

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

RECEIVED**MAY 07 2015**Department of Water Resources
Eastern Region**APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION**

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for an entire water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right or to report an ownership change for a portion of a water right. See the Application for Transfer Instructions for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☐ Change diversion point(s) ☒ Add diversion point(s) ☐ Ownership change

1. **APPLICANT(S)** City of Rexburg Phone (208) 359-3020
 2. **MAILING ADDRESS** PO Box 280 City Rexburg
 State Idaho Zip 83440 Email _____

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
- ☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
- ☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed. Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. **LIST WATER RIGHT NUMBER(S)** 22-203 and 22-204C

- ☒ Attach a copy of the water right(s) as recorded, available at www.idwr.idaho.gov, *Water Right Transfers, Step 1*, or by contacting any Department office.

4. **TOTAL AMOUNT OF WATER** transferred is 60 cubic feet per second and/or _____ acre-feet per annum.
 (diversion rate) (storage volume)

5. **POINT OF DIVERSION** – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources*.

New?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
These PODs should be included on both 22-203 and 22-204C.										
N			SE	SE	10	6N	40E	MADISON	TETON RIVER	REXBURG DITCH
N		SE	NE	NE	20	6N	40E	MADISON	TETON RIVER	REX. IRRIG. CO.
Y			SW	NE	19	6N	40E	MADISON	TETON RIVER	WALTERS PUMP

These PODs will remain unchanged on 22-204C and will not be added to 22-203.

N		SW	NW	SE	3	6N	44E	TETON	TETON RIVER	TETON PIPELINE
N		NW	SE	NW	10	6N	44E	TETON	TETON RIVER	TETON PIPELINE
N		SW	SE	NW	10	6N	44E	TETON	TETON RIVER	TETON PIPELINE
N		NW	SE	SE	15	6N	44E	TETON	TETON RIVER	TETON PIPELINE

WATER RIGHT NO. 22-203

Owner Type Name and Address

Current Owner CITY OF REXBURG
PO BOX 280
REXBURG, ID 83440
(208)359-3020

Priority Date: 04/01/1898

Basis: Decreed

Status: Active

Source Tributary

TETON RIVER HENRYS FORK

Beneficial Use From To Diversion Rate Volume

MUNICIPAL 01/01 12/31 33 CFS

Total Diversion 33 CFS

Location of Point(s) of Diversion:

TETON RIVER SESESW Sec. 13 Township 06N Range 39E MADISON County

TETON RIVER SESE Sec. 10 Township 06N Range 40E MADISON County

TETON RIVER SENENE Sec. 20 Township 06N Range 40E MADISON County

Place(s) of use: Large POU Info

Conditions of Approval:

This partial decree is subject to such general provisions necessary for the definition of the rights or for

1. C18 the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. 129 Place of use is within the service area of the City of Rexburg municipal surface water supply system as provided for under Idaho Law.

Decreed Date: 11/24/2008

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WATER RIGHT NO. 22-204C

Owner Type **Name and Address**
Current Owner CITY OF REXBURG
PO BOX 280
REXBURG, ID 83440
(208)359-3020

Priority Date: 06/10/1883

Basis: Decreed

Status: Active

Source **Tributary**
TETON RIVER HENRYS FORK

Beneficial Use **From** **To** **Diversion Rate** **Volume**
MUNICIPAL 01/01 12/31 27 CFS
Total Diversion 27 CFS

Location of Point(s) of Diversion:

TETON RIVER SESESW Sec. 13 Township 06N Range 39E MADISON County
TETON RIVER SESE Sec. 10 Township 06N Range 40E MADISON County
TETON RIVER SENENE Sec. 20 Township 06N Range 40E MADISON County
TETON RIVER SWNWSE Sec. 03 Township 06N Range 44E TETON County
TETON RIVER NWSNW Sec. 10 Township 06N Range 44E TETON County
TETON RIVER SWSNW Sec. 10 Township 06N Range 44E TETON County
TETON RIVER NWSESE Sec. 15 Township 06N Range 44E TETON County

Place(s) of use: Large POU Info

Conditions of Approval:

- This partial decree is subject to such general provisions necessary for the definition of the rights or for
1. C18 the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
 2. 129 Place of use is within the service area of the City of Rexburg municipal surface water supply system as provided for under Idaho Law.
 3. The place of use for this water right may include the service area of the Teton Pipeline Association as recorded in transfer no. 2080
 4. The point of diversions for Teton Pipeline Association are limited to 6.5 CFS as recorded in lease agreement between City of Rexburg and Teton Pipeline Associaton.

Decreed Date: 11/24/2008

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

The new POD will include a pump to pipeline directly from the Teton River. A measuring device will be installed immediately to monitor recharge delivered to Walter's Pond through this POD.

- b. Who owns the property at the point(s) of diversion? David Walters

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

Written agreement, attached, to deliver recharge water to the Walter's Pond via a new pump on the Teton River.

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

7. **MAP** – ☒ Attach a map of the diversion, measurement, control and distribution system. Clearly label the map with township, range, section and ¼ ¼ of section information. The *Map Tool*, available at maps.idwr.idaho.gov/TransferApplicationLayouts/ provides a satisfactory template for creating the required map.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

Richard S. Woodland
Signature of applicant or authorized agent

RICHARD S. WOODLAND
Print name and title if applicable

3-18-15
Date

Signature of applicant or authorized agent

Print name and title if applicable

Date

9. **FEE** – ☒ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The *Fee Schedule* is available at www.idwr.idaho.gov, *Water Right Transfers, Step 4* and in the *Application for Transfer Instructions*.

FOR DEPARTMENT USE ONLY

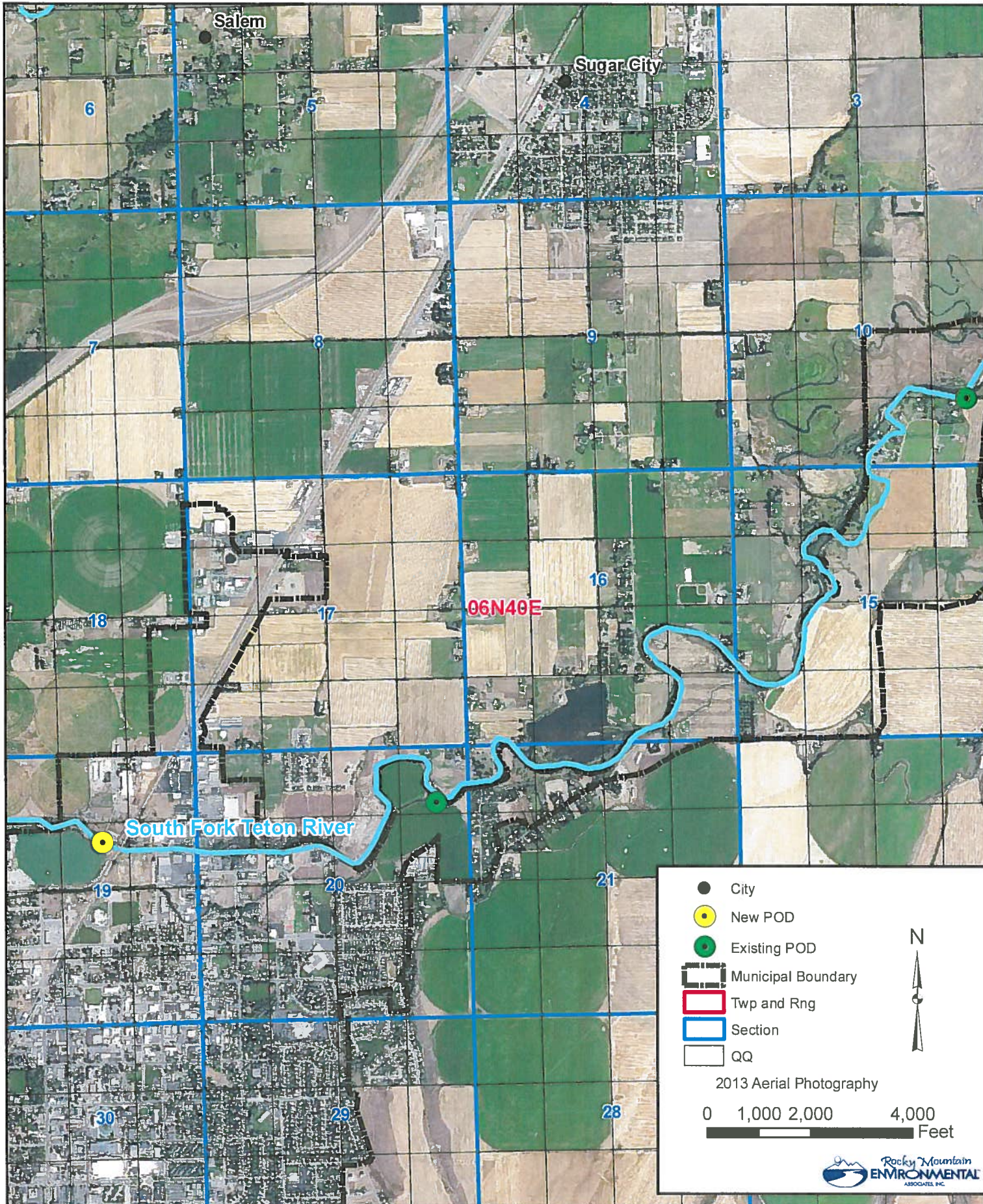
Transfer includes _____ pages of attachments. Received by _____ Date _____

Fee paid \$3620. Date 5-7-2015 Received by AS Receipt # E040991

Preliminary review completed by _____ Date _____

Application for Transfer - COD

City of Rexburg



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002393

W. Roger Warner
ROCKY MOUNTAIN ENVIRONMENTAL ASSOCIATES, INC.
482 Constitution Way, Suite 303
Idaho Falls, Idaho 83402
Telephone: (208) 524-2353
Facsimile: (208) 524-1795

Instrument # 394358
REXBURG, MADISON, IDAHO
3-27-2015 02:16:08 PM No. of Pages: 7
Recorded for : CITY OF REXBURG
KIM H. MUIR Fee: 0.00
Ex-Officio Recorder Deputy 

CITY OF REXBURG AND WALTERS READY MIX
RECHARGE SITE AGREEMENT

THIS RECHARGE SITE AGREEMENT (the "Agreement") is made and entered into as of the 26th day of March, 2015 by and between the City of Rexburg, a municipal corporation, whose address is 35 North 1st East, Rexburg, ID 83440 (hereinafter, the "City"), and Walters Ready-Mix, Inc., an Idaho corporation whose address is PO Box 390, Rexburg, ID 83440 (hereinafter, "Walters"). Collectively, the above entities are hereinafter referred to as the "Parties."

RECITALS:

1. The City is the owner of Water Right Nos. 22-203 and 22-204C, which authorizes diversion of Teton River water for municipal purposes.
2. The City is also the owner of various ground water rights which it uses to service residents of the City. Current water demands have resulted in the City's near full utilization of its maximum diversion rate authorized under its ground water rights, particularly during the summer months when water demands are at their peak.
3. Walters is the owner of a large pond (hereinafter, the "Pond") associated with a facility located 342 West 4th North, Rexburg, Idaho 83440. The pond is a result of mining gravel at the location. Currently, gravel is mined through dredging the pond bottom.
4. On August 6, 2008, the City submitted an Application for Water Right Permit No. 22-13888 (hereinafter, the "Application") to the Idaho Department of Water Resources.
5. The Application was protested by the A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and the Twin Falls Canal Company (hereinafter collectively the "Protestants") on March 9, 2009, wherein the Protestants alleged injury to their water rights and that the Application did not propose sufficient mitigation.
6. As a result of the protest, the City amended its Application to include additional diversion volume under Permit No. 22-12888, as well as a mitigation plan that includes ground water recharge to mitigate for the effects of ground water pumping.

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7. In order to conduct such recharge, the City has identified a number of sites to perform such recharge, including the Pond.
8. In order to transport water to the Pond, the City has determined that there are the following two alternatives for delivery of the recharge water. Both options will require approval of an Application for Transfer of Water Rights by the Idaho Department of Water Resources:
 - a. The Rexburg Canal of the Rexburg Irrigation Company flows on the east side of the Pond with an existing headgate to divert water into the Pond.
 - b. Installation of a new pump on the Teton River that connects to the Pond via pipeline and which would provide water directly.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual covenants and promises set forth below, the Parties agree as follows:

1. PURSUIT OF THE APPLICATION. As a condition precedent to the performance of any provision under this Agreement, the City shall, at its sole cost and expense, pursue and receive approval of the Application and any amendments thereto, which shall include the ground water recharge plan set forth in this Agreement. To the extent the Application is denied, and upon the City exhausting all administrative and legal remedies it may pursue at its sole discretion and yet the Application remains denied, then this Agreement shall be null and void and of no further effect. Furthermore, to the extent the Application is approved with conditions unacceptable to the City, the City may, in its sole discretion, voluntarily withdraw or surrender the Application and its associated permit, and this Agreement shall likewise be of no further force or effect.
2. TERM. The initial term of this Agreement shall be for a period of five (5) years from the Effective Date, and shall automatically extend for an additional five (5) year period unless either Party opts out of this Agreement for any reason by providing written notice one hundred and eighty (180) days prior to expiration of the term.
3. GROUND WATER RECHARGE INFRASTRUCTURE. The City, at its sole cost and expense, shall install all infrastructure necessary for the delivery of water to the Pond, including, but not limited to, pumps, pipelines, canal checks, weirs, measuring devices, headgates, etc. The City shall first receive approval from Walters for the design and location of any structure or device to be installed within the Pond, as well as the structures and conveyance systems to be installed running from such structures or devices.
4. RECHARGE WATER DATA AND MEASUREMENT. Recharge water data and measurement shall be collected by the City each year and shared with Walters at the sole cost and expense of the City. The City shall also provide to Walters, upon reasonable

request and within a reasonable time of such request, actual measurement data obtained during the year.

5. PAYMENT. City shall pay to Walters a charge per acre foot of recharge water delivered to the Pond based upon the following sliding scale table:

Acre-feet	Charge per acre foot
1-100	\$4.00
101-500	\$3.00
501-1000	\$2.00
1001-5000	\$1.00

6. INDEMNIFICATION AND ASSUMPTION OF LIABILITY:

- a. Indemnification: To the extent the City's recharge water causes any property damage, injury, or death, City hereby agrees to defend and indemnify Walters against and to hold Walters harmless from any and all claims and demands, including but not limited to, claims or demands for loss of or damage to property or injury or death to any person from any cause whatsoever due to the City's use of the Pond for recharge water. Notwithstanding the above, such indemnification shall not extend to negligence on behalf of Walters or its employees or agents in receiving such recharge water provided that such negligence is proven in a court of law.
- b. Indemnification for Environmental Harm or Injury: To the extent the City's recharge water causes environmental harm, City hereby agrees to defend and indemnify Walters against and to hold Walters harmless from any and all claims or demands for environmental damage from any cause whatsoever due to the City's use of the Pond for ground water recharge. In addition, City is required to comply with all applicable state and federal environmental regulations (if any) for ground water recharge as it relates to the Pond and to obtain any and all permits that may be required, including, but not limited to:
 - i. The Federal Clean Water Act (33 U.S.C. §§ 1251 to 1387) and its associated regulations;
 - ii. The Federal Oil Pollution Act (33 U.S.C. §§ 2701 to 2761, and 46 U.S.C. § 3703a) and its associated regulations; and
 - iii. The Endangered Species Act (15 U.S.C. §§ 1531 to 1544) and its associated regulations.

7. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the Parties with respect to the matters set forth in this Agreement. It supersedes all prior oral or written agreements of the parties as to the matters set forth in this Agreement, and it cannot be altered or amended except by an instrument in writing, signed by the Parties.
8. REVOCABILITY. Walters may revoke or modify this agreement if groundwater recharge into the pond limits or interferes with Walters business or recreational use of pond or property.
9. SUCCESSORS AND ASSIGNS. This Agreement shall be binding on the Parties and their respective heirs, legal representatives, agents, successors in interest and assigns and shall inure to the benefit of such persons.
10. COOPERATION. Each party agrees to cooperate with the other in preparing and filing the necessary documents, or taking other actions, to properly achieve the purposes of this Agreement.
11. HEADINGS. The headings in this Agreement are for reference only and do not limit or define the meaning of any provision of this Agreement.
12. NOTICES. Any notice given in connection with the Agreement must be in writing and must be given by personal delivery, overnight delivery, confirmed facsimile or United States certified or registered mail, addressed to the Parties at the following addresses:

CITY: City of Rexburg
35 North 1st East
Rexburg, ID 83440

WITH A
COPY TO: Mr. Stephen Zollinger
P.O. Box 280
Rexburg, ID 83440

WALTERS: Walters Ready-Mix, Inc.
P.O. Box 390
Rexburg, ID 83440

Notice is deemed to have been given on the date the notice is delivered by personal delivery or by confirmed facsimile or on the date the notice is deposited with an overnight delivery service or in the United States mail. Notice is deemed to have been received on the date the notice is actually received or delivery is refused.

13. WAIVER. The waiver by any party to this Agreement of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.
14. COUNTERPARTS/FACSIMILE. This Agreement may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument. This Agreement may be signed and delivered by facsimile (fax or email) which shall be effective as an original.
15. SEVERABILITY. If any provision of this Agreement or any portion of any provision of this Agreement is determined to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability may not alter the remaining portion of such provision, or any other provision of this Agreement, as each provision of this Agreement is deemed severable from all other provisions of this Agreement.
16. ATTORNEYS' FEES. If there is any litigation or other action taken by any party to enforce or interpret any provisions of or rights arising under this Agreement, the defaulting party shall pay to the other party all costs and expenses, including but not limited to reasonable attorney fees and costs, which the other party may incur in enforcing this Agreement or in pursuing any remedy allowed by law, whether such is incurred by the filing of suit or otherwise.
17. GOVERNING LAW. This Agreement is governed by, and construed and enforced in accordance with, the laws of the State of Idaho.

IN WITNESS WHEREOF, the Parties have each caused their names and seals to be appropriately affixed by duly authorized representatives the day and year first above written.

CITY OF REXBURG

Richard Woodland
By: Richard Woodland
Its: Mayor

ATTEST:

Brian D. Kay
Secretary

STATE OF IDAHO)
)ss.
County of)

On this 26 day of March, 2015, before me, the undersigned, a notary public in and for said State, personally appeared Richard Woodland, known or identified to me to be the Mayor of the City of Rexburg, a municipal corporation, who executed this instrument on behalf of said corporation and acknowledged to me that such corporation 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.



Marianna Gonzalez
Notary Public for Idaho
Residing at: Madison
My commission expires: 2/13/21

WALTERS READY-MIX, INC.

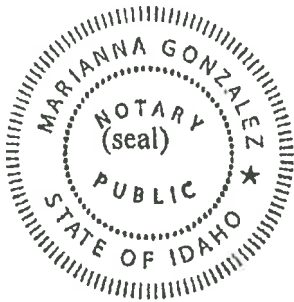
David Walters

By: David Walters
Its: President

STATE OF IDAHO)
)ss.
County of)

On this 26 day of March, 2015, before me, the undersigned, a notary public in and for said State, personally appeared David Walters, known or identified to me to be the President of Walters Ready-Mix, Inc., an Idaho corporation, who executed this instrument on behalf of said corporation and acknowledged to me that such corporation 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.



Marianna Gonzalez
Notary Public for Idaho
Residing at: Madison
My commission expires: 2/13/15



RECEIVED
MAY 07 2015
Department of Water Resources
Eastern Region

May 7, 2015

RMEA 08-0064

Idaho Department of Water Resources
900 N Skyline Dr. Ste A
Idaho Falls, ID 83402

Re: City of Rexburg Transfer Application

Dear Reviewing Agent,

Please find enclosed an Application for Transfer of Water Right –Points of Diversion for the City of Rexburg. Recently, Idaho Department of Water Resources approved Permit No. 22-13888, a ground water right for municipal purposes. Mitigation for this new permit is provided by recharging portions of water right nos. 22-203 and 22-204C into a pond owned by Walter's Ready Mix. The enclosed application proposes to add a new point of diversion to these water rights to allow for diversion directly from the Teton River into the Walter's Pond.

Walter's Ready Mix has signed an agreement to allow for the diversion into the pond. The executed agreement is attached.

Please contact our office with questions regarding this application.

Respectfully,

A handwritten signature in blue ink that reads "Kristin Moore".

Kristin Moore
Water Rights Analyst

Attachment: Application for Transfer –Points of Diversion
 Recharge Site Agreement