

MEMORANDUM OF AGREEMENT

by and between

THE CITY OF BOISE CITY

and

[SELECTED APPLICANT]

THIS MEMORANDUM OF AGREEMENT (the “**Agreement**”) is made and entered into this _____ day of _____, 201__, by and between the city of Boise City, an Idaho municipal corporation, (the “**City**”), and **[SELECTED APPLICANT]**. Separately, the City or **[SELECTED APPLICANT]** may be referred to as a “**Party**” and jointly, the City and **[SELECTED APPLICANT]** may be referred to as the “**Parties.**”

RECITALS

WHEREAS, in 2015 the citizens of city of Boise City passed the approval of a temporary override levy to raise Ten Million Dollars (\$10,000,000.00) to be spent for the protection of clean water and drinking water, wildlife habitat, critical open space, and native plant species, and enhance recreation opportunities and trails; and

WHEREAS, in order to ensure the proper expenditure of these funds, the Boise City Open Space and Clean Water Advisory Committee (OSCWAC) was created to operate in an advisory capacity to the Boise City Mayor and City Council; and

WHEREAS, **[SELECTED APPLICANT]** submitted a proposed project (the “**Project**”) for the expenditure of levy funds by way of the Boise Open Space and Clean Water Improvement Project Application Form; and

WHEREAS, **[SELECTED APPLICANT]** proposal was recommended by OSCWAC for approval by the Boise City Mayor and City Council and was approved by the Mayor and City Council on **[INSERT DATE OF APPROVAL]**; and

WHEREAS, the City and **[SELECTED APPLICANT]** desire to enter into this Agreement to set forth the duties and responsibilities of each Party as they pertain to the Project.

NOW THEREFORE, for good and valuable consideration and in consideration of the mutual covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the City and **[SELECTED APPLICANT]** agree as follows:

AGREEMENT

A. Scope of Work. [TO BE DETERMINED]. The [SELECTED APPLICANT] shall perform all necessary functions related to the Project in compliance with federal, state and city law and regulations. Contract documents consist of the following together with any amendments that may be agreed to in writing by both Parties:

- a. Improvement Project Application
- b. Boise City Levy
- c. [ADDITIONAL DOCUMENTS]

B. Amount of Project Contribution: The City shall contribute levy funds toward this Project in an amount not to exceed: [INSERT AMOUNT]

C. Expenditure of Funds: All funds contributed by the City shall be spent in accordance with the City and State's purchasing and procurement requirements. Such requirements include, but are not limited to, those set forth in Idaho Code, Title 67, Chapter 28, Boise City Code, Chapter 1-11 and the City's Business Operations Manual. All levy funds must be spent solely on the benefits and goals listed above, and not administrative costs.

D. Term of Agreement: This Agreement shall be effective from the date signed by both Parties and shall continue until [INSERT ANTICIPATED COMPLETION DATE] (the "**Original Term**") or until otherwise terminated as provided by the terms herein. An extension or renewal of this Agreement may be made only in writing and approved by both Parties.

E. Time of Performance: All work and products described above in the Scope of Work shall be completed within [INSERT NUMBER OF DAYS] from the date hereof. The completion date may be modified by mutual written agreement of the Parties.

F. Project Manager: The City shall provide a Project Manager who will supervise the execution of the Project. The Project Manager will supervise the completion of the Project and will act as the decision maker for processes related to the Project. The Project Manager will also coordinate collaboration between the City and [SELECTED APPLICANT].

G. Roles and Responsibilities.

1. City Responsibilities: The City shall be responsible for the following:

- i. Providing a Project Manager and other necessary personnel to supervise the execution of the Project.

2. [SELECTED APPLICANT] Responsibilities: [SELECTED APPLICANT] will be responsible for the following:

i.

H. Equipment: If [SELECTED APPLICANT] uses any of the City's equipment, vehicles, or facilities ("**E**quipment") [SELECTED APPLICANT] shall be responsible for any and all damages and replacement costs that occur while the Equipment is in use by [SELECTED APPLICANT], regardless of whether the damage is caused by [SELECTED APPLICANT] staff or volunteers. Similarly, if the City uses any of [SELECTED APPLICANT] Equipment, the City shall be responsible for any and all damages and replacement costs associated with that use, regardless of whether the damage is caused by City staff or volunteers.

I. Personnel. Representatives from the City and [SELECTED APPLICANT], respectively, shall be responsible for directing and supervising their own staff and volunteers. [SELECTED APPLICANT] shall ensure that all City policies, procedures, rules, and guidelines are followed and adhered to.

1. Sexual Offenders. [SELECTED APPLICANT] shall not employ any employee, servant, agent, or volunteer on or at any event, or on or at any park, field, court, or facility, which is owned, managed, or operated by Parks and Recreation, who:

- i. Has been convicted of a crime listed in Idaho Code § 18-8304 (or similar law from any other state or territory); or
- ii. Is required to register under Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, Idaho Code § 18-8301 et seq. (or similar law from any other state or territory).

2. [SELECTED APPLICANT], at its own expense, shall conduct appropriate and applicable background and reference checks on each of its employees, servants, agents, and volunteers for the purpose of determining if either of the disqualifying circumstances exists with regard to any employee, servant, agent, or volunteer. Prior to work related to the Project, [SELECTED APPLICANT] shall certify that none of its employees, servants, agents, or volunteers has been convicted of any crime listed in Idaho Code § 18-8304 (or similar statute from any other state or territory) nor is required to register as a sex offender. [SELECTED APPLICANT] employment of any employee, servant, agent, or volunteer at any Youth Outdoors Program event, who is not qualified under this provision, shall result in immediate termination of this Agreement.

J. Termination for Cause. If, through any cause, the [SELECTED APPLICANT] shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the [SELECTED APPLICANT] shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the [SELECTED APPLICANT] of such termination and specifying the effective date thereof. If this

agreement is terminated for cause the [SELECTED APPLICANT] shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the [SELECTED APPLICANT] shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the [SELECTED APPLICANT], and the City may withhold any payments to the [SELECTED APPLICANT] for the purposes of set-off until such time as the exact amount of damages due the City from the [SELECTED APPLICANT] is determined. This provision shall survive the termination of this agreement and shall not relieve the [SELECTED APPLICANT] of its liability to the City for damages, provided that the amount of such damages shall not exceed the total compensation provided for in section two of this agreement.

K. Termination by Notice of the City: The City may terminate this Agreement at any time by giving at least thirty (30) days' notice in writing to the [SELECTED APPLICANT]. If the Agreement is terminated by the City as provided herein, [SELECTED APPLICANT] will be paid an amount which bears the same ratio to the total compensation as the services actually performed by [SELECTED APPLICANT] covered by this Agreement, less payments of compensation previously made.

L. Default and Cancellation. If the Parties are in default on any of the terms and conditions of this Agreement, or if the Parties violate any law of the United States, statute of the state of Idaho, ordinance of Boise City, or any rule or regulation promulgated by the Boise City Department of Parks and Recreation and thereafter fails or refuses to perform or correct the conditions constituting a breach or default, after thirty (30) days written notice this Agreement shall be deemed terminated and forfeited without further notice or demand, and all rights of the breaching Party hereunder shall be terminated.

TERMS

A. Relationship of the Parties. In all matters pertaining to this Agreement, the relationship between the Parties is that of independent contractors. No partnership is formed, or intended to be formed by this Agreement.

1. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

2. Neither [SELECTED APPLICANT] nor any employee, servant, agent, or volunteer of [SELECTED APPLICANT] shall be deemed an employee of the City.

3. Neither [SELECTED APPLICANT] nor any employee, servant, agent, or volunteer of [SELECTED APPLICANT] are entitled to any benefits the City may provide its employees or partners.

B. No Endorsement. Nothing in this Agreement shall be interpreted as an official endorsement by the City.

1. [SELECTED APPLICANT] shall not take any action or make any statement, issue any press release, or publish or print any advertisement suggesting or implying the partnership or endorsement of the City.
2. Decisions to issue any statements, press releases, advertisements, public service announcements and similar communications regarding the City and this Agreement and any activities conducted hereunder related to this Project, requires review by the City prior to release. Such materials must be approved in writing by the City prior to issuance.

C. [Compensation/Contribution]:

D. [Method of Payment]:

E. Reports and Information: At such times and in such forms as the City may require, there shall be furnished to the City such statements, records, reports, data and information as the City may request pertaining to matters covered by this Agreement.

- i. The City in its discretion shall supervise and manage the progress of the Project.
- ii. The City and [SELECTED APPLICANT] shall create a timeline which shall establish and illustrated the anticipated timeframe for completion of certain aspects of the Project. Deviation by [SELECTED APPLICANT] of this timeline may be considered default under this Agreement.

F. Approvals. [SELECTED APPLICANT] shall allow the City to review the Project's progress as the City feels necessary. The City shall approve or disapprove the work related to the Project within seven (7) days of the final completion. If, during the approval reviews, the City concludes that the work does not conform to the specifications of the Project, the City shall provide the [SELECTED APPLICANT] with notice in writing of specific non-conformity and request the [SELECTED APPLICANT] to address and cure the specific non-conformity within two weeks of the received notice. If after attempted correction, the City believes there is still non-conformity this Agreement shall be subject to immediate termination for cause.

G. Audits and Inspections: At any times during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all of [SELECTED APPLICANT] records with respect to all matters covered by this Agreement. [SELECTED APPLICANT] shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement

H. Changes: The City may, from time to time, request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in [SELECTED APPLICANT] contribution, which are mutually agreed upon by and between the City and the vendor, shall be incorporated in written amendments to this Agreement.

GENERAL PROVISIONS

A. Indemnification. To the extent allowed by Idaho law, [SELECTED APPLICANT] shall indemnify and save and hold harmless the City from and for any and all losses, claims, actions, judgments for damages or injury to persons or property and losses and expenses caused or incurred by [SELECTED APPLICANT], its servants, agents, employees, contractors, guests, volunteers and business invitees, and not caused by or arising out of the tortious conduct of the City or its employees.

B. Insurance. Prior to performance of any work related to the Project, [SELECTED APPLICANT] shall obtain, at its own cost and expense, and shall thereafter maintain at all times throughout the term of this Agreement and any extension thereof, liability insurance, in which the City is named as an additional insured in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code. The limits of insurance shall not be deemed a limitation of the covenants to indemnify, save, hold harmless and defend the City as provided herein. If, as a result of any action or inaction by [SELECTED APPLICANT] or any of its officers, employees, contractors, tenants, servants, agents, guests, volunteers or business invitees, the City becomes liable for an amount in excess of these mandatory insurance minimums, [SELECTED APPLICANT] expressly covenants and agrees to indemnify, save, hold harmless, and defend the City and its employees, servants, agents, and volunteers from and for all such amounts of losses, claims, actions, judgments for damages, and liability to persons or property that arise as a result of the activities contemplated pursuant to this Agreement. Proof of insurance shall be submitted to the city of Boise City, Department of Parks and Recreation.

[SELECTED APPLICANT] shall maintain automobile insurance with a limit of no less than \$500,000.00 per occurrence for owned, non-owned and hired vehicles. If [SELECTED APPLICANT] has no owned motor vehicles, then hired and non-owned motor vehicle liability coverage with limits not less than \$500,000 per accident for bodily injury and property damage is required. Where applicable, the city of Boise City shall be named as an additional insured.

Additionally, [SELECTED APPLICANT] shall have and maintain during the life of this Agreement, statutory Workers Compensation, regardless of the number of employees, or lack thereof, to be engaged in work on the project under this Agreement (including itself) in the statutory limits as required by law. In case any such work is sublet, the [SELECTED APPLICANT] shall require the subcontractor provide Workers Compensation Insurance for himself and any/all the latter's employees. Proof of insurance must be provided to the City prior to the start of work.

These provisions contained in Sections A and B immediately above, shall be deemed as separate and independent from the Agreement in the event there is any default, termination, cancelation, or expiration of the Agreement, and shall survive such default, termination, cancelation, or expiration of this Agreement.

C. Notices. Where notice to either Party is required, notice shall be delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested to the Party to be notified at the address specified below. Every notice shall be deemed to have been given at the time it is deposited in the United States mail, or upon personal delivery to the Party specified below or its agent or legal representative.

<u>The City:</u>	[SELECTED APPLICANT]
Department of Parks & Recreation	_____
ATTN:	_____
1104 Royal Boulevard	_____
Boise, Idaho 83706	_____

with a copy to:

Boise City Attorney's Office
ATTN: Abigail R. Germaine
150 N. Capitol Boulevard, 4th Floor, Building 2
Boise, Idaho 83702

D. Binding Effect. This Agreement and the terms and conditions hereof shall apply to and are binding upon the heirs, legal representatives, successors and assigns of the Parties.

E. Controlling Law. This Agreement shall be subject to and interpreted in accordance with the laws of the state of Idaho and the ordinances of the city of Boise City.

F. No Waiver. No failure of either Party to exercise any power or authority under this Agreement, or to insist upon strict compliance by the other Party with regard to any obligation hereunder, and no custom or practice of the Parties at variance with the terms hereof, shall constitute a waiver of either Party's right to demand strict compliance with any term, or all terms, of this Agreement.

G. Section Titles and Headers. The captions of the various paragraphs, articles, and sections of this Agreement are for convenience and ease of reference only, and are expressly not a part of this Agreement.

H. Compliance with Laws: In performing the Scope of Work required hereunder, [SELECTED APPLICANT] shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

I. Non-Discrimination. In performance of the Scope of Work provided herein, [SELECTED APPLICANT] shall not discriminate or permit discrimination against any person or group of persons in any manner on the grounds of race, color, sex, sexual orientation, gender identity/expression, religion, national origin or ancestry, familial status, age, or disability. Noncompliance with such assurances shall constitute a breach and default of this Agreement, and in the event of such breach and default, the City, at its sole discretion, may take appropriate action to enforce compliance and may terminate this agreement or seek judicial enforcement thereof. It is the responsibility of [SELECTED APPLICANT] to ensure that any employee, volunteer or sub-contractor is in compliance with this section.

J. No Third-Party Beneficiary. The provisions of this Agreement are for the exclusive benefit of the City and [SELECTED APPLICANT] and their respective successors and assigns. This Agreement is not for the benefit of any third person or party, nor shall it be interpreted to confer any right, express or implied, upon any third person or party.

K. Severability. If any provision of this Agreement or application thereof is held invalid, such invalidity shall not affect any other provision or application that can be given effect without the invalid provision or application. To that end, each and every term, paragraph, and provision of this Agreement is expressly declared by the Parties to be severable.

L. Time is of the Essence: The Parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the Party so failing to perform.

M. Force Majeure: Any delays in or failure of performance by [SELECTED APPLICANT] shall not constitute a breach or default hereunder if and to the extent such delays or failures of performance are caused by occurrences beyond the reasonable control of [SELECTED APPLICANT] including but not limited to, acts of God or the public enemy; compliance with any order or request of any governmental authority; fires, floods, explosion, accidents; riots, strikes or other concerted acts of workmen, whether direct or indirect; or any causes, whether or not of the same class or kind as those specifically named above, which are not within the reasonable control of [SELECTED APPLICANT]. In the event that any event of force majeure as herein defined occurs, [SELECTED APPLICANT] shall be entitled to a reasonable extension of time for performance of its Services under this Agreement.

N. Assignment: It is expressly agreed and understood by the Parties hereto, that [SELECTED APPLICANT] shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of the City.

O. Modification. Either Party shall have the option to amend this Agreement upon terms and conditions mutually agreed upon in writing and signed by authorized representatives of each Party.

P. Successors and Assigns. Subject to the assignment provisions herein, this Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the respective Parties.

Q. Entire Agreement. This Agreement constitutes the whole agreement between the Parties and no warranties, agreements, or representations have been made or shall be binding upon either Party unless herein set forth.

R. Attorney Fees. If either Party commences legal action to enforce the terms of this Agreement, in addition to any and all other relief received, the prevailing Party in such legal action shall be entitled to reasonable attorney's fees. This provision shall be construed and interpreted as applicable to this entire Agreement, and shall survive the termination and expiration of the Agreement.

S. Approval Required. This Agreement shall not become effective or binding until approved by the city of Boise City.

T. Authority. By the signature of its authorized representative on this Agreement, each Party declares and warrants that they are authorized to execute this Agreement on behalf of their respective agencies.

IN WITNESS WHEREOF, the Parties have executed and attested this Agreement as of the date and year first above written.

END OF AGREEMENT
[SIGNATURES FOLLOW ON NEXT PAGE]

For Boise City:

By: _____
David H. Bieter, Mayor

Date: _____

ATTEST: _____
Lynda Lowry, *Ex-Officio* City Clerk

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2017, before me, a notary public in and for said state, personally appeared David H. Bieter and Lynda Lowry, known or identified to me to be the Mayor and Ex-Officio City Clerk, respectively, who executed the within instrument and acknowledged to me that Boise City executed the same.

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

Notary Public for Idaho
Residing at: _____
My Commission Expires: _____

For [SELECTED APPLICANT]:

By: _____

Date: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____, 2017, before me, a Notary Public in and for the state of Idaho, personally appeared _____, known or identified to me to be the _____ who executed the within instrument, and acknowledged that _____ executed the same.

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

Notary Public for Idaho
Residing at: _____
My Commission Expires: _____