

AGENDA ITEM SUMMARY

DATE: 12/22/2008 **DEPARTMENT:** Finance & Records **DEPT. HEAD SIGNATURE:** Mary Cone

SUBJECT

Idaho Transportation Department (Division of Aeronautics) grant agreement and Resolution for Friedman Memorial Airport.

AUTHORITY: ID Code IAR _____ City Ordinance/Code _____

BACKGROUND:

In past years this grant was a 50% match at \$15,000. This year it is a 50% match and \$25,000. Last year we did not receive this grant.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS

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

This grant is a reimbursement program, so the airport will be required to show invoices for expenditures of at least \$50,000 to match this State participation.

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:

___ City Attorney ___ Clerk / Finance Director ___ Engineer ___ Mayor
___ P & Z Commission ___ Parks & Lands Board ___ Public Works ___ Other

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

Approval of grant agreement, Resolution and authorize Mayor Davis to sign.

FOLLOW UP NOTES:



IDAHO TRANSPORTATION DEPARTMENT
P.O. Box 7129
Boise ID 83707-1129

(208) 334-8000
itd.idaho.gov

November 20, 2008

Mr. Richard R. Baird, Manager
Friedman Memorial Airport
PO Box 929
Hailey, ID 83333

Re: Idaho Airport Aid Program, Project Number: LNS8SUN
Project Number: 3-16-0016-033 / 3-16-0063-002

Dear Mr. Baird:

Enclosed are two (2) copies each of the GRANT AGREEMENT and CITY RESOLUTION for the above referenced project. Please have the Council ratify both the Grant Agreement and the City Resolution, have the Mayor sign both copies of each, and have the Clerk attest to the resolution. Please retain one set for your local records and return one set to me. Please complete these actions by December 19, 2008, as highlighted on page 2 of the grant.

These grant funds are available upon receipt of the executed grant and submission of an invoice. The invoice needs to indicate that the airport spent at least \$50,000.00 in local funds, where upon this grant will reimburse you 50% or \$25,000.00.

I look forward to working with the City on this project. If you have any questions call me at (208) 334-8784.

Sincerely,

WILLIAM P. STATHAM
Airport Planning and Development, Project Manager

cc: Sandra Simmons, FAA

Friedman	FILE OF
Received:	DEC 01 2008
c:	PS

IDAHO TRANSPORTATION DEPARTMENT
DIVISION OF AERONAUTICS

GRANT AGREEMENT

TO: CITY OF HAILEY
(Hereinafter referred to as the "SPONSOR")

FROM: The State of Idaho, acting through the IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF AERONAUTICS (Hereinafter referred to as the "STATE")

WHEREAS, the SPONSOR operates the Friedman Memorial Airport, a Primary Airport as defined by the Airport and Airways Act of 1982 and Amendments;

WHEREAS, the Idaho Transportation Board has approved a grant for development of the airport consisting of developments to be mutually agreed upon by the SPONSOR and the STATE, identified as:

Program Number: LNS8SUN

Project Number: 3-16-0016-033 / 3-16-0063-002

NOW THEREFORE, for the purpose of carrying out the provisions of the Uniform State Aeronautics Department Act of 1947, as amended, and in consideration of the SPONSOR acceptance of this offer, as hereinafter provided. The STATE hereby offers this Grant with the following terms and conditions:

1. The maximum obligation of the STATE payable under this Grant shall be \$25,000.00.
2. The SPONSOR shall:
 - A. Certify the expenditure of at least \$50,000.00 to match STATE participation in said project either as part of this project or match to federal entitlement funds.
 - B. Diligently and expeditiously complete this project and likewise pursue appropriate measures as may be agreed upon by the SPONSOR and the STATE to remedy project delays, including but not limited to litigation or condemnation.
 - C. Carry out and complete the project in accordance with the plans, specifications, and property map, incorporated herein, as they may be revised or modified, with approval of the STATE.
 - D. All contracts for construction involved in this project shall be bid competitively in accordance with bidding procedures otherwise authorized for public entities.

- E. In connection with the acquisition of real property for the project, the SPONSOR shall comply with all provisions of the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act and associated rules/regulations.
 - F. The SPONSOR agrees to hold said airport open to the flying public for the useful life of the facilities developed under this project. The SPONSOR shall grant no exclusive use or operating agreements, to any person, company, or corporation; that failure to abide by such agreement shall automatically obligate the immediate and full return of all State of Idaho money expended in behalf of the project to the State of Idaho.
- 3. The allowable costs of the project shall not include any costs determined by the STATE to be ineligible.
 - 4. The STATE reserves the right to amend or withdraw this offer at any time prior to its acceptance by the SPONSOR.
 - 5. This offer shall expire and the STATE shall not be obligated to pay any part of the costs of the project unless this agreement has been accepted by the SPONSOR on or before **December 19, 2008**, or such subsequent date as may be prescribed in writing by the STATE.

Except for those projects receiving both State and Federal Aid (submit copies of FAA documents), the following inspection schedule and reporting system will be required:

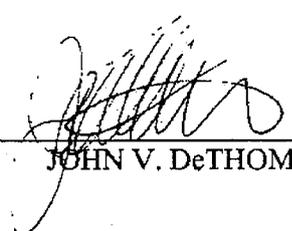
6. Inspection Schedule and Reporting System:

Inspection Schedule and Reporting System will vary for each project. The SPONSOR will be required to make reports and be inspected on the following schedule:

- A. SPONSOR shall report project commencement date.
- B. SPONSOR shall make periodic progress reports as appropriate.
- C. SPONSOR shall receive approval prior to any change in the scope of the project
- D. SPONSOR shall report project completion date and request final inspection and payment.
- E. STATE may make final inspection and shall sign off project as completed.
- F. STATE may arrange for audit of account in accordance with regularly scheduled audit program.

The SPONSOR'S acceptance of this offer and ratification and adoption of the project application incorporated herein shall be evidenced by execution of this instrument by the SPONSOR, as hereinafter provided. Said offer and acceptance shall comprise allocation agreement, constituting the obligation and rights of the State of Idaho and the SPONSOR with respect to the accomplishment of the project and the operation and the maintenance of the airport. Such allocation agreement shall become effective upon the SPONSOR acceptance of this offer and shall remain in full force and effect throughout the useful life of the facilities developed under the project but in any event not to exceed twenty (20) years from the date of acceptance.

STATE OF IDAHO, ITD
Division of Aeronautics

By: 

JOHN V. DeTHOMAS, Administrator

ACCEPTANCE

THE SPONSOR DOES HEREBY RATIFY AND ADOPT ALL STATEMENTS, representations, warranties, covenants, and agreements contained in the project application and incorporated materials referred to in the foregoing offer and does hereby accept said offer and by such acceptance agrees to all of the terms and conditions thereof.

Executed this ____ day of _____, 2008.

By: _____

RICK DAVIS, Mayor

Attest: _____

~~HEATHER DAWSON~~, City Clerk

MARY CONE

CITY RESOLUTION

EXTRACT FROM THE MINUTES OF A REGULAR MEETING
OF THE CITY COUNCIL OF THE CITY OF HAILEY, IDAHO
HELD ON _____, 2008.

The following Resolution was introduced by Councilman _____, read in full, considered and adopted:

RESOLUTION NO. _____ OF CITY OF HAILEY, IDAHO ACCEPTING THE GRANT OFFER OF THE STATE OF IDAHO THROUGH THE IDAHO TRANSPORTATION DEPARTMENT, DIVISION OF AERONAUTICS, IN THE MAXIMUM AMOUNT OF \$25,000.00 TO BE USED UNDER THE IDAHO AIRPORT AID PROGRAM NUMBER: LNS8SUN, PROJECT NUMBER: 3-16-0016-033 / 316-0063-002 IN THE DEVELOPMENT OF THE FRIEDMAN MEMORIAL AIRPORT; AND

Be it resolved by the Mayor and Council of the City of Hailey, Idaho (herein referred to as the "CITY") as follows:

Sec. 1. That the CITY, shall accept the Grant Offer of the State of Idaho in the amount of \$25,000.00, for the purpose of obtaining State Aid under Program Number: LNS8SUN, Project Number: 3-16-0016-033 / 316-0063-002, in the development of the Friedman Memorial Airport; and

Sec. 2. That the Mayor of the CITY is hereby authorized and directed to sign the statement of Acceptance of said Grant Offer (entitled Part II - Acceptance) on behalf of the CITY. The CITY Clerk is hereby authorized and directed to attest the signature of the Mayor and to impress the official seal of the CITY on the aforesaid statement of Acceptance; and

Sec. 3. A true copy of the Grant Offer referred to herein be attached hereto and made a part thereof.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS _____ DAY OF _____, 2008.

RICK DAVIS, Mayor

ATTEST:

HEATHER DAWSON, City Clerk

CERTIFICATE

Mary Cone
I, ~~Heather Dawson~~, City Clerk do hereby certify that the foregoing is a full, true, and correct copy of Resolution No. _____ adopted at a regular meeting of the Council held on the _____ day of _____, 2008, and that the same is now in full force and effect. IN WITNESS WHEREOF, I have hereunto set my hand and impressed the official seal of the CITY, this _____ day of _____, 2008.

~~HEATHER DAWSON~~, City Clerk

Mary Cone

AGENDA ITEM SUMMARY

DATE: 12/222008

DEPARTMENT: Legal

DEPT. HEAD SIGNATURE: _____



SUBJECT:

Security Agreement -- Cutters

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

At a prior hearing, the Council considered several matters involving the Cutters Subdivision. There was general consensus on one matter involving a security agreement. That security agreement is intended to allow the developer additional time to complete the park improvements provided sufficient security is posted. Since the last meeting, Hailey has been provided more than adequate security for the improvements.

Ned

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:

Make a motion to authorize the mayor to sign the Security Agreement.

FOLLOW-UP REMARKS:

ORIGINAL IN RED

**SECURITY AGREEMENT
(CUTTERS SUBDIVISION)**

THIS SECURITY AGREEMENT (Cutters Subdivision) ("Agreement") is made and entered into this ___ day of December, 2008, by and between Old Cutters, Inc. an Idaho corporation, whose mailing address is P.O. Box 4944, Ketchum, Idaho, 83340 (hereinafter referred to as "Developer"), and the City of Hailey, Idaho, a municipal corporation, (hereinafter referred to as "Hailey").

RECITALS

A. Developer has made an application for and received final plat approval of the Cutters Subdivision from Hailey thereof as set forth in the Hailey City Council's Findings of Fact, Conclusions of Law and Decision dated August 13, 2007, and incorporated herein by reference; and

B. Developer has received final plat approval prior to completion of construction of the certain improvements. Developer and Hailey entered into a Security Agreement dated November 26, 2007, in which Developer agreed to post a letter of credit in the amount of \$299,491.95, as security for complete performance and construction of certain improvements.

C. Developer has not completed construction of the improvement described in the Security Agreement dated November 26, 2007, but the parties agree to enter into this Agreement to allow a letter of credit to be provided as security for the uncompleted improvements, described on attached Exhibit "A" ("Improvements") and as a condition thereof, Developer is required by the Hailey City Council to post security therefore consistent with the ordinances of the City of Hailey.

AGREEMENT

NOW, THEREFORE, Developer and Hailey hereby covenant and agree as follows:

1. Security. Developer, simultaneously with the execution of this Agreement, deposits with Hailey a Letter of Credit (Number 174) dated November 16, 2008 ("Letter of Credit"), from Mountain West Bank, Ketchum, Idaho, whose mailing address is P.O. Box 2237, Ketchum, Idaho in the principal total amount of THIRTY FIVE THOUSAND EIGHT HUNDRED AND 00/100's DOLLARS (\$35,800.00), as security for complete performance and construction of the Improvements upon the terms and conditions set forth herein. The Letter of Credit shall be made solely in the name of the City of Hailey, Idaho and shall be held by Hailey in lieu of the Owner filing or depositing other security with Hailey.

2. Time of Performance. Developer shall complete construction of the Improvements on or before one (1) year from the date of the Letter of Credit or the amount of the Letter of Credit shall be due and payable to Hailey up to the full amount thereof and Hailey may draw upon the Letter of Credit as Hailey in its sole discretion determines necessary to complete the Improvements or any portion thereof as provided in paragraph 3, below.

3. Remedies. In the event Developer fails or refuses to complete the Improvements or any portion thereof on or before one (1) year from the date of the Letter of Credit, Hailey shall have the right, but not the obligation, to draw the funds from the Letter of Credit and apply the proceeds thereof to construction of the Improvements or any portion thereof. In case of default by Developer, if the total cost of construction of the Improvements is less than the amount of the Letter of Credit, Hailey agrees to return to Developer the unused portion of the Letter of Credit funds. However, if the cost of installing or constructing the Improvements is greater than the amount of the Letter of Credit, Developer agrees to reimburse and hold harmless Hailey for any and all additional costs and expenses incurred by Hailey associated with installing and constructing the Improvements.

4. Release. In the event Developer completes construction of the Improvements on or before one (1) year from the date of the Letter of Credit, Hailey shall release the funds from the Letter of Credit, including any and all interest accrued, to Developer upon receiving written notice by the City Engineer that the Improvements have been installed according to applicable ordinances, regulations, plans and specifications, and that the same has been inspected and approved by the City Engineer. Developer can apply for a partial release of funds from Hailey and the Hailey City Council may so authorize release by the City Clerk of an appropriate proportion of the amount held as security upon completion of a substantial portion of the Improvements, and the inspection and approval thereof by the City Engineer. In such cases, Hailey shall retain sufficient security for completion of all the Improvements in compliance with this Agreement.

5. Inspection Fees. Developer is responsible for and shall pay any and all fees incurred by the City Engineer in providing services associated with the inspections necessary to confirm completion of any or all of the Improvements required.

6. Relationship of Parties. This Agreement is not a guarantee that any of the Improvements will be constructed and does not obligate Hailey in any way to complete any of the Improvements. This Agreement is not intended nor shall it be construed as a third party beneficiary contract or creating any third party beneficiary rights.

IN WITNESS WHEREOF, the parties hereto have signed this document the day and year first written above.

DEVELOPER
Old Cutters, Inc., an Idaho corporation

By _____
John Campbell, its president

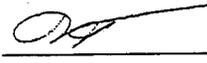
CITY OF HAILEY, IDAHO

By _____
Rick Davis, Council President

EXHIBIT "A"

<u>Description</u>	<u>Amount</u>
Restroom	\$10,000.00
Bike Racks/Benches/Picnic Tables/Trash Cans	4,717.30
Pedestrian ROW between lots 8 & 9	2,300.00
Mailboxes (2)	<u>3,000.00</u>
Total	\$20,017.30
Minimum Security Required (\$20,017.30 x 150%)	\$30,025.95

AGENDA ITEM SUMMARY

DATE: 12/22/08 DEPARTMENT: Engr DEPT. HEAD SIGNATURE: 

SUBJECT: Motion to approve using SPF Water Engineering to assist with the city's water rights and future water needs.

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)

Draft 12-30-03



RECEIVED

DEC 01 2008

MHC TH

November 26, 2008

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

Subject: Miscellaneous Water Right Services

Dear Tom:

SPF Water Engineering, LLC, is pleased to submit a proposal for professional services to assist the City with miscellaneous water right services.

SCOPE OF WORK

SPF is available to provide services relating to City municipal and irrigation water right issues as they arise, such as (1) preparation of applications for water right transfer, applications for permit, or applications for permit amendment, (2) conducting licensing examinations, (3) negotiating water right acquisitions for the City, (4) providing information concerning the City's water right portfolio and water right administration, and (5) negotiating water right and water use agreements with others who are seeking annexation to the City.

The initial services provided under this scope of work will be items 1 through 8 on the action item log from our November 20, 2008 meeting with the City. Other items will be added at the request of the City.

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.

Our proposed budget is based on time and materials pricing with a not to exceed maximum of \$10,000.

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 with a budget upper limit of \$10,000. We will let you know when we are approaching the budget limit, and then if additional tasks are required, the City can authorize additional budget.

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*
Cathy Cooper, R.E.
Manager

By _____

Title _____

Date _____

By *Roxanne Brown*
Roxanne Brown
Sr. Water Rights Specialist

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 Copple	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.
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.

AGENDA ITEM SUMMARY

DATE: 12/22/08 DEPARTMENT: Engr DEPT. HEAD SIGNATURE: 

SUBJECT: Motion to authorize renewal of contract with Digline

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

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The renewal for Dig Line Inc. includes an increase in the fees. This is a necessary part of our Public Works Dept services. *2008 monthly rate - \$56.00*
2009 monthly rate \$58.40 - 1/2 average of calls between April through October 2008 - 91/month

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)

Draft 12-30-03

RECEIVED

SEP 22 2008

TH MHC



DIGLINE Inc.
Call Before You Dig!

ADDENDUM to
DIG LINE, INC. CONTRACT FOR SERVICES
Effective 1/1/2009

EXHIBIT B - AUTOMATIC TRANSMISSION NOTIFICATION RATE SCHEDULE

Minimum Monthly Fee: (up to forty (40) notifications per month) \$58.40
Additional notifications: \$1.46 for each additional notification over the minimum entitlement.

Minimum Annual Fee:
Option 1: Annual Fee (up to 50 notifications/year) \$ 73.00
Option 2: Annual Fee (up to 100 notifications/year) \$146.00
Additional notifications: \$1.46 for each additional notification over the minimum entitlement.
Long Distance Notification: Removed from Exhibit.
Adjustment To Rates: Changed from March to January.

EXHIBIT C - TELEPHONE NOTIFICATION RATE SCHEDULE

Rate is removed from Dig Line, Inc. Contract For Services

EXHIBIT D - AUTOMATIC TRANSMISSION NOTIFICATION - SECOND LOCATION

Change Exhibit Number to EXHIBIT C

Minimum Duplicate Monthly Fee: (up to forty (40) duplicate notifications/month) \$ 29.20

Minimum Duplicate Annual Fee: (up to 50 or 100 duplicate notifications/year) \$36.50/73.00

Additional duplicate Notifications: \$.73 for each additional notification over the minimum fee entitlement.
Long Distance Notification: Removed from Exhibit
Adjustment to Rates: Changed from March to January.

City of Hailey
Company Name

Subscriber

Date



September 16, 2008

Dear Dig Line Subscriber:

We appreciate the opportunity to work with you as your one call center. The goal of Dig Line, Inc. has been to operate your one call center as efficiently as possible and still provide our clients with the best service possible. As part of this service, Dig Line, Inc. continually evaluates business operation expenses. Unfortunately, due to an increase in operating expenses and the reduction of ticket volume beyond our control, we are now compelled to implement a 4.1% rate increase to be effective January 1, 2009. Dig Line, Inc. pledges to continue meeting your one call center needs in an effective and efficient manner.

Attached is a Rate Increase Addendum. Please sign, date and return to Dig Line, Inc. by December 15, 2008.

Your current rate is as follows:

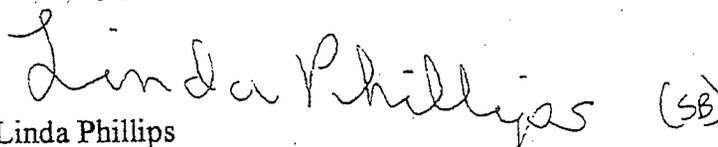
- Automatic Monthly
- Automatic Yearly (\$70.00) (Includes 50 notifications)
- Automatic Yearly (\$140.00) (Includes 100 notifications)

Your new current rate based on your ticket volume for 2007 & 2008:

- Automatic Monthly
- Automatic Yearly (\$73.00) (Includes 50 notifications)
- Automatic Yearly (\$146.00) (Includes 100 notifications)

If you have any questions about your current rate structure or the rate structure beginning January 1, 2009, please do not hesitate to call me at 1-800-342-1585, Ext. 407.

Sincerely yours,


Linda Phillips (SB)
Manager

