

**IDAHO FALLS REDEVELOPMENT AGENCY
P.O. BOX 50220
IDAHO FALLS, IDAHO 83405-0220**

**Thursday, March 15, 2018
Idaho Falls City Council Chambers
680 Park Avenue**

Meeting Time: Noon

A G E N D A

1. Modifications, Additions, Changes to the Agenda
2. Approval of Minutes: February 15, 2018
3. Approval of Bills and Financial Report
4. Public Comment: Consider Resolution Approving the 2017 Annual Report
5. Bonneville Hotel: Revised DDA
6. Jackson Hole Junction DDA
7. Project Updates and Discussion
 - a. The Broadway and Parking Garage
 - b. Idahoan Foods
8. RAI Discussion and Legislative Update
9. Next Meeting: April 19, 2018

Public hearing items are subject to change. If you have interest in a specific item, please contact the Planning Office at 208-612-8799. If you need communication aids or services or other physical accommodations to participate or access this meeting or program of the City of Idaho Falls, you may contact Naysha Foster at 208-612-8799, or the ADA Coordinator, Lisa Farris at 208-612-8323 and every effort will be made to adequately meet your needs.

IDAHO FALLS REDEVELOPMENT AGENCY
P.O. BOX 50220
IDAHO FALLS, IDAHO 83405-0220

MEMORANDUM

TO: Board of Idaho Falls Redevelopment Agency
FROM: Brad Cramer, Executive Director
SUBJECT: Agenda Items, Regular Meeting, March 15, 2018
DATE: March 9, 2018

2017 Annual Report

Attached is a resolution approving the final draft of the 2017 Annual Report including the Financial Audit Report. Changes discussed at last month's meeting have been made. The Annual Report covers a summary of projects, activities, and finances for each urban renewal district and an overview of valuations of all districts. It must be approved and submitted to the City Clerk on or before March 31, 2018. Notice that the Board will be accepting public comment on the report was posted on the City's website, in the newspaper, and sent out as a press release.

Bonneville Hotel: Revised DDA

Attached is the proposed amendment to the DDA and Schedule of Performance for the Bonneville Hotel. The changes reflect the change in purchase price from \$500,000 to \$200,000, selecting TitleOne as the escrow agent, and the possibility that another loan is being pursued by The Housing Company which, if successful, may result in up to \$300,000 being returned to the Agency as part of the purchase price.

Jackson Hole Junction OPA

The most recent draft of the OPA for Jackson Hole Junction is attached. The draft reflects changes requested by the sub-committee, which met with staff and legal counsel to discuss the amendments made by the applicant. The agreement includes provisions for IFRA to maintain 20% of the tax revenues with a \$50,000 cap and that no payment will be made until either a road is built and accepted by the City or a Certificate of Occupancy is issued for a building. Most of the remaining language is standard.

The Broadway: Project Update, Plaza and Parking Discussion

Staff held a phone call with Jeff Wolf from Car Park regarding the parking lot. Based on the conversation, staff recommends the subcommittee for this project schedule a separate time to meet with staff, the Oppenheimer team, and legal counsel to discuss some of the ideas proposed and how to move forward and to report back to the full agency board in April.

IDAHO FALLS REDEVELOPMENT AGENCY

P.O. BOX 50220

IDAHO FALLS, ID 83405

February 15, 2018

Regular Meeting Minutes

Council Chambers

Call to Order: Lee Radford called the meeting to order at 12:00.

Members Present: Lee Radford, Terri Gazdik, Brent Thompson, Kirk Larsen, Thomas Halley, Dave Radford, Chris Harvey.

Members Absent: None

Also Present: Brad Cramer; Ryan Armbruster (via telephone); and interested citizens.

Modifications to Agenda: None.

Minutes: Dave Radford moved to approve the minutes of January 18, 2018, Kirk Larsen seconded the motion and it passed unanimously.

Approval of Bills: Lee Radford presented the finance report dated February 15, 2018. The following bills were presented to be paid from the Snake River Allocation Fund: Elam and Burke, \$3,126.95 for legal services; Rebecca Thompson, \$70.00 for transcription of minutes; Kevin Machen, \$70.00 for snow removal; Amerititle – Renaissance Partners, \$175,677.90 for the OPA tax increment; as well as a transfer of funds from the Snake River Revenue Allocation Fund to the Jackson Hole Junction to cover legal fees. The following bill was presented to be paid from the River Commons Revenue Allocation Fund: Title Financial Specialty- Bandon River, \$10,129.67 for OPA tax increment; Title Financial Services – Ball Ventures, \$443,764.02. The following bill was presented to be paid from the Jackson Hole Junction Revenue Allocation Fund: Elam and Burke, \$1,580.00 for legal services. **Thomas Halley moved to approve the Finance Report, Brent Thompson seconded the motion and it passed unanimously.**

2017 Audit Report. Stacey Lemon, Rudd & Company. Lemon presented the 2017 Audit Report. Lemon indicated that the report was issued as an “unmodified report”, which means that the audit procedures have concluded that the financial statements are reasonably stated. Lemon directed the Board members to page 13 *Statement of Net Position* for IFRA. Lemon reminded the Board that all information is as of September 30, 2017. Lemon indicated that assets include: Cash and Investments of \$7,484,145.00; Property Tax receivable of \$94,996.00; Other receivable; \$25,804.00; Real estate option deposit of \$100,000 for Bonneville Hotel and that will go away once the option expires ore applied to the purchase price; Land \$1,499,386.00 for the purchase of the Kelsch Property, and that land has already been transferred, but as of the end of the year it still belonged to the Agency, which leaves the Agency with \$9,204,331 in assets. Lemon indicated that there is a small amount of payables as listed, as some accrued interest on the notes due under OPA agreements. Lemon indicated that it is showing a negative net position of (\$4,155,827.00), but a lot of that is for the promissory notes that are due to developers, and if those notes haven’t been paid by the end of the district, they go away. Lemon indicated that it is not an issue and there are plenty of funds to cover what is coming in the future. Lemon directed the Board to page 15 *Balance Sheet* for each individual District. Lemon indicated there is still a significant amount of cash and most of it is in the Snake River District; there are tax receivable that are mostly in the Snake River District. Lemon noted that there is an amount due between two different funds. Lemon stated that there was an issue with the property taxes in December 2016 and the County had marked some funds that were due for the Pancheri-Yellowstone Fund and the Eagle Ridge Fund as belonging to the Snake River

Fund, so now there is a receivable under Pancheri-Yellowstone and Eagle Ridge for the property taxes, and a payable on the Snake River's books. Lemon directed the Board to the Fund Balances portion on this page that shows the funds available to the District to use. Lemon showed that the Snake River Fund is the only fund that has any committed funds for projects. Lemon directed the Board Members to page 32 the last page of *Notes to Financial Statements*, that gives a list of what the Commitments are for each fund. Lemon indicated that at this point a lot of these commitments have been paid, but as of the end of the Fiscal year the amount still existed. Lemon directed the Members to page 17 *Statement of Revenues, Expenditures, and Changes in Fund Balances*. Lemon indicated that this page is the Profit and Loss Statement, by fund for the whole year. Lemon indicated that property tax revenues were up from the prior year by approximately \$200,000.00. Lemon stated that expenditures were similar to last year. Lemon stated that the amount under capital outlay shows the amount that was paid out for specific projects, including \$100,000 for Bonneville Hotel Option; \$151,000 for Milligan Road; \$2.2 million for the Riverwalk Drive project. Lemon indicated that the other funds only had administrative costs and legal expenses. Lemon stated that there is now a new fund for Jackson Hole Junction, and there was \$30,000 of income that was received from the developer that was used for legal expenses. Lemon directed the Board Members to page 25 *Notes to Financial Statements*. Lemon indicated that this shows the long-term notes and the activity in those debts throughout the year. Lemon stated that the payment is based on a percentage of the property tax received during the year, and most of them have no principal paid because the accrued interest balance is high, and the property tax goes to interest. Lemon stated that when the Districts expire the loans will go away. Lemon indicated that the Snake River Revenue Allocation Fund for \$2.5 million will disappear once the District is gone, and the Agency is not liable for the note. Dave Radford asked what the \$163,616 under Reductions for Snake River Allocation is depicting. Lemon indicated that it is the amount of principal that was paid down on the Promissory Note, so the payments that were received for property taxes that were then remitted to the developer were more than the accrued interest. Brent Thompson asked on Page 17 the River Commons Allocation Fund paid \$703,093 in interest and was that related to the balance on the Promissory Notes (\$9.3 million) on Page 25 for the Fund. Lemon agreed with Thompson that the interest was mostly from the \$8.8 million loan that has been outstanding for 10 years and has accrued a lot of interest. Lemon indicated that the other 2 notes are new that the accrued interest balance is new and that is why some of the payment was applied to principal. Lemon directed the Board Members to page 28 *Notes to Financial Statements*, shows a narrative of the Commitments on each of the projects, including the original agreement, how much has been paid, and how much still will be paid in the future. Lemon directed the Board Members to page 34 *Snake River Allocation Fund Schedule of Revenues, Expenditures, and Changes in /fund Balances- Budget to Actual*. Lemon indicated that this is a comparison of actual expenditures and revenues to the budgeted amounts for each fund. Lemon stated that Jackson Hole Junction is not listed because it did not exist when the budget was set. Lemon stated that revenues are more than what was budgeted; expenditures were less as some projects did not get going before the end of the year. *River Commons Fund Schedule of Revenues, Expenditures, and Changes in /fund Balances- Budget to Actual*. Lemons indicated that the only change is for \$665,000 for cost of construction because the promissory note was expected to be issued before the end of the year. Lemon indicated that the Pancheri Yellowstone has no significant differences between the budgeted and actual amounts. Lemons indicated that on Eagle Ridge the differences shown are from projects that were expected to be farther ahead.

Larsen directed Lemon to Page 13 *Statement of Net Position*. Larsen stated that there is an asset accrual and a liability accrual, and the asset is property tax receivable. Larsen asked if that goes through September 30 on the receivable. Lemon indicated those are all the property taxes receivable for previous years (2016, 2015, 2014, 2013) as of September 30. Larsen asked if the accrued interest payable is from

the last time the interest was brought current up until September 30. Lemons agreed with Larsen. Lemons indicted that some of the interest is current.

Thomas Halley moved to accept the 2017 Audit Report, direct Staff to file it appropriately, and add it to the annual report, Brent Thompson seconded the motion and it passed unanimously.

Review of Draft 2017 Annual Report. Cramer stated that most of the report has been updating the narrative to include projects they've done this year and updating projects. Cramer stated that the most asked about page deals with the increment values on page 3. Cramer stated that the Table shows each of the Districts, the year they were created, the year they will terminate, and their increment value to-date. Cramer stated that the paragraphs below the table show the percentage of valuation compared with the valuation of the City as a whole. Cramer stated that the table shows the positive affect of urban renewal on Idaho Falls. Cramer stated that the new section includes Jackson Hole Junction beginning on page 14. Cramer stated that everything is up to date with the text, and he would like to update the photos to show some of the projects that have been completed.

Gazdik stated she liked the *Executive Summary* (page 2) and asked if under the Culver's restaurant they could add the private investment that was invested on the property is, so it gives the read a good idea on the return on what the Agency is putting into the property.

Lee Radford stated he liked page 16 *Summary of "Increment Value"* that shows the Base Value and the Current Value. Gazdik asked if the Summary is supposed to be for 2016. Cramer indicated he will update all the years to 2017. Lee Radford asked Cramer to put the Base Value first and then the Net Taxable (switch columns). Halley stated that the values are appraised value and the market value will be considerably higher. Dave Radford stated that if it is more than 10% (5% on either side) deviation they are out of compliance as far as appraised value.

Armbruster indicated that they need to accept the report in its draft form, and authorize Cramer to distribute the Report and make it available to the public. Cramer indicated that in the past he has done a publication notice with the Post Register as well as posting it to the City's website. Armbruster stated that the March meeting will be open for public comment and approve the Annual Report for filing.

Kirk Larsen moved to approve the Draft 2017 Annual Report and authorize Brad Cramer to distribute the report and make it available to the public, including posting it to the City's website and filing a publication notice with the Post Register, Terri Gazdik seconded the motion and it passed unanimously.

Jackson Hole Junction: Review of Draft Owner Participation Agreement. Lee Radford asked who the sub-committee is on Jackson Hole Junction. Halley indicated that he was working on that project. Cramer stated that this will be a status update as the OPA is not ready to be reviewed. Cramer stated that the OPA has been distributed to staff and Chairman and recently to the developer's legal counsel. Cramer stated that once the changes come back from the developer the sub-committee can meet and review the OPA closer.

Halley stated that they are going to remove a lot of dirt from the area and they are intending to donate the dirt to the Heritage Park along the River.

Dave Radford offered to help with the sub-committee on Jackson Hole Junction.

Pancheri-Yellowstone Potential Project Update. Cramer stated that one of the property owners in the District approached the Agency to do a project and spend some of the money in the District, including

some improvements along Yellowstone Highway. Cramer stated that Public Works used their right of way agent to work with property owners to get some consensus amongst the property owners that this project would affect. Cramer stated that the plan shows the preferred option. Cramer stated that some of the changes that you could see might be to close some of the driveways and widen some other so the access flows better. Cramer stated that the plan shows trees, but Public Works is worried that the salt from the roads will kill the trees because of the narrow landscape area. Cramer stated that if they move the trees it is a \$12,000 cost difference. Cramer stated that if they don't do the trees, they could do decorative pavers or decorative rock. Cramer stated that the cost shown does not reflect the cost of purchasing the easement necessary to do these changes, which is estimated to be approximately \$5,000. Cramer indicated that this project shows 8' sidewalks. Cramer stated that this is an area that the City would like to see widened and have a better pathway for Connecting Our Community's and to help people that are coming from the Haven and the Ruth House, who need sidewalks to walk to work, etc. Cramer asked the Board if he should continue working on this project.

Lee Radford stated that when this District was started when Roger Ball Family wanted to build Candlewood Suites. Radford stated that the Balls' approached the Agency about an Urban Renewal District. Radford stated that Balls didn't ask for a lot, just some landscaping at the intersection and a portion of the trail maintenance. Radford stated that the hope was that some of the owners along Yellowstone would use the opportunity of having an urban renewal area to market their properties and bring other development, however, none have taken advantage, so the money has accumulated. Dave Radford stated that Kerr Lumber and Burglars were contacted and there wasn't any interest.

Lee Radford stated that the alternative to doing this project would be to return the funds to the tax entity and close the District.

Kirk Larsen asked if there is any interest in the area. Cramer stated that the only thing that they've heard is the Berry Oil Company will be making improvements to their site and all the other owners are just sitting.

Brent Thompson asked about the easements that need to be purchased. Cramer stated that they are sidewalk easements, so rather than purchasing the property they would purchase easements.

Dave Radford indicated that this District is intended to be a 12-year District. Cramer indicated that this District ends in 2019. Dave Radford stated that the sidewalks are a good idea for the area, and that might make the area more appealing for development.

Halley stated that the balance of the District is \$727,000.

Cramer asked if the Board is supportive and if he can direct Public Works to continue working on the project. Gazdik asked what decision needs to be made today. Gazdik stated that she would rather all the money go into the project, rather than return the money. Gazdik stated that the improvements will enhance the property and Yellowstone is a main entry way to the City and it needs to look good. Dave Radford stated that Renee Magee always wanted to do more along Yellowstone to make it look more appealing going into town. Gazdik stated that it is unfortunate that they can't do any greenery, but maybe another aesthetic improvement can be made. Lee Radford agreed with Gazdik. Radford stated that if they can encourage one development they will pay back what money is spent. Lee Radford asked if there is enough money to buy another foot or two of easement. Lee Radford stated that the land owners should participate and not be too tough on the Agency on giving them another foot or two to get some greenery along the road. Lee Radford stated that it will encourage people to want to invest in the area. Lee Radford stated that they've done a lot to the segments of the river from John Holes Bridge to Sunnyside.

Lee Radford indicated that if they could get a hotel or restaurant along the river it would be a major contribution, and this improvement along the road might be small part of pushing that direction. Halley stated that the economy is going well, and things are getting added. Halley stated that the Agency should do what they can to make it an attractive investment for developers.

Cramer clarified that the Agency is wanting to spend the balance of the funds instead of giving the money back. Cramer asked if they couldn't get more width purchased would the Agency want to narrow the sidewalk from 8' down to 5' to increase the landscaping width or would they rather keep the 8' sidewalk and have pavers and possibly no greenery. Gazdik suggested that instead of pavers they could possibly do some stampcrete, as the pavers sometimes get shifted due to the freeze. Thompson stated that Firth has paver work that was put in years ago and still looks nice. Lee Radford stated that the pavers on Broadway are holding up, but the ones that go in the street do not do well. Cramer agreed with Radford that the pavers that are used for pedestrian traffic do well. Gazdik indicated she would like them to find a way to put greenery. Halley stated that the best way to move traffic and reduce ice and snow is brine and the brine is lethal to greenery. Gazdik asked about planter boxes.

Lee Radford stated that the Agency is willing to spend the entire balance if they can get a plan that has more greenery, possibly more space and see what they can do. Lee Radford stated that it appears that they lean more towards pavers over rocks. Dave Radford asked if the current balance is projected for next years. Cramer stated that it is only current balance, so there would be some additional funds going in for next year. Mark Hagedorn stated that they are getting \$60,000 in property taxes.

Dave Radford stated that along the river it would be nice to have a bike and walking path. Cramer stated that there is a pathway along that side of the river that goes all the way to Sunnyside that has been developed in the last 5-7 years.

Brent Thompson suggested that the property owners be encouraged to donate the easements.

Terri Gazdik moved to authorize Brad Cramer to pursue plans for development of the area along Yellowstone Highway to include: attempting to acquire more easement to put in greenery, and if greenery is not possible then to have pavers for aesthetics, Brent Thompson seconded the motion and it passed unanimously.

The Broadway: Project Update and Plaza Discussion. Lee Radford recused himself for this item. Cramer stated that they meet with the Plaza Committee and there is a revised design in the packet that has the wave design that is like the new City Logo. Cramer stated that the concrete has been poured for the plaza and the Committee liked the amenities that were selected. Cramer stated that they need to start thinking about the structure of the parking below grade, whether it will be hourly, daily, monthly. Cramer stated that they need to order the equipment for gate to the parking garage, and the type of equipment needed is different than hourly versus long term leases.

Brent Thompson indicated that there hasn't been a lot of successful public parking projects in Idaho Falls, so it is hard to tell what they are going to need. Thompson indicated that he believes it should be short term, and perhaps some long-term parking. Thompson suggested they have the equipment than can handle both.

Thomas Halley stated that if too much is in long term monthly leases, the less it benefits the public in general as it would be strongly biased towards the tenants.

Thompson indicated that it is imperative to make the emphasis on the parking as a benefit to the public, rather than an excessive benefit to the tenants.

Cramer stated that he spoke with Oppenheimers about long term lease would have a certain time of day that the lease spot would end, so after 5:30 that spot would not be guaranteed, and Oppenheimers were open to that type of a mix.

Lee Radford stated that his firm is entering into a lease to lease a portion of the building and this is a concern for the tenants. Lee Radford stated that the lease has a provision that if the firm is not happy with the parking arrangement they can terminate the lease. Radford stated that they are paying a full market rent and they need to be able to have some rights to the parking.

Brent Thompson stated that both public and tenants have an interest in the parking. Thompson stated that there are 49 below grade spaces and there needs to be a balance with short term and long-term parking.

Kirk Larsen asked if there is any knowledge about other cities using a mix such as Monday – Friday 7-5:30 is a lease and then after that time it is open for hourly parking. Cramer stated that Boise has done that. Larsen indicated that would be a good compromise for a percentage of the spots.

Armbruster stated that CCDC in its new garage will move to a mixed parking situation. Armbruster stated that your monthly parking pass doesn't guarantee you the opportunity to park 24/7. Armbruster stated that in the older garages the way CCDC mixes short term and long term is by floor so that the monthly pass car is parking on the higher floors and the retail/short term parking will be on the lower floor. Armbruster stated that they have gone to more monthly than short term because it has been more attractive in terms of financial return. Armbruster stated that theoretically if you do have enough turn over in the short-term spaces you do make more money than a long term monthly pass.

Larsen stated that the tenants have needs and they are paying market price for the rental, so they need to be met in the middle. Larsen stated that it is doable to have a mix.

Cramer clarified that at this point the equipment that could be needed should be such to accommodate a mix of parking. The Board members agreed with Cramer.

Gazdik stated that the redesigned Grove has the waves running through their plaza that has little solar pebbles in the wave so there is a lighting affect at night. Armbruster stated that it is much changed and very cool. Thompson stated that the artificial ground view is very attractive.

The Bonneville Hotel: Project Updates and Draft DDA Revisions. Cramer stated that the revised DDA will be available in March that will revise the purchase price and how the funds are allocated. Armbruster stated that they have flushed out the issues in the drafting tasks and they will have a draft at the next meeting in March.

Update on Constitution Way Improvements. Radford indicated that Tom Manschrek has been working with Idahoan to convince them to remain in Downtown Idaho Falls. Radford stated that they are trying to help and see how the Agency can participate. Radford indicated that Manschrek has a proposal to Idahoan and they are supposed to meet next week with Idahoan and see what they have to say. Radford indicated that the property they are looking at is the property across the street from the City building, where Idahoan currently is, and the lot next to Idahoan. Radford stated that the lot next to Idahoan would be developed into a high rise building that was joined to the existing Idahoan. Radford added that they plan to improve the intersection of Park and Constitution. Radford stated that Idahoan could easily find new space in another area, but it would be beneficial to have them invest in the current infrastructure.

Thompson asked what the parking plan is. Radford stated that the plans are interesting and attractive, including a 7-story building with a retain component on the main floor and 3 parking floors and 3 floors of office space that would connect to the existing Idahoan space. Radford stated that this would have covered parking and that is a major incentive to Idahoan.

RAI and Legislative Updates. Armbruster stated that Legislatively there is House Bill 556 that would have granted to the County Commissioners the right to grant a property exemption from the remaining part of personal property that is not already exempted. Armbruster stated there has been concern expressed by the tax commission and the bill is technically held at the Chair, so likely it is done for the session. Armbruster stated that most of the entities, including Association of Idaho Cities, Association of Highway Districts, etc. opposed the bill. Armbruster stated that RAI will meet this afternoon to discuss other issues, but nothing pressing.

Halley stated that Bill 556 would be hard on the Districts that use bonding, as there wouldn't be enough money coming in to cover the bond. Armbruster stated that he had received comments from the Burley Redevelopment Agency, whose current tax revenue comes from personal property because of the heavy industrial nature of their project and they would be in a world of hurt, if the Cassia County Commissioners approved an exemption to one or more of the industrial users.

Lee Radford asked what Tax Payers they have that have more than \$100,000 of personal property. Armbruster stated that not many. Armbruster stated that in Boise the personal property tax is 15-20% of the revenue, so it's not insignificant, but not a substantial majority. Halley asked if this is a shift toward the smaller businesses as far as taxes go. Armbruster stated that would be the result.

Dave Radford asked if hotels would have over 100,000 in personal property. Armbruster stated that in Boise CCDC's loss of revenue would be 6%, as most users already fall within the exemption. Armbruster stated that the non-exempt personal property is the heavy industrial users. Armbruster stated that the statute works so that most of hotel/retail equipment and personal property values are small.

Next Regular Meeting: March 15, 2018.

Brent Thompson moved to adjourn the meeting, Dave Radford seconded the motion and it passed unanimously.

Respectfully Submitted: Beckie Thompson

FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the IDAHO FALLS URBAN RENEWAL AGENCY ("Agency") and The Housing Company ("Developer"), individually referred to as a "Party" and collectively referred to as the "Parties." The Parties agree as follows:

- A. The Parties have entered into a Disposition and Development Agreement with an effective date of June 19, 2017 (the "DDA");
- B. The Parties desire to amend the DDA to reflect a modification to the Purchase Price, as that term is defined in the DDA and to update the Schedule of Performance.
- C. Capitalized terms not defined herein shall have the meaning ascribed in the DDA.
- D. All terms and provisions of the DDA not modified or amended herein are still in effect.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agency and Developer agree as follows:

- 1. Amendment to Section 5.1.1 of the DDA.** Section 5.1.1 of the DDA is modified by deleting the section and replacing it as follows:

1.1.1. Purchase Price. The purchase price for the Property (the "Purchase Price") is TWO HUNDRED THOUSAND Dollars (\$200,000.00). \$20,000 of the Purchase Price is allocated to the land. \$180,000 of the Purchase Price is allocated to the building and improvements.

The Purchase Price is based upon "Reuse Appraisal Data" including but not limited to market conditions; density of development; costs expected to be incurred and revenues expected to be realized in the course of developing and disposing of the Project; sizes and expected sales prices or rents; square footages of uses of the residential spaces; leasing or sales prices for other uses and assets such as commercial and retail spaces; assumptions regarding soft costs such as marketing and insurance; risks of Agency; risks of Developer; Developer participation in the funding of public facilities and amenities; estimated or actual Developer return including assumptions regarding entrepreneurial incentive, overhead and administration; and restrictions, limitations, or requirements upon use and development of the Property as these factors apply to the Project; estimated market value for the Property as a part of the Project;

and estimated costs for any anticipated public improvements. The Reuse Appraisal is attached hereto as **Attachment 6**.

The Parties acknowledge that Developer has applied for certain affordable housing grants that will not be awarded until after Closing. The Parties agree that if Developer is awarded any affordable housing grants or any like substitutes for the Project that would qualify Developer to a tax credit allocation pursuant to the Idaho Housing and Finance Association Reservation Low-Income Tax Credit executed by the Idaho Housing and Finance Authority on December 22, 2017, and Developer on December 29, 2017, (the "Grant") the Purchase Price shall be adjusted upwards by the lesser of fifty percent of the amount of the Grant or \$300,000.00.

2. Amendment to Section 5.3. Section 5.3 of the DDA is modified by changing the Escrow Agent to TitleOne, 400 Memorial Drive, Idaho Falls, ID, 83402.

3. Amendment to Section 5.3.3. Section 5.3.3 of the DDA is modified by deleting the section and replacing it as follows:

The Close of Escrow ("Closing") shall occur within ten (10) days after the date all of the Agency Closing Conditions and the Developer Closing Conditions in Sections 5.3.1 and 5.3.2 (other than the conditions on the delivery of documents and funds into Escrow, which shall occur during said ten (10) day period) are satisfied or waived by the benefited party, but in no event later August 31, 2018.

4. Schedule of Performance. The Schedule of Performance attached to the DDA as Attachment 4 is deleted and replaced with the Schedule of Performance attached hereto as Exhibit A.

Agency:

IDAHO FALLS URBAN RENEWAL AGENCY

By: _____

Its: _____
_____, 2018

DEVELOPER:

The Housing Company, an Idaho nonprofit corporation

By: _____

Kathryn Almberg, Director
_____, 2018

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, 2018, before me, _____, the undersigned notary public in and for said county and state, personally appeared _____, known or identified to me to be the _____ of THE IDAHO FALLS URBAN RENEWAL AGENCY, the public body, corporate and politic, that executed the within instrument on behalf of said Agency, and acknowledged to me that such Agency executed the same for the purposes herein contained.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of _____, 2018, before me, _____, a Notary Public in and for said State, personally appeared Kathryn Almberg, known or identified to me to be the Director of The Housning Company, an Idaho nonprofit corporation, and the person who subscribed said company name to the foregoing instrument, and acknowledged to me that she executed the within instrument on behalf of said corporation, and that such corporation executed the same in said company name.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

| Schedule of Performance, The Bonneville Hotel | | | |
|--|---|---|----------------|
| | Action | Due Date | Section |
| 1 | Submission of Preliminary Evidence of Financing. Developer shall submit to Agency evidence satisfactory to the Agency that Developer will have at or before Closing the financial capability necessary for the acquisition of the Property and the development of the Project thereon pursuant to this Agreement. | Submitted | 4.1 |
| 2 | Time to Approve Evidence of Financing. Agency shall approve or disapprove of Developer's evidence of financing | Complete | 4.2 |
| 3 | <u>Escrow Opening</u> . Agency shall open escrow for the sale of Parcel to Developer. | Within 5 business days of Execution of Agreement by Agency. | 5.3 |
| 4 | Submission of Agency Design Review Drawings. | Submitted | 7.4 |
| 5 | Approval of Design Review Drawings. | Approved by Agency | 7.4 |
| 6 | Submission of Revised Design Review Drawings. | Prior to Submission to City | 7.4 |
| 7 | Approval of Revised Design Review Drawings. | Within 15 days of submission by Developer | 7.4 |
| 8 | Submission of Final Construction Documents. Developer shall prepare and submit to Agency for review and approval construction plans sufficient to obtain a building permit for the Project. | Thirty days prior to Closing | 7.5 |
| 9 | Approval of Final Construction Documents. | Within 15 days of submission by Developer | 7.5 |
| 10 | Submission of Revised Final Construction Documents. | Upon completion, but at least 15 days prior to Closing | 7.9 |
| 11 | Approval of Revised Final Construction Documents. | Within 10 days of submission by Developer | 7.9 |

| | | | |
|----|--|--|-----------|
| 12 | <u>Insurance.</u> Developer shall furnish evidence of the insurance required under the Agreement to Agency. | Prior to Closing. | 8 |
| 13 | <u>City and Government Permits.</u> Developer shall secure all necessary permits, other than building permits and condominium plat approvals, for the Project. | Prior to Closing. | 5.4.1 (a) |
| 14 | <u>Construction Loan Closings.</u> Developer shall have closed its loan for the construction of the Project | Concurrently with Closing | 5.4.1 (d) |
| 15 | <u>Conditions Precedent to Closing.</u> All Conditions Precedent to Closing shall be satisfied or waived as appropriate. | Prior to Closing. | 5.5 |
| 16 | <u>Closing.</u> Agency shall close escrow and convey Parcel to Developer. | In no event later than August 31, 2018. | 5.3.3 |
| 17 | <u>Commencement of Construction</u> of the Project. | Within 30 days following Closing. | |
| 18 | <u>Completion of Construction.</u> Developer shall complete construction of Project as evidenced by the receipt of a Certificate of Completion from the City. | Approximately 12 months after commencement of sitework. | |
| 19 | <u>Certificate of Completion.</u> Agency shall provide Certification of Completion to Developer. | Within 30 days of receipt of Certificate of Occupancy from the City or other written confirmation from the City that Project has been completed. | 9 |
| | | | |

OWNER PARTICIPATION AGREEMENT

By and Between

The Idaho Falls Redevelopment Agency,

and

JHJCC, LLC

for

JACKSON HOLE JUNCTION PROJECT

OWNER PARTICIPATION AGREEMENT

THIS OWNER PARTICIPATION AGREEMENT (hereinafter “Agreement”) is entered into by and between the Idaho Falls Redevelopment Agency, a public body, corporate and politic (hereinafter “Agency”), organized pursuant to the Idaho Urban Renewal Law, Title 50, Chapter 20, Idaho Code, as amended (hereinafter the “Law”), and undertaking projects under the authority of the Local Economic Development Act, Title 50, Chapter 29, Idaho Code, as amended (hereinafter the “Act”), and JHJCC, LLC, successor to MCMC Jackson Hole Junction LLC, an Idaho limited liability company authorized to do business in the State of Idaho (hereinafter “Participant”), collectively referred to as the “Parties” and each individually as “Party,” on the terms and provisions set forth below.

RECITALS

WHEREAS, Agency, an independent public body, corporate and politic, is an urban renewal agency created by and existing under the authority of the Law and the Act;

WHEREAS, the Idaho Falls City Council adopted its Ordinance No. 3142 on November 8, 2017, approving the Urban Renewal Plan for the Jackson Hole Junction Urban Renewal Project (hereinafter the “Urban Renewal Plan”);

WHEREAS, Participant owns and controls the real property generally located at Pioneer Drive and Sunnyside Road, near the Sunnyside Road interchange with Interstate 15 (hereinafter referred to as the “Site” as defined below);

WHEREAS, Participant intends on constructing water, sewer, street, and electrical improvements and basalt remediation on the Site and adjacent public rights of way in conjunction with the development of a new commercial, office, and retail project on the Site (the “Project”);

WHEREAS, the Urban Renewal Plan authorizes Agency to use revenue allocation financing to fund specific projects and improvements to implement the Urban Renewal Plan;

WHEREAS, Agency and Participant have negotiated the major terms of Agency’s participation in the funding of certain improvements to the public infrastructure, basalt remediation and other eligible expenses (collectively the “Agency Funded Public Improvements”);

WHEREAS, the Agency Funded Public Improvements implement several objectives outlined in the Urban Renewal Plan;

WHEREAS, the Urban Renewal Plan authorizes Agency to enter into owner participation agreements to implement the Urban Renewal Plan;

WHEREAS, as a result of Participant's agreement to construct the Agency Funded Public Improvements, Participant's commitment to comply with the terms of the Urban Renewal Plan, and Agency's commitment to reimburse Participant in compliance with the Urban Renewal Plan, the Parties deem it necessary to enter into this Owner Participation Agreement to define their respective obligations;

NOW, THEREFORE, in consideration of the above recitals, which are incorporated into this Agreement, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

I. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date when this Agreement has been signed by the Parties (last date signed) and shall continue until all obligations of each Party are complete.

II. SUBJECT OF AGREEMENT

A. Recitals, Purpose of This Agreement, and Interest

The Parties agree that the foregoing recitals are not mere recitations but are covenants of the Parties, binding upon them as may be appropriate and a portion of the consideration for the agreements contained herein. The mutual consideration and covenants contained herein are intended to achieve the objectives and obligations of both Parties. The Agency's commitment herein is intended to comply with the Agency's authority under the Law, the Act, and the Urban Renewal Plan and is not a gift or donation of public funds.

The purpose of this Agreement is to effectuate the Urban Renewal Plan by providing for basalt remediation and the construction of public improvements on or adjacent to the Site.

The construction of said public improvements on the Site and the fulfillment, generally, of this Agreement are in the vital and best interests of the City of Idaho Falls (the "City") and the health, safety, and welfare of its residents and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements. Implementation of this Agreement will further the goals and objectives of the Urban Renewal Plan.

B. The Plan

This Agreement is subject to the provisions of the Urban Renewal Plan.

C. The Project Area

The Urban Renewal Project Area (“Project Area”) is located in the City, and the exact boundaries of the Project Area are the same as the boundaries of the Site.

D. The Site

The Site is the entirety of the Project Area shown on the “Map of the Site,” attached to this Agreement as **Attachment 1** which is incorporated herein by reference, and as more particularly described in the “Legal Description” of the Site, attached hereto as **Attachment 2** which is incorporated herein by reference.

E. Agency Participation Policy

Generally, the Agency will agree to financially participate with a private developer when such participation achieves the objectives of the Urban Renewal Plan, is not duplicative of other public entity funding, and does not replace or substitute for the obligations imposed by other governmental agencies on the Participant. The specific participation by the Agency for this Site is as set forth herein.

F. Parties to This Agreement

1. Agency

The Agency is an independent public body, corporate and politic, exercising governmental functions and powers and organized and existing under the Law and the Act. The office of the Agency is located at 308 Constitution Way, Idaho Falls, Idaho 83402. “Agency,” as used in this Agreement, includes the Urban Renewal Agency and any assignee of or successor to its rights, powers, and responsibilities.

2. Participant

The Participant is JHJCC, LLC, an Idaho limited liability company. The principal address of the Participant is P.O. Box 1604, Idaho Falls, Idaho 83403.

Whenever the term “Participant” is used herein, such term shall include any assignee or successor in interest approved or consented to by the Agency, which consent should not be unreasonably withheld. The Participant qualifies as an “owner participant” as that term is used in the Urban Renewal Plan.

G. The Private Development

The Private Development shall mean the development undertaken by Participant or the approved successors or assigns upon the Site. The Private Development consists of the construction of a new commercial, office, and retail project. The Private Development and any further development upon the Site or any portion of the Site shall comply with all the provisions of the Urban Renewal Plan and all applicable City building and zoning ordinances.

III. IMPROVEMENT OF THE SITE AND AGENCY'S PARTICIPATION

A. Development Design

Participant agrees that the Private Development will be in full compliance with the Urban Renewal Plan.

B. Cost of Construction

The cost of the Private Development and the Agency Funded Improvements, defined below, shall be borne by the Participant except as otherwise set forth herein.

C. Agency, City, and Other Governmental Agency Permits

Participant has or shall, at Participant's own expense, secure or cause to be secured any and all permits or approvals which may be required by Agency, City, or any other governmental agency relative to Project construction and operation.

D. Agency Funded Public Improvements

The Agency Funded Public Improvements are directly related to public infrastructure and basalt remediation and are: (a) critical to the redevelopment of the Site and (b) provide a higher quality of development that should assist Agency in achieving redevelopment of other properties adjacent to the Site and meeting the objectives of the Urban Renewal Plan. Because of the Private Development, which achieves several of the objectives contained within the Urban Renewal Plan, Agency finds that a portion of the public improvements may be reimbursed by the Agency. Agency finds that the Agency Funded Public Improvements are in the best public interest and provide for enhanced development of the Site within the Project Area.

In consideration of the terms of this Agreement and subject to certain conditions as contained in this Agreement, Agency agrees to pay the costs of certain approved Agency Funded Public Improvements, inclusive of design and engineering costs, as verified by the Agency. Approved Agency Funded Public Improvements shall include those improvements listed on **Attachment 43**.

E. Agency Review of Construction Documents

Upon Agency's request, Agency shall have the right and the opportunity to review Participant's construction plans, budgets, and bids for the Agency Funded Public Improvements (collectively the "Agency Funded Public Improvement Construction Documents"). Participant will utilize commercially reasonable contracting, budgeting, and bidding practices to ensure that the Agency Funded Public Improvements are constructed consistent with the Agency Funded Public Improvement Construction Documents and are undertaken in a reasonable manner. For purposes of this Section and Section F, below, Participant shall be presumed to have utilized commercially reasonable contracting, budgeting and bidding practices if its general contractor solicits or solicited competitive bids for the Agency Funded Public Improvements and such work is not performed by an affiliate or subsidiary of Participant.

F. Reimbursement Obligation

1. Amount of Reimbursement

In consideration of Participant's construction of the Agency Funded Public Improvements, Agency, subject to the terms of this Agreement, agrees to reimburse Participant an amount equal to the Actual Eligible Costs, as defined below, of the Agency Funded Public Improvements, not to exceed Four Million and 00/100 dollars (\$4,000,000.00), with no interest accruing on the Reimbursement Obligation (defined below).

2. Notification, Inspection, Approval

Upon completion of construction of any category of the Agency Funded Public Improvements associated with the Project and on not less than a quarterly basis during construction, Participant shall notify Agency in writing to request a meeting with the Agency Director to determine if the completed Agency Funded Public Improvements meet the requirements of this Agreement. Agency shall provide Participant with written confirmation that the completed Public Improvements are eligible for reimbursement as follows:

- (a) With respect to each Notification of Completion, Participant is responsible for submitting invoices or receipts for work performed as part of the Project (the "Cost Documentation") which will permit Agency to determine the Actual Eligible Costs, which shall be the actual costs to construct the Agency Funded Public Improvements, including costs incurred prior to the Effective Date of this Agreement, as approved by the Agency Director. Cost Documentation shall include the following:

- i. An accounting of the costs associated with the completed Agency Funded Public Improvements and evidence of payment of such costs by Participant. Participant shall include invoices from Participant's design professionals, general contractor, subcontractor(s), and material suppliers for each type of eligible cost item, which shall specify quantities and unit costs of installed materials.
- ii. Explanation of any significant deviation between the initial cost estimates in Attachment 4-3 and the actual costs in the Cost Documentation.

(b) The Agency Director shall have the right to review the Cost Documentation, to inspect the completed Agency Funded Public Improvements, and to obtain independent verification that the quantities of work claimed and the costs associated therewith are accurate, commercially reasonable, and appropriate for the Agency Funded Public Improvements completed. The Agency's approval shall not be unreasonably delayed or withheld.

(c) Within thirty (30) days of Agency's receipt of the Cost Documentation, the Agency Director shall notify Participant in writing of Agency's acceptance of the Cost Documentation and Agency's determination of the Actual Eligible Costs. Agency shall notify Participant of any disputes with the Cost Documentation and provide Participant a reasonable time to explain any discrepancy. If the Agency Director and the Participant cannot agree on any disputed costs, the Parties agree to submit the dispute to the Agency Board of Commissioners for final determination.

3. Reimbursement

Participant shall initially pay for all of the costs of construction for the Agency Funded Public Improvements associated with the Project. By approval of this Agreement by Agency's Board of Commissioners, Agency has authorized reimbursement for the Actual Eligible Costs of the Agency Funded Public Improvements (the "Reimbursement Obligation") as set forth in Section F, Section G and the other provisions of this Agreement.

G. Reimbursement Procedure

1. Agency's Reimbursement Obligation shall not commence until (1) the first Certificate of Occupancy, or the equivalent thereof, is issued for the Private Development, or upon the City's acceptance of the new public roadway

through the Project Area connecting Pioneer Drive and Sunnyside Road, whichever is earlier; and (2) the Agency has been reimbursed \$16,247.87 for the costs to create the Project Area pursuant to the Memorandum of Understanding, dated May 18, 2017.

2. In conjunction with its receipt of revenue allocation proceeds on a biannual basis, the Agency will retain twenty percent (20%) of the proceeds, capped at Fifty Thousand Dollars (\$50,000) per year, for ~~District-Project Area~~ operating and administrative expenses and agrees to make payment to Participant of the remaining tax increment revenue allocation proceeds actually received and arising from the Site commencing from the first date the Agency receives tax increment monies arising from the Site subsequent to the satisfaction of the conditions set forth in Section G(1) and until such time as the Reimbursement Obligation has been paid in full or the termination of the Urban Renewal Plan, whichever occurs first. To the extent the Agency operating and administrative expenses exceed Fifty Thousand Dollars (\$50,000) in any year, the Agency may retain sufficient funds to cover the additional expenses, but in no event will the Agency retain more than twenty percent (20%) of the revenue allocation proceeds in that year. **PARTICIPANT ACKNOWLEDGES THE TAX REVENUE ALLOCATION PROCEEDS MAY NOT BE SUFFICIENT TO PAY OFF THE REIMBURSEMENT OBLIGATION ON OR BEFORE THE TERMINATION OF THE URBAN RENEWAL PLAN AND ASSUMES THAT RISK.**

3. The biannual payments are due to Participant within thirty (30) days of receipt of revenue allocation proceeds from the Site by Agency.

4. Agency shall have no obligation to make payments to the Participant for taxes collected and paid to Agency beyond the term described herein.

5. Agency may pay, at any time, in whole or in part, without penalty, the then remaining outstanding balance of the Reimbursement Obligation.

6. All payment due hereunder shall be paid to the Participant, and future owners of units created on the Site as part of the Project shall have no claim or entitlement to such payments as a result such ownership.

7. Non-general Obligation

As provided by Idaho Code Section 50-2910, the obligations of Agency hereunder shall not constitute a general obligation or debt of the Agency, the State of Idaho, or any of its political subdivisions, or give rise to a charge against their general credit or taxing powers to be payable out of any funds or properties other than the monies deposited in the special fund or funds provided for herein and pledged hereby to the payment of principal and interest on this Reimbursement Obligation.

H. Taxes

The Act provides that Agency will be paid tax increment funds contingent on the amount of assessed value as determined by the Bonneville County Assessor each year and the rate of tax levy or the percentage of assessment levied by each of the taxing agencies. Agency is not a guarantor of the assessment determination made by Bonneville County Assessor or guarantor of collection of taxes by the Bonneville County Treasurer.

Participant shall pay, when due, all real estate and personal property taxes and assessments assessed and levied on Participant's ownership interest of the Site. This provision or covenant shall run with the land and be binding upon Participant's successors. Except as set forth herein, nothing herein contained shall be deemed to prohibit Participant from contesting the validity or amounts of any tax, assessment, encumbrance, or lien or to limit the remedies available to Participant with respect thereto; provided, such contest does not subject the Site or any portion thereof to forfeiture or sale.

The increment tax revenues on the Site by Participant (as determined from the assessment records of the Bonneville County Assessor and the payment records of the Bonneville County Treasurer) shall be paid to Participant if and only as they are paid to Agency by Bonneville County, the entity which has the legal responsibility to collect property taxes.

Participant recognizes Agency has no authority or involvement in the assessment, tax, or collection process for ad valorem taxes, including real property and personal property taxes. Participant also recognizes the ability of Agency to reimburse Participant for the Reimbursement Obligation is dependent on the ad valorem assessment and collection process. Therefore, in the event insufficient taxes are received by Agency because of reduction of the tax levy rate or assessed values less than assumed by Agency and Participant or in the event of any tax delinquency by any owner of parcels within the Site or by any tenant related to personal property, Participant must elect to either pay the delinquent taxes or in-lieu-of taxes reflecting higher assessments or levy rate on behalf of those taxpayers or receive less reimbursement from Agency to pay the Reimbursement Obligation.

Participant shall not apply for or otherwise request any exemption or reduction in property taxes on the Site pursuant to Idaho Code Section 63-602NN or Idaho Code Section 63-606A during the term of the Urban Renewal Plan.

I. Liens/Payment of General Contractor

Participant hereby certifies that as of the Effective Date no mechanic's or materialman's liens have been placed on the Site, as defined above, and that the general contractor and all subcontractors have been or will be paid in full for all work performed on the Private Development. In the event any materialman's liens are placed on the Site, Participant agrees Agency may suspend any payments required under this Agreement until any liens or claims related to the Project and made by any contractor, subcontractor, or material supplier that performed work on the Private Development have been satisfied.

J. Agency Contribution Assignable

Agency and Participant agree that Agency's obligations run only to Participant or its assignee and that Agency is under no obligation to grant any additional consideration or greater participation than set forth herein. Participant shall have the absolute right to assign its right to receive any payments to its lender, its successor, or other entity designated by Participant.

K. Indemnification

Participant shall indemnify and hold Agency and its respective officers, agents, and employees (collectively referred to in this Section K as "Agency") harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges, and expenses, including reasonable architect and attorney fees (collectively referred to in this Section K as "Claim"), which may be imposed upon or incurred by or asserted against Agency and for which Agency ~~is~~ may be legally liable under applicable law (excluding any liability or obligation Agency assumes by contract) by reason of any of the following occurrences, provided Participant shall have no obligation to indemnify and hold Agency harmless from and against any Claim to the extent it arises from ~~(i) the negligence or willful act or omission of Agency or Agency's contractors and associated subcontractors~~ or (ii) public use of public improvements once dedicated to the City or other public entity:

1. Any work done in, on, or about the Site, including the Agency Funded Public Improvements, or work related to the Agency Funded Public Improvements; or

2. Any use, nonuse, possession, occupation, condition, operation, maintenance, or management of the Site or any part thereof; or
3. Any negligent or intentional wrongful act or omission on the part of Participant or any of its agents, contractors, servants, employees, subtenants, operators, licensees, or invitees; or
4. Any accident, injury, or damage to any person or property occurring in, on, or about the Site or any part thereof, during construction; or
5. Any failure on the part of Participant to perform or comply with any of the terms, provisions, covenants, and conditions contained in this Agreement to be performed or complied with on its part.
6. Funding, by Agency, of the Agency Funded Public Improvements.

In case any such Claim is brought against Agency, Participant, upon written notice from Agency, shall, at Participant's expense, resist or defend such Claim.

L. Insurance

Participant shall, or through its contractor constructing the Agency Funded Public Improvements, shall, at Participant's sole cost, obtain and maintain in force for the duration of the Agreement (including the warranty period) insurance of the following types, with limits not less than those set forth below, and in a form acceptable to Agency:

1. Commercial General Liability Insurance ("Occurrence Form") with a minimum combined single limit liability of \$1,000,000 each occurrence for bodily injury and property damage, with a minimum limit of liability of \$1,000,000 each person for personal and advertising injury liability. Such policy shall have a general aggregate limit of not less than \$2,000,000, which general aggregate limit will be provided on a per project basis. The policy shall be endorsed to name Agency, including its respective affiliates, and City as additional insureds.
2. Workers' Compensation Insurance, if Participant has employees, including occupational illness or disease coverage, in accordance with the laws of the nation, state, territory, or province having jurisdiction over Participant's employees, and Employer's Liability Insurance. If Participant has employees, Participant shall not utilize occupational

accident or health insurance policies, or the equivalent, in lieu of mandatory Workers' Compensation Insurance or otherwise attempt to opt out of the statutory Workers' Compensation system.

3. Automobile Liability Insurance covering use of all owned, non-owned, and hired automobiles with a minimum combined single limit of liability for bodily injury and property damage of \$1,000,000 per occurrence. This policy shall be endorsed to name Agency, including its respective affiliates, directors, and employees, as additional insureds.

4. All insurance provided by Participant under this Agreement shall include a waiver of subrogation by the insurers in favor of Agency. Participant hereby releases Agency, including its respective affiliates, directors, and employees, for losses or claims for bodily injury or property damage covered by Participant's insurance or other insured claims arising out of Participant's performance under this Agreement or construction of the Project.

5. Certificates of insurance, reasonably satisfactory in form to Agency (ACORD form or equivalent), shall be supplied to Agency evidencing that the insurance required above is in force, and that notice will be given to Agency prior to any cancellation of the policies in accordance with the policies. Participant shall also provide, with its certificate of insurance, executed copies of the additional insured endorsements and dedicated limits endorsements required in this Agreement. At Agency's request, Participant shall provide a certified copy of each insurance policy required under this Agreement.

6. Except as otherwise stated above, the obligations set forth in this Section shall remain in effect only until the date City accepts the dedication of the Agency Funded Public Improvements.

7. All policies of insurance required by this Agreement shall be issued by insurance companies qualified to do business in the State of Idaho.

8. The foregoing insurance coverage shall be primary and noncontributing with respect to any other insurance or self-insurance that may be maintained by Agency. Participant's General and Automobile Liability Insurance policies shall contain a Cross-Liability or Severability of Interest clause. The fact that Participant has obtained the insurance required in this Section shall in no manner

lessen or affect Participant's other obligations or liabilities set forth in the Agreement.

M. Warranty

Participant warrants that the materials and workmanship employed in the construction of the Agency Funded Public Improvements shall be good quality and shall conform to generally accepted standards within the construction industry and agrees to repair any non-conforming improvements during the warranty period upon receipt of notice from Agency of such non-conforming improvements. Such warranty and repair obligation shall extend for a period of one (1) year after acceptance of the Agency Funded Public Improvements by the City. Provided, nothing herein shall limit the time within which Agency may bring an action against Participant on account of Participant's failure to otherwise construct such improvements in accordance with this Agreement.

N. Maintenance

Participant recognizes Agency has no specific authority to accept maintenance responsibility of the Agency Funded Public Improvements. Participant anticipates that the City and or various public utilities may accept ownership and maintenance obligations of some or all of the Agency Funded Public Improvements; however, such acceptance is not a condition precedent to the obligations of the Parties hereto.

IV. USE AND MAINTENANCE OF THE SITE AND ADJACENT AREA

A. Use of the Site

Participant agrees and covenants to comply with all other provisions and conditions of the Urban Renewal Plan for the period of time the Urban Renewal Plan is in force and effect.

B. Effect and Duration of Covenants

Covenants contained in this Agreement shall remain in effect until sooner of December 31, 2030, or the date on which the Urban Renewal Plan terminates, whichever is sooner. The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on the part of the Participant and any successors and assigns to the Site, or any part thereof, for the benefit of and in favor of Agency, its successors and assigns.

E. Local, State and Federal Laws

Participant covenants that it will carry out the construction of the Agency Funded Public Improvements in conformity with all applicable laws, including all applicable federal and state labor standards and anti-discrimination laws.

V. DEFAULTS, DISPUTE RESOLUTION, REMEDIES, AND TERMINATION

A. Defaults in General

Neither Party shall be deemed to be in default of this Agreement except upon the expiration of forty-five (45) days from receipt of written notice from the other Party specifying the particulars in which such Party has failed to perform its obligations under this Agreement unless such Party, prior to expiration of said forty-five (45) day period, has rectified the particulars specified in said notice of default, provided that in the case where rectifying the matters specified in the notice of default requires more than forty-five (45) days, such notified Party shall not be in default so long as they commence prior to the expiration of the forty-five (45) days and diligently pursue actions needed to rectify such matters. In the event of a default, the nondefaulting Party may do the following:

1. The nondefaulting Party may terminate this Agreement upon written notice to the defaulting Party and recover from the defaulting Party all direct damages incurred by the nondefaulting Party.
2. The nondefaulting Party may seek specific performance of this Agreement and, in addition, recover all damages incurred by the nondefaulting Party. The Parties declare it to be their intent that this Agreement may be specifically enforced.
3. The nondefaulting Party may perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting Party or recover said monies from the defaulting Party.
4. The nondefaulting Party may pursue all other remedies available at law, it being the intent of the Parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting Party.
5. In the event Participant defaults under this Agreement, Agency (the nondefaulting Party) shall have the right to suspend or terminate its payment under this Agreement, as more specifically defined in this Agreement, for so long as the default continues and if not cured,

Agency's obligation for payment shall be deemed extinguished. In addition, if Agency funds shall have been paid, Agency may seek reimbursement of any amounts paid to Participant up to the amount of damages incurred by Agency for Participant's default.

B. Dispute Resolution

In the event that a dispute arises between Agency and Participant regarding the application or interpretation of any provision of this Agreement, the aggrieved party shall promptly notify the other party to this Agreement of the dispute within ten (10) days after such dispute arises. If the Parties shall have failed to resolve the dispute within thirty (30) days after delivery of such notice, the Parties agree to first endeavor to settle the dispute in an amicable manner by mediation or other process of structured negotiation under the auspices of a nationally or regionally recognized organization providing such services in the Northwestern States or otherwise, as the Parties may mutually agree before resorting to litigation. Should the Parties be unable to resolve the dispute to their mutual satisfaction within thirty (30) days after such completion of mediation or other process of structured negotiation, each Party shall have the right to pursue any rights or remedies it may have at law or in equity.

C. Legal Actions

In addition to any other rights or remedies, any Party may institute legal action to cure, correct, or remedy any default; to recover damages for any default; or to obtain any other remedy consistent with the purpose of this Agreement. The nondefaulting Party may also, at its option, cure the default and sue to collect reasonable attorney's fees and costs incurred by virtue of curing or correcting the Party's breach.

The laws of the State of Idaho shall govern the interpretation and enforcement of this Agreement.

D. Rights and Remedies Are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other Party.

VI. GENERAL PROVISIONS

A. Notices, Demands, and Communications Between the Parties

Formal notices, demands, and communications between Agency and Participant shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of Agency and Participant as set forth in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail.

B. Conflicts of Interest

No member, official, or employee of Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, Partnership, or association in which he/she is directly or indirectly interested.

Participant warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

C. Non-liability of Agency Officials and Employees

No member, official, or employee of Agency shall be personally liable to Participant in the event of any default or breach by Agency or for any amount which may become due to Participant or on any obligations under the terms of this Agreement.

D. Successors and Assigns

This Agreement shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

E. Attorney Fees and Costs

In the event that either party to this Agreement shall enforce any of the provisions hereof in any action at law or in equity, the unsuccessful party to such litigation agrees to pay to the prevailing party all costs and expenses, including reasonable attorney fees incurred therein by the prevailing party, and such may be included to the judgment entered in such action.

F. Severability

If any provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

G. Headings

The section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Agreement.

H. Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

I. Forced Delay; Extension of Times of Performance

In addition to the specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, acts of another party, environmental analysis or removal of hazardous or toxic substances, acts or the failure to act of any public or governmental agency or entity (except that acts or the failure to act of Agency shall not excuse performance by Agency), or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the forced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Agency and Participant.

J. Inspection of Books and Records

Agency has the right, upon not less than seventy-two (72) hours' notice, at all reasonable times to inspect the books and records of Participant pertaining to the Agency Funded Public Improvements.

K. Attachments and Exhibits Made a Part

All attachments and exhibits which are attached to this Owner Participation Agreement are made a part hereof by this reference.

VII. AMENDMENTS TO THIS AGREEMENT

Agency and Participant agree to mutually consider reasonable requests for amendments to this Agreement and any attachments hereto which may be made by any of the Parties hereto, lending institutions, bond counsel, financial consultants, or underwriters to Agency, provided said requests are consistent with this Agreement and would not alter the basic business purposes included herein or therein. Any such amendments shall be in writing and agreed to by the Parties.

VIII. ENTIRE AGREEMENT, WAIVERS, AND AMENDMENTS

This Agreement, including Attachments 1 through 3, inclusive, incorporated herein by reference, constitutes the entire understanding and agreement of the Parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter thereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of Agency and Participant, and all amendments hereto must be in writing and signed by the appropriate authorities of Agency and Participant.

[signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement the day and year below written to be effective the day and year above written.

IDAHO FALLS REDEVELOPMENT AGENCY

By: _____
Lee Radford, Chair
Date: _____

ATTEST:

By: _____
_____,
Secretary

PARTICIPANT
JHJCC, LLC

By: _____
_____, Managing Member
Date: _____

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2018, before me, _____, the undersigned notary public in and for said county and state, personally appeared Lee Radford, known or identified to me to be the Chair of the Idaho Falls Redevelopment Agency, the public body corporate and politic, that executed the within instrument, and known to me to be the person that executed the within instrument on behalf of said Agency and acknowledged to me that such Agency executed the same for the purposes herein contained.

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

Notary Public for Idaho
Commission Expires _____

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2018, before me, _____, the undersigned notary public in and for said county and state, personally appeared _____, known or identified to me to be the managing member of JHJCC, LLC, and the person who signed the within instrument, and acknowledged to me that he has authority to execute and executed the foregoing instrument for the purposes therein contained on behalf of JHJCC, LLC.

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

Notary Public for Idaho
Commission Expires _____

Attachment 1

Map of the Site

Attachment 2

Legal Description

Attachment 3

Agency Funded Public Improvements

| | |
|--|-------------|
| Basalt Remediation | \$1,024,882 |
| Street Improvements | \$1,413,456 |
| Sewer System Improvements | \$166,083 |
| Water System Improvements | \$344,255 |
| Power System Improvements | \$489,315 |
| Engineering, legal and consulting fees | \$374,950 |
| Management Fee | \$187,059 |
| Total | \$4,000,000 |