

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JUN 14 2017

DEPARTMENT OF
WATER RESOURCES

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column. If the water right is leased to the Water Supply Bank, check "Yes". If you are not sure if the water right is leased to the Water Supply Bank, see #6 of the instructions.

Water Right/Claim No.	Split?	Leased to Water Supply Bank?	Water Right/Claim No.	Split?	Leased to Water Supply Bank?
29-14203	Yes ☐	Yes ☐	29-14202	Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐
	Yes ☐	Yes ☐		Yes ☐	Yes ☐

2. Previous Owner's Name: Idaho Water Company Co LLC
Name of current water right holder/claimant
3. New Owner(s)/Claimant(s): City of Pocatello, Idaho, a municipal corporation of Idaho
New owner(s) as listed on the conveyance document Name connector ☐ and ☐ or ☐ and/or
- PO Box 4169 (Attn: Water Dept.) Pocatello ID 83205
Mailing address City State ZIP
- 208-234-6174 jarmstrong@pocatello.us
Telephone Email
4. If the water rights and/or adjudication claims were split, how did the division occur?
☒ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.
5. Date you acquired the water rights and/or claims listed above: 11-16-2016
6. If the water right is leased to the Water Supply Bank changing ownership of a water right will reassign to the new owner any Water Supply Bank leases associated with the water right. Payment of revenue generated from any rental of a leased water right requires a completed IRS Form W-9 for payment to be issued to an owner. A new owner for a water right under lease shall supply a W-9. Water rights with multiple owners must specify a designated lessor, using a completed Lessor Designation form. Beginning in the calendar year following an acknowledged change in water right ownership, compensation for any rental will go to the new owner(s).
7. This form must be signed and submitted with the following **REQUIRED** items:
☒ A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
☒ Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
☒ Filing fee (see instructions for further explanation):
 • \$25 per *undivided* water right.
 • \$100 per *split* water right.
 • No fee is required for pending adjudication claims.
☐ If water right(s) are leased to the Water Supply Bank AND there are multiple owners, a Lessor Designation form is required.
☐ If water right(s) are leased to the Water Supply Bank, the individual owner or designated lessor must complete, sign and submit an IRS Form W-9.

SUPPORT DATA

IN FILE # 29-14202

8. Signature: [Signature] Mayor, City of Pocatello 5-26-17
Signature of new owner/claimant Title, if applicable Date

Signature: _____ _____ _____
Signature of new owner/claimant Title, if applicable Date

For IDWR Office Use Only:

Received by VC Date 6/20/17 Receipt No. C103744 Receipt Amt \$50
 Active in the Water Supply Bank? Yes ☐ No ☐ If yes, forward to the State Office for processing W-9 received? Yes ☐ No ☐
 Name on W-9 _____ Approved by _____ Processed by CS Date 6-23-17

Admin

Exhibit A – Form of Water Rights Deed

Notes:

This form of deed should not be executed at the time the Agreement is executed. Instead, a deed should be drafted based on this form and executed at and held in escrow in accordance the Agreement.

When Recorded Return To:

[name & address of Buyer]

SPECIAL WARRANTY DEED FOR WATER RIGHTS

Idaho Water Company LLC, an Idaho limited liability company, whose address is 1135 Valley Road S., Eden, Idaho 83325 ("Grantor"), does hereby grant, bargain, sell, assign, and convey unto The City of Pocatello, whose address is 911 North 7th Ave, Pocatello, Idaho 83201, ("Grantee"), and to Grantee's heirs, successors, and assigns forever, that portion of the partially decreed Water Rights No. 29-14203 & 29-14202 that had been appurtenant to the Bannock County, State of Idaho, real property described as the NW 1/4 of Section 1, Township 07S, Range 36E, Boise, Meridian ("Water Rights") and subsequently severed therefrom. - Davis

NW 1/4 NE 1/4 Sec 30 TWP 07S Rng 36 - Bull
Grantor assigns to Seller any other interest it may have in the Water Rights including any claim, permit, license, or shares of stock evidencing, claiming, or representing such Water Rights.

To the extent the Water Rights, or any of them, are represented by a permit or other property not conveyable by deed, this deed shall be deemed and shall operate as a bill of sale therefore.

Grantor retains no residual or reversionary interest in any of the Water Rights.

Grantor hereby covenants and warrants to Grantee as follows:

- (A) that Grantor is the owner in fee simple of the Water Rights;
- (B) that Grantor has not conveyed any of the Water Rights to anyone other than Grantee;
- (C) that each of the Water Rights is free from all liens, claims, or encumbrances;
- (D) that Grantor has the authority to convey the Water Rights to Grantee;
- (E) the Grantor has disclosed to Grantee in good faith all relevant information known to Grantor bearing on the validity and extent of the Water Rights.

Grantor makes no other covenants or warranties as to the Water Rights.

IN WITNESS, WHEREOF, the undersigned authorized officers of Grantor, acting on behalf of Grantor, have caused their names to be hereunto subscribed on the date shown by each name.

Grantor: IDAHO WATER COMPANY, LLC

Dated: 5/25/2017

By:

Name: Delbert G. Kohtz
Title: Member

STATE OF IDAHO,)
) ss.
County of Ada
Jerome

On this 25th day of May, 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Delbert G. Kohtz, known and identified to me to be a Member of Idaho Water Company, LLC, an Idaho liability company, that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

(SEAL)



Kolbie Stauffer
Notary Public for Idaho
Residing at Jerome, Idaho
Commission expires: 6/22/2017

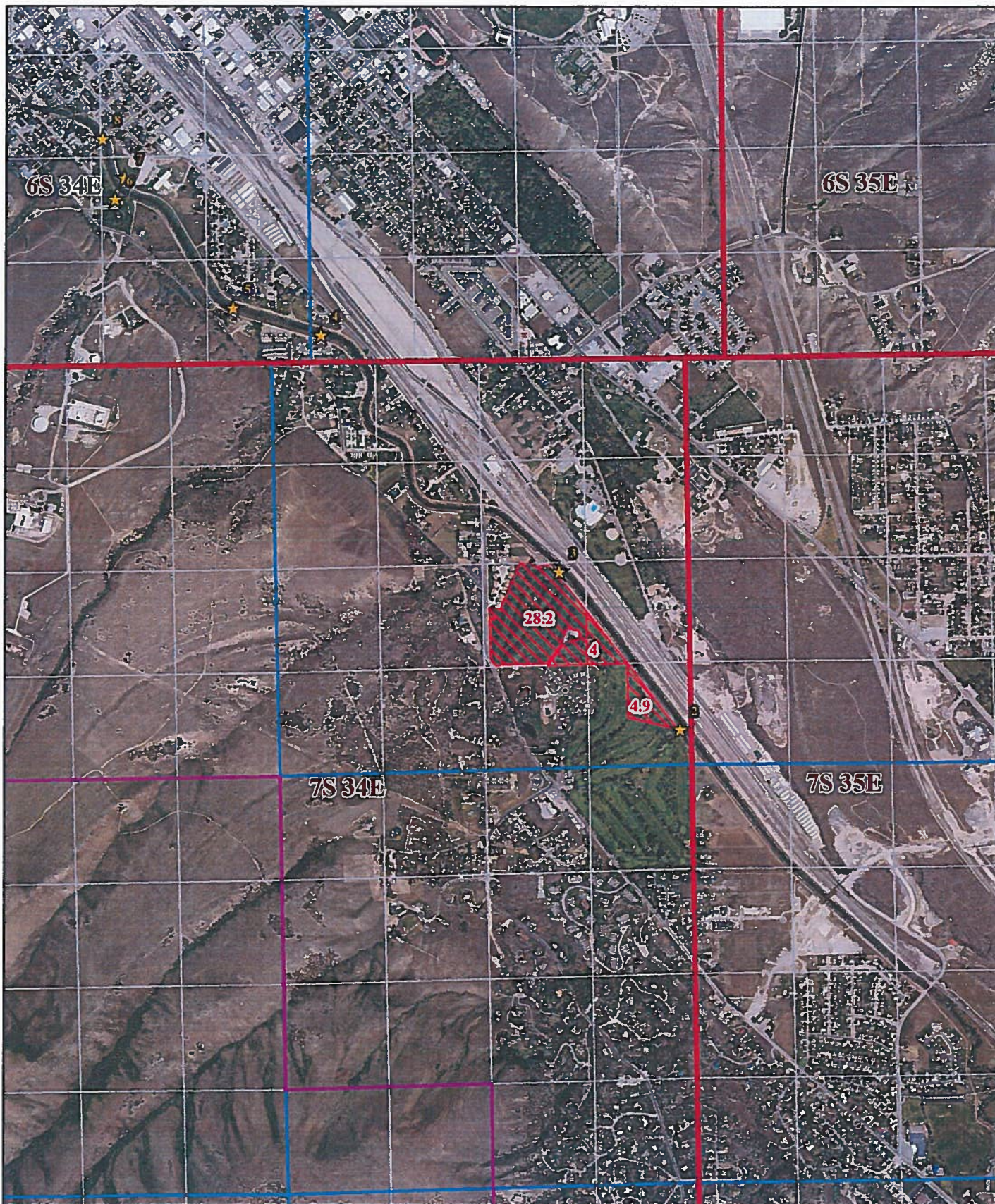
OFFICIAL RECORD BK# 1015
BANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
FEE 10 DEPUTY

CITY OF POCA TELLO

21707391

2017 MAY 26 P 3:34



0 375 750 1,500 Feet

IDAHO WATER COMPANY LLC TRANSFER

**CITY OF POCATELLO TRANSFER
2015 NAIP AERIAL**

BROCKWAY ENGINEERING, PLLC.
GWS - Date: 3/8/2017

Legend



PODs for M. IRR. Recharge



PODs for R. J. W. H



37.1 Acre POU
Pocatello Municipal POU

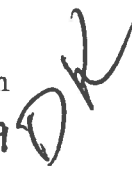
N

IDAHO WATER COMPANY LLC.
1135 VALLEY ROAD SOUTH EDEN, ID 83325
Tel: (208) 312-1135 fax: (208) 275-7511
Email: info@idahowatercompany.com

IDAHO WATER COMPANY AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHTS

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER RIGHTS ("Agreement") is made and entered into this 16 day of November, 2016 ("Effective Date"), by and between Idaho Water Company LLC, an Idaho Limited Liability Company, whose address is 1135 Valley Road South, Eden, Idaho 83325 (hereinafter "Seller"), and the City of Pocatello, an Idaho municipal corporation, whose address is 911 North 7th Ave, Pocatello, Idaho 83201 (hereinafter "Buyer") (collectively "Parties"). Del Kohtz is an authorized managing member of Seller and hereby discloses that he is a licensed Real Estate Agent acting herein as principal for his own account.

RECITALS

- A. Seller has the legal right and option ("Option") to purchase portions of those certain decreed water rights designated as Water Right Nos. 29-65A and 29-4179 (the "Water Rights") in the records of the Idaho Department of Water Resources ("Department").
- B. Upon exercise of its option, the Seller wishes to convey and the Buyer wishes to buy the amount of Water Rights authorizing diversion of Surface Water for irrigation from the Portneuf River totaling 0.22 cubic feet per second ("cfs") and 59.5 acre-feet per annum ("afa") and 0.4 cfs and 70 acre-feet per annum from Water Rights 29-65A and 29-4179  respectively (the "Water Rights") once the seller has successfully transferred the above described portions to change the point of diversion, place of use, and nature of use thereof for Buyer's purposes (the "Transfer"). The Water Right reports are attached to this agreement as Exhibit B.

- C. Seller and Buyer acknowledge that the Transfer will require formal application to, and approval by, the Department and that Seller shall be solely responsible for the Transfer as described herein. **No land is included in this agreement.**

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the sums to be paid by Buyer to Seller, and the terms and conditions set forth below, the Parties agree as follows:

1. Purchase and Sale. Seller, in consideration of the terms set forth herein, agrees to exercise its Option and thereafter sell and convey to Buyer, and Buyer does hereby agree to buy from Seller, the Water Rights to be transferred to Buyer's point of diversion(s) and nature and place of use.
2. Purchase Price. The purchase price for the Water Rights is One Thousand One Hundred Dollars (\$1,100.00) per each acre-foot of authorized annual volume of water ultimately approved in the Transfer by Seller to be conveyed to Buyer ("Purchase Price"). The Purchase Price will be payable as follows:
3. Down Payment. Upon execution of this Agreement by Seller and Buyer, the Buyer will deliver to Seller the sum of twenty-one thousand four hundred twenty-five dollars and fifty-two cents (\$21,425.52), (\$142,835 X %15) as Down Payment ("Down payment"). The Down Payment will be applied towards the Purchase Price at Closing.
4. Balance of Purchase Price. The balance of the Purchase Price, being the Purchase Price less the Down Payment, will be due and payable to Seller at Closing.
5. Adjustment to Purchase Price and Water Rights to be Purchased Due to Transfer Conditions. Seller and Buyer acknowledge that the Purchase Price is based upon a unit value of \$1,100.00 per each acre-foot of water authorized by the Transfer to be available for Buyer's intended use. If due to acknowledged uncertainties in the final ESPA model configurations or otherwise, the Department approves the Transfer but with conditions limiting the total annual diversion volume to less than proposed in the Transfer, and provided Buyer has

waived the conditions precedent herein and elected to close on the purchase of the lesser quantity of the Water Rights approved under the Transfer, then the Parties agree that the Purchase Price will be adjusted based on the annual diversion volume in acre-feet approved by the Transfer multiplied by \$1,100.00.

6. Conditions Precedent. Buyer shall not be obligated to close under this Agreement unless and until each of the following contingencies has been satisfied.
- a. Seller shall exercise its Option with respect to the Water Rights that are the subject of this Agreement so as to be able to convey the Water Rights to Buyer at closing.
 - b. Buyer's obligation to purchase the Water Rights is expressly subject to and conditioned upon a final, unappealable approval of the Transfer and that the Transfer include necessary terms and conditions so as to permit and not limit Buyer's intended use as determined appropriate by Buyer, in its sole discretion.
 - c. Seller and Buyer agree that Seller shall be responsible for obtaining Department approval of the Transfer. Buyer agrees to cooperate in obtaining Department approval of the Transfer.
 - d. Buyer shall provide Seller with a list of intended points of diversion, uses of water, places of use, and other necessary terms and conditions for the Transfer application within 7 days of the Effective Date.
 - e. Within thirty (30) days following the Effective Date of this Agreement, Seller will file with the Department an application to transfer the Water Rights including terms and conditions necessary for Buyer to make its intended use of the Water Rights and not limit Buyer's intended use. Buyer shall have the right to review said application before Seller files with the Department to determine if it contains the necessary terms and conditions as required for Buyer's intended use of the water, in Buyer's sole discretion. Buyer shall have fifteen (15) days to complete this review.
 - f. Seller will handle the costs to prepare the Transfer, including but not limited to all consultant fees for preparation of the Transfer application and calculation of mitigation, and Buyer will be responsible for the costs of filing the Transfer application; and further

providing that Buyer also shall be responsible for the costs of prosecuting and defending the Transfer application, including all attorney fees, if the Transfer is protested and the subsequent administrative process associated with such protest(s) begins. Buyer and Seller shall work diligently and in good faith to obtain timely Transfer approval. Buyer shall have the right to review and approve any changes to the Transfer application to facilitate the process of transferring the water.

- g. The investigations conducted in the Due Diligence Period described in section 8 to this Agreement have been completed and are acceptable in the sole discretion of Buyer.
- 7. Use of Water Rights. Prior to Closing, once Seller has exercised its Option, the Seller shall remain in possession of the Water Rights and shall maintain the Water Rights in their present condition. Prior to Closing, the Seller shall be entitled to all income from the Water Rights; shall be responsible for all expenses associated with use of the water rights, including but not limited to maintenance, repair, and replacement of any equipment; and shall pay when due any and all taxes associated with the Water Rights.
- 8. Due Diligence Investigations. Buyer shall have a period of sixty (60) days (when used herein, days shall mean calendar days) after the Effective Date to conduct such investigations and perform such due diligence on the Water Rights as to the suitability of the Water Rights for Buyer's use ("Due Diligence Period"). Upon completion of the Due Diligence Period, Buyer shall provide Seller written notice that Buyer has completed its investigation and determined the Water Rights are acceptable for Buyer's purposes subject to proposed conditions of transfer. If, however Buyer determines, in its sole discretion, that the Water Rights are not acceptable for Buyer's purposes or that Seller does not have marketable title, Buyer shall provide Seller with written notice outlining the reasons for its determination. Seller shall have 15 days in which to cure any identified defect(s), to the sole satisfaction of the Buyer. The Due Diligence investigation may include, but without limitation, the following:
 - a. Seller shall ensure that agents, employees, consultants, and representatives of Buyer have reasonable access to the lands on which the Water Rights are diverted, transported and used ("Land"), at reasonable times, to conduct investigations of the suitability of the Water Rights for Buyer's purposes; and the Seller shall cooperate fully in providing

information regarding the historical use of the Water Rights to agents, employees, consultants, and representatives of entities of Buyer.

- b. Seller shall provide to Buyer information concerning: (1) who owns other interests in the Water Rights; (2) what land is irrigated with the Water Rights; (3) what other water rights may have been used to irrigate the lands on which the Water Rights are used, and (4) what lands are irrigated by the other portions of the Water Rights, or any other uses made by the Water Rights.
 - c. Within five (5) days after the Effective Date of this Purchase Agreement, the Seller shall provide Buyer with copies in the Seller's possession and control of any deeds, abstracts, title opinions, title insurance policies, stock certificates, agreements, assignments, permits, licenses, court decrees, engineering reports, photographs, records of use, correspondence with State or local water officials, and all other documents or information that pertain to the Water Rights.
 - d. Buyer shall determine whether the Seller has acceptable title to the Water Rights and whether the Water Rights are suitable for Buyer's purposes.
9. Termination and Liquidated Damages: Buyer may terminate the Agreement if during the due diligence period Buyer determines, in its sole discretion, that the Water Rights are not suitable or are not needed for Buyer's purposes, is not satisfied with the Seller's attempts to cure the stated title defects, or any other matter arising from its Due Diligence investigations of the Water Rights, the Conditions Precedent are not satisfied, or as otherwise provided by this Agreement by giving written notice of termination to Seller. Upon termination, Buyer shall have no further obligations under this Agreement except as provided in this section. If Buyer terminates this Agreement after the Due Diligence Period, Buyer shall be entitled to return of the Down Payment less ten thousand dollars (\$10,000.00), to be retained by the Seller, for expenditures in securing and facilitating the Transfer. The Parties contemplate this amount as a reasonable determination of costs incurred and agree it in no way constitutes punishment for non-performance in respect to the terms and conditions herein.
10. Closing. Provided that the Conditions Precedent are all satisfied and the conditions set out in this Agreement are met, Closing shall occur at a reasonable time and place and location

designated by the Parties within thirty (30) days following Department approval of the Transfer. Possession and use of the Water Rights passes to Buyer on Closing. At Closing, Buyer will deliver the Purchase Price Balance to Seller, less any permitted adjustments, and Seller will provide Buyer with a fully-executed Special Warranty Deed for Water Rights substantially in the form attached hereto as Exhibit A conveying the Water Rights to Buyer. Seller shall furnish Buyer with a Dry-up Covenant, executed by the owners of the land on which the Water Rights have been historically used, substantially in the form of Exhibit C, which shall limit the future irrigation of the Lands, so as to protect the ability of Buyer to use the Water Rights. The Covenants shall run with the Lands and with the Water Rights, so that its benefits and burdens accrue to the successive owners thereof. The executed Dry-Up Covenants shall be delivered to the Buyer at or before Closing for recording at the time determined by the Buyer. All costs of Closing, defined as recording fees, closing agent fees, escrow fees, shall be shared equally by the Buyer (50%) and Seller (50%).

11. Attorney Fees. In the event of any suit or proceeding by either party against the other party, in any way arising out of this Agreement, the prevailing party shall be awarded their reasonable attorney fees and costs.
12. Binding. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective heirs, representatives, successors and assigns.
13. Authority. Each party represents and warrants to the other that they have full power and authority to enter into this Agreement.
14. As-Is. Except as to the warranties contained in the Special Warranty Deed to be delivered by Seller at Closing, Seller has not made and does not make, any representations, warranties or guaranty of any kind concerning the Water Rights or their fitness for Buyer's intended purposes, or any purpose. Seller will not sell, transfer, convey, encumber, lease or otherwise dispose of or abandon the Water Rights (or any portion thereof) during the terms of this Agreement without the prior written consent of Buyer. Buyer acknowledges that Buyer is relying solely on its own investigation of the Water Rights.
15. Entire Agreement. This Agreement for Purchase and Sale of Water Rights contains the entire understanding between the Parties related to the purchase and sale of the Water Rights.

All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are fully integrated and merged herein.

16. Modification. No modification of this Agreement will be valid unless the same is in writing and signed by both Parties.
17. Notices. All notices to be given to the Parties will be in writing, delivered in hand, or by U.S. Mail, postage pre-paid directed to such Parties address as contained herein unless such party will have directed in writing that notice be sent to a different address.
18. Counterparts. This Agreement may be executed in counterparts.

[end of text; signature page follows]

IN WITNESS WHEREOF the Parties have caused their names to be subscribed on the dates set forth above.

SELLER:

Idaho Water Company LLC
Delbert G. Kohtz

Idaho Water Company LLC,
an Idaho limited liability company
BY: Delbert G. Kohtz, Member

BUYER:

Brian C. Bled
Brian C. Bled, Mayor
City of Pocatello, an Idaho political subdivision

STATE OF IDAHO,)
Bannock) ss.
County of ~~Ada~~)

On this 16th day of November, 20 16, before me, the undersigned, a Notary Public in and for said State, personally appeared Delbert G. Kohtz, known and identified to me to be a Member of Idaho Water Company, LLC, an Idaho liability company, that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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

Liffany J. Olson

Notary Public for Idaho

(SEAL)

Residing at Blackfoot, Idaho

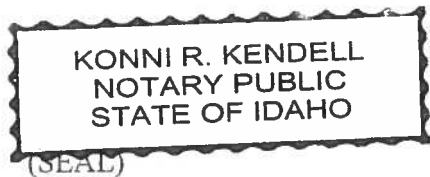
Commission expires: 10/3/2017

Approved at 10/20/2016 Council mtg

STATE OF IDAHO,)
County of Bannock) ss.

On this 16th day of November, 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Brian C. Blad, known and identified to me to be an authorized signer for the CITY OF POCA TELLO, IDAHO, an Idaho Political Subdivision, the signer who subscribed said city's name to the foregoing instrument, and acknowledged to me that he executed the same.

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



Konni R. Kendell
Notary Public for Idaho
Residing at American Falls, Idaho
Commission expires: 3-22-18

Exhibit B
(Water Rights)

Exhibit C

(Form Dry-Up Agreement)

This Dry-up Agreement and Covenant ("Agreement") is made and entered as of the ____th day of _____ 20__, by and between [insert Landowner name(s)] ("Landowner"), whose address is [insert address(es)], and City of Pocatello, an Idaho municipal corporation, whose address is 911 North 7th Ave, Pocatello, Idaho 83201 ("Buyer") (collectively, Landowners and Buyer are referred to as "Parties").

1. Buyer and Idaho Water Company LLC, a/k/a Idaho Water Co. LLC whose address is 1135 Valley Rd. So. Eden, Idaho 83325 ("Seller"), are parties to a Purchase and Sale Agreement.
2. The Purchase and Sale Agreement describes certain lands and Water Rights, more particularly described as [legal description]. Seller has agreed to convey said Water Rights to Buyer. Landowner owns the land historically irrigated by the Water Rights, described more particularly as [insert legal description] ("Land").
3. Dry-Up. In order for Buyer to make beneficial use of these Water Rights, irrigation of the Land must no longer be irrigated with the Water Rights. The Parties agree that the Lands shall be subject to a dry-up covenant as described herein ("Dry-Up Covenant").
 - a. After Closing as defined by the Purchase and Sale Agreement, the Lands shall not be watered or irrigated.
 - b. Application of any other water on the Lands shall be in compliance with the applicable administrative or judicial approval of use of the water on the Lands.
 - c. All operations on the Lands shall be conducted in accordance with, and in such a manner as not to violate, the terms and conditions of this Dry Up Agreement.
 - d. No irrigation or watering of the Lands after Closing shall impair the use of the Water Rights or of any other water rights by Buyer.
4. Notice. Within 24 hours after the Buyer provides notice to the Landowners to cease irrigation of the Lands, the Landowners covenant and agree to cease irrigation of the Lands with the Water Rights.
5. Compliance. The Landowners covenant and agree to comply with any administrative approvals, including, but not by way of limitation, any provisions prohibiting irrigation of the Lands. In order to ensure compliance, the Landowners shall cooperate fully with the

Buyer and provide access at reasonable times to the Lands to enforce such compliance with the Decree or administrative approvals.

6. General Provisions.

- a. Governing Law. This Dry-Up Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State of Idaho.
- b. Benefit and Burdens Run. This Dry-Up Agreement shall run with the Lands and with the Water Rights, and the benefits and burdens thereof shall inure and apply to the Landowners and to the Buyer and to their respective successors and assigns, in perpetuity. Upon any conveyance of the Land, this Dry-Up Agreement cannot be severed from the Lands.
- c. Recording. Buyer may record this Dry-up Covenant or a memorandum thereof in the real property records of _____ County, Idaho.
- d. Entire Agreement. This Dry-Up Agreement constitutes the entire agreement between the parties. No representations or warranties pertaining to this Dry-Up Agreement or any property affected thereby have been made by, or shall be binding on, any of the parties, except as expressly stated in this Dry-Up Agreement. This Dry-Up Agreement may not be changed orally, but only by an agreement in writing signed by both parties.