197,147. I recommend the award of the contract to the low bidder, Power Plus Inc. of Boise, for \$107,390. Review of the contract by the City Attorney will be performed.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: Tom Hellen Phone # 788-9830 Ext 14
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:

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./Agmt./Order Originals: Record *Additional/Exceptional Originals to: _____

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

PROJECT:

COUNTRYSIDE TRAFFIC SIGNAL INSTALLATION

ITEM (Item Number on Plan Sheets 3 & 4)	
1. Electric Service Pedestal (8)	\$ 4200.00
2. Sign Mounting Brackets (9 & 10)	\$ 1400.00
3. Junction Box (11)	\$ 7200.00
4. Advanced Warning Beacons (12)	\$ 17,310.00
5. Advanced Loop Detectors (13)	\$ 6700.00
6. Luminaire (14, 15, 16)	\$ 6116.00
7. Thermoplastic Pavement Marking (17, 18, 19, 20, 21, 22)	\$ 8698.00
8. All Signs (23, 24, 25)	\$ 1700.00
9. Traffic Control (26)	\$ 5100.00
10. Signal Controller Cabinet (1)	\$ 12,766.00
11. Poles (2, 3)	\$ 20,800.00
12. Traffic Signals (4, 5, 6)	\$ 12,400.00
13. Video Detection System (7)	\$ 2900.00
TOTAL OF ALL PRICES	(\$ 107,390.00)

TOTAL OF ALL PRICES

TOTAL WRITTEN IN WORDS One hundred seven thousand three hundred ninety -

(* use tax on owner furnished materials is not included.)

6.01 Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.

6.03 Bidder agrees to comply with Idaho Code 44-1001 through 44-1006, regarding employment of Idaho residents.

QUALITY ELECTRIC

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

PROJECT:

COUNTRYSIDE TRAFFIC SIGNAL INSTALLATION

<u>ITEM (Item Number on Plan Sheets 3 & 4)</u>	
1. Electric Service Pedestal (8)	\$ <u>8,935.00</u>
2. Sign Mounting Brackets (9 & 10)	\$ <u>1,939.00</u>
3. Junction Box (11)	\$ <u>5,426.00</u>
4. Advanced Warning Beacons (12)	\$ <u>42,853.00</u>
5. Advanced Loop Detectors (13)	\$ <u>4,952.00</u>
6. Luminaire (14, 15, 16)	\$ <u>1,643.00</u>
7. Thermoplastic Pavement Marking (17, 18, 19, 20, 21, 22)	\$ <u>15,574.00</u>
8. All Signs (23, 24, 25)	\$ <u>3,316.00</u>
9. Traffic Control (26)	\$ <u>14,922.00</u>
10. Signal Controller Cabinet (1)	\$ <u>2,168.00</u>
11. Poles (2, 3)	\$ <u>11,364.00</u>
12. Traffic Signals (4, 5, 6)	\$ <u>17,824.00</u>
13. Video Detection System (7)	\$ <u>6,484.00</u>
TOTAL OF ALL PRICES	(\$ <u>137,400.00</u>)

TOTAL WRITTEN IN WORDS

One Hundred Thirty Seven Thousand Four Hundred Dollars
& No cents

6.01 Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.

6.03 Bidder agrees to comply with Idaho Code 44-1001 through 44-1006, regarding employment of Idaho residents.

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

PROJECT:

COUNTRYSIDE TRAFFIC SIGNAL INSTALLATION

ITEM (Item Number on Plan Sheets 3 & 4)

1. Electric Service Pedestal (8)	\$ 5,727. ⁰⁰
2. Sign Mounting Brackets (9 & 10)	\$ 2,238. ⁰⁰
3. Junction Box (11)	\$ 7,488. ⁰⁰
4. Advanced Warning Beacons (12)	\$ 47,820. ⁰⁰
5. Advanced Loop Detectors (13)	\$ 12,120. ⁰⁰
6. Luminaire (14, 15, 16)	\$ 2,350. ⁰⁰
7. Thermoplastic Pavement Marking (17, 18, 19, 20, 21, 22)	\$ 15,050. ⁰⁰
8. All Signs (23, 24, 25)	\$ 2,270. ⁰⁰
9. Traffic Control (26)	\$ 4,804. ⁰⁰
10. Signal Controller Cabinet (1)	\$ 9,258. ⁰⁰
11. Poles (2, 3)	\$ 35,806. ⁰⁰
12. Traffic Signals (4, 5, 6)	\$ 39,816. ⁰⁰
13. Video Detection System (7)	\$ 11,800. ⁰⁰
TOTAL OF ALL PRICES	(\$ 197,147. ⁰⁰)

TOTAL WRITTEN IN WORDS One hundred Ninety Seven thousand One hundred forty-Seven dollars and zero cents

6.01 Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with paragraph 14.07.B of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work within the times specified above, which shall be stated in the Agreement.

6.03 Bidder agrees to comply with Idaho Code 44-1001 through 44-1006, regarding employment of Idaho residents.

AGENDA ITEM SUMMARY

DATE: 7/14/08 DEPARTMENT: Engr DEPT. HEAD SIGNATURE: 

SUBJECT: Motion to approve a study by SPF Water Engineering of the Peregrine Ranch Recharge proposal

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

Review the scope of work and either recommend approval of the contract or a revision of the scope of work. Authorize the mayor to sign.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Caselle # _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: Tom Hellen Phone # 788-9830 Ext 14
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:

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./Agmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

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



July 3, 2008

Mr. Tom Hellen
Public Works Director
City of Hailey
115 Main Street South, Suite H
Hailey, ID 83333

RECEIVED

JUL 08 2008

(MHC) TA

Subject: Proposal for Peregrine Ranch Recharge Analysis

Dear Tom,

SPF Water Engineering, LLC (SPF) is pleased to provide a proposal for analyzing ground water recharge and mitigation options at the Peregrine Ranch Development. We understand that the City would like an independent review of recharge and mitigation options proposed by Brockway Engineering on behalf of Harry Rinker and Peregrine Ranch.

The proposed project consists of recharging a shallow aquifer by diverting water into ponds on the Peregrine Ranch property via an existing diversion from the Hiawatha Canal. Three potential participants were identified for the project (Peregrine Ranch, City of Hailey, and the Blaine County School District), each of which owns surface water irrigation rights. The recharge is proposed to serve as mitigation for junior priority ground water rights that are used for irrigation.

Surface and ground water is currently administered separately in the Big Wood basin by the Idaho Department of Water Resources (IDWR). However, we anticipate conjunctive management of surface and ground water in the future (possibly within the next five years). Under conjunctive management, it is possible that a water delivery call could lead to temporary curtailment of diversions for irrigation under junior-priority ground water rights (such as water rights that are currently used by the City of Hailey for residential irrigation). In this case, mitigation of junior-priority water use with senior-priority surface water may help avert full or partial curtailment.

The City could have two general options for mitigating all or a portion of junior-priority ground water use: (1) leave water that could have been diverted under water right 37-10717 (with a priority date of March 24, 1883) in the Big Wood River or (2) divert water under the same right into a recharge basin such as that proposed by Peregrine Ranch. The first option was used by the Blaine County School District for the mitigation of a portion of ground water use at the Woodside Elementary School. However, it may be possible to achieve a greater mitigation benefit with the second option if there is sufficient storage of recharged ground water to cover out-of-priority periods.

SCOPE OF WORK

The goals of the following tasks are to (1) form an initial opinion of how the proposed Peregrine Ranch recharge project could help mitigate withdrawals by City of Hailey wells during a future ground water curtailment and (2) identify possible alternatives to achieving the same goal.

1. Review of Local Aquifer Conditions

The first task will consist of reviewing (a) drillers reports from local wells, (b) drillers' reports from City of Hailey wells, and (c) other available hydrogeologic information to estimate the possible effects of shallow aquifer recharge at Peregrine Ranch on local aquifers. At issue is the degree to which benefits of recharge might extend through potential priority calls. The result of this effort would be an initial opinion of recharge benefits; further work may be required to adequately define impacts and benefits and limitations for subsequent IDWR administration purposes.

2. Review of City Water Rights

SPF will map and review water rights held by the City of Hailey. The purpose of this review would be to become familiar with the City's water right portfolio and to identify other possible recharge/mitigation needs and opportunities.

3. Review of City Irrigation Use

SPF will review typical water use for seasonal irrigation based on information supplied by the City. This information will be used to evaluate the extent to which possible mitigation would cover existing City irrigation use.

4. Provide Recommendations

SPF will summarize the results of Tasks 1-3 in a brief technical memorandum and provide recommendations regarding potential mitigation options for the City of Hailey.

SCHEDULE

SPF is prepared to begin this review within approximately two weeks; with completion in six weeks (unless faster turnaround is required).

PROJECTED COST

SPF proposes to perform this work on a time and materials basis. A current hourly rate schedule is provided as Table 1. Direct costs (travel, photocopy, postage, etc.) will be billed at the actual cost plus 15%.

A detailed cost estimate has not been prepared for this project. For budgetary purposes, we suggest that a project of this scope could cost between \$3,000 and \$6,000.

If this proposal (and attached Schedule of Fees and Conditions) meets with your approval, it may serve as the basis for agreement with an upper budget limit of \$6,000 (SPF will exceed this amount only with written approval of the City) by affixing a signature in the space provided below. Please return one signed original to my office.

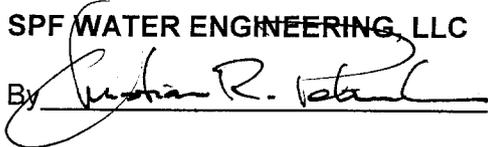
Thank you for the opportunity to be of service – we look forward to working with you.

Respectfully submitted,

Accepted By:

SPF WATER ENGINEERING, LLC

CITY OF HAILEY

By 

By _____

Christian R. Petrich, Ph.D., P.E., P.G.
Manager

Title _____

Date _____

TABLE 1 - SPF WATER ENGINEERING, LLC		
SCHEDULE OF HOURLY BILLING RATES		
Personnel	Title	2008 Billing Rate
Terry Scanlan, P.E., P.G.	Principal Engineer/Hydrogeologist	\$140
Christian Petrich, Ph.D., P.E., P.G.	Principal Engineer/Hydrologist	\$130
Tim Farrell, P.E.	Principal Engineer	\$125
Cathy Cooper, P.E.	Principal Engineer	\$125
Eric Landsberg, P.E.	Project Manager	\$120
Bob Hardgrove, P.E.	Project Manager	\$120
Scott King, P.E.	Supervising Engineer	\$115
Stuart Hurley, P.E.	Senior Project Engineer	\$115
Jennifer Sukow, P.E., P.G.	Senior Project Engineer	\$107
Shawn Kohtz, P.E.	Project Engineer	\$97
Roxanne Brown	Senior Water Rights Specialist	\$95
Mike Martin, P.E.	Project Engineer	\$86
Lori Graves	Water Rights Specialist	\$85
Marci Pape, P.E.	Project Engineer	\$85
Kristin Brastrup, P.E.	Project Engineer	\$83
Lance Dennis, E.I.T.	Associate Engineer	\$82
Jason Thompson, E.I.T.	Associate Engineer	\$80
Clint Long	Construction Manager	\$85
Buzz Cople	Construction Manager	\$85
Steve Bennett	Designer I	\$80
Crane Drafting	Designer II	\$72
Mike Lash	Engineering Technician	\$63
Julie Romano	Bookkeeping	\$55
Crystal Weber	Administrative Support	\$50

Note: Hourly billing rates will be adjusted on January 1st each year.

SCHEDULE OF FEES AND CONDITIONS
SPF WATER ENGINEERING, LLC (SPF)

A. FEES AND PAYMENT

1. The fee for services will be based on SPF's standard hourly rates (including labor cost, overhead, and profit). Non-salary expenses directly attributable to the project, such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable reproduction costs applicable to the work; and (3) outside services will be charged at actual cost plus 15% service charge to cover overhead and administration. Hourly rates are adjusted on an annual basis.
2. Payment shall be due within 30 days after date of monthly invoice describing the work performed and expenses incurred during the preceding month.
3. OWNER agrees that timely payment is a material term of this Agreement and that failure to make timely payment as agreed constitutes a breach hereof. In the event payment for services rendered has not been made within 60 days from the date of invoice, SPF may, after giving 7 days written notice to OWNER, and without penalty or liability of any nature, and without waiving any claim against OWNER, suspend all work on all authorized services as set forth herein. Upon receipt of payment in full for services rendered, plus interest charges, SPF will continue with all services not inconsistent with Article C.4 herein. Payment of all compensation due SPF pursuant to this Agreement shall be a condition precedent to OWNER using any of SPF's professional services work products furnished under this Agreement.
4. In order to defray carrying charges resulting from delayed payments, simple interest at the rate of 18% per annum (but not exceeding the maximum rate allowed by law) will be added to the unpaid balance of each invoice. The interest period shall commence 30 days after date of original invoice, and shall terminate upon date of payment. Payments will be first credited to interest and then to principal. No interest charge will be added during the initial 30-day period following date of invoice.

B. COMMENCEMENT OF WORK. The work will be commenced immediately upon receipt of written notice to proceed. If after commencement of work the project is delayed for any reason beyond the control of SPF for more than 60 days, the price and schedule for services under this Agreement are subject to revision. Subsequent modifications shall be in writing and signed by the parties to this Agreement.

C. MISCELLANEOUS PROVISIONS

1. INSURANCE/INDEMNIFICATION/LIMITATION OF LIABILITY

- (a) SPF will maintain statutory limits of insurance coverage for Workers' Compensation and Employer's Liability Insurance as well as Professional Liability, General Liability and Automobile Liability Insurance and will name Owner as an additional insured on the Professional Liability, General Liability and Automobile Liability Insurance policies if specifically requested in writing.
- (b) SPF asserts that it is skilled in the professional calling necessary to the services and duties proposed to be performed, and that it shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals of SPF's caliber in the same locality, and to that end SPF agrees to indemnify and hold harmless Owner, its officers, and employees from and against claims, suits, loss, damages, costs, and expenses arising out of or resulting from the negligent acts, errors, or omissions of SPF, its

officers, employees or agents in the performance of its services and duties hereunder, but not from the negligence or willful misconduct of Owner, its officers, and employees. However in no event shall SPF be liable for any special, indirect, or consequential damages as a result of its performance of the services hereunder. The total aggregate of SPF's liability to all parties related to this Agreement shall not exceed \$50,000, or the amount of SPF's fee, whichever is less.

- (c) Owner hereby understands and agrees that SPF has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Owner's premises, or in connection with or related to this project with respect to which SPF has been retained to provide professional engineering services. The compensation to be paid SPF for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, Owner agrees to defend, indemnify, and hold SPF, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including but not limited to, attorney's fees and court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalies, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.
- (d) Nothing contained within this Agreement shall be construed or interpreted as requiring SPF to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, §6901 et seq., as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste. Further, the contents of this Agreement shall not be construed or interpreted as requiring SPF to arrange for the transportation, treatment, or disposal of hazardous substances, as described in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USCA §9601, et seq., as amended.
- (e) Notwithstanding any provisions in this Agreement to the contrary, if this project involves construction, as that term is generally understood, and SPF does not provide engineering services during construction, including but not limited to, on-site monitoring, site visits, shop drawing review, and design clarifications, Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless from any and all liability arising out of the construction.
- (f) SPF shall not be liable for damages arising out of or resulting from the actions or inaction of governmental agencies, including but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits. Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless from any and all liability, other than that caused by the negligent acts, errors, or omissions of SPF, arising out of or resulting from the same.
- (g) Notwithstanding other terms of this Agreement to the contrary, SPF makes no warranty, whether express or implied, as to the actual capacity or drawdown of any proposed water well(s), or the quality or temperature of ground water, if any, which may be produced by any

water well(s) to be drilled and developed pursuant to this Agreement. Owner understands and agrees that SPF's responsibility under this Agreement is to apply its hydrogeology expertise, and to exercise the usual standard of care in the engineering profession to develop what ground water may reasonably exist, and may be economically feasible to use, beneath the proposed site(s).

2. DOCUMENTS

- (a) All tracings, survey notes, and other original documents, as instruments of service, are and shall remain the property of SPF, except where by law or precedent these documents become public property. Owner agrees to hold harmless, indemnify, and defend SPF, its consultants, agents, and employees against all damages, claims, expenses, and losses arising out of any reuse of the plans and specifications without the written authorization of SPF.
- (b) All computer programs, software, and other like data developed during the course of the project, unless specifically developed for Owner, are and shall remain the sole property of SPF.
- (c) SPF's liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. SPF makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by SPF under this Agreement. In no event shall SPF, its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.
- (d) Environmental Audit/Site Assessment report(s) are prepared for Owner's sole use. Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless against all damages, claims, expenses, and losses arising out of or resulting from any reuse of the Environmental Audit/Site Assessment report(s) without the written authorization of SPF.

- 3. **TERMINATION OR ABANDONMENT.** If any portion of the work is terminated or abandoned by Owner, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services performed during such phase shall be based on SPF's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse SPF for termination costs.
- 4. **WAIVER.** SPF's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
- 5. **ENTIRE AGREEMENT.** This Agreement, and its attachments, contains the entire understanding between Owner and SPF relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.
- 6. **SUCCESSORS AND ASSIGNS.** All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided,

however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.

7. **CONSTRUCTION ESTIMATES.** Estimates of cost for the facilities considered and designed under this Agreement are prepared by SPF through exercise of its experience and judgement in applying presently available cost data, but it is recognized that SPF has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that SPF cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from SPF's cost estimates.
8. **INJURY TO WORKERS.** It is understood and agreed that SPF's fee is based on SPF being named as an Additional Insured on construction contractor's insurance policy for Comprehensive General Liability and Builders All Risk Liability, and Owner agrees to insert into all contracts for construction between Owner and construction contractor(s) arising out of this design a provision requiring the construction contractor(s) to defend, indemnify, and hold harmless both Owner and SPF from any and all actions arising out of the construction project, including but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Owner or SPF.
9. **SITE VISITS.** Visits to the construction site and observations made by SPF as part of services during construction under this Agreement shall not make SPF responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make SPF responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s), and for all safety precautions incidental thereto. Such visits by SPF are not to be construed as part of the monitoring duties of the on-site monitoring personnel defined below.
10. **ON-SITE MONITORING.** When SPF provides on-site monitoring personnel as part of services during construction under this Agreement, the on-site monitoring personnel will make reasonable efforts to guard Owner against defects and deficiencies in the work of the contractor(s), and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day monitoring will not, however, cause SPF to be responsible for those duties and responsibilities which belong to the construction contractor(s), including but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.
11. **SEVERABILITY.** If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.



RECEIVED

JUL 02 2008

MHC TH

June 30, 2008

Mr. Tom Hellen
Public Works Director
City of Hailey
115 Main Street South, Suite H
Hailey, ID 83333

Subject: Proposal for Investigating Tank-Fill Issues and Reviewing Hydraulic Model

Dear Tom,

SPF Water Engineering (SPF) is pleased to provide this proposal for engineering services to investigate tank-fill issues for the City of Hailey water system and review the hydraulic model updates created for the City by Akel Engineering Group. We understand that the City's recently constructed Quigley Tank is not filling up all the way during maximum demand periods. Akel Engineering Group has updated the City's 2002 hydraulic model to look at tank-fill issues and proposed solutions, including a base model, a model run with a section of new 16-inch pipe, a model run with a new well plus 200 homes, and a model run with a new well plus 380 homes. We have reviewed the City's available SCADA information, the hydraulic models, and other available data. The City is currently working to provide SPF with a copy of the 2002 Master Plan and as-built information for the Cities' two storage reservoirs, which will help us complete our analysis.

PROPOSED SCOPE OF WORK

The work tasks necessary to complete the proposed scope of work are described below.

Task 1 – Investigate Tank-Fill Issues

- a. **Site Visit.** This site visit to see the City water facilities will allow SPF engineers to obtain additional background information from City personnel and gain a more thorough understanding of the City's water system.
- b. **Investigation.** SPF will explore different reasons why the Quigley tank may not be filling. Additional information may be requested from the City during the investigation.
- c. **Summary Memorandum.** SPF will prepare a technical memorandum outlining possible reasons for the tank-fill issues. Recommendations for improving water system performance will be given.

Task 2 – Review of Hydraulic Model

- a. **Verify Demand Data.** There appear to be some discrepancies in the demand data used in the model. SPF, in conjunction with City personnel, will verify that the demand data used in the model reasonably represents demands in the City water system.
- b. **Model Calibration.** SPF needs to review the 2002 City master plan and model information, which is on the way from the City. It doesn't appear any calibration has been done on the new model runs. It may be necessary/recommended to perform some level of calibration. SPF can better determine this once more information is available. SPF will coordinate any calibration testing with City personnel.
- c. **Model Review Summary.** SPF will prepare a technical memorandum containing results of the model review and recommendations for moving forward.

ESTIMATED COSTS

SPF proposes to perform this work on a time and materials basis. A current hourly rate schedule is provided as Table 1. Direct costs (travel, photocopy, postage, etc.) are billed at actual cost plus 15%. Subcontract and laboratory costs can be billed directly where appropriate. Hourly rates are adjusted on an annual basis to reflect salary increases.

We anticipate that the cost to complete Task 1 will be between \$5,000 and \$10,000, and the cost to complete Task 2 will be between \$5,000 and \$20,000 depending on the level of effort and number of site visits required. We recommend proceeding initially with Task 1 and Task 2a (verify demand data for the hydraulic model), with a budget upper limit of \$15,000. Depending on the results from Task 1 and 2a, revisions to the hydraulic model may be necessary prior to SPF reviewing the model.

TABLE 1 - SPF WATER ENGINEERING, LLC		
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SCHEDULE

We understand that you are moving quickly to address the tank-fill issue. We can schedule a site visit immediately, and estimate that it will take approximately 3 to 4 weeks to complete the tank-fill investigation. It will be helpful to watch the City's SCADA system during July (peak demand month) to see how sources are operating in relation to tank levels. The model review can be completed in 4 to 6 weeks and will be dependent on receiving timely assistance from Akel Engineering Group and City personnel, as necessary.

AGREEMENT

If this proposal meets with your approval, it may serve as the basis for agreement, in conjunction with the attached schedule of fees and conditions, by affixing a signature in the space provided below. This signature will be considered as a notice to proceed on Tasks 1 and 2a with a budget upper limit of \$15,000.

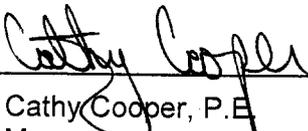
Please return one signed original to my office. We look forward to working with you on this project.

Respectfully submitted,

Accepted By:

SPF WATER ENGINEERING, LLC

CITY OF HAILEY

By 
Cathy Cooper, P.E.
Manager

By _____

Title _____

Date _____

SCHEDULE OF FEES AND CONDITIONS

SPF WATER ENGINEERING, LLC (SPF)

A. FEES AND PAYMENT

1. The fee for services will be based on SPF's standard hourly rates (including labor cost, overhead, and profit). Non-salary expenses directly attributable to the project, such as: (1) living and traveling expenses of employees when away from the home office on business connected with the project; (2) identifiable reproduction costs applicable to the work; and (3) outside services will be charged at actual cost plus 15% service charge to cover overhead and administration. Hourly rates are adjusted on an annual basis.
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- (c) Owner hereby understands and agrees that SPF has not created nor contributed to the creation or existence of any or all types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Owner's premises, or in connection with or related to this project with respect to which SPF has been retained to provide professional engineering services. The compensation to be paid SPF for said professional engineering services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions. Therefore, to the fullest extent permitted by law, Owner agrees to defend, indemnify, and hold SPF, its officers, directors, employees, and consultants, harmless from and against any and all claims, damages, and expenses, whether direct, indirect, or consequential, including but not limited to, attorney's fees and court costs, arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acid, alkalies, toxic chemicals, liquids, gases, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.

- (d) Nothing contained within this Agreement shall be construed or interpreted as requiring SPF to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 USCA, §6901 et seq., as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste. Further, the contents of this Agreement shall not be construed or interpreted as requiring SPF to arrange for the transportation, treatment, or disposal of hazardous substances, as described in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USCA §9601, et seq., as amended.
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- (g) Notwithstanding other terms of this Agreement to the contrary, SPF makes no warranty, whether express or implied, as to the actual capacity or drawdown of any proposed water well(s), or the quality or temperature of ground water, if any, which may be produced by any water well(s) to be drilled and developed pursuant to this Agreement. Owner understands and agrees that SPF's responsibility under this Agreement is to apply its hydrogeology expertise, and to exercise the usual standard of care in the engineering profession to develop what ground water may reasonably exist, and may be economically feasible to use, beneath the proposed site(s).

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- (b) All computer programs, software, and other like data developed during the course of the project, unless specifically developed for Owner, are and shall remain the sole property of SPF.
- (c) SPF's liability to Owner for any computer programs, software products, or related data furnished hereunder is limited solely to the correction of residual errors, minor maintenance, or update(s) as agreed. SPF makes no warranties of any kind, including any implied warranty of merchantability or of fitness for any particular purpose, or against infringement, with respect to computer programs, software products, related data, technical information, or technical assistance provided by SPF under this Agreement. In no event shall SPF, its officers, agents, or employees be liable under or in connection with this Agreement under any theory of tort, contract, strict liability, negligence, or other legal or equitable theory for incidental or consequential damages relating to any computer programs, software products, or related data furnished hereunder.
- (d) Environmental Audit/Site Assessment report(s) are prepared for Owner's sole use. Owner agrees to defend, indemnify, and hold SPF, its consultants, agents, and employees harmless against all damages, claims, expenses, and losses arising out of or resulting from any reuse of the Environmental Audit/Site Assessment report(s) without the written authorization of SPF.

- 3. **TERMINATION OR ABANDONMENT.** If any portion of the work is terminated or abandoned by Owner, the provisions of this Schedule of Fees and Conditions in regard to compensation and payment shall apply insofar as possible to that portion of the work not terminated or abandoned. If said termination occurs prior to completion of any phase of the project, the fee for services performed during such phase shall be based on SPF's reasonable estimate of the portion of such phase completed prior to said termination, plus a reasonable amount to reimburse SPF for termination costs.
- 4. **WAIVER.** SPF's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, shall not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
- 5. **ENTIRE AGREEMENT.** This Agreement, and its attachments, contains the entire understanding between Owner and SPF relating to professional engineering services. Any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein are of no effect. Subsequent modifications or amendments to this Agreement shall be in writing and signed by the parties to this Agreement.

6. **SUCCESSORS AND ASSIGNS.** All of the terms, conditions, and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns, provided, however, that no assignment of this Agreement shall be made without written consent of the parties to this Agreement.
7. **CONSTRUCTION ESTIMATES.** Estimates of cost for the facilities considered and designed under this Agreement are prepared by SPF through exercise of its experience and judgement in applying presently available cost data, but it is recognized that SPF has no control over costs of labor and materials, or over the construction contractor's methods of determining prices, or over competitive bidding procedures, market conditions, and unknown field conditions so that SPF cannot and does not guarantee that proposals, bids, or the project construction costs will not vary from SPF's cost estimates.
8. **INJURY TO WORKERS.** It is understood and agreed that SPF's fee is based on SPF being named as an Additional Insured on construction contractor's insurance policy for Comprehensive General Liability and Builders All Risk Liability, and Owner agrees to insert into all contracts for construction between Owner and construction contractor(s) arising out of this design a provision requiring the construction contractor(s) to defend, indemnify, and hold harmless both Owner and SPF from any and all actions arising out of the construction project, including but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Owner or SPF.
9. **SITE VISITS.** Visits to the construction site and observations made by SPF as part of services during construction under this Agreement shall not make SPF responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make SPF responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all portions of the work under the construction contract(s), and for all safety precautions incidental thereto. Such visits by SPF are not to be construed as part of the monitoring duties of the on-site monitoring personnel defined below.
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11. **SEVERABILITY.** If any provision of this Agreement is declared invalid, illegal, or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement shall nevertheless continue in full force and effect, and no provision shall be deemed dependent upon any other provision unless so expressed herein.
12. **IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY APPROVAL.** SPF will submit the required documents for the proposed facilities to the Idaho Department of Environmental Quality (IDEQ) for the appropriate reviews and approvals. Under no circumstances may construction begin on the proposed facilities prior to receipt of IDEQ's written approval of the reports, plans, and specifications for the proposed facilities. As professional engineers, SPF's employees are obligated to report to IDEQ any construction that begins prior to receipt of the appropriate approvals.