

## Welcome to tonight's City Council meeting!

The elected officials of the City of Bonners Ferry are appreciative of an involved constituency. Testimony from the public is encouraged concerning issues when addressed under the Public Hearing portion of the agenda. Any individual who wishes may address the council on any issue, whether on the agenda or not, during the Public Comments period. Normal business will preclude public participation during the business portion of the meeting with the discretion left to the Mayor and Council. Special accommodations to see, hear, or participate in the public meeting should be made at City Hall within two days of the public meeting.

### Vision Statement

Bonners Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life. We are an inclusive city that welcomes all people, regardless of race, religion, color, national origin, sex, age, disability, sexual orientation, or gender identity and encourages their participation in city government and city programs.

**AGENDA  
CITY COUNCIL MEETING  
Bonners Ferry City Hall  
7232 Main Street  
267-3105  
August 18, 2020  
6:00 pm**

### PLEDGE OF ALLEGIANCE

### PUBLIC COMMENTS

Each speaker will be allowed a maximum of three minutes, unless repeat testimony is requested by the Mayor/Council

### REPORTS

Police/Fire/City Administrator/City Engineer/Economic Development Coordinator/Urban Renewal District/SPOT/Golf

### CONSENT AGENDA – {action item}

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Approval of the July 22, 2020 Special Council meeting minutes, July 27, 2020 Special Council meeting minutes, August 3, 2020 Special Council meeting minutes, August 4, 2020 Council meeting minutes
4. Treasurer's Report

### OLD BUSINESS

### NEW BUSINESS

5. Water – Consider Authorizing the Mayor to Sign the Contract with Burlington Northern Santa Fe for the Dakota Street Water Crossing (attachment) {action item}
6. Street – Consider Authorizing the Advertisement for the Street Superintendent Position (attachment) {action item}
7. Street – Consider Authorizing the Mayor to Sign the Right of Way Dedication Agreement with Tim Gorshe (attachment) {action item}
8. Golf – Discuss the Role of the Golf Committee regarding the Golf Contractor's Contract {action item}
9. Golf – Consider Approval of the Friends of Mirror Lake Volunteers (attachment) {action item}
10. Golf – Consider Authorizing the Mayor to Sign the Contract with CDA Stump Grinding for Work at the Golf Course (attachment) {action item}
11. Police – Consider Authorizing the Mayor to Sign the Memorandum of Understanding with the Boundary County School District (attachment) {action item}

### ADJOURNMENT

**MINUTES  
SPECIAL CITY COUNCIL MEETING  
Bonners Ferry City Hall  
7232 Main Street  
267-3105  
July 22, 2020  
5:30 pm**

Mayor Dick Staples called the Council meeting of July 22, 2020 to order at 5:30 pm. Present for the meeting were: Council President Rick Alonzo, Council Members Adam Arthur, Valerie Thompson and Ron Smith. Also present were: City Clerk/Treasurer Christine McNair, City Administrator Lisa Ailport, City Engineer Mike Klaus, Street Superintendent John Youngwirth, Police Chief Brian Zimmerman, Fire Chief Dave Winey, Water/Sewer Superintendent John Delaney.

**OLD BUSINESS**

1. City – Budget Workshop {action item}

Christine presented a preliminary budget. Areas that need to be discussed are the fire fighters training pay and which of the three insurance quotes Council wants to go with. Council discussed several options for the IT position wage. Mayor Staples wants to talk to the employees prior to making a decision on the insurance. Dike maintenance options were discussed. Capital projects for the Sewer department were discussed. New software was briefly discussed. Council requested to have a presentation of the software. Mayor Staples requested the rate increases be added to the budget along with a cost of living adjustment.

**ADJOURNMENT**

The meeting adjourned at 8:27 pm.

**MINUTES**  
**SPECIAL CITY COUNCIL MEETING**  
**Bonnors Ferry City Hall**  
**7232 Main Street**  
**267-3105**  
**July 27, 2020**  
**5:30 pm**

Mayor Dick Staples called the Council meeting of July 27, 2020 to order at 5:30 pm. Present for the meeting were: Council President Rick Alonzo, Council Members Adam Arthur, Valerie Thompson and Ron Smith. Also present were: City Clerk/Treasurer Christine McNair, City Administrator Lisa Ailport, City Engineer Mike Klaus, Street Superintendent John Youngwirth, Assistant Police Chief Marty Ryan.

**GUEST**

Eric Heaps – Tyler Technologies Presentation

Eric and Mark gave a brief presentation showing several modules offered by Tyler Technologies. Lisa asked if it is possible to map assets. Mark said there are two modules for assets, one offers mapping and one does not. Lisa asked if it is possible to have a separate presentation on the enterprise assets maintenance module. Eric said it is. Mike asked if it is possible to see the depreciation total anytime of the year. Mark said yes. Mike asked about permits. Mark said they have a module for permits. Eric said it is a mobile application and it is easy for the public to use. Mike asked if we can backup locally in case there is a problem with the cloud. Eric said yes. Mike asked if there are payment options. Eric said there are several payment options.

**OLD BUSINESS**

1. City – Budget Workshop {action item}

Marty said there were several cuts to the police budget and he feels some line items need to be increased. Marty is very concerned about the training budget, due to these uncertain times. John Youngwirth said all departments had serious cuts this year. The County has requested a four percent increase in the dispatch agreement. Marty requested adding insurance for the police secretary since she has performed an amazing job getting the police department back into compliance, which it had not been for several years. Dike maintenance was discussed. John said he looking at different options and people that are available to do the work. Lisa asked about cost of living adjustments. Mayor Staples said he needs better numbers.

**NEW BUSINESS**

2. City – Consider Authorizing the Mayor to Sign the Participation Agreement and the Joint Powers Agreement with III-A (attachment) {action item}

Mayor Staples said he and Rick met with the employees and it was unanimous that they want III-A. Mayor Staples said III-A is a two percent increase, the current policy is a zero increase and Pacific Source is a seven percent decrease. Adam said the deductible for Pacific Source is a lot more than the others. Ron said there is a three-year commitment required to join III-A. Mayor Staples said that is correct. Rick said there is more return for the money with III-A. Rick said we haven't had increases the last two years since there has been competition. Ron does not like the idea of being locked into a company for three years. Adam said that helps keep the rates down.

Rick Alonzo moved to change to III-A insurance and authorize the Mayor to sign the participation agreement and the joint powers agreement. Adam Arthur seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – no

**ADJOURNMENT**

The meeting adjourned at 8:29 pm.

**MINUTES  
SPECIAL CITY COUNCIL MEETING  
Bonners Ferry City Hall  
7232 Main Street  
267-3105  
August 3, 2020  
5:30 pm**

Mayor Dick Staples called the Council meeting of August 3, 2020 to order at 5:30 pm. Present for the meeting were: Council President Rick Alonzo, Council Members Adam Arthur and Valerie Thompson. Also present were: City Clerk/Treasurer Christine McNair, City Administrator Lisa Ailport, City Engineer Mike Klaus, Street Superintendent John Youngwirth and Assistant Police Chief Marty Ryan.

**OLD BUSINESS**

1. City – Budget Workshop {action item}

Mayor Staples asked Lisa to explain the relief funds. Lisa said she spoke with the State and it sounds like we will be eligible for reimbursement for the COVID expenses. Council decided to add the three percent increase for property taxes in the budget, if the US Treasury provides a letter stating the Governor's tax relief program is legal then the City will participate. Ron provided a comment that he is in favor of COLAs, but he is concerned about what the public will think since the utility rates were just increased. Valerie said she is concerned with the ongoing expenses. She really appreciates the employees, but most places are not able to give COLAs every year. Adam said we need to think about what the insurance costs maybe next year. John said there are going to equipment needs that are going to have to be purchased. It was decided not to give COLAs this year.

**ADJOURNMENT**

The meeting adjourned at 6:27 pm.

**MINUTES  
CITY COUNCIL MEETING  
Bonners Ferry City Hall  
7232 Main Street  
267-3105  
August 4, 2020  
6:00 pm**

Mayor Dick Staples called the City Council meeting of August 4, 2020 to order at 6:00 pm. Present for the meeting were: Council Members Adam Arthur, Valerie Thompson and Ron Smith. Also present were: City Engineer Mike Klaus, City Clerk/Treasurer Christine McNair, City Attorney Andrakay Pluid and City Administrator Lisa Ailport. Members of the public present were: Jessica Tingley, Victor Martinez, Steve Tanner and Nevin Neal.

**PLEDGE OF ALLEGIANCE**

**PUBLIC COMMENTS**

Steve Tanner spoke in opposition to the vision statement.

**REPORTS**

City Administrator Lisa Ailport said she has an option to possibly allow the pool to be open longer. The budget is close to maximum. Adam asked if the charging station arrived. Lisa said it did and the electric department is planning to start installing it in October. Ron asked how long it takes to train new guards. Lisa said in the past it has taken about 40-60 hours. Valerie asked if the man Lisa is speaking with is interested in applying to be a trainer or a lifeguard. Lisa said he interested in being the head lifeguard. Mayor Staples said this is a tight schedule. Lisa said it is. Valerie asked if it is an advantage to have the training completed this year. Lisa said yes. Valerie said it seems rushed but it is a good idea to stay in touch with this man and work on something for next year.

City Engineer Mike Klaus said the electric phase on Selkirk Street started today and the splash pad opened last week.

**CONSENT AGENDA – {action item}**

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Approval of the July 21, 2020 Council meeting minutes.

Adam Arthur moved approve the consent agenda. Valerie Thompson seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Ron Smith – yes

**OLD BUSINESS**

**NEW BUSINESS**

4. Sewer – Consider Purchasing Lot 3, Block 3 of the Dunnings Acre Tracts from the Marx Family (attachment) {action item}

Ron asked if there is a lift station near this lot. Mike said the lift station is west of the lot. Mayor Staples asked the size of the lot. Mike said it is 1.13 acres. Mike said it may be possible to re-route the sewer line to adjust how it enters the lift station. Valerie Thompson moved to authorize the Mayor to sign the purchase/sale agreement to purchase Lot 3, Block 3 of the Dunnings Acre Tracts in the amount of \$15,000.00 and a clean title report being presented to the City. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Ron Smith – yes

5. Electric – Consider Proposal from HDR for Additional Services Related to the Latest Part 12 Inspection (attachment) {action item}

Mike said the Part 12 inspection is to try to identify possible failures. The 2018 inspection showed the stability analysis needs to be looked at again. FERC is requesting the evaluation needs to be completed by December 31, 2020. Ron Smith moved to approve the proposal from HDR for additional services related to the latest Part 12 inspection under their current contract with a total of \$21,600 on a time and material basis. Adam Arthur seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Ron Smith – yes

6. Electric – Consider Authorizing the Mayor to Sign the Professional Service Agreement with Ripplinger Engineering Laboratories for Assessment and Recommendations Related to the Moyie Hydro Controls and Automation (attachment) {action item}

Mike said this is a complex issue that started in 2005. The generator protective relay (GPR) sends an alarm when there is a problem. Craig Ripplinger has done a lot of work with the Moyie Hydro and the Moyie substation. Craig and Terry Borden will provide an analysis and feedback on items that are required. Valerie asked when the work will be done. Mike said it will start as soon as the contract is signed and needs to be completed within 120 days. Adam Arthur moved to authorize the Mayor to sign the professional service agreement with Ripplinger Engineering Laboratories for assessment and recommendations related to the Moyie Hydro controls and automation in the amount of \$14,255. Valerie Thompson seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Ron Smith – yes

7. City – Consider Proposed Budget for Fiscal Year 21 and Authorize the Publication of Proposed Budget for Fiscal Year 21 {action item}

Valerie Thompson moved to approve the proposed budget for fiscal year 2021 and authorize the publication of the proposed budget for fiscal year 2021. Adam Arthur seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Ron Smith – yes

## **ADJOURNMENT**

The meeting adjourned at 6:40 pm.



# MEMO

CITY OF BONNERS FERRY  
CITY ENGINEER

---

**Date:** August 11, 2020  
**To:** City Council  
**From:** Mike Klaus, City Engineer  
**Subject:** Water Department - Dakota Water Main - BNSF Contract to Cross Tracks

Welch Comer Engineers recently submitted an application to BNSF on behalf of the City to install a new 8" water main inside of an existing pipe under the tracks. The City obtained a permit for in the 1950's for the original 10" steel pipe that is currently in place. This new 8" pipe is critical to delivering water from the new well house to the water tanks.

Obtaining permission from BNSF to use this crossing requires that the City enter into a contract with them. The contract is attached with this memo and contract fee is \$3,700. I request that the Council authorize the Mayor to sign the contract and approve payment of the contract fee.

Please let me know if you have any questions.

Thank you,

Mike



Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Rd., Suite 110  
Fort Worth, Texas 76155  
tel +1 817-230-2600, fax +1 817 306-8265

July 28, 2020

City of Bonners Ferry  
Attention: Mr. Mike Klaus  
7232 Main St.  
Bonners Ferry, ID 83805

20-66123

Dear Mr. Klaus:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print two (2) copies execute and **return both copies with original signature** for completion on part of BNSF Railway Company ("BNSF") to this office, along with the following requirements:

- A check in the amount of \$3,700.00 payable to BNSF Railway Company which covers the contract fee.

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

**In lieu of providing a separate policy for Railroad Protective Liability Insurance**, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and including an additional \$1,266.00 with your check.

**PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.**

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website [www.BNSFcontractor.com](http://www.BNSFcontractor.com) prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

**The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.**

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$1,600.00.

Sincerely,

Katie Robles  
Permit Manager  
Attachment

## PIPELINE LICENSE

THIS PIPELINE LICENSE ("License") is made to be effective \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between **BSNF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF BONNERS FERRY**, an Idaho corporation ("Licensee").

In consideration of the mutual covenants contained herein, the parties agree to the following:

### GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, 8 inches in diameter inside a ten inch (10") steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Bonners Ferry, County of Boundary, State of Idaho, Line Segment 0036, Mile Post 1368.03 as shown on the attached Drawing No. 79383, dated July 23, 2020, attached hereto as Exhibit "A" and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry potable water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

### COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. Costs and Expenses.
  - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
  - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare

benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

### LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

### LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, Cory McReynolds at Cory.McReynolds@BNSF.com, telephone 208-267-6813, at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

## 12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3<sup>rd</sup> parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensor.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

## **LIABILITY AND INSURANCE**

### 13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
  - 13.2.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,
  - 13.2.3 LICENSEE'S OCCUPATION AND USE OF THE PREMISES,
  - 13.2.4 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR
  - 13.2.5 ANY ACT OR OMISSION OF ANY LICENSEE PARTY.
- 13.3 TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.
- 13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.
- 13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR

**THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
  - Personal Injury and Advertising Injury
  - Fire legal liability
  - Products and completed operations
  - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- a. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
- The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
  - Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- b. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- c. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
- Bodily injury and property damage.
  - Any and all vehicles owned, used or hired.
- a. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to Licensor;
  - Additional insured endorsement in favor of and acceptable to Licensor;
  - Separation of insureds;
  - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all

of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

a. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- Licensee may **elect** to participate in Licensor's Blanket Policy;
- Licensee **declines** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.

15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.

15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.

- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.10 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.11 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.12 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.13 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.14 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.15 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.16 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.17 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

## COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

### 16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

### 17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.

- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensor's property. Upon request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.
- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 "**Environmental Law(s)**" shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental

requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

### DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

### LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other

improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

#### DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
- 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
- 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
24. Surrender of the Premises.
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
- 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises

solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor for no additional consideration.

### MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or

description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.

26.4 Licensor shall have the right to transfer and assign, in whole or in part, all of its rights and obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Road, Suite 110  
Fort Worth, TX 76155  
Attn: Permits/Licenses

with a copy to: BNSF Railway Company  
2650 Lou Menk Drive  
Fort Worth, TX 76131  
Attn: Senior Manager Real Estate

If to Licensee: City of Bonners Ferry  
7232 Main St.  
Bonners Ferry, ID 83805  
Attn: Mike Klaus

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.

29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.

30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.
- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

**END OF PAGE – SIGNATURE PAGE FOLLOWS**

This License has been duly executed by the parties hereto as of the Effective Date.

**LICENSOR:**

**BNSF Railway Company**, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.  
4200 Buckingham Road, Suite 110  
Fort Worth, TX 76155

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

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

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

**LICENSEE:**

**City of Bonners Ferry**, an Idaho corporation

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

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

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

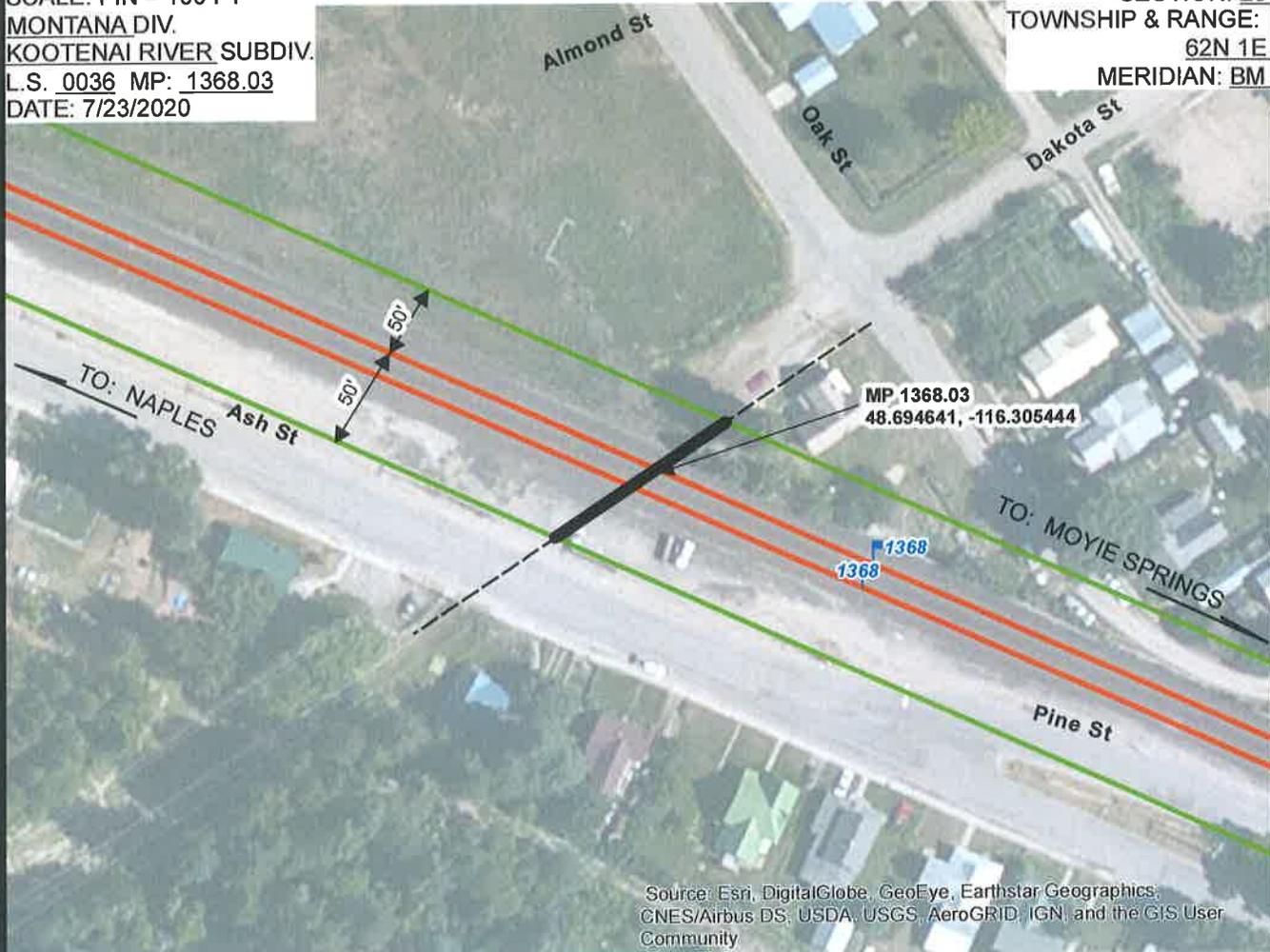
**EXHIBIT "A"**  
 ATTACHED TO CONTRACT BETWEEN  
**BNSF RAILWAY COMPANY**  
 AND



**CITY OF BONNERS FERRY**

SCALE: 1 IN = 100 FT  
 MONTANA DIV.  
 KOOTENAI RIVER SUBDIV.  
 L.S. 0036 MP: 1368.03  
 DATE: 7/23/2020

SECTION: 26  
 TOWNSHIP & RANGE:  
 62N 1E  
 MERIDIAN: BM



NOTE: EXISTING CASING IN PLACE PER AGREEMENT GN-50755

DESCRIPTION OF PIPELINE  
 PIPELINE SHOWN BOLD

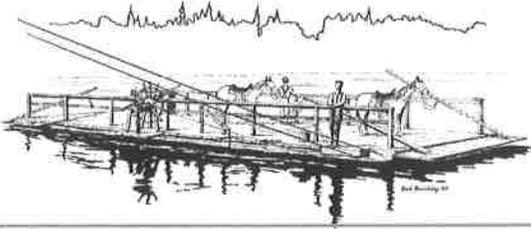
	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	8"	10"	LENGTH ON R/W:	117'	117'
CONTENTS:	POTABLE WATER		WORKING PRESSURE:	140 PSI	
PIPE MATERIAL:	HDPE	STEEL	BURY: BASE/RAIL TO TOP OF CASING		4.5'
SPECIFICATIONS / GRADE:	DR 11	CLASS IV, C76-57T	BURY: NATURAL GROUND		3'
WALL THICKNESS:	0.784"	0.25"	BURY: ROADWAY DITCHES		3'
COATING:	-	-	CATHODIC PROTECTION		-

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -  
 NOTE: CARRIER TO BE INSTALLED IN EXISTING CASING VIA SLIPLINE TECHNIQUE

**BONNERS FERRY**  
 COUNTY OF BOUNDARY

STATE OF ID

BMN



## CITY OF BONNERS FERRY

7232 Main Street  
P.O. Box 149  
Bonners Ferry, Idaho 83805  
Phone: 208-267-3105 Fax: 208-267-4375

---

**TO:** Mayor and City Council

**FROM:** Lisa Ailport, City Administrator *LMA*

**DATE:** August 14, 2020

**RE:** Authorization to Advertise the Streets Superintendent's position

I have received the Street Superintendent's resignation letter with a last date of work of September 30<sup>th</sup> of this year (see attached letter).

The current hiring freeze imposed by Council requires that I get permission from the Council to advertise the position.

I would like permission from Council to do both an internal and external advertisement, as this position is a critical position to our streets department.

Please let me know if you have any questions.

August 10<sup>th</sup>, 2020

City of Bonners Ferry  
Attn: City Council  
PO Box 149  
Bonners Ferry, Idaho 83805

Dear Mayor, City Council and City Administrator

Please accept this letter as notice of my retirement from the City of Bonners Ferry, Street Superintendent position, effective as of September 30<sup>th</sup>, 2020. After 35 years, **425** months of employment with the City, I have seen many changes in staff, co-workers and mayors. I am grateful to have had the opportunity to work with them all and to have started with the City at such a young age. I'd like to thank my co-workers, city council, mayor (both past and present), and office ladies for being a huge part of my work family for the past three and a half decades.

Thank you,

Michael John Youngwirth



RECEIVED

AUG 11 2020



## CITY OF BONNERS FERRY

7232 Main Street  
P.O. Box 149  
Bonners Ferry, Idaho 83805  
Phone: 208-267-3105 Fax: 208-267-4375

**TO:** Mayor and City Council

**FROM:** Lisa Ailport, City Administrator *LMA*

**DATE:** August 14, 2020

**RE:** **Gorshe Right of Way Agreement**

---

For the past year, staff has been working towards the attached agreement with the landowner regarding the exchange of land for city utility extension. In our discussion, we have determined that an equitable trade with the landowner would include a 50x300 foot strip of land for public right-of-way purposes in exchange for the city extending a sewer main through a portion of the right-of-way.

This right-of-way is a critical path for future connectivity from Denver and El Paso Street to Alderson Street. A current garage structure will need to be removed but just east of this property a natural draw exists where future construction of the street and utility expansion can occur. This corridor was identified in our Transportation Plan, capital improvement planning table:

Table 11 – Proposed Revised CIP

Project	Description	Total Points
Solomon to Wilson/Augusta	Potential Connection	39
Alderson Extension to Tamarack	Potential Connection	33
Tamarack to Labrosse Hill	Potential Connection	33
Walker to McCall	Potential Connection	32
Riverside	Reconstruction	29
Comanche/US-95	Intersection	29
El Paso to Eaton Area	Potential Connection	28
Garden Lane Extension: Garden Court to Fry	Potential Connection	26
US-95 Crosswalk with RFBs	Crosswalk	26
Cow Creek Road	Widening & Retaining Walls	26
Cody north of US-95 to Van Buren	Widen for Bike/Pedestrian	26
Denver/El Paso Extension to Alderson	Potential Connection	24
Loop Connection Around Elementary School	Potential Connection	24
Stephens, Cody to Augusta	Advisory Lane Striping	24
Alderson/Paradise Valley	Intersection	23

In our evaluation of the investment, we have estimated the cost to extend an 8-inch sewer line approximately 250 feet at \$37,000.00. Our estimation assumes outside contractors will complete the project; however, our hope is our staff will be able to complete the work, which will save money.

If Council approves of the agreement, we will begin preparing the right-of-way transfer deeds and legal description and plan the future sewer line extension for the following construction seasons. Our staff will look to prepare the legal

Please let me know if you have any questions.

## RIGHT OF WAY DEDICATION AGREEMENT

THE CITY OF BONNERS FERRY, hereinafter the "City", a municipal corporation of the state of Idaho, 7232 Main Street Bonners Ferry, Idaho 83805, and Timothy R. Gorshe referred to in this agreement as "Landowner", enter into this Right-of-Way Dedication Agreement, hereinafter the "Agreement," in order to acquire a public-right-of-way hereinafter referred to as the "Project."

WHEREAS, the City desires to develop and provide connectivity through a dedicated public access from the intersection of Alderson Street easterly 300 or so feet to the east property line (see exhibit C), providing for sewer main extension and to secure a right-of-way to allow construction of a future city street which will provide for critical east/west connectivity as identified within the City's comprehensive plan and transportation plan.

WHEREAS, the Landowner owns approximately 0.56 (RPB00000344602A) and 0.18 (RPB00000344601A) acres of real property in fee simple title, known as Tax Parcel 190 and 189 respectively and located in Section 34, Township 62N, Range 1E sited within the City of Bonners Ferry.

WHEREAS, the landowner agrees to dedicate a 50-foot strip of land to the City in consideration for the City installing sewer within the portion of dedicated stip.

WHEREAS, this agreement is meant to identify obligations thereby and to provide for authorization by the Landowners for dedication and for the City to accept the strip of land for the purpose and use as public right-of-way.

NOW THEREFORE,

IT IS HEREBY AGREED that subject to terms as set forth herein, the Project is anticipated to occur in the process stipulated with this agreement. Modification of this Agreement shall only be made by either the Landowners or the City Council in accordance with the procedures as identified within this Agreement.

The Landowner and City agree to the following:

1. Property and Term.

- 1.1 Property Subject to this Agreement. All of the real property defined herein as the Project, and more specifically defined within the following Instrument numbers #272296, and as included as Exhibit "A" shall be subject to this Agreement.
  - 1.2 Term. The term of this Agreement shall commence upon the execution of this Agreement by all parties hereto and shall continue until sewer is installed to the satisfaction of the City and the Landowners.
2. Regulations and Policies.
- 2.1 Project Development. Landowners shall have the right to develop the property in accordance with all City standards, the terms and conditions of this agreement do not affect any lands outside of the agreement, nor does it allow any deviations from any standard of city code or policy. Nothing in this Agreement shall contravene any applicable provision of law, which is not subject to modification by the City.
  - 2.2 Hold Harmless. Landowners hereby agree to and shall hold City harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the construction of City utilities, excepting claims and causes of actions brought by the Landowners for default of this Agreement or those arising from the negligence or willful misconduct of the City.
3. Construction of Improvements
- 3.1 Improvements to be constructed. The City will design and construct a municipal sewer main through portions of the dedicated right-of-way in accordance with specific utility plans developed by the City. The City reserves the right to construct such services at a level determined by the City Engineer and approved by the appropriate Idaho State agencies. All costs associated with the construction of the, sewer main as defined within this agreement, will be borne by the City and developed

and installed by the City.

Any improvements not specifically listed within this section, including but not limited to, the construction of the physical road and any sewer lift stations required to connect to sewer mains, are not included with this agreement. The City reserves the right to consider all specifics of the project and whether those improvements are in keeping with the intent of this agreement.

3.2 Connections to Services: The property owner requesting service shall pay all applicable City fees for connection to City water mains, sewer mains, and primary electric feeder, including any capitalization, construction or development fees at the time the request is made to connect to such services. This agreement does not include costs for installation to any structure or property, including lateral connections from any City main utility line.

3.3 Timing of Construction:

3.3.1 Responsibility: The City is responsible for installing the City owned utilities.

3.3.2 Phasing Construction: The City has the right to phase installation and construction of the utilities in a manner that serves the best interest of the City. It is not anticipated that Phasing will be a part of this agreement.

3.3.3 City Timelines: The City expects to complete the utilities within 36 months of the date of the signed agreement and pursuant to the phased construction approach listed in §3.3.4 of this section. The City and Landowners recognizes that the installation of utilities is dependent on weather, man power and resources.

3.3.4 Phased Construction Approach: [Reserved]

4 Transfer of Property and Removal of Structure.

4.1 Legal Description. The City shall provide the legal description to the Landowners for the vesting document.

- 4.2 Warranty Deed. Upon execution of this agreement, in accordance with section 7.7, the City shall prepare the legal description for recording through a Right-of-Way dedication deed which shall be signed by the landowner and the city.
- 4.3 Recording. Once the legal documents have been prepared and signed by all required parties, the City shall record those documents with the County Recorder.
- 4.4 Removal of Existing Structures: The city and the landowner acknowledge that an existing carport is present in future right-of-way. Once the property conveyance is complete, the landowner shall remove any existing structures and foundations thereto, within the newly acquired right-of-way. Removal shall include building materials, foundations and any underground utilities.
- 4.5 Landowner Responsible for Removal Costs: The landowner is responsible for all costs associated with the removal of the structure located in the future right-of-way. Should the city be required to remove any portion of structure or debris related to the building, the city may bill the landowner for actual costs associated with the removal of said structure, including staff time.
- 4.6 Removal Time Frame: In order to fully execute this contract, the city requests the structure be removed by no later than 12 months from the date of signature and recording of this document.

5. Default, Remedies, Termination, and Review.

- 5.1 General Provisions. Subject to extensions of time by mutual consent in writing, or as otherwise provided herein, failure by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. In the event of default under this Agreement or any of its terms or conditions, the party alleging such default or breach shall give the alleged breaching party not less than thirty (30) days notice in writing, measured from the date of certified mailing, specifying the nature of the alleged default and, when appropriate, the manner by which said default

may be satisfactorily cured. During any such thirty-day period of curing, the party charged shall not be considered in default for purposes of termination or institution of legal proceeding. The parties agree to meet face-to-face in the event of any such notice of default. After proper notice, meeting and expiration of said thirty (30) day cure period without cure, or if such cure cannot be accomplished within such thirty (30) day period, or if the cure has not been commenced within such period and diligent effort has not been made to effect cure thereafter, the party to this Agreement alleging the default, at its option, may institute legal proceedings to enforce this Agreement by specific performance or give notice of termination of this Agreement. Failure or delay in giving notice of default pursuant to the Notice provision of this Agreement shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

5.2 Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the action shall be brought in Boundary County, Idaho and the prevailing party shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be found by the Court.

5.3 Termination for Unforeseen Circumstances. If City determines that the health, safety and general welfare of the City or its residents requires the modification, suspension or termination of this Agreement as a result of facts either unknown or unforeseeable at the time this Agreement was executed, the City modify, suspend or terminate this Agreement following compliance with the following procedures.

- 5.3.1 City shall notify Landowners in writing of the City's determination that such circumstances exist, the reasons for the City's determination and all facts upon which such reasons are based.
  - 5.3.2 City shall hold a public meeting before City Council on the City's determination that this Agreement should be modified, suspended or terminated and provide notice of the time and place of the hearing to the Landowners and copies of all documents relating to such determination no less than seven (7) days prior to such public meeting.
  - 5.3.3 City shall have the obligation, based upon clear and convincing evidence, of establishing that (1) the circumstances were unknown, unforeseeable and could not have been known; and (2) the health, safety and general welfare of the community require the suspension, modification or termination of the Agreement as opposed to any other alternative.
  - 5.3.4 In the event the City Council should fail to make such findings, then this Agreement shall not be so terminated, modified or suspended.
  - 5.3.5 If such threat is immediate and substantial, the City may suspend project development immediately in order to protect the public interest.
  - 5.3.6 These procedures shall not apply when the unforeseen circumstances is a change in laws or regulations imposed by any political entity other than the City.
- 5.4 Governmental Authority. Nothing in this Agreement shall be deemed to compromise the governmental authority of the Mayor and City Council of the City of Bonners Ferry, present or future.

6. Transfers and Covenants.

- 6.1 Right to Assign. Landowners shall have the right to sell, assign or transfer, and all of their rights, duties and obligations under this Agreement, to any entity during the Term of this Agreement; provided,

however, in no event shall the rights, duties and obligations conferred upon Landowners pursuant to this Agreement be at any time so transferred or assigned except through a transfer of that party's interest in the Property, or portion thereof transferred.

6.2 Covenants Run With The Land. **All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entity acquiring the Project real property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws.**

7. General Provisions.

7.1 No Joint Venture or Partnership. City and Landowners agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Landowners a joint venture or partners. It is specifically understood and agreed by the parties that the Project contemplated by this Agreement is to provide public connectivity in the form of a right-of-way and public utilities; that the City has no interest in or responsibility for or duty to third persons concerning any of said improvements. The only relationship between City and Landowners is that of a governmental entity developing public utilities within public property pursuant to the laws of the City and the State of Idaho.

7.2 Severability. City and Landowners agree that if any provision of this Agreement is held invalid, the remainder of this Agreement shall not be

affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

- 7.3. Entire Agreement. This Agreement may be executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of \_\_\_\_ ( ) pages, including the Recitals and three (3) Exhibits, which constitute the entire understanding and agreement of the parties. A list of exhibits to this Agreement are as follows:

**Exhibit A: Vesting Deed #272296**

**Exhibit B: Engineer's Cost Estimate for utility installation**

**Exhibit C: Right of Way exhibit**

- 7.4 Minor Changes to Agreement. Minor changes in the manner of implementation of the approval memorialized hereby can be made by mutual agreement of the Landowners and the City's administrative staff.

- 7.5 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than three (3) years.

- 7.6 Estoppel Certificate. The Landowners may, at any time, and from time to time, deliver written notice to the City requesting such party to certify in writing that, to the knowledge of the certifying party (1) this Agreement is in full force and effect and a binding obligation of the parties; (2) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (3) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and

amount of such defaults. A party receiving a request hereunder shall execute and return such certificate or give a written detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. City's Mayor or City Administrator shall have the right to execute any certificate requested by Landowners hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

7.7 Duty To Record.

This Agreement or a Memorandum referencing the existence of this Agreement shall be recorded by City.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF BONNERS FERRY

\_\_\_\_\_  
James R. "Dick" Staples, Mayor

ATTEST:

\_\_\_\_\_  
Christine McNair, City Clerk

EXHIBIT A  
Legal Descriptions

(Attach Boundary County Records Instrument numbers #272296)

A tract of land lying in the Southeast Quarter of the Northwest Quarter (SE¼ NW ¼) of Section Thirty-four (34), Township Sixty-two (62) North, Range One (1) East, City of Bonners Ferry, Boundary County, Idaho, said tract of land being more particularly described as follows:

Commencing at the Southeast corner of the Southeast quarter of the Northwest quarter of Section 34, also described as the Center of Section Monument in Kinnear's Gardens Subdivision Plat; thence Northerly along the East boundary of Kinnear's Gardens Subdivision a distance of 396 feet to the Northeast corner of Lot 6 of Kinnear's Gardens Subdivision also known as the point of beginning.

Thence Westerly, along the North line of said Lot 6, a distance of 307.5 feet to the Northwest corner of said Lot 6; thence Southerly, along the West line of said Lot 6, a distance of 50 feet; thence Easterly, parallel to the North line of said Lot 6, a distance of 307.5 feet to a point along the East line of said Lot 6; thence Northerly, along the East line of Lot 6, a distance of 50 feet to the point of beginning.

Said tract of land contains a total of 0.35 acres, more or less.

272296

EXHIBIT "A"

Tax 189:

A tract of land in the Southeast Quarter of the Northwest Quarter of Section 34, Township 62 North, Range 1 East, B.M.; Boundary County, Idaho, more particularly described as follows:

Beginning at a monument at center of Section 34, Township 62 North, Range 1 East, B.M., Boundary County, Idaho, thence North 291 feet, thence West 202.50 feet to Point of Beginning; thence North 75 feet; thence West 105 feet; thence South 75 feet; thence East 105 feet to the Point of Beginning.

and also a strip of land on the West end of said tract for road purposes said strip being 22.5 feet wide and 75 feet long.

Tax 190:

A tract of land in the Southeast Quarter of the Northwest Quarter of Section 34, Township 62 North, Range 1 East, B.M.; Boundary County, Idaho, more particularly described as follows:

Beginning at a monument at center of Section 34, Township 62 North, Range 1 East, B.M., Boundary County, Idaho, thence North 291 feet to the Point of Beginning; thence North 105 feet; thence West 307.5 feet; thence South 30 feet; thence East 105 feet; thence South 75 feet; thence East 202.50 feet to the Point of Beginning.

and also a strip of land on the West end of said tract for road purposes said strip being 22.5 feet-wide and 75 feet long.

STATE OF IDAHO }  
County of Boundary } SS.

Filed by: Boundary Abstract

on 11-3-2011 at 1:45 p.m.

Glenda Poston

County Recorder

By Deputy

Fee \$

Mail to

15.00 (1 charge)  
Boundary Abstract  
Bonnors Ferry ID



272296

WARRANTY DEED

IN CONSIDERATION of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged by

ROBERT T. WINEY and PATRICIA D. WINEY, husband and wife, as community property with rights of survivorship

the Grantors does hereby grant, bargain, sell, convey and warrant unto

TIMOTHY R. GORSHE and JUDITH GRAUBART-GORSHE, husband and wife, as community property with rights of survivorship

the Grantees whose current address is:

P.O. Box 242, Moyie Springs, ID 83845

the following described premises, to-wit:

See Exhibit "A" attached hereto and made a part hereof.

SUBJECT TO all easements, right of ways, covenants, restrictions, reservations, applicable building and zoning ordinances and use regulations and restrictions of record, and payment of accruing present year taxes and assessments as agreed to by parties above.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

[Signature] ROBERT T. WINEY

11-1-17 Date

[Signature] PATRICIA D. WINEY

11-1-17 Date

State of Idaho )
)ss
County of Boundary )

On this 1st day of November, 2017, before me, the undersigned, a Notary Public, in and for said State, personally appeared ROBERT T. WINEY and PATRICIA D. WINEY, known to me, and/or identified to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

WITNESS MY HAND AND OFFICIAL SEAL

[Signature] Notary Public For Idaho
Residing at Bonners Ferry

Commission Expires: 10/7/2021



EXHIBIT B  
Engineer's Cost Estimate for Utility Installation

(Attached)

Exhibit B

**Alderson Sewer Extension**

*Engineer's Estimate*

<u>Item</u>	<u>Units</u>	<u>\$/Unit</u>	<u>Quantity</u>	<u>Total</u>
Sewer Manhole	EA	\$ 5,500	2	\$ 11,000
8" Sewer Main	LF	\$ 25	250	\$ 6,250
Trench Excavation	LF	\$ 20	250	\$ 5,000
Bedding / Backfill	LF	\$ 15	250	\$ 3,750
Sidewalk Repair	SF	\$ 15	50	\$ 750
Asphalt Repair	SF	\$ 15	150	\$ 2,250
Traffic Control	LS	\$ 2,500	1	\$ 2,500
Engineering	LS	\$ 3,500	1	\$ 3,500
CEI	LS	\$ 2,500	1	\$ 2,500
<b>Total</b>				<b>\$ 37,500</b>

<u>R-O-W</u>	<u>Length</u>	<u>Width</u>	<u>Area(SF)</u>	<u>Cost/SF</u>
	310	50	15500	\$ 2.42

Acreage= 0.35583

Cost/Acre= \$ 105,387.10

Exhibit C  
Right of Way Exhibit

(Attached)

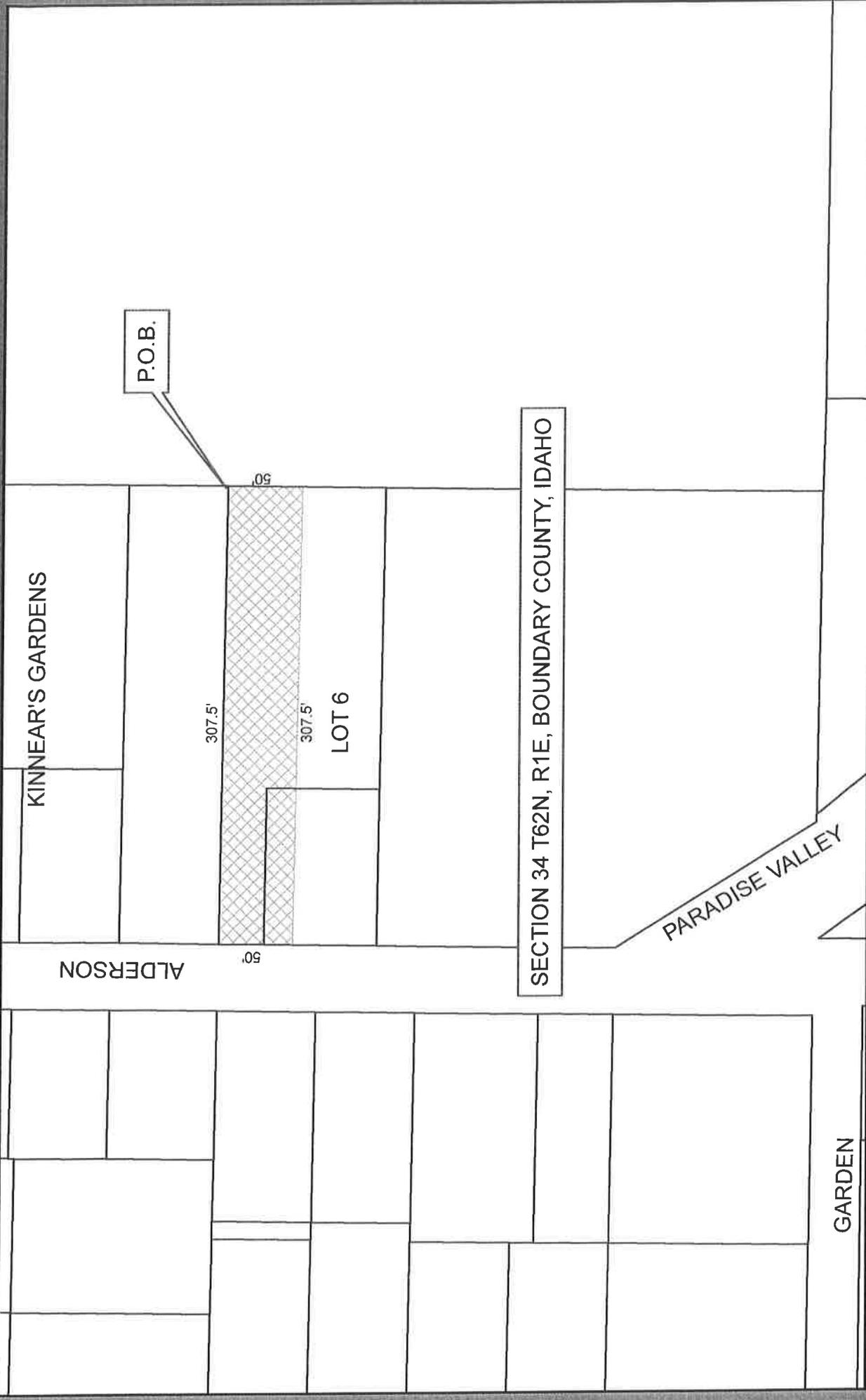
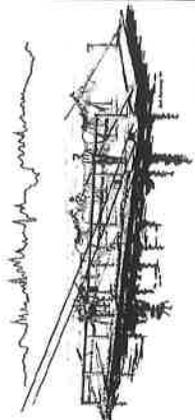


EXHIBIT C  
 RIGHT-OF-WAY DEDICATION  
 MARCH 2020



CITY OF BONNERS FERRY

LANDOWNER

Timothy R. Gorshe  
Timothy R. Gorshe

Judith Graubart-Gorshe  
Judith Graubart-Gorshe  
JG H

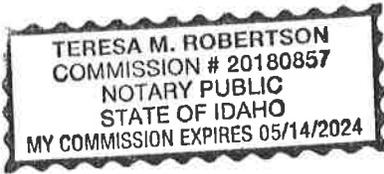
STATE OF IDAHO            )  
  :SS  
County of Boundary        )

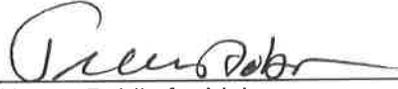
On this 12 day of August, in the year of 2020, before me Timothy R. Gorshe  
personally appeared Judith Graubart-Gorshe and Gorshe, proved to me on  
the basis of satisfactory evidence to be the persons whose names are subscribed to the  
within instrument, and acknowledged that they executed the same.

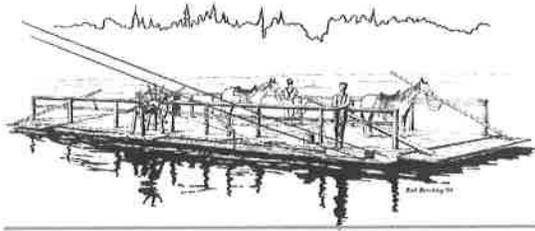
\_\_\_\_\_  
Notary Public for the state of Idaho  
Residing at:  
Commission Expires:

STATE OF IDAHO       )  
                                  ) ss.  
County of Boundary    )

On this 12<sup>th</sup> Day of August 2020, before me, the undersigned Notary Public, personally appeared **Timothy R Gorshe and Judith Graubart-Gorshe** known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Bonners Ferry  
Com. Expires: 05/14/2024



## CITY OF BONNERS FERRY

7232 Main Street  
P.O. Box 149  
Bonners Ferry, Idaho 83805  
Phone: 208-267-3105 Fax: 208-267-4375

---

**TO:** Mayor and City Council

**FROM:** Lisa Ailport, City Administrator *LMA*

**DATE:** August 14, 2020

**RE:** Approval of Volunteers for Mirror Lake Golf Course

---

According to the Golf Contractor, the following list is people who have agreed to participate in projects at the golf course on behalf of Friends of Mirror Lake.

Ralph Lotspeich, Julie Williams, Dave Anderson, Scott Schopen, Steve and Gerry Ann Howlett, Brion Poston, Steve Nelson, Jeremy Hill, Matt Maggi, Chad Iacolucci, Dan Tadlock, Mick Taylor, Michael Stevens, Mike Halford, Melayne Stevens, Dick Staples, Chad Kimball, Pat and Renee Murphy, Bill Gutknecht, Bob Schnuerle, Travis Blackmore, Tyler Pauls, Kevin Dinning, Mike Jelinek, Keith Fairchild, Phil Pollacia, Eddy Invernon, Travis Hinthorn, Cyle Young.

It is recommended that Council approve the above list as city volunteers for work done at Mirror Lake Golf Course and that they be covered under the city's liability insurance for any work conducted on behalf of Friends of Mirror Lake.

It is also recommended that the golf contractor provide a list of the volunteers for each project commenced at the course so that the city has record of volunteers, should any issue arise where our insurance may be needed.

Please let me know if you have any questions.

## INDEPENDENT CONTRACTOR AGREEMENT

AGREEMENT made between the City of Bonners Ferry, a political subdivision of the state of Idaho, herein "ENTITY" and CDA Stump Grinding herein "CONTRACTOR",

THE PARTIES AGREE AS FOLLOWS:

1. **CONTRACT:** ENTITY hereby employs CONTRACTOR as an independent contractor to complete and perform the following project and work: stump grinding/removal at Mirror Lake Golf Course and as described in the attached quote. CONTRACTOR agrees to provide all materials and services for the project.
2. **TIME OF PERFORMANCE AND TERMINATION:** Parties agree that: CONTRACTOR shall complete the project by December 31, 2020.
3. **COMPENSATION:** ENTITY agrees to pay CONTRACTOR as compensation a total not to exceed \$ 6150.00, as contemplated by the attached quote.
4. **INDEPENDENT CONTRACTOR:** The parties agree that CONTRACTOR is the independent contractor of ENTITY and in no way an employee or agent of ENTITY and is not entitled to workers compensation or any benefit of employment with the ENTITY. ENTITY shall have no control over the performance of this Agreement by CONTRACTOR or its employees, except to specify the time and place of performance, and the results to be achieved. ENTITY shall have no responsibility for security or protection of CONTRACTOR'S supplies or equipment. CONTRACTOR agrees to pay and be responsible for all taxes due from the compensation received under this contract.
5. **WARRANTY:** CONTRACTOR warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. CONTRACTOR acknowledges that it will be liable for any breach of this warranty.
6. **INDEMNIFICATION:** CONTRACTOR agrees to indemnify, defend, and hold harmless ENTITY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of CONTRACTOR, CONTRACTOR'S agents, employees, or representative under this agreement.
7. **INSURANCE:** CONTRACTOR agrees to obtain and keep in force during its acts under this agreement a comprehensive general liability insurance policy in the minimum amount of \$1,000,000 which shall name and protect CONTRACTOR, all CONTRACTOR'S employees, ENTITY and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR'S acts. CONTRACTOR shall provide proof of liability coverage as set forth above to ENTITY prior to commencing its performance as herein provided, and require insurer to notify ENTITY ten (10) days prior to cancellation of said policy.
8. **WORKER'S COMPENSATION:** CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff that the CONTRACTOR may employ, and provide proof to ENTITY of such coverage or that such worker's compensation insurance is not required under the circumstances.
9. **COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all federal, state, city, and local laws, rules and regulations.
10. **ENTIRE AGREEMENT:** This is the entire agreement of the parties and can only be modified or amended in writing by the parties.
11. **ATTORNEY FEES:** Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

ENTITY:

CITY OF BONNERS FERRY

CONTRACTOR:

By \_\_\_\_\_

By \_\_\_\_\_

James R. Staples, Mayor

Its \_\_\_\_\_

(Title or Office)

ATTEST:

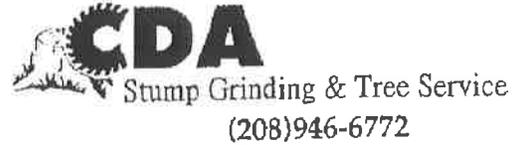
Christine McNair, Clerk

WITNESS:

(Signature of Witness or Notary Public)

Form and content approved by Andrakay Pluid as attorney for the City of Bonners Ferry

Shawn Smith  
1605 Crossport Rd  
Bonners Ferry, ID 83805  
ldirks.cdastump@outlook.com



ADDRESS  
Mirror Lake Golf Course  
5686 Main Street  
Bonners Ferry, ID 83805

ESTIMATE # E- 1051  
DATE 05/05/2020

DESCRIPTION	AMOUNT
HOLE 1 Grind 19 stumps - 1 day	1,450.00
HOLE 3 Remove 3 Birch trees Grind stumps Remove dead wood from other trees Remove Spruce tree	3,050.00
HOLE 4 Grind 4 stumps	
HOLE 5 Grind 3 stumps	
HOLE 6 Grind 1 stump	
HOLE 7 Grind 1 stump and cut all stumps low by T box	
HOLE 8 Grind 4 stumps	
HOLE 9 Grind 2 stumps	
Stump grinding HOLE 4 to HOLE 9	1,650.00

FULL CLEAN UP OF ENTIRE JOB

**TOTAL \$6,150.00**

Accepted By

Accepted Date

Thanks, Shawn Smith

**MEMORANDUM OF UNDERSTAND BETWEEN  
BOUNDARY COUNTY SCHOOL DISTRICT AND  
CITY OF BONNERS FERRY POLICE DEPARTMENT**

This Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between the City of Bonners Ferry Police Department and Boundary County School District effective September 1, 2020.

**SECTION 1. PURPOSE OF MOU**

The MOU formalizes the relationship between the participating entities in order to foster an efficient and cohesive program that will build a positive relationship between law enforcement and the youth of our community, with the goal of reducing crime committed by juveniles and young adults.

This MOU delineates the mission, organizational structure, and procedures of the School Resource Officer Program (hereinafter the "SRO Program") as a joint cooperative effort between the Boundary County School District and the City of Bonners Ferry Police Department. The success of this program relies upon the effective communication between all involved employees, the principal of each individual Boundary County school, and other key staff members of each organization.

**SECTION 2. TERM**

The term of this MOU shall begin on September 1, 2020 and end on August 31, 2021, unless terminated earlier as provided herein. The parties may renew this MOU only by separate written agreement or addendum hereto, which must be executed by both parties.

**SECTION 3. MISSION, GOALS, AND OBJECTIVES**

The mission of the SRO Program is the reduction and prevention of school-related violence and crime committed by juveniles and young adults. The SRO Program aims to create and maintain safe, secure and orderly learning environments for students, teachers and staff. This is accomplished by assigning a Law Enforcement Officer employed by the City of Bonners Ferry Police Department (hereinafter referred to as "SRO") to Boundary County School District facilities on a permanent basis.

Goals and objectives are designed to develop and enhance rapport between youth, police officers, school administrators and parents. Goals of the SRO Program include:

1. Reduce incidents of school violence.
2. Maintaining a safe and secure environment on school grounds.
3. Reduction of criminal offenses committed by juveniles and young adults.
4. Establish a rapport between the SRO and the student population.
5. Establish rapport between the SRO and parents, faculty, staff, and administrators.

Moreover, the SRO will establish a trusted channel of communication with students, parents and teachers. The SRO will serve as a positive role model to instill in students good moral standards, good judgment and discretion, respect for other students, and a sincere concern for the school community. The SRO will promote citizen awareness of the law to enable students to become better informed and effective citizens, while empowering students with the knowledge of law enforcement efforts and obligations regarding enforcement as well as consequences for violations of the law.

#### SECTION 4. ORGANIZATIONAL STRUCTURE

- A. Composition. The City of Bonners Ferry Police Department shall assign one (1) full time law enforcement officer to serve as SRO. The City of Bonners Ferry Police Department shall retain the exclusive right to exercise the customary functions of management. The SRO will be certified by the State of Idaho and meet all requirements as set forth by the Idaho Peace Officer Standards and Training. The Bonners Ferry Police Department reserves the right to remove the SRO at any time if Police Department staffing levels fall below acceptable norms or police response is necessary elsewhere in the City of Bonners Ferry.
- B. Supervision. The day to day operation and administrative control of the SRO Program will be the responsibility of the Police Department. Responsibility for the conduct of the SRO, both personally and professionally, shall remain solely with the City of Bonners Ferry Police Department. The SRO is employed and retained by the City of Bonners Ferry Police Department, and in no event will be considered an employee of the Boundary County School District. The Police Department and the School District shall each name a contact person who will monitor the program. Each principal will designate a contact person for the school to facilitate communication.

#### SECTION 5. PROCEDURES

- A. Selection. The SRO position will be filled per Police Department directives and selection process. The City of Bonners Ferry Police Department will make the final selection of any SRO vacancy.
- B. SRO Program Structure. The SRO is first and foremost a law enforcement officer for the providing law enforcement agency. The SRO shall be responsible for carrying out all duties and responsibilities of a law enforcement officer and shall remain at all times under the control, through the chain of command, of the law enforcement agency. All acts of commission or omission shall conform to the guidelines of the providing law enforcement agency directives. School officials should ensure that non-criminal student disciplinary matters remain the responsibility of school staff and not the SRO. Enforcement of the code of student conduct is the responsibility of teachers and administrators. The SRO shall refrain from being involved in the enforcement of disciplinary rules that do not constitute violations of law, except to support staff in maintaining a safe school environment.

The SRO is not a formal counselor or educator, and will not act as such. However, the SRO may be used as a resource to assist students, faculty, staff, and all persons involved with the school. The SRO can be utilized to help instruct students and staff on a variety of subjects, ranging from alcohol and drug education, to formalized academic classes. The SRO may use these opportunities to build rapport between the students and the staff. The Bonners Ferry Police Department recognizes, however, that the Boundary County School District shall maintain full, final, and plenary authority over curriculum and instruction in the School District, including the instruction of individual students. The parties recognize and agree that classroom instruction is the responsibility of the classroom teacher, not the Police Department or its employees, and the Police Department and its employees shall not attempt to control, influence, or interfere with any aspect of the school curriculum or classroom instruction except in emergency situations.

## SECTION 6. DUTIES AND RESPONSIBILITIES

- A. SRO: The responsibilities of the SRO will include but are not be limited to:
- a. Enforce criminal law and protect the students, staff, and public at large against criminal activity. The SRO shall follow the chain of command as set forth in the policies and procedures manual of the Bonners Ferry Police Department. School authorities and the parents of any child involved shall be notified as quickly as possible when the SRO takes any direct law enforcement action involving a student, on campus or off campus, during school hours.
  - b. Complete reports and investigate crimes committed on campus.
  - c. Coordinate, whenever practical, investigative procedures between law enforcement and school administrators. The SRO shall abide by all applicable legal requirements concerning interviews or searches should it become necessary to conduct formal law enforcement interviews or searches with students or staff on property or at school functions under the jurisdiction of the Boundary County School District. The SRO will not be involved in searches conducted by school personnel unless a criminal act is involved or unless school personnel require the assistance of the SRO because of exigent circumstances, such as the need for safety or to prevent flight. Formal investigations and arrests by law enforcement officials will be conducted in accordance with applicable legal requirements.
  - d. Take appropriate enforcement action on criminal matters as necessary. The SRO shall, whenever practical, advise the principal before requesting additional enforcement assistance on campus and inform the principal of any additional law enforcement responsibilities that may need to be undertaken.
  - e. The SRO will wear the Bonners Ferry Police Department issued uniform with all normal accessories and equipment, including a taser and firearm.

- f. The SRO shall be highly visible throughout the school district's campuses. For officer safety reasons, the SRO shall not establish any set routine, which allows predictability in their movements and their locations.
  - g. Confer with the principal to develop plans and strategies to prevent and/or minimize dangerous situations on or near the campus or involving students at school related activities.
  - h. Comply with all laws, regulations, and school board policies applicable to employees of the Boundary County School District, including but not limited to laws, regulations and policies regarding access to confidential student records and/or the detention, investigation, and searching of students on school premises, provided the SRO shall under no circumstances be required or expected to act or in a manner inconsistent with their duties as law enforcement officers. The use of confidential school records by the SRO shall be done only with the principal's approval and as allowed by law. Any existing rights or benefits of personnel assigned under this agreement shall not be abridged, and remain in full effect.
  - i. Provide information concerning questions about law enforcement topics to students and staff.
  - j. Develop expertise in presenting various subjects, particularly in meeting federal and state mandates in drug/alcohol abuse prevention education, and provide these presentations at the request of the school personnel in accordance with the established curriculum.
  - k. Prepare lesson plans necessary for approved classroom instruction.
  - l. Provide supervised classroom instruction on a variety of law related education and other topics deemed appropriate and approved by the SRO's agency supervisor and a school administrator.
  - m. The SRO shall attend school special events as needed (for example: sporting events), dependent upon scheduling and funding availability.
  - n. SRO will occasionally make themselves available for attendance at Boundary County School Board meetings upon request.
  - o. Attend law enforcement agency in service training as required. Reasonable attempts will be made to schedule such training to minimize his/her absence from school on an instructional day.
- B. SRO SUPERVISOR: The responsibilities of the SRO supervisor will include but are not limited to:
- a. Coordinate work assignments of the SRO.
  - b. Ensure SRO compliance with Police Department directives.
  - c. Coordinate scheduling and work hours of the SRO.
  - d. Work with the schools to make any needed adjustments to the SRO program throughout the school year.
- C. SCHOOLS: The responsibilities of the Schools will include but are not limited to:
- a. The Boundary County School District shall provide the SRO with a private, appropriately furnished office at the High School that can be secured and is reasonably acceptable to the City of Bonners Ferry Police Department.
  - b. The School District shall provide the SRO with a set of master keys for all schools served by the SRO.

- c. The School District shall provide reasonable opportunity to address students, teachers, school administrators, and parents about the SRO program, goals and objectives. Administrators shall seek input from the SRO regarding criminal justice problems relating to students and site security issues.
- d. When school personnel discover weapons, drugs, alcohol, or the illegal contraband on school property, the SRO shall be notified as soon as reasonably possible. If no juvenile or criminal charges are to be filed and no administrative action is to be taken by the Schools, the contraband shall be confiscated by the SRO according to Police Department policy and properly disposed of.
- e. School personnel shall timely notify the SRO with the names of specific individuals who are not allowed on school property, and shall notify the SRO of any anticipated parental problems resulting from disciplinary action taken against a student.
- f. Work cooperatively with the Police Department to make any needed adjustments to the SRO program throughout the year.
- g. Provide the Police Department with updated copies of all laws, rules, regulations, and school board policies applicable to employees of the School, including but not limited to laws, rules, regulations and policies regarding access to confidential student records and/or the detention, investigation, and searching of students on school premises.
- h. The School District shall work cooperatively with the City of Bonners Ferry to ensure continued, adequate funding of the SRO program.

## SECTION 6. ENFORCEMENT

Although the SRO has been placed in a formal educational environment, he/she are not relieved of the official duties as an enforcement officer. The SRO shall intervene when it is necessary to prevent any criminal act or maintain a safe school environment. Citations shall be issued and arrests made when appropriate and in accordance with Idaho state law and department policy.

The SRO and the Bonners Ferry Police Department will have the final decision on whether criminal charges shall be filed. The Bonners Ferry Police Department will reserve the right to temporarily remove the SRO in the event that additional officers are needed during an incident or natural disaster.

## SECTION 7. TERMINATION

This Agreement may be terminated by either party, with or without cause, upon sixty (60) day written notice to the other party.

## SECTION 8. HOLD HARMLESS

Each party agrees to hold harmless, defend, and indemnify each other including its officers, agents, and employees against all claims, demands, actions and suits (including

all attorney fees and cost) arising from the indemnitors performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.

The Boundary County School District and the City of Bonners Ferry Police Department mutually covenant and agree that neither party will insure the actions of the other, and each party will assume its own responsibility in connection with any claims made by a third party against the City of Bonners Ferry Police Department and/or the Boundary County School District subject to the provisions of this section.

SECTION 9. NOTICE

Any notice, consent or other communication in connection with this Agreement shall be in writing and may be delivered in person, by mail or by email. If hand delivered, the notice shall be effective upon delivery. If by email, the notice shall be effective when sent. If served by mail, the notice shall be effective three (3) business days after being deposited in the United States Postal Service by certified mail, return receipt requested, addressed appropriately to the intended recipient as follows:

Boundary County School District  
Jan Bayer, Superintendent  
7188 Oak Street  
Bonners Ferry, ID 83805  
[jan.bayer@mail.bcsd101.com](mailto:jan.bayer@mail.bcsd101.com)

City of Bonners Ferry  
Brian Zimmerman, Chief of Police  
7232 Main Street  
PO Box 149  
Bonners Ferry, ID 83805  
[bzimmerman@bonnersferry.id.gov](mailto:bzimmerman@bonnersferry.id.gov)

This has been agreed to in cooperation with the City of Bonners Ferry Police Department and the Boundary County School District. As agreed to and in partnership with:

BOUNDARY COUNTY SCHOOL DISTRICT:



Date: August 5, 2020

CITY OF BONNERS FERRY:



Brian Zimmerman, Chief of Police

Date: 8-13-20

James R. Staples, Mayor

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