

AGREEMENT TO TRANSFER WATER RIGHT

THIS AGREEMENT, is made and entered into this 27th day of October, 2005, by and between the **NEW SWEDEN IRRIGATION DISTRICT**, hereinafter referred to as "**New Sweden**," and the **City of Blackfoot**, hereinafter referred to as "**City**."

RECEIVED

NOV 15 2005

Department of Water Resources
Eastern Region

RECITALS

- A. WHEREAS, the City is in need of obtaining a water supply to irrigate and maintain storage at Jensen's Grove Park located within the City; and
- B. WHEREAS, lands located within the New Sweden Irrigation District have been petitioned out of the district because of residential and commercial development that no longer need the use of surface water from New Sweden, and
- C. WHEREAS, The City has been awarded a federal grant in excess of \$250,000 that can be used to purchase water rights associated with the designated land to irrigate Jensen's Grove Park and to provide water storage in Jensen's Grove Park; and
- D. WHEREAS, an Application for Transfer of Water Right associated with the designated land has been prepared whereby 46 cfs of natural flow water right will be permanently transferred from New Sweden to the City,

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this agreement, the parties agree as follows:

1. **RECITALS.** The above-reference Recitals hereby are incorporated into this agreement.
2. **TRANSFER OF WATER RIGHT.** New Sweden agrees to sell and the City agrees to purchase, upon the terms and conditions that are hereinafter set forth, 46 cfs of natural flow water right, Right Number 01-181C, pursuant to the Application for Transfer of Water Right, a copy of which is attached hereto as Exhibit "A," and made a part hereof by this reference.
3. **APPLICATION FOR TRANSFER OF WATER RIGHT.** The City agrees to prepare, file, and amend as necessary, the Application for Transfer of Water Right. New Sweden agrees to use due diligence and cooperate fully with the City in pursuing approval of the transfer from appropriate state and federal agencies.
4. **PURCHASE PRICE.** The purchase price agreed upon between the parties for said water right is the sum of TWO HUNDRED FIFTY THOUSAND and No/100 DOLLARS (\$250,000.00). Of that amount, TWENTY-FIVE THOUSAND and NO/100 DOLLARS (\$25,000) shall be paid as earnest money towards the purchase price on or before the execution of this agreement.

5. **PAYMENT OF PURCHASE PRICE.** Payment of the purchase price and transfer of the water right is conditioned upon the State of Idaho Department of Water Resources approving the transfer. Payment further is conditioned upon the Federal Department of Housing and Urban Development (HUD) approving the use of the grant funds to purchase such water right associated with the designated land. Payment shall be made within ten days of the City receiving approval of transfer from the State of Idaho Department of Water Resources and the acceptance of the environmental review and/or other Federal requirements relating to the Grant Award releasing the grant funds for the purpose of making the purchase.
6. **DUES AND ASSESSMENTS.** New Sweden shall waive all dues and assessments lawfully levied and assessed against the water right through the closing date.
7. **CLOSING.** The closing of this transaction and the delivery of all the executed documents and instruments contemplated by the parties shall take place at the offices of New Sweden, in Idaho Falls, Idaho, on or before the 1st day of December, 2005, or at such later date as the parties hereto may mutually agree in writing.
8. **WAIVER.** The waiver of any breach of this agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach, either of the same or another provision of this Agreement.
9. **AMENDMENTS.** This agreement shall not be changed, altered, or modified, other than by written agreement of the parties hereto.
10. **ADDITIONAL DOCUMENTS.** The parties hereby agree to execute and deliver such additional documents as may be necessary or desirable to carry out the intent of this Agreement.
11. **TIME OF ESSENCE.** Time and the prompt performance of each and every term, covenant and condition of this agreement is material and of the essence of this agreement.
12. **CAPTIONS TO PARAGRAPHS.** The captions to the paragraphs of this agreement are for convenience only and shall not be deemed to enlarge, diminish or in any manner affect the meaning of such paragraphs.
13. **INTEGRATION OF AGREEMENT.** Seller and Buyer acknowledge that the terms of this agreement may vary from the terms contained in any other preliminary agreements or discussions made prior to the execution of this agreement and may vary from any negotiations between the parties prior to the execution of this agreement. Seller and Buyer agree that the terms, covenants and conditions of this agreement shall supersede all such prior negotiations and agreements, that there are no other agreements not contained in this agreement, and that this agreement shall be and is the final expression of the agreement of the parties and shall control. No modifications of the agreement shall be valid unless in writing and executed by the parties to the agreement.

- ### ACKNOWLEDGMENT.

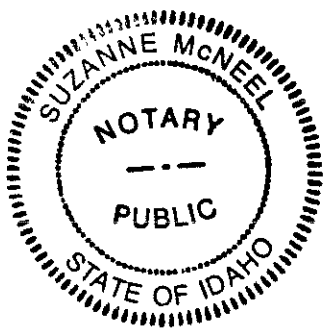
NEW SWEDEN IRRIGATION DISTRICT

New Sweden Irrigation Dist.
By: Louis Stiel, Board Chairman
Its authorized agent.

Attest: Suzanne McNeel
City Clerk

STATE OF IDAHO)
) ss.
County of Bingham)

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

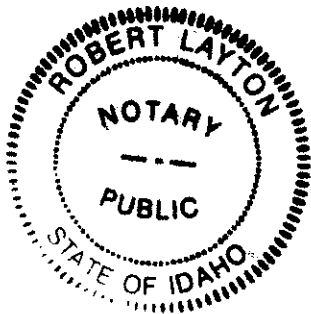


Stephanne McNeel
Notary Public for Idaho
Residing at Blackfoot, Idaho
My Commission Expires: 4-15-08

STATE OF IDAHO)
) ss.
County of Bingham)

On this 1st day of November, 2005, before me the undersigned, a Notary Public for Idaho, personally appeared, Louis Thiel, the person whose name is subscribed to the within instrument, known to me to be the authorized agent for New Sweden Irrigation District, and acknowledged to me that he executed the same on behalf of such entity.

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



Notary Public for Idaho
Residing at Blackfoot, Idaho
My Commission Expires: 3-15-10