



# Rathdrum

City Council Agenda

May 13, 2020

6:00 p.m.

Location: City Council Chamber - Zoom Conference information will be on the  
8047 W. Main Street City Website – [www.rathdrum.org](http://www.rathdrum.org)  
Rathdrum, ID 83858  
(208) 687-0261

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**WELCOME-PLEASE TURN OFF CELL PHONES- Thank You.**

- 1) **CALL THE MEETING TO ORDER**
- 2) **PLEDGE OF ALLEGIANCE**
- 3) **ROLL CALL**
- 4) **AMENDMENTS TO THE AGENDA AND DECLARATION OF CONFLICT, EX-PARTE CONTACTS AND SITE VISITS** The declaration and justification of an amendment must be approved by motion of the Council.
- 5) **ACTION ITEM: CONSENT CALENDAR APPROVAL**
  - A) Regular Council Minutes of April 22, 2020
  - B) Regular and Special Bills as presented
  - C) Changing the safety deposit Box from a 10x10 box to a 3x5 box
  - D) Westwood Pines Development Agreement
- 6) **CEREMONIES AND REPORTS**
- 7) **VISITORS COMMENTS** – An opportunity to address concerns not on the agenda (No formal action allowed – 3-minute time limit per issue) issues may be placed on subsequent agenda. Comments regarding performance by city employees are inappropriate at this time and should be directed to the Mayor, either by subsequent

appointment or after tonight's meeting, if time permitting. Repeated comments of the same or similar topic will be considered out of order and not allowed.

**8) OLD BUSINESS**

**9) PUBLIC HEARING**

- A) Timber Glade Annexation

**10) NEW BUSINESS**

- A) **ACTION ITEM:** Consideration of Timber Glade Annexation Ordinance
- B) **ACTION ITEM:** Consideration of Timber Glade Annexation Agreement
- C) **ACTION ITEM:** Consideration Intermex Franchise Agreement
- D) **ACTION ITEM:** Consideration of Memorandum of Understanding between the Sheriff's Office of Kootenai County and the Rathdrum Police Department

**11) STAFF REPORTS**

- A) Public Works Reporting
- B) Police Reporting
- C) Park and Recreation Reporting
- D) City Administrator
  - 1. COVID-19 report

**12) MAYOR'S REPORT/APPOINTMENTS**

- A) Memorial Day Proclamation

**13) COUNCIL REPORTS**

**14) ADJOURN**

**Rathdrum City Hall is an ADA accessible building. Assistance for persons with disabilities will be provided upon 24-hours' notice prior to the meeting.**



# Rathdrum

City Council Minutes

April 22, 2020

6:00 p.m.

Location: City Council Chamber  
8047 W. Main Street  
Rathdrum, ID 83858  
(208) 687-0261

- Zoom Conference information will be on the  
City Website – [www.rathdrum.org](http://www.rathdrum.org)



**WELCOME-PLEASE TURN OFF CELL PHONES- Thank You.**

## 1) CALL THE MEETING TO ORDER

Meeting called to order at 6:02 pm

## 2) PLEDGE OF ALLEGIANCE

## 3) ROLL CALL

**PRESENT:** Mayor Holmes. Councilor Hill, Councilor Laws, Councilor Rickard,  
and Councilor Adams via Zoom video Conference

**ABSENT:**

**STAFF:** City Administrator Duce. City Clerk Halligan, Police Chief McLean,  
City Planner Siess, Sergeant Ray, Finance Director Taylor and City  
Attorney Herrington via Zoom video Conference

## 4) AMENDMENTS TO THE AGENDA

## 5) **ACTION ITEM:** CONSENT CALENDAR APPROVAL

- A) Regular Council Minutes of April 8, 2020
- B) Regular and Special Bills as presented
- C) Consideration of Surplus of Chairs in Council Room

- D) Consideration of the Sanitary Sewer Lift Station, Off-Site Sewer Force Main & Off-Site Water Main for Brookshire Subdivision Project
- E) Consideration of Brookshire 1<sup>st</sup> addition Final Plat
- F) Consideration of Thayer Farm 1<sup>st</sup> addition Final Plat

City Administrator gave a brief presentation on the consent calendar

Councilor Laws made a MOTION that we approve the Consent Calendar as presented. Motion seconded by Councilor Hill.

**AYES:** Councilor Laws  
Councilor Hill  
Councilor Rickard  
Councilor Adams

**NAYES:** None

**ABSENT:**

Passed by all

## **6) CEREMONIES AND REPORTS**

**7) VISITORS COMMENTS – An opportunity to address concerns not on the agenda (No formal action allowed – 3-minute time limit per issue) issues may be placed on subsequent agenda. Comments regarding performance by city employees are inappropriate at this time and should be directed to the Mayor, either by subsequent appointment or after tonight’s meeting, if time permitting. Repeated comments of the same or similar topic will be considered out of order and not allowed.**

## **8) OLD BUSINESS**

## **9) NEW BUSINESS**

## **11)STAFF REPORTS**

- A) Finance Reporting
- B) City Administrator

## **12)MAYOR’S REPORT/APPOINTMENTS**

## **13)COUNCIL REPORTS**

## **14)ADJOURN**

Meeting was adjourned at 6:26 pm

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Vic Holmes, Mayor

Attest:

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Sherri L Halligan, City Clerk

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## Report Criteria:

Detail report.  
Invoices with totals above \$0.00 included.  
Only unpaid invoices included.

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
<b>10-218200</b>							
100	AFLAC	465018	April premium	04/25/2020	1,475.66	.00	
Total 10-218200:					1,475.66	.00	
<b>10-414-330</b>							
2815	VISA	LD8855MAY20	May credit card pymt MT	04/27/2020	24.02	.00	
Total 10-414-330:					24.02	.00	
<b>10-415-310</b>							
1360	KOOTENAI COUNTY REPROGR	2020-0000008	Utility envelooes	05/06/2020	135.10	.00	
2518	SUPER ONE FOODS	02-1448366	Supplies	04/30/2020	6.64	.00	
2815	VISA	LD8855MAY20	May credit card pymt LD	04/27/2020	37.42	.00	
2815	VISA	LD8855MAY20	May credit card pymt MT	04/27/2020	226.13	.00	
2815	VISA	MT7773MAY20	May credit card MT	04/27/2020	116.16	.00	
Total 10-415-310:					521.45	.00	
<b>10-415-320</b>							
134	AMAZON CAPITAL SERVICES	1N3J-NVYF-K	Hand sanitizer dispensers	04/20/2020	14.91	.00	
546	CRYSTAL SPRINGS	100773010425	Cooler rent & water	04/25/2020	82.44	.00	
Total 10-415-320:					97.35	.00	
<b>10-415-480</b>							
1026	IIMC	ANNUAL MEM	Annual membership fee	04/20/2020	36.66	.00	
1026	IIMC	DUSSH	Annual membership-SH	04/20/2020	36.67	.00	
Total 10-415-480:					73.33	.00	
<b>10-415-510</b>							
1979	POWERNET GLOBAL COMMUNI	42002201	Long distance service	05/07/2020	34.94	.00	
75	TIME WARNER CABLE	002706404252	Internet fee	04/25/2020	132.50	.00	
2810	VERIZON WIRELESS, BELLEVU	9853323799	Cell phones -CH	04/25/2020	124.89	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7235	E-mail	05/07/2020	585.80	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7236	Annual service	05/07/2020	864.00	.00	
Total 10-415-510:					1,742.13	.00	
<b>10-415-610</b>							
1505	LES SCHWAB TIRES	12700305168	Winter changeover	05/06/2020	20.00	.00	
1505	LES SCHWAB TIRES	12700316745	Winter changeover LD	04/15/2020	99.06	.00	
Total 10-415-610:					119.06	.00	
<b>10-415-760</b>							
2815	VISA	LD8855MAY20	May credit card pymt LD	04/27/2020	362.59	.00	
Total 10-415-760:					362.59	.00	
<b>10-415-775</b>							
134	AMAZON CAPITAL SERVICES	19NY-7Q7Y-JT	Portable hard drive	05/06/2020	116.86	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 10-415-775:					116.86	.00	
<b>10-415-796</b>							
2271	ROYAL BUSINESS SYSTEMS-T	26890397	Copiers	04/20/2020	416.81	.00	
Total 10-415-796:					416.81	.00	
<b>10-415-820</b>							
1505	LES SCHWAB TIRES	FIN CHG	Finance charge	05/07/2020	22.13	.00	
Total 10-415-820:					22.13	.00	
<b>10-416-423</b>							
1977	POST FALLS LAW	210746	Legal fees	04/30/2020	4,500.00	.00	
Total 10-416-423:					4,500.00	.00	
<b>10-416-429</b>							
283	BENEFITS EXCHANGE NORTH	3922	Admin fee	05/05/2020	42.00	.00	
Total 10-416-429:					42.00	.00	
<b>10-421-310</b>							
134	AMAZON CAPITAL SERVICES	14C9-H7CT-1	Envelopes	04/18/2020	45.78	.00	
2440	STAPLES ADVANTAGE	3444995553	Coffee filters,cups, ink cart,logitec	04/11/2020	130.11	.00	
2440	STAPLES ADVANTAGE	3445340576	Credit Inv 3444995553	04/18/2020	2.00-	.00	
2518	SUPER ONE FOODS	5720	36.87 per Super 1	05/07/2020	36.87-	.00	
2815	VISA	LD8855MAY20	May credit card pymt MT	04/27/2020	74.19	.00	
Total 10-421-310:					211.21	.00	
<b>10-421-320</b>							
134	AMAZON CAPITAL SERVICES	1LNH-Y464-9H	Hand sanitizer dispenser	04/20/2020	89.64	.00	
396	CW WRAPS & MARKETING	10673	Patrol badge for wall mount	04/16/2020	142.50	.00	
1815	O'REILLY AUTO PARTS	3930-489395	Funnel	04/18/2020	4.99	.00	
2144	RATHDRUM TRADING POST HA	6012/1	Rags & spray bottle	04/08/2020	22.81	.00	
2518	SUPER ONE FOODS	03-2073847	Cake-RPD	05/04/2020	14.43	.00	
2518	SUPER ONE FOODS	09----1684399	Supplies-deli	04/16/2020	89.98	.00	
2518	SUPER ONE FOODS	09-1686918	Veggie & meat tray	04/20/2020	89.98	.00	
Total 10-421-320:					454.33	.00	
<b>10-421-330</b>							
270	BANNER FUEL	2012101RPD	April Fuel RPD	04/30/2020	2,907.79	.00	
Total 10-421-330:					2,907.79	.00	
<b>10-421-423</b>							
430	CITY OF POST FALLS	INV04606	Legal fees	04/15/2020	5,400.00	.00	
Total 10-421-423:					5,400.00	.00	
<b>10-421-480</b>							
2703	TRANSUNION	3005511-20200	Searches	05/01/2020	50.00	.00	
Total 10-421-480:					50.00	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
<b>10-421-510</b>							
787	FRONTIER	2080016771AP	Tele	04/13/2020	256.00	.00	
787	FRONTIER	2086870711AP	Tele	04/13/2020	408.71	.00	
1979	POWERNET GLOBAL COMMUNI	41927242	Long distance service	03/27/2020	76.27	.00	
1979	POWERNET GLOBAL COMMUNI	41979070	Long distance service	04/27/2020	198.64	.00	
75	TIME WARNER CABLE	000123404282	Internet service	04/28/2020	187.59	.00	
2810	VERIZON WIRELESS, BELLEVU	9853323799	Cell phones -PD	04/25/2020	843.06	.00	
Total 10-421-510:					1,970.27	.00	
<b>10-421-520</b>							
240	AVISTA UTILITIES	6538920000AP	GAS & ELECTRIC	04/20/2020	384.05	.00	
240	AVISTA UTILITIES	8446740000AP	Natural gas	04/20/2020	38.00	.00	
1370	KOOTENAI COUNTY SOLID WA	84744MARCH2	Dumpster 2 yds	03/31/2020	65.00	.00	
920	NORTHWEST WASTE & RECYC	476470	2yd fl 1xw	05/01/2020	46.50	.00	
Total 10-421-520:					533.55	.00	
<b>10-421-610</b>							
883	GRIZZLY GLASS CENTERS	H0121076	Windshield 2012 Dodge Durango	04/23/2020	250.00	.00	
883	GRIZZLY GLASS CENTERS	H0121077	Windshield	04/23/2020	399.00	.00	
1815	O'REILLY AUTO PARTS	3930-491798	Tire foam, wipes ,car wash	05/01/2020	21.26	.00	
863	PRAIRIE AUTOMOTIVE	200016	Speed trailer repairs	04/27/2020	40.00	.00	
863	PRAIRIE AUTOMOTIVE	200017	Cut window moulding for spot light	04/27/2020	100.00	.00	
Total 10-421-610:					810.26	.00	
<b>10-421-695</b>							
2809	VIEVU LLC	RMA373700-2	Les body worn camera	04/27/2020	299.00	.00	
Total 10-421-695:					299.00	.00	
<b>10-421-720</b>							
2311	SAWYER PLUMBING LLC	309-11268	Repaired faucet leak	04/23/2020	172.50	.00	
2328	SERIGHT'S ACE HARWARE 3	14248/3	Faucet, plumber putty	04/21/2020	66.91	.00	
2328	SERIGHT'S ACE HARWARE 3	14324/3	Rollers & caulking	05/01/2020	13.11	.00	
2795	VANGUARD CLEANING SYSTE	94890	Janitorial services	04/30/2020	215.00	.00	
Total 10-421-720:					467.52	.00	
<b>10-421-760</b>							
1239	J&R ELECTRONICS	046774	Non-Pen Ridge Mount	04/16/2020	540.54	.00	
Total 10-421-760:					540.54	.00	
<b>10-421-775</b>							
732	JOSEPH HUME	2020-0413-S	Service contract-May 2020	04/13/2020	400.00	.00	
Total 10-421-775:					400.00	.00	
<b>10-421-796</b>							
2271	ROYAL BUSINESS SYSTEMS-T	26890397	Copier	04/20/2020	416.82	.00	
Total 10-421-796:					416.82	.00	
<b>10-423-310</b>							
1240	J.THAYER COMPANY, INC	1450870-0	Clipboards & pens	05/04/2020	36.02	.00	
2815	VISA	KJ0839MAY20	May credit card pymt KJ	04/27/2020	14.00	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
2815	VISA	LD8855MAY20	May credit card pymt MT	04/27/2020	148.38	.00	
Total 10-423-310:					198.40	.00	
<b>10-423-320</b>							
2328	SERIGHT'S ACE HARWARE 3	14366/3	Screws	05/06/2020	5.37	.00	
Total 10-423-320:					5.37	.00	
<b>10-423-330</b>							
270	BANNER FUEL	2012101PW	April fuel PW	04/27/2020	685.78	.00	
960	HICO COUNTRY STORE, INC.	112751	April fuel PW	04/27/2020	19.96	.00	
960	HICO COUNTRY STORE, INC.	113348	April fuel PW	04/17/2020	36.01	.00	
960	HICO COUNTRY STORE, INC.	113349	April fuel PW	04/23/2020	49.38	.00	
Total 10-423-330:					791.13	.00	
<b>10-423-510</b>							
2810	VERIZON WIRELESS, BELLEVU	9853323799	Cell phones -PW	04/25/2020	584.34	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7235	E-mail	05/07/2020	585.80	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7236	Annual service	05/07/2020	1,008.00	.00	
Total 10-423-510:					2,178.14	.00	
<b>10-423-520</b>							
1370	KOOTENAI COUNTY SOLID WA	80608MAR20	Garbage dumpster	03/31/2020	351.00	.00	
1370	KOOTENAI COUNTY SOLID WA	81011MAR20	Dumpster 1 yd	03/31/2020	32.50	.00	
920	NORTHWEST WASTE & RECYC	476463	6yd fl 2xwk	05/01/2020	145.10	.00	
920	NORTHWEST WASTE & RECYC	476465	2yd fl 1xw	05/01/2020	36.50	.00	
Total 10-423-520:					565.10	.00	
<b>10-423-610</b>							
1505	LES SCHWAB TIRES	12700291494	Flat tire repair	05/07/2020	20.00	.00	
1890	PERFECTION TIRE # 38	1-161199	Brake pads , filters	05/01/2020	478.51	.00	
Total 10-423-610:					498.51	.00	
<b>10-423-720</b>							
820	GENERAL FIRE EXTINGUISHER	88048	Amerex	04/21/2020	79.95	.00	
2328	SERIGHT'S ACE HARWARE 3	14309/3	Corner brace, nails, bolts, nuts	04/29/2020	31.31	.00	
2328	SERIGHT'S ACE HARWARE 3	14331/3	Corner brace	05/01/2020	.96-	.00	
2795	VANGUARD CLEANING SYSTE	94890	Janitorial services	04/30/2020	425.00	.00	
Total 10-423-720:					535.30	.00	
<b>10-423-770</b>							
2815	VISA	KJ0839MAY20	May credit card pymt KJ	04/27/2020	240.87	.00	
Total 10-423-770:					240.87	.00	
<b>10-423-920</b>							
861	GREAT AMERICA FINANCIAL SE	26890396	Large copier	04/30/2020	368.78	.00	
1037	ROYAL BUSINESS SYSTEMS-S	IN124259	Overage	04/12/2020	480.00	.00	
2271	ROYAL BUSINESS SYSTEMS-T	26890397	Copier	04/20/2020	416.82	.00	
Total 10-423-920:					1,265.60	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
<b>10-431-320</b>							
1720	Norco	29171026	Cylinder rent	04/30/2020	53.40	.00	
2328	SERIGHT'S ACE HARWARE 3	14191/3	Screws	04/15/2020	26.99	.00	
2328	SERIGHT'S ACE HARWARE 3	14297/3	Gloves, file guide, file	04/28/2020	60.25	.00	
Total 10-431-320:					140.64	.00	
<b>10-431-390</b>							
1016	INTERMOUNTAIN SIGN & SAFE	11513	PF 36 YEL PE PEX	12/11/2019	320.00	.00	
Total 10-431-390:					320.00	.00	
<b>10-431-510</b>							
222	AT & T MOBILITY	287262285686	Call out phones	04/05/2020	145.62	.00	
Total 10-431-510:					145.62	.00	
<b>10-431-525</b>							
240	AVISTA UTILITIES	2219530000AP	Street lights	04/21/2020	18.00	.00	
240	AVISTA UTILITIES	2756400000AP	Street lights	04/28/2020	6,878.78	.00	
240	AVISTA UTILITIES	2820160000AP	Street lights	04/20/2020	13.13	.00	
240	AVISTA UTILITIES	7896220000AP	ELECTRIC	04/20/2020	13.13	.00	
1385	KOOTENAI ELECTRIC	1488980APR2	Street lights	04/20/2020	135.00	.00	
1385	KOOTENAI ELECTRIC	1800084MAY2	Street lights	04/30/2020	294.61	.00	
1385	KOOTENAI ELECTRIC	1831880MAY2	Street lights	04/30/2020	44.28	.00	
1385	KOOTENAI ELECTRIC	1832815APR2	Street lights	04/30/2020	647.66	.00	
1385	KOOTENAI ELECTRIC	1837059	Street lights	04/30/2020	90.78	.00	
1385	KOOTENAI ELECTRIC	1844717APR2	Street lights	04/20/2020	573.15	.00	
Total 10-431-525:					8,708.52	.00	
<b>10-431-610</b>							
1650	NAPA AUTO STORE, CDA, INC.	898779	Virtual kit	03/06/2020	117.98	.00	
1650	NAPA AUTO STORE, CDA, INC.	903968	Tubes-step nerfbar	04/22/2020	240.55	.00	
1815	O'REILLY AUTO PARTS	3930-491236	nerf/step br	04/28/2020	199.99	.00	
Total 10-431-610:					558.52	.00	
<b>10-431-730</b>							
2971	SPRAY CENTER ELECTRONICS	255205	Custom cable & clamp	04/13/2020	119.89	.00	
Total 10-431-730:					119.89	.00	
<b>10-435-310</b>							
2328	SERIGHT'S ACE HARWARE 3	14252/3	Battery	04/22/2020	8.63	.00	
Total 10-435-310:					8.63	.00	
<b>10-435-330</b>							
960	HICO COUNTRY STORE, INC.	112753	May fuel PR	05/04/2020	34.44	.00	
960	HICO COUNTRY STORE, INC.	113433	April fuel PR	04/27/2020	63.79	.00	
960	HICO COUNTRY STORE, INC.	113437	May fuel PR	05/04/2020	20.19	.00	
Total 10-435-330:					118.42	.00	
<b>10-435-420</b>							
1913	PINNACLE INVESTIGATIONS C	70343	Background Check	05/01/2020	46.50	.00	
2948	YOUSEY, CINDER	002-2020	Camp host	05/13/2020	600.00	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 10-435-420:					646.50	.00	
<b>10-435-440</b>							
2815	VISA	ES1391MAY20	May credit card pymt ES	04/27/2020	61.11	.00	
2815	VISA	ES1391MAY20	May credit card pymt ES	04/27/2020	15.13	.00	
Total 10-435-440:					45.98	.00	
<b>10-435-510</b>							
787	FRONTIER	2086872399AP	Tele	04/25/2020	307.91	.00	
2810	VERIZON WIRELESS, BELLEVU	9853323799	Cell phones -PR	04/25/2020	306.44	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7235	E-mail	05/07/2020	585.80	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7236	Annual service	05/07/2020	720.00	.00	
Total 10-435-510:					1,920.15	.00	
<b>10-435-520</b>							
240	AVISTA UTILITIES	3088650000AP	ELECTRIC	04/20/2020	211.40	.00	
1370	KOOTENAI COUNTY SOLID WA	85115MARCH2	Garbage cart	04/15/2020	15.00	.00	
920	NORTHWEST WASTE & RECYC	475885	96G Comm 1XWK	05/01/2020	12.00	.00	
Total 10-435-520:					238.40	.00	
<b>10-435-720</b>							
2795	VANGUARD CLEANING SYSTE	94890	Janitorial services	04/30/2020	105.00	.00	
Total 10-435-720:					105.00	.00	
<b>10-435-920</b>							
2271	ROYAL BUSINESS SYSTEMS-T	26890397	Copier	04/20/2020	416.82	.00	
Total 10-435-920:					416.82	.00	
<b>10-438-315</b>							
1560	MARC/MID AMERICA, INC.	0695122-IN	Germ free plus	04/17/2020	135.95	.00	
Total 10-438-315:					135.95	.00	
<b>10-438-320</b>							
2144	RATHDRUM TRADING POST HA	163455/1	Chain & guide bar	04/11/2020	75.97	.00	
2144	RATHDRUM TRADING POST HA	6092/1	Paint, mini woven cover	04/21/2020	44.08	.00	
2144	RATHDRUM TRADING POST HA	6148/1	Safety glasses, batteries, pickup s	04/29/2020	113.05	.00	
2144	RATHDRUM TRADING POST HA	6165/1	Spray bottles	04/30/2020	8.07	.00	
2144	RATHDRUM TRADING POST HA	6174/1	Tee, battery	05/01/2020	10.24	.00	
2144	RATHDRUM TRADING POST HA	6177/1	poly tank sprayer	05/01/2020	41.99	.00	
Total 10-438-320:					293.40	.00	
<b>10-438-330</b>							
960	HICO COUNTRY STORE, INC.	112753	May fuel PR	05/04/2020	11.18	.00	
960	HICO COUNTRY STORE, INC.	113432	April fuel pr	04/23/2020	32.96	.00	
960	HICO COUNTRY STORE, INC.	113435	April fuel PR	04/30/2020	66.92	.00	
Total 10-438-330:					111.06	.00	
<b>10-438-360</b>							
981	HORIZON	2S125854	side control bar & valve	04/23/2020	502.50	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
981	HORIZON	2S126606	Sprinkler, valve, controller	05/01/2020	289.55	.00	
Total 10-438-360:					792.05	.00	
<b>10-438-520</b>							
240	AVISTA UTILITIES	0030160000AP	Area light & electric	04/20/2020	67.02	.00	
240	AVISTA UTILITIES	1026820000AP	ELECTRIC	04/20/2020	50.60	.00	
240	AVISTA UTILITIES	2491230000AP	ELECTRIC	04/20/2020	26.62	.00	
240	AVISTA UTILITIES	3476550000AP	ELECTRIC	04/21/2020	26.31	.00	
240	AVISTA UTILITIES	3706340000AP	ELECTRIC	04/20/2020	29.10	.00	
240	AVISTA UTILITIES	3857440000AP	ELECTRIC	04/20/2020	61.40	.00	
240	AVISTA UTILITIES	4305510000AP	ELECTRIC	04/20/2020	31.56	.00	
240	AVISTA UTILITIES	4552300000AP	Area light & electric	04/21/2020	113.74	.00	
240	AVISTA UTILITIES	5030160000AP	Area Light	04/20/2020	63.64	.00	
240	AVISTA UTILITIES	5323310000AP	ELECTRIC	04/20/2020	26.26	.00	
240	AVISTA UTILITIES	9027800000AP	ELECTRIC	04/20/2020	63.61	.00	
Total 10-438-520:					559.86	.00	
<b>10-438-570</b>							
2515	SUN RENTAL POST FALLS	3676333-01	Man lift	04/08/2020	165.00	.00	
Total 10-438-570:					165.00	.00	
<b>10-438-600</b>							
2326	SENSKE SERVICES	9795627	Lawn care early spring, Majestic P	03/20/2020	218.50	.00	
Total 10-438-600:					218.50	.00	
<b>10-438-610</b>							
1650	NAPA AUTO STORE, CDA, INC.	903648	Manifold '97' GMC Sonoma	04/20/2020	71.71	.00	
Total 10-438-610:					71.71	.00	
<b>10-439-330</b>							
960	HICO COUNTRY STORE, INC.	113431	April fuel PR	04/21/2020	11.02	.00	
960	HICO COUNTRY STORE, INC.	113434	April fuel PR	04/30/2020	35.12	.00	
Total 10-439-330:					46.14	.00	
<b>10-439-520</b>							
240	AVISTA UTILITIES	2180110000AP	ELECTRIC	04/20/2020	27.29	.00	
240	AVISTA UTILITIES	7852400000AP	ELECTRIC	04/20/2020	38.25	.00	
Total 10-439-520:					65.54	.00	
<b>10-439-630</b>							
136	AMERICA ON SITE SERVICES	337809	Handicap unit	04/30/2020	95.00	.00	
Total 10-439-630:					95.00	.00	
<b>10-440-860</b>							
2815	VISA	ES1391MAY20	May credit card pymt ES	04/27/2020	34.80	.00	
Total 10-440-860:					34.80	.00	
<b>10-490-515</b>							
430	CITY OF POST FALLS	INV04607	March Dispatch	04/16/2020	7,717.82	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 10-490-515:					7,717.82	.00	
<b>13-400-100</b>							
708	DAVID EVANS & ASSOCIATES	465373	Project RATH0000-009SH-53 & M	04/30/2020	29,782.99	.00	
Total 13-400-100:					29,782.99	.00	
<b>20-490-695</b>							
2942	WILBERT PRECAST, INC	050620	Niche wall	05/05/2020	13,000.00	.00	
Total 20-490-695:					13,000.00	.00	
<b>40-400-200</b>							
896	HMH, LLC	M19014-03	Latah St Br 1	04/30/2020	13,377.51	.00	
Total 40-400-200:					13,377.51	.00	
<b>60-434-310</b>							
1360	KOOTENAI COUNTY REPROGR	2020-0000008	Utility envelooes	05/06/2020	135.11	.00	
2518	SUPER ONE FOODS	02-1448366	Supplies	04/30/2020	6.63	.00	
2815	VISA	MT7773MAY20	May credit card pymt MT	04/27/2020	116.16	.00	
Total 60-434-310:					257.90	.00	
<b>60-434-320</b>							
134	AMAZON CAPITAL SERVICES	1N3J-NVYF-K	Hand sanitizer dispensers	04/20/2020	14.91	.00	
Total 60-434-320:					14.91	.00	
<b>60-434-480</b>							
1026	IIMC	ANNUAL MEM	Nannual membership fee	04/20/2020	36.67	.00	
1026	IIMC	DUESSH	Annual membership-SH	04/20/2020	36.67	.00	
Total 60-434-480:					73.34	.00	
<b>60-434-510</b>							
1979	POWERNET GLOBAL COMMUNI	42002201	Long distance service	05/07/2020	34.93	.00	
75	TIME WARNER CABLE	002706404252	Internet fee	04/25/2020	132.50	.00	
2810	VERIZON WIRELESS, BELLEVU	9853323799	Cell phones -CH	04/25/2020	124.89	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7235	E-mail	05/07/2020	523.30	.00	
Total 60-434-510:					815.62	.00	
<b>60-434-610</b>							
1505	LES SCHWAB TIRES	12700305168	Winter changeover	05/06/2020	20.00	.00	
1505	LES SCHWAB TIRES	12700316745	Winter changeover	04/15/2020	99.06	.00	
Total 60-434-610:					119.06	.00	
<b>60-434-760</b>							
2815	VISA	LD8855MAY20	May credit card LD	04/27/2020	362.58	.00	
Total 60-434-760:					362.58	.00	
<b>60-435-520</b>							
240	AVISTA UTILITIES	0942300000AP	Water pumping	04/20/2020	108.34	.00	
240	AVISTA UTILITIES	1016020000AP	Water pumping	04/20/2020	655.82	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
240	AVISTA UTILITIES	3242300000AP	Water pumping	04/20/2020	38.42	.00	
240	AVISTA UTILITIES	3708160000AP	Water pumping	04/20/2020	245.96	.00	
240	AVISTA UTILITIES	4452300000AP	Water pumping	04/20/2020	76.36	.00	
1385	KOOTENAI ELECTRIC	1835508MAY2	Pumping	04/30/2020	6,841.19	.00	
Total 60-435-520:					7,966.09	.00	
<b>60-436-320</b>							
103	ALSCO	LSPO2293411	Shop towels & medical supplies	04/20/2020	53.07	.00	
2144	RATHDRUM TRADING POST HA	6150/1	Drill bit, brush, spray sealer	04/29/2020	41.00	.00	
2328	SERIGHT'S ACE HARWARE 3	14305/3	Plumbing supplies	04/29/2020	70.43	.00	
2772	USA BLUEBOOK	197757	Diiehard cmpl	04/06/2020	146.95	.00	
2772	USA BLUEBOOK	216349	Hach DPD 1	04/23/2020	82.13	.00	
Total 60-436-320:					393.58	.00	
<b>60-436-450</b>							
50	ACCURATE TESTING LABS,LLC	110291	Coliform Presence/Absence	04/20/2020	100.00	.00	
50	ACCURATE TESTING LABS,LLC	110422	Copper/lead Grange Well	04/29/2020	40.00	.00	
Total 60-436-450:					140.00	.00	
<b>60-436-520</b>							
240	AVISTA UTILITIES	2907930000AP	GAS & ELECTRIC	04/20/2020	321.85	.00	
240	AVISTA UTILITIES	3179070000AP	ELECTRIC	04/20/2020	369.75	.00	
Total 60-436-520:					691.60	.00	
<b>60-436-610</b>							
1650	NAPA AUTO STORE, CDA, INC.	903144	Disc pad, electr throttle body	04/16/2020	248.78	.00	
Total 60-436-610:					248.78	.00	
<b>60-436-720</b>							
2795	VANGUARD CLEANING SYSTE	94890	Janitorial services	04/30/2020	52.50	.00	
Total 60-436-720:					52.50	.00	
<b>60-436-730</b>							
2003	PREMIER ELECTRIC MOTORS I	8223	Ac motor Thayer Well	05/01/2020	3,480.00	.00	
Total 60-436-730:					3,480.00	.00	
<b>60-490-429</b>							
1880	PASSWORD, INC.	10236803	Overcalls	05/01/2020	319.60	.00	
1880	PASSWORD, INC.	10236804	Admin fee	05/01/2020	3.00	.00	
Total 60-490-429:					322.60	.00	
<b>61-208000</b>							
430	CITY OF POST FALLS	INV04617	Sewer cap fees March	04/16/2020	34,859.00	.00	
Total 61-208000:					34,859.00	.00	
<b>61-434-310</b>							
1360	KOOTENAI COUNTY REPROGR	2020-0000008	Utility envelooes	05/06/2020	135.11	.00	
2518	SUPER ONE FOODS	02-1448366	Supplies	04/30/2020	6.63	.00	
2815	VISA	MT7773MAY20	May credit card pymt MT	04/27/2020	116.15	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 61-434-310:					257.89	.00	
<b>61-434-320</b>							
134	AMAZON CAPITAL SERVICES	1N3J-NVYF-K	Hand sanitizer dispensers	04/20/2020	14.91	.00	
Total 61-434-320:					14.91	.00	
<b>61-434-480</b>							
1026	IIMC	ANNUAL MEM	Annual membership-LM	04/20/2020	36.67	.00	
1026	IIMC	DUESSH	Annual membership-SH	04/20/2020	36.66	.00	
Total 61-434-480:					73.33	.00	
<b>61-434-510</b>							
1979	POWERNET GLOBAL COMMUNI	42002201	Long distance service	05/07/2020	34.93	.00	
75	TIME WARNER CABLE	002706404252	Internet fee	04/25/2020	132.49	.00	
2810	VERIZON WIRELESS, BELLEVU	9853323799	Cell phones -CH	04/25/2020	124.89	.00	
2814	VISION MUNICIPAL SOLUTIONS	09-7235	E-mail	05/07/2020	523.30	.00	
Total 61-434-510:					815.61	.00	
<b>61-434-610</b>							
1505	LES SCHWAB TIRES	12700305168	Winter changeover	05/06/2020	20.00	.00	
1505	LES SCHWAB TIRES	12700316745	Winter changeover	04/15/2020	99.06	.00	
Total 61-434-610:					119.06	.00	
<b>61-434-760</b>							
2815	VISA	LD8855MAY20	May credit card pymt LD	04/27/2020	362.58	.00	
Total 61-434-760:					362.58	.00	
<b>61-435-520</b>							
240	AVISTA UTILITIES	5552300000AP	Sewer pumping	04/20/2020	192.84	.00	
240	AVISTA UTILITIES	6785020000AP	ELECTRIC	04/20/2020	1,185.75	.00	
240	AVISTA UTILITIES	7807930000AP	Sewer pumping	04/20/2020	30.45	.00	
Total 61-435-520:					1,409.04	.00	
<b>61-436-320</b>							
103	ALSCO	LSPO2293411	Shop towels & medical supplies	04/20/2020	53.08	.00	
Total 61-436-320:					53.08	.00	
<b>61-436-520</b>							
240	AVISTA UTILITIES	2907930000AP	GAS & ELECTRIC	04/20/2020	321.85	.00	
240	AVISTA UTILITIES	3179070000AP	ELECTRIC	04/20/2020	369.76	.00	
Total 61-436-520:					691.61	.00	
<b>61-436-720</b>							
2795	VANGUARD CLEANING SYSTE	94890	Janitorial services	04/30/2020	52.50	.00	
Total 61-436-720:					52.50	.00	
<b>61-490-625</b>							
430	CITY OF POST FALLS	INV04612	Mar pumping	04/16/2020	126,601.37	.00	

Vendor	Vendor Name	Invoice Number	Description	Invoice Date	Net Invoice Amount	Amount Paid	Date Paid
Total 61-490-625:					126,601.37	.00	
<b>62-400-200</b>							
822	GENERAL PACIFIC, INC.	1371765	Meters	05/05/2020	9,108.00	.00	
Total 62-400-200:					9,108.00	.00	
Grand Totals:					299,570.06	.00	

Dated: \_\_\_\_\_

Mayor: \_\_\_\_\_

City Council: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City Recorder: \_\_\_\_\_

Report Criteria:

- Detail report.
- Invoices with totals above \$0.00 included.
- Only unpaid invoices included.

**DEVELOPMENT AGREEMENT**  
**FOR**  
**WESTWOOD PINES SUBDIVISION**

THE CITY OF RATHDRUM, hereinafter the "City", a municipal corporation of the state of Idaho, 8047 W. Main Street, Rathdrum, Idaho 83858, and Viking Construction, Inc., an Idaho Corporation, 2605 W Hayden Avenue, Hayden, ID 83835 and Viking Construction, Inc., a Washington Corporation, 19425 E Broadway Avenue, Spokane Valley, WA 99016, hereinafter together "Owner" or "Developer", enter into this Development Agreement, hereinafter the "Agreement."

WHEREAS, Owner owns approximately 50.00 acres of real property located within the City of Rathdrum, which Owner plans to develop (hereinafter the "**Property**") in approximately three (3) planned phases. Of this acreage, 110 residential lots, 2 commercial lots and 1 well lot are to be developed, commonly identified as Westwood Pines Subdivision which requires major investment in public facilities and front-end on-site and off-site improvements (hereinafter the "**Project**"). The Project area is more specifically identified and described in Exhibit "A", and the Preliminary Plat, Exhibit "B" which is attached hereto and incorporated, as if fully set forth herein.

WHEREAS, in order to enhance and strengthen the public planning process it is the desire of the City and the Owner to establish conditions of approval and terms of mitigation, to describe the scope of construction improvements, to foster an understanding between the Owner and the City with regards to the development of the Project described in Exhibit "B" and to assure the maximum effective utilization of the City's resources with the least economic cost to its residents.

WHEREAS, the City has complied with the notice and public hearing requirements for the subdivision approval for the Property, the Planning and Zoning Commission recommended approval of the subdivision following public hearing on February 19, 2020 and on March 11, 2020 the City Council of the City of Rathdrum approved the preliminary plat to be constructed in phases; and

WHEREAS, the City has determined the Project is appropriate for development conditioned upon the Owner entering into a Development Agreement with the City addressing issues relating to development and maintenance of common area landscaping and stormwater management systems, street trees, and future water and sewer infrastructure, and warranty of the infrastructure, on the terms and conditions set forth below.

NOW THEREFORE,

IT IS HEREBY AGREED that subject to the review process for development of the Project, maintenance of continuing progress in development of the Project in compliance with the provisions of this Agreement, and the availability of utility capacity

to the Project, Owner shall be allowed to develop the Project as set forth herein.

1. Property and Term.

1.1 Property Subject to this Agreement. All of the real property defined herein as the Project shall be subject to this Agreement, unless otherwise specified herein.

1.2 Term. The term of this Agreement shall commence upon the execution of this Agreement by all parties hereto and shall continue until all lands in the Project are subdivided and/or otherwise developed in accordance with the terms of this Agreement, unless earlier terminated as provided herein.

1.2.1 Section 3.5 Maintenance of Common Area Landscaping and Roadway Drainage Swales shall continue in effect after the term of this agreement and shall be an ongoing obligation of the Home Owner's Association (HOA) and/or the property owners of the whole subdivision collectively along which the landscaping and roadway drainage swales are situated within and external to the project, together with and including the east side of Meyer Road and the north side of Highway 53 adjacent to the plat, as well as those streets interior to the project. The lot owner of any property abutting public right of way is responsible for maintaining stormwater retention/treatment areas (grassy swales) contained within public rights of way or drainage easements for street drainage along streets interior to the plat unless otherwise maintained by the HOA.

1.3 Phased Subdivision. The duration of this Agreement envisions continuing development of the Project with phases to be presented for final construction approval approximately every one to three years, subject to market conditions. If no phase is submitted and constructed for a period of three years, City is authorized to give notice to the Owner of intent to terminate this Agreement for non-performance. Upon such notice, the Owner shall be allowed a public hearing concerning the City's intent to terminate, if requested. After hearing from the Owner, in addition to comments from the public, City's governing board may finally decide the status of this Agreement, setting forth its rationale in writing.

1.3.1 The terms of this agreement shall apply to all phases of the development of the Project. Any additional or modified terms or conditions for a specific phase must be in writing signed by both parties and attached to this Agreement as an Addendum.

2. Project Regulations and Policies.

2.1 Project Development. Owner shall have the right to develop the Project in accordance with the terms and conditions of this Agreement and City shall have the right to control development of the Project as set forth in this Agreement and consistent with applicable local and state laws in effect at the time of issuance of any permit. Except as otherwise specified in this

Agreement, the approvals memorialized hereby shall control the overall design, development and construction of the Project, and all on-and off-site improvements and appurtenant improvements in connection therewith, in the manner specified in this Agreement. Nothing in this Agreement shall contravene any applicable provision of law, which is not lawfully subject to modification by the City through an Agreement.

- 2.1.1 Existing Approvals. Development of the Project shall be subject to all of the conditions and standards as set forth herein. The development of the Project shall be consistent with adopted rules, regulations and ordinances of the City except where such rules, regulations and ordinances are expressly and lawfully modified by the approvals accorded the Project.
- 2.1.2 Future Application. Sections 2.1 and 2.1.1 herein shall not preclude changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in State or Federal laws or regulations which may be otherwise applicable to the Project. In the event State or Federal laws or regulations enacted after the effective date of this Agreement or action by any governmental jurisdiction other than the City prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, this Agreement shall be modified, extended or suspended as may be necessary to comply with such State or Federal laws or regulations or the regulations of such other governmental jurisdictions.
- 2.1.3 Fees. All applications for City approvals, permits and entitlements shall be subject to City's development and processing fees and charges at the time of consideration of the final plat map, development approval request, or building permit.
- 2.1.4 Final Plat Approval(s). During the course of development of the Project, Owner will make application to City for approval of final plat map(s) of the Project. The final plat(s) shall be submitted in accordance with Rathdrum Municipal Code Title 12, Chapter 4. During City's review process of final plat map(s), the approvals memorialized hereby, and any addenda hereto, shall control conditions imposed by City for the Project and future final plat maps.
- 2.1.5 Disclaimer of Warranties. Notwithstanding this Agreement or any action taken by any person hereunder, neither the City nor any City officer, agent or employee warrants or represents the fitness, suitability or merchantability of a property, plan, design, material, workmanship or structure for any purpose.
- 2.1.6 Governmental Authority. Nothing in this Agreement shall be deemed to compromise the governmental authority of the Mayor and City Council of the City of Rathdrum, present or future.

- 2.2 Hold Harmless. Owner hereby agrees to and shall hold City harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise during the construction phase and during and following the warranty period as a result of the actions of the Developer or the Developer's contractors and consultants, relating to the design or construction of the Project, excepting claims and causes of actions brought by the Owner for default of this Agreement or those arising from the negligence or willful misconduct of the City.
3. Conditions of Approval.
- 3.1 Improvements to be Constructed. Developer shall construct the improvements on-site and off-site for the Project required pursuant to the Rathdrum City Code, including any current adopted policies pending codification, this Agreement and any other conditions of approval imposed by the Rathdrum City Council prior to this Agreement.
- 3.2 Roadway Drainage Swales. Developer shall construct roadway drainage swales with drywell storm outlet in accordance with adopted policy simultaneously with construction of new roadways or improvements to existing roadways in the Project, including the east side of Meyer Road, the north side of Highway 53, and other interior roadways planned to be Cloverdale Street, Dayton Avenue, Astoria Loop and Pelican Loop. Note that such road names have not been approved for use by Kootenai County and are subject to change. Roadway drainage swales shall be constructed in accordance with the approved construction plans for the Project and functional prior to acceptance by the City.
- 3.3 Landscaping/Street Trees. Developer shall plant grass, plants and trees within the swales and along all street frontages of Meyer Road, and Highway 53. Trees shall be selected from the City's Tree and Planting Guide and spaced 20-feet maximum. Individual lot owners shall be responsible at time of building permit phase to install, maintain or replace grass, plants and trees when the lots are improved along those streets and in those areas as set forth in Landscape Plan component of approved construction plans and in accordance with the Rathdrum City Code.
- 3.4 Irrigation Water Service Lines to Roadway Drainage Swales and Landscape Areas. Developer shall construct water lines with valves and backflow prevention devices for the purpose of providing irrigation service to stormwater drainage swales and common area landscaping along the north side of Highway 53 and the east side of Meyer Road frontages to the Project. Individual lot owners within the Project shall construct irrigation lines with valves and backflow prevention devices for the purpose of providing irrigation service to each stormwater roadway drainage swale and common landscaping areas as located in dedicated right-of-way areas fronting their individual lots within the Project.

- 3.5 Maintenance of Common Area Landscaping and Roadway Drainage Swales. The Home Owner's Association (HOA) or the owners of all lots within the Project are collectively responsible for the maintenance of that common area landscaping and all costs associated with the maintenance, including the irrigation water fees and replacement of any dead trees, shrubs and grass along the east side of Meyer Road, and the north side of Highway 53 frontages to the Project. Furthermore, the owner of each lot within the Project shall irrigate and maintain the landscaping within any stormwater drainage area fronting the lot and in groundwater swales and planting strips in rights-of-way(s) adjacent to the owner's lot. The responsibility for the maintenance of that landscaping and all costs associated with the maintenance, including the water fees and replacement of any dead trees, shrubs and grass shall be the responsibility of the individual lot owners. In the event the lot owner fails to meet their obligations under this provision, the City is authorized to contract to provide the maintenance services and to assess the cost of such maintenance and water fees to the lot owners. This obligation shall be ongoing and constitute a consensual perpetual lien upon the property within the Project.
- 3.6 Irrigation System Casings. Developer shall install a two (2) inch minimum diameter casing / conduit for each lot under the sidewalks to the planting strips or swales and at all lot corners abutting a right-of way during the construction of all sidewalks and/or walkways as part of the infrastructure to be installed within the Project to support future irrigation system needs.
- 3.7 Walkways and Stormwater. Developer shall construct planting strips and stormwater drainage swales along both sides of all improved right-of-ways within the Project. Streets within the development shall have 5-foot wide sidewalks on each side as is typical.
- 3.8 Streetlights. Developer shall place street lights along all improved right-of-ways in the Project as set forth in the approved construction plans.
- 3.9 Streets. All streets in the Project shall be built to City standards. No direct lot access shall be allowed to Meyer Road, or Highway 53. Vehicular access from Highway 53 shall be limited to no more than one point of access at Cloverdale Street. The developer shall reconstruct Meyer Road, from Highway 53 to the project's northwest boundary.
- 3.10 Construction Access. Access to the Project site shall be limited to improved streets located in existing right-of-ways directly adjacent to the area under development, which improved streets and right-of-ways shall be maintained in a clean and orderly manner kept clear of all construction debris and material.
- 3.11 Public Street Closure. When working within the existing public right-of-way outside of the Project being constructed, the Developer shall keep at least one travel lane open at all times and provide the appropriate traffic control, at no cost to the City, to allow for vehicle travel in a safe manner through the construction area. Street closures will only be allowed with

prior approval by the City Engineer and only upon a showing by the Developer that the construction cannot be accomplished without a street closure. Approval for a street closure shall be for a limited duration set by the City Engineer, which shall be strictly adhered to by the Developer.

- 3.12 Phase Sustainability. The public infrastructure and other required amenities must be installed for each phase of the Project, to allow that phase to function without the construction of any subsequent phases of the Project.
- 3.13 Sediment Erosion Control Plan. Developer shall maintain sediment and erosion control measures as set forth in approved sediment and erosion control plan during all phases of construction of the Project.
- 3.14 Dedication of Right-of-Way. Developer shall dedicate to the City the necessary right-of-ways within the Subdivision for public roads and utilities and those adjacent to the Subdivision within Meyer and/or Highway 53 as necessary to complete public improvements.
- 3.15 Dedication of Easements. Developer shall dedicate sufficient easements for the installation, maintenance and operation of municipal and public utilities, street surfacing for public ingress and egress and stormwater treatment and disposal over and across the off-site properties owned by Developer as necessitated by engineering design.
- 3.16 Sewer. The developer shall construct a fully functional public temporary sewer force main which alignment shall be contained within noted/platted access aisles where it crosses the City's cemetery property. The developer shall construct a 16-foot wide all-weather vehicle access aisle, within said force main alignment within the cemetery property. The developer shall also construct a permanent sewer force main which alignment shall be contained within the Cloverdale Street public right-of-way, and which shall terminate on the north side of Highway 53. The developer shall also construct a temporary sanitary sewer lift station within the Project.
- 3.17 Water. The developer shall construct a 12-inch diameter water main in both the Dayton Avenue Public right-of-way alignment (entirety of alignment) and Cloverdale Street. The Cloverdale Street 12-inch water main shall terminate on the north side of Highway 53. Internal water mains shall be looped.

Any upsizing of and/or extensions for looping purposes as needed to achieve desired fire flows to either commercial lot shall be at the exclusive expense of the developer.

- 3.18 Fencing. The developer shall install a six-foot tall solid (wood or vinyl, with no gaps between slats) fence located three-feet south of the northern boundary of the subdivision.

#### 4. Improvement Construction Standards and Procedures.

- 4.1 Any public utility service contemplated by this Agreement needs to be provided only to areas where the service is allowed by applicable law. All utility service shall conform to the rules, regulations, and tariffs of the State of Idaho to the extent they may apply.
- 4.2 If the State of Idaho or other agency having authority disallows any utility service to be provided by the City or any utility following execution of this Agreement, requirements of this Agreement relating to the disallowed service shall be deleted from the requirements of the Owner under this Agreement. The disallowance shall not be grounds for any claim, action, or demand against the City.
- 4.3 Owner shall bear all cost associated with the installation of all public utilities owned and operated by the City or regulated by the Idaho Public Utilities Commission, including street lights. These installation costs shall not be passed on to the City unless provided for otherwise within an appendix to this agreement.
- 4.4 Prior to performing any work in the existing public right-of-way, the Owner shall obtain the required encroachment permit and comply with the insurance and surety requirements associated with the permit.
- 4.5 The Owner shall minimize the tracking of materials and dirt along any developed public right-of-way through use of methods approved by the City to assure existing streets are kept free of excessive dirt and other foreign materials.
- 4.6 Owner shall not proceed with construction of the Project, except for movement or stripping of top soil, until construction plans have been approved by the City Engineer, a construction improvement agreement is signed by the City and a pre-construction conference has been completed between the Owner and the City.
- 4.7 Owner shall be responsible to either pay the sewer and water cap fees and hookup fees or confirm that those fees have been paid by any property owner, which the Owner connects to the City sewer or water system as part of the installation of the public improvement. If individual connections are not made by the Owner, such sewer and water capitalization and hookup fees shall be paid by the individual property owner or developer at the time of building.
- 4.8 The City Engineer is authorized to approve an alternate design for the stormwater management system instead of the preliminary drawings presented at the public hearing, if, in the opinion of the City Engineer, the alternate design meets or exceeds the goals and treatment capacity provided in the design reflected on the preliminary drawings.
- 4.9 The Owner shall not obtain permits for the construction of improvements or commence the construction of improvements until this Agreement has been completed and signed by the Owner and the City, and all applicable fees have been paid as required by City ordinance or resolution.

- 4.10 Building permits may be issued, once a performance bond for the completion of the infrastructure is submitted to and accepted by the City and final plat recorded, or alternatively, once all infrastructure has been installed and approved by the City and final plat recorded. All infrastructure associated with the Project, including those items for which surety has been provided, must be completed and accepted by the City prior to the issuance of any certificate of occupancy for a building constructed within the Project.
- 4.10.1 The Owner shall be responsible to provide written notice, at or before, the time of closing, to each purchaser of a lot before the subdivision improvements are completed that no certificate of occupancy will be issued until such time as the subdivision improvements are completed and accepted by the City.
- 4.11 At all times after construction of the subdivision improvements are commenced, and prior to the sale of lots, the Owner shall be responsible to provide weed and dust control for the Project, including but not limited to weed removal, and to keep the construction site free of garbage and debris.
5. Performance Guaranty.
- 5.1 Owner shall guarantee, for the sole benefit of the City that the Owner will perform all of its obligations not yet completed under this Agreement for the Project at the time of final plat approval for the Project. The guaranty shall be in a form approved in Sections 5.1.1, 5.1.2, and 5.1.3. During the term of this Agreement, the Owner may, with the written consent of the City, substitute for a performance guaranty submitted under this section another guaranty in the required amount and in one of the forms specified herein.
- 5.1.1 Performance Bond. Owner may provide a performance bond from a company qualified by law to act as a surety in the State of Idaho. The bond shall be in a form approved by the City Attorney. The bond shall name the City as the sole beneficiary and the Owner as the principal.
- 5.1.2 Escrow. Owner may deposit funds in an escrow account with a bank or financial institution qualified by law to do business in the State of Idaho. The disbursement of the escrowed funds shall be governed by an escrow agreement in a form approved by the City Attorney.
- 5.1.3 Letter of Credit. The Owner may cause a bank or financial institution qualified by law to do business in the State of Idaho to issue an irrevocable letter of credit in a form approved by the City.
- 5.2 Amount of Guaranty. The guaranty shall be in an amount equal to 150% (one hundred fifty percent) of the estimated cost of all improvements not yet constructed or completed per City Code, not including those to be constructed by private utilities. The estimated cost shall be determined as follows. The Owner shall submit for the City Engineer's approval a cost

estimate for each improvement required by this Agreement. Before submitting the cost estimates, the Owner's engineer shall have prepared, documented and certified each cost estimate. The estimated cost of all improvements shall be the sum of the estimated cost as approved by the City Engineer.

5.3 As soon as the earliest of the following occurs, the City shall release any performance guaranty which has not been used or encumbered:

5.3.1 The final acceptance of all improvements and the posting of warranty guaranty as provided in Section 5.4. Or,

5.3.2 The expiration of the warranty period as provided in Section 5.4.

5.4 Owner's Warranty.

5.4.1 Owner shall warrant the design, construction materials and workmanship of the improvements against any failure or defect in design, construction, material or workmanship which is discovered for one (1) year, except for street improvements, which shall be warranted for two (2) years. This warranty shall cover all direct or indirect costs of repair or replacement, and damage to the property, improvements or facilities of the City or any other person, caused by such failure or defect or in the course of repairs thereof, and any increase in cost to the City of operating and maintaining a City improvement resulting from such failures, defects or damages.

5.4.2 The Owner's warranty shall not extend to any failure or defect caused solely by changes in design, construction or materials required by the City.

5.4.3 Except as provided in Subsection 5.4.2, the fact that the City takes any action, or omits to take any action authorized in this Agreement including, but not limited to, operation or routine maintenance of the improvements prior to acceptance or surveillance, inspections, review or approval of plans, tests or reports shall in no way limit the scope of the Owner's warranty.

5.4.4 To secure the Owner's performance of the warranty under subsection 5.4.1, the performance guaranty provided by the Owner under Section 5.1 shall remain in effect until the end of the warranty period, or the Owner shall provide a warranty guaranty by one or more of the methods described in Sections 5.1.1 through 5.1.3.

5.5 City's Remedies Under Warranty.

5.5.1 The City shall notify the Owner in writing upon its discovery of any failure or defect covered by the warranty in Section 5.4.1. The City shall notify the Owner before conducting any test or inspections to determine the cause of failure or defect to the extent the circumstances will allow and shall notify the Owner of the results of all such tests and inspection.

- 5.5.2 Owner shall correct or make a diligent effort to correct any failure or defect covered by the warranty within thirty (30) days of receiving notice of the failure or defect from the City. Owner shall correct the failure or defect at its own expense and to the reasonable satisfaction of the City.
- 5.5.3 If the Owner fails to correct the failure or defects within the time allowed by Section 5.5.2, the City may correct the failure or defect at Owner's expense. If the Owner fails to pay the City for the corrective work within thirty (30) days of the City sending the bill, the City may pursue any remedy provided by law or this Agreement to recover the cost of the corrective work, including calling upon the Owner's security. The City's attorney's fees in pursuit of such remedy shall be an allowed cost.
- 5.5.4 In case of an emergency affecting public health and safety, the City may make immediate required repairs and shall notify the Owner and warranty bond surety as quickly as possible.

6. Consistency with Comprehensive Plan.

- 6.1 The parties agree that the terms of this Agreement are compatible with the City's Comprehensive Plan, and its implementation is in the best interests of the City and the health, safety and welfare of its residents.

7. Notices.

- 7.1 Formal written notices or demands by the parties pursuant to this Agreement shall be sufficiently given if dispatched by a recognized overnight courier such as Federal Express or UPS, or by certified mail, postage prepaid, return receipt requested, to the offices of the City and Owner indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such other persons and addresses as either party may from time-to-time designate by mail as provided in this section. Notices may also be delivered by personal delivery to an officer of the Owner or the Public Works Director of the City.

DEVELOPER / OWNER  
 Viking Construction, Inc.  
 2605 W Hayden Avenue  
 Hayden, ID 83835

CITY  
 Mayor, City of Rathdrum  
 8047 W. Main Street  
 Rathdrum, Idaho 83858

Viking Construction, Inc.  
 19425 E Broadway Avenue  
 Spokane Valley, WA 99206

8. Default, Remedies, Termination, and Review.

- 8.1 General Provisions. Subject to extensions of time by mutual consent in writing, or as otherwise provided herein, failure by either party to perform

any term or provision of this Agreement constitutes a default under this Agreement. In the event of default under this Agreement or any of its terms or conditions, the party alleging such default or breach shall give the alleged breaching party not less than thirty (30) days' notice in writing, measured from the date of delivery to a recognized overnight courier such as Federal Express or UPS, or certified mailing, specifying the nature of the alleged default and, when appropriate, the manner by which said default may be satisfactorily cured. During any such thirty-day period of curing, the party charged shall not be considered in default for purposes of termination or institution of legal proceeding, unless the act of default is conclusive and incapable of cure. The parties agree to meet face-to-face in the event of any such notice of default. After proper notice, meeting and expiration of said thirty (30) day cure period without cure, or if such cure cannot be accomplished within such thirty (30) day period, or if the cure has not been commenced within such period and diligent effort has not been made to effect cure thereafter, the party to this Agreement alleging the default, at its option, may institute legal proceedings to enforce this Agreement by specific performance or give notice of termination of this Agreement. Failure or delay in giving notice of default pursuant to the Notice provision of this Agreement shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. City is allowed to withhold approval of subsequent phases of the Project or issuance of building or construction permits when a material condition of default exists.

8.2 Applicable Law / Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho. Should any legal action be brought by either party because of breach of this Agreement or to enforce any provision of this Agreement, the action shall be brought in Kootenai County, Idaho and the prevailing party shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be found by the Court.

9. Subsequent Laws As Superseding Terms.

9.1 Superseded by Subsequent Laws. If any agency other than City imposes any law or regulation ("Law") after the date of this Agreement, which prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or

suspension would have on the purposes and intent of this Agreement. In addition, Owner shall have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

10. Mortgagee Protection; Certain Rights of Cure.

10.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Project or any portion thereof after the date of recording this Agreement, including the lien of any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Project, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

10.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 10.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of improvements, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Project to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, unless the City releases its interest in performance by action of the City Council.

10.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given Owner hereunder and specifying the address for service thereof, then City is authorized to deliver to such Mortgagee, concurrently with service thereon to Owner, any notice given to Owner with respect to any claim by City that Owner has committed an event of default. If City makes a determination of noncompliance hereunder, City shall likewise serve notice of such noncompliance on such Mortgagee concurrently with service thereof on Owner. Each Mortgagee shall have the rights during the same period available to Owner to cure or remedy the event of default claimed or the areas of noncompliance set forth in the City's notice. Owner is obliged hereby to notify the City of any Mortgagee with an interest in the Project.

11. Transfers and Assignments.

11.1 Right to Assign. Owner shall have the right to sell, assign or transfer, any and all of its rights, duties and obligations under this Agreement, to any entity during the Term of this Agreement; provided, however, in no event shall the rights, duties and obligations conferred upon Owner pursuant to this Agreement be at any time so transferred or assigned except through a transfer of Owner's interest in the Property, or portion thereof transferred.

This right to assign or transfer shall not compromise the rights of the City to require surety to assure completion of Owner's obligations established hereby or by law. Any purchaser or assignor shall remain obligated to all duties and rights accorded hereby to Owner. Nothing in this Section 11 shall prevent transfer of some or all of the ownership interest in Owner.

- 11.2 Release Upon Transfer. Upon the sale, transfer or assignment of Owner's rights, responsibilities and interests under this Agreement consistent with Section 11.1 above, Owner shall be released from its obligations under this Agreement with respect to its interest in the Project or portion thereof, so transferred arising subsequent to the effective date of such transfer if (1) Owner is not then in default under this Agreement; (2) Owner has provided to City notice of such transfer, (3) the transferee executes and delivers to City a written agreement in which (a) the name and address of the transferee is set forth; and (b) the transferee expressly and unconditionally, upon provision of sufficient surety or other assurance of performance, assumes all of the obligations of the Owner under this Agreement with respect to the Project, or portion thereof transferred; and (4) City approves the transferee, which approval City will not unreasonably withhold if such transferee is financially capable of performing the obligations of transferor pursuant to this Agreement or if surety is provided to guarantee performance. Failure to deliver a written assumption agreement hereunder shall not affect the running of any covenants herein with the land, as provided in Section 12 below, nor shall such failure negate, modify or otherwise affect the liability of any transferee pursuant to the provisions of this Agreement.

12. Covenants Run With The Land.

All of the provisions, agreements, rights, powers, standards, terms, covenants, duties and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Project real property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and do hereby constitute covenants running with the land pursuant to applicable laws.

13. General Provisions.

- 13.1 No Joint Venture or Partnership. City and Owner agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making City and Owner a joint venture or partners. It is specifically understood and agreed by the parties that the Project contemplated by this Agreement is a private development; that the City has no interest in or responsibility for or duty to third persons concerning any of Owner's obligations regarding said improvements; that

Owner shall have full power over and exclusive control of the Project herein described subject only to the limitations and obligations of the Owner under this Agreement and applicable provisions of law. The only relationship between City and Owner is that of a governmental entity regulating the development of private property pursuant to the laws of the City and the State of Idaho.

- 13.2 Severability. City and Owner agree that if any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected and shall remain in full force and effect unless amended or modified by mutual consent of the parties.
- 13.3. Entire Agreement. This Agreement is the entire Agreement and may only be modified in writing signed by both parties.
- 13.4 Minor Changes to Agreement. Minor changes in the manner of implementation of the approval memorialized hereby can be made by mutual agreement of the Owner and the City's administrative staff.
- 13.5 Completion of Performance. Upon completion of performance by the parties or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of the City and Owner shall be recorded in the Official Records of Kootenai County, Idaho. Any such release shall not signal completion or release of any provision which confers a public benefit and which is intended to run with the land unless expressly approved by the governing board of the City.
- 13.6 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions by those not party to this Agreement) or by other causes beyond such party's control (inability to obtain funding on the part of the Owner shall not constitute a cause beyond the Owner's control). If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than three (3) years.
- 13.7 Estoppel Certificate. Owner may, at any time, and from time to time, deliver written notice to the City requesting such party to certify in writing that, to the knowledge of the certifying party (1) this Agreement is in full force and effect and a binding obligation of the parties; (2) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; and (3) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of such defaults. A party receiving a request hereunder shall execute and return such certificate or

give a written detailed response explaining why it will not do so within thirty (30) days following the receipt thereof. City's Mayor shall have the right to execute any certificate requested by Owner hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

13.8 Duty To Record. This Agreement or a Memorandum referencing the existence of this Agreement shall be recorded by City.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF RATHDRUM

OWNER,  
VIKING CONSTRUCTION, INC.

\_\_\_\_\_  
Vic Holmes, Mayor

\_\_\_\_\_  
By:

ATTEST:

\_\_\_\_\_  
Sherri Halligan, City Clerk

STATE OF IDAHO            )  
  ):ss  
County of Kootenai        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary for the state of Idaho, personally appeared Vic Holmes and Sherri Halligan known, or identified to me, to be the Mayor and City Clerk of the City of Rathdrum, Kootenai County, Idaho, executing the herein instrument, and acknowledged to me that such city of Rathdrum executed the same.

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

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at:  
Commission Expires:

STATE OF IDAHO )  
 ):ss  
County of Kootenai )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary for the state of Idaho, personally appeared \_\_\_\_\_ known, or identified to me, to be the manager or member of the limited liability company that executed this instrument or the person who executed the instrument on behalf of said corporation, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the foregoing instrument, and acknowledged to me that such corporation / company executed the same.

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

\_\_\_\_\_  
Notary Public for the State of Idaho  
Residing at:  
Commission Expires:

STATE OF \_\_\_\_\_ )  
 ):ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary for the state of Idaho, personally appeared \_\_\_\_\_ known, or identified to me, to be the manager or member of the limited liability company that executed this instrument or the person who executed the instrument on behalf of said corporation, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they was/were authorized to execute the foregoing instrument, and acknowledged to me that such corporation / company executed the same.

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

\_\_\_\_\_  
Notary Public for the State of \_\_\_\_\_  
Residing at:  
Commission Expires:

**EXHIBIT A  
WESTWOOD PINES SUBDIVISION  
BOUNDARY DESCRIPTION**

Real property in the County of Kootenai, State of Idaho, described as follows:

**PARCEL 1:**

**A PARCEL OF LAND BEING A PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AS SHOWN ON THE RECORD OF SURVEY FILED IN BOOK 22 OF SURVEYS AT PAGE 124, RECORDS OF KOOTENAI COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

**COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 29, MONUMENTED BY A ZINK CAP, 2-1/4 IN. DIAM., FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 29 BEARS NORTH 88 DEGREES 42' 46" WEST, A DISTANCE OF 2654.35 FEET;**

**THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, NORTH 01 DEGREES 01' 53" EAST, A DISTANCE OF 47.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF STATE HIGHWAY 53, SAID POINT BEING MONUMENTED BY AN IRON ROD, 1/2 IN. DIAM., WITH CAP MARKED LS 772;**

**THENCE ALONG SAID RIGHT-OF-WAY, NORTH 89 DEGREES 02' 43" WEST, A DISTANCE OF 3.66 FEET TO A CONCRETE R/W MONUMENT AS SHOWN ON SAID RECORD OF SURVEY;**

**THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 89 DEGREES 02' 44" WEST, A DISTANCE OF 1632.53 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;**

**THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 89 DEGREES 02' 44" WEST, A DISTANCE OF 354.54 FEET TO THE SOUTHEAST CORNER OF PARCEL 6370 AS SHOWN ON SAID RECORD OF SURVEY, BEING MONUMENTED BY AN IRON ROD, 1/2 IN. DIAM., WITH A CAP MARKED LS 772;**

**THENCE LEAVING SAID RIGHT-OF-WAY ALONG THE EAST LINE OF SAID PARCEL 6370, NORTH 01 DEGREES 02' 28" EAST, A DISTANCE OF 623.19 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 6370, MONUMENTED BY AN IRON ROD, 1/ 2 IN. DIAM., WITH A CAP MARKED LS 772;**

**THENCE ALONG THE NORTH LINE OF SAID PARCEL 6370, NORTH 88 DEGREES 46' 33" WEST, A DISTANCE OF 663.55 FEET TO A POINT ON THE WEST LINE OF SAID SOUTHWEST QUARTER, SAID POINT BEING MONUMENTED BY AN IRON ROD, 1/ 2 IN. DIAM., WITH A CAP MARKED LS 772;**

**THENCE ALONG SAID WEST LINE, NORTH 01 DEGREES 02' 40" EAST, A DISTANCE OF 657.90 FEET TO AN IRON PIPE, MONUMENTING THE NORTHWEST CORNER OF SAID SOUTH HALF OF THE SOUTHWEST QUARTER;**

**THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID SOUTHWEST QUARTER, SOUTH 88 DEGREES 50' 20" EAST, A DISTANCE OF 1017.97 FEET TO A POINT;**

THENCE LEAVING SAID NORTH LINE, SOUTH 01 DEGREES 02' 16" WEST, A DISTANCE OF 1280.54 FEET TO THE TRUE POINT OF BEGINNING.

**PARCEL 2:**

A PARCEL OF LAND BEING A PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AS SHOWN ON THE RECORD OF SURVEY FILED IN BOOK 22 OF SURVEYS, AT PAGE 124, RECORDS OF KOOTENAI COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 29, MONUMENTED BY A ZINC CAP, 2-1/4 IN. DIAM., FROM WHICH THE SOUTHWEST CORNER OF SAID SECTION 29 BEARS NORTH 88 DEGREES 42' 46" WEST, A DISTANCE OF 2654.35 FEET;

THENCE ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 29, NORTH 01 DEGREES 01' 53" EAST, A DISTANCE OF 47.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF STATE HIGHWAY 53, SAID POINT BEING MONUMENTED BY AN IRON ROD, 1/2-IN. DIAM., WITH CAP MARKED LS 772;

THENCE ALONG SAID RIGHT-OF-WAY, NORTH 89 DEGREES 02' 43" WEST, A DISTANCE OF 3.66 FEET TO A CONCRETE R/W MONUMENT AS SHOWN ON SAID RECORD OF SURVEY;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 89 DEGREES 02' 44" WEST, A DISTANCE OF 610.52 FEET TO A POINT, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, NORTH 89 DEGREES 02' 44" WEST, A DISTANCE OF 1022.01 FEET TO A POINT;

THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 01 DEGREES 02' 16" EAST, A DISTANCE OF 1280.54 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH HALF OF SAID SOUTHWEST QUARTER;

THENCE ALONG THE NORTH LINE OF THE SOUTH HALF OF SAID SOUTHWEST QUARTER, SOUTH 88 DEGREES 50' 20" EAST, A DISTANCE OF 1021.94 FEET TO A POINT;

THENCE LEAVING SAID NORTH LINE, SOUTH 01 DEGREES 02' 05" WEST, A DISTANCE OF 1276.86 FEET TO THE TRUE POINT OF BEGINNING.





## City of Rathdrum City Council

### Staff Report – Annexation and Zoning Request

**To:** Rathdrum City Council  
**From:** City of Rathdrum Planning and Zoning Administrator  
**Date of Report:** May 6, 2020  
**Subject:** Timber Glade Annexation and Zoning 2020-01A  
**Property Address:** NNA N Meyer Road  
**Applicant / Owner:** Wild Horse Investments, LLC  
14899 W Stub Avenue  
Rathdrum, ID 83858  
**Representative:** Ray Kimball  
Whipple Consulting Engineers  
21 S. Pines Road  
Spokane Valley, WA 99206  
**Date of Meeting:** May 13, 2020

#### PROJECT INFORMATION

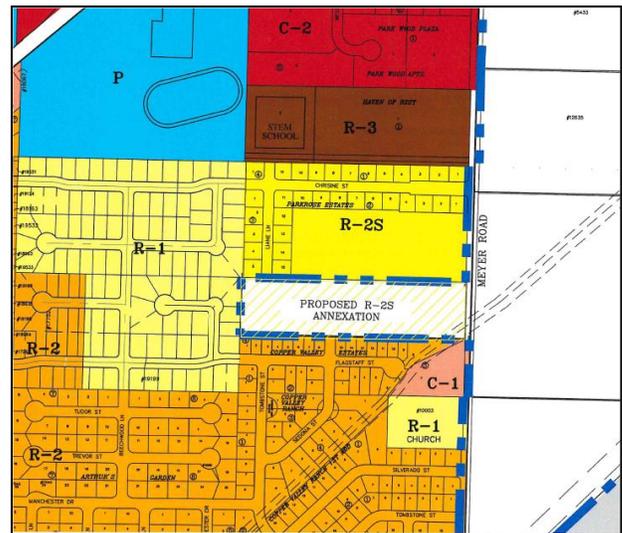
**Request:** The applicant is seeking approval of annexation of approximately 9.75 acres of real property (excluding rights of way) for the purpose of incorporating the property into the city limits of Rathdrum. The property is adjacent to existing city limits to the north, south and west. The annexation will include the adjoining and extended approximately 1.4 acres of public right-of-way for Meyer Road which is currently still within County jurisdiction.

**Location of Project:** The property is generally located west of N Meyer Road, south of W Christine Street and north of W Flagstaff Street.

**Legal / Parcel Data:** The legal description of the area is described by meets and bounds within the NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO as found within the Legal Description as attached hereto.

The Kootenai County Assessors Tax Parcel Number is 52N04W-31-2170.

**Current Property Use:** The property is currently vacant.



**Proposed Zoning:** The proposed zoning is Residential R-2S (single family, low-medium density). The proposed zoning will allow for permitting and development of a new residential neighborhood with approximately 31 single family lots (57 lots are incorporated into an overall subdivision proposal which includes this property and property located to the north, subject to separate permitting). Minimum lot size will be 7,500 square feet in area.

**Comprehensive Plan Designation / Zoning:** The property is located within Rathdrum’s exclusive Area of City Impact (ACI) and is identified as “Residential” pursuant to the City’s Future Land Use Map. The property is currently zoned “Agricultural Suburban” by Kootenai County.

**Adjacent Land Uses and Zoning:**

North	R-2S	Residential Park Rose Ranch
East	Agriculture	Undeveloped – Kootenai County
South	R-2S	Residential – Copper Valley Estates
West	R-1	Residential – Timber Landing Estates 2 <sup>nd</sup>

**PROJECT REVIEW**

City planning and public works staff and the Planning and Zoning Commission have reviewed the proposed annexation and zoning request. This report reflects an overview of the proposal based on the submitted application materials, public hearing for the proposal before the Planning and Zoning Commission, comments received from the public and agencies with jurisdiction, and other information available at the time of this report. The project is subject to modification prior to final action of the Council. The Applicant will be required to sign an Annexation Agreement with the City.

**Comprehensive Plan Consistency Analysis:** The proposal is generally consistent with and implements several goals and policies of the City’s Comprehensive Plan. The relevant goals and policies established within the Rathdrum Comprehensive Plan that pertain to the proposal are listed in Exhibit E, attached hereto. Included for each Comprehensive Plan element is an analysis of the proposed project’s consistency.

**Rathdrum City Code Analysis:** Several titles of the Rathdrum City Code (RCC) provide regulations for the proposal. Those portions of the RCC that pertain to the proposal are described in Exhibit F, attached hereto. Included for each requirement is an analysis of the proposal’s conformance with that requirement.

**Public Hearing / Public Comments:** The Planning and Zoning Commission held a public hearing for this proposal on April 15, 2020 (see process information within Exhibit G, §11-11-4-A-1 attached hereto). Minutes from the hearing are not yet available, however, staff has provided a summary of public comments received prior and during the Planning and Zoning Commission hearing within Exhibit G attached hereto. Comments received from the public following the Planning and Zoning Hearing and prior to the date of this report have been attached within Exhibit H.

**RECOMMENDATION**

The City of Rathdrum Planning and Zoning Commission recommends approval of the annexation request finding that it is compliant with the City of Rathdrum Comprehensive Plan and Rathdrum City Code as shown within the Code and Comprehensive Plan analysis found in the Staff Report dated March 11, 2020.

## **COUNCIL ACTION**

Following the public hearing, the Council shall consider all relevant evidence and comments and determine whether to approve the annexation and zoning request as requested, to recommend a modification of the request, or to deny the request. Upon revising or rejecting the recommendation by the Commission, City Council shall establish its own findings and conclusions and shall specify:

- a. The ordinance and standards used in evaluating the application;
- b. The reasons for approval or denial;
- c. The actions, if any, that the applicant could take to obtain annexation and zoning.

## **STAFF CONTACT**

For more information regarding this application, the complete project file, including application materials and project history, is available for review at Rathdrum City Hall at 8047 W. Main Street, Rathdrum, Idaho, or by contacting Planning staff:

Cary Siess, City Planner / Planning and Zoning Administrator  
City of Rathdrum Public Works Department, Planning Division  
8047 W. Main Street, Rathdrum, Idaho 83858  
Phone: 208-687-2700 x 117  
Email: cary@rathdrum.org

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### Attached Exhibits:

Exhibit A – Legal Description

Exhibit B – Annexation Map

Exhibit C – Application Narrative

Exhibit D – Agency Comments

1. Northern Lakes Fire Protection District
2. Bonneville Power Administration
3. Lakeland Joint School District #272
4. Lakeland Joint School District #272 Email
5. City of Rathdrum Public Works Director / City Engineer Memo

Exhibit E – Comprehensive Plan Consistency Analysis

Exhibit F – Rathdrum City Code Consistency Analysis

Exhibit G – Public Comments Planning and Zoning Commission hearing

Exhibit H – Public Comments City Council Hearing – to date

Exhibit I - Annexation Agreement 2020-01AA

Exhibit J – Annexation Ordinance

TIMBER GLADE ANNEXATION LEGAL DESCRIPTION

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 31, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 31 BEARS N01° 10' 15"E A DISTANCE OF 2649.21 FEET; AND THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

THENCE N01° 10' 15"E ALONG SAID SECTION LINE A DISTANCE OF 330.00 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE N88° 57' 17"W ALONG THE NORTH LINE OF THE PLAT OF COPPER VALLEY ESTATES AS RECORDED IN BOOK G OF PLATS, PAGE 456 A DISTANCE OF 1319.51 FEET TO THE NORTHWEST CORNER OF SAID PLAT, SAID POINT MARKED BY A 5/8" REBAR WITH NO CAP;

THENCE N01° 11' 20"E ALONG THE EAST LINE OF LOT 2, BLOCK 11 OF THE FINAL PLAT OF TIMBER LANDING ESTATES 2ND ADDITION AS RECORDED IN BOOK L OF PLATS, PAGES 305-305C A DISTANCE OF 331.54 FEET TO THE SOUTHWEST CORNER OF LOT 2, BLOCK 1 OF SAID FINAL PLAT OF PARK ROSE RANCH AS RECORDED IN BOOK J OF PLATS, PAGES 406-406A, SAID POINT MARKED BY A 5/8" REBAR WITH A YELLOW PLASTIC CAP MARKED "TATE ENG PLS 4565";

THENCE S88° 59' 03"E ALONG THE SOUTH LINE OF BLOCK 1 OF SAID FINAL PLAT OF PARK ROSE RANCH A DISTANCE OF 1294.41 FEET TO THE SOUTHWEST CORNER OF THE EAST 25 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE N01° 10' 15"E A DISTANCE OF 662.24 FEET PARALLEL TO AND 25 FEET WEST OF THE EAST LINE OF SAID SECTION 31 TO THE NORTHWEST CORNER OF THE EAST 25 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE S89° 00' 33"E A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32;

THENCE S01°10'15"W A DISTANCE OF 1324.54 FEET ALONG THE EAST LINE OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32.

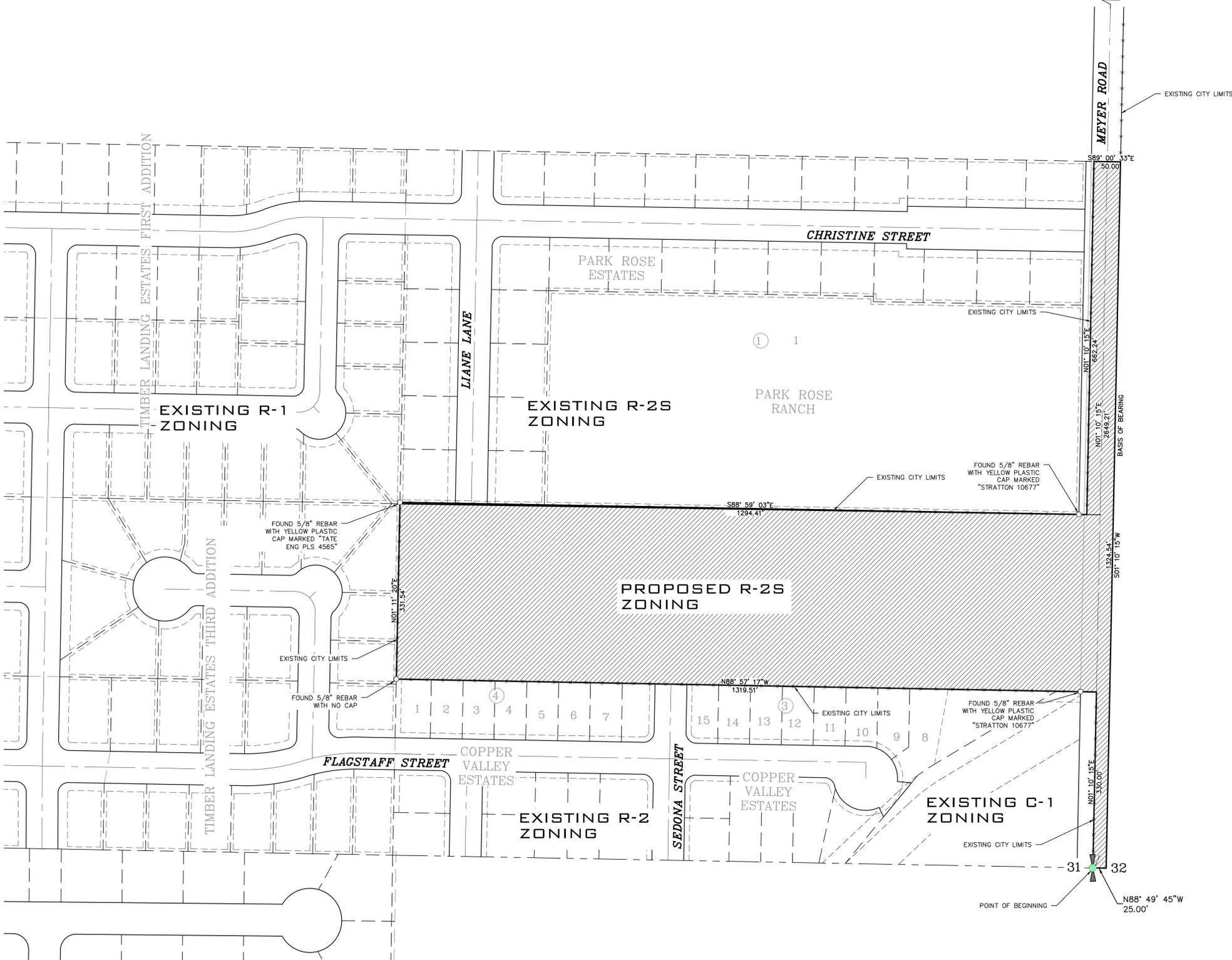
THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.

**TIMBER GLADE  
ANNEXATION EXHIBIT**  
LOCATED IN A PORTION OF  
SEC 31, TWN 52N, RNG 04W, B.M.  
CITY OF RATHDRUM, KOOTENAI COUNTY, IDAHO



30729  
31132



**LEGAL DESCRIPTION**

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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CONTAINING 11.15 ACRES, MORE OR LESS.

**LEGEND**

- FOUND MONUMENT AS NOTED
- ✚ SECTION CORNER
- ✚ SECTION QUARTER CORNER
- EXISTING CITY LIMITS
- ▨ AREA TO BE ANNEXED

**EXISTING COUNTY AG ZONING**

**ENGINEERING (CONTACT)**

THIS PRELIMINARY PLAT WAS PREPARED BY:  
WHIPPLE CONSULTING ENGINEERS  
21 S. PINES ROAD  
SPOKANE VALLEY, WA 99216  
PHONE: 509-893-2617  
CONTACT: RAY KIMBALL, P.E.

**OWNER**

WILD HORSE INVESTMENTS, LLC  
14899 W. STUB AVE  
RATHDRUM, ID 83858  
MIKE STEGMANN

**EXISTING LAND USE**

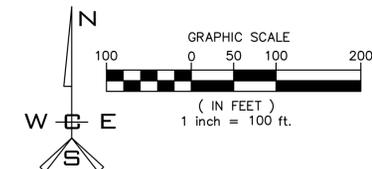
VACANT/TIMBER

**EXISTING ZONING**

AG-SUBURBAN

**PROPOSED ZONING**

R-2S



PREPARED BY WHIPPLE CONSULTING ENGINEERS 2/11/20  
RAY KIMBALL, P.E.

NO.	DATE	BY	REVISIONS
A	11/21/19	RDK	ORIGINAL PREPARATION

<b>SCALE:</b>	<b>PROJ #:</b> 19-2494
<b>HORIZONTAL:</b>	<b>DATE:</b> 1/20/20
1"=100'	<b>DRAWN:</b>
<b>VERTICAL:</b>	<b>REVIEWED:</b> RDK

CIVIL	<input type="checkbox"/>
STRUCTURAL	<input type="checkbox"/>
SURVEYING	<input type="checkbox"/>
TRAFFIC	<input type="checkbox"/>
PLANNING	<input checked="" type="checkbox"/>
LANDSCAPE	<input type="checkbox"/>
OTHER	<input type="checkbox"/>

**WCE**  
WHIPPLE CONSULTING ENGINEERS  
21 SOUTH PINES ROAD  
SPOKANE VALLEY, WA 99206  
PH: 509-893-2617 FAX: 509-829-0227

**TIMBER GLADE  
ANNEXATION EXHIBIT  
RATHDRUM, ID**

**SHEET  
1 OF 1**

**JOB NUMBER  
19-2494**

F:\WCE\WORK\2019\19-2494\PROJECTS\2019-2494-ANNEXATION EXHIBIT\DWG PLOT DATE:02/11/20

NAVD-88  
XXXX



Whipple Consulting Engineers, Inc.

### Timber Glade Annexation and Subdivision

The site of the proposed annexation and subdivision is located in the Northeast ¼ of Section 31, T52N, R4W, west of Meyer Road and between Flagstaff and Christine Streets. See below for a Vicinity Map.

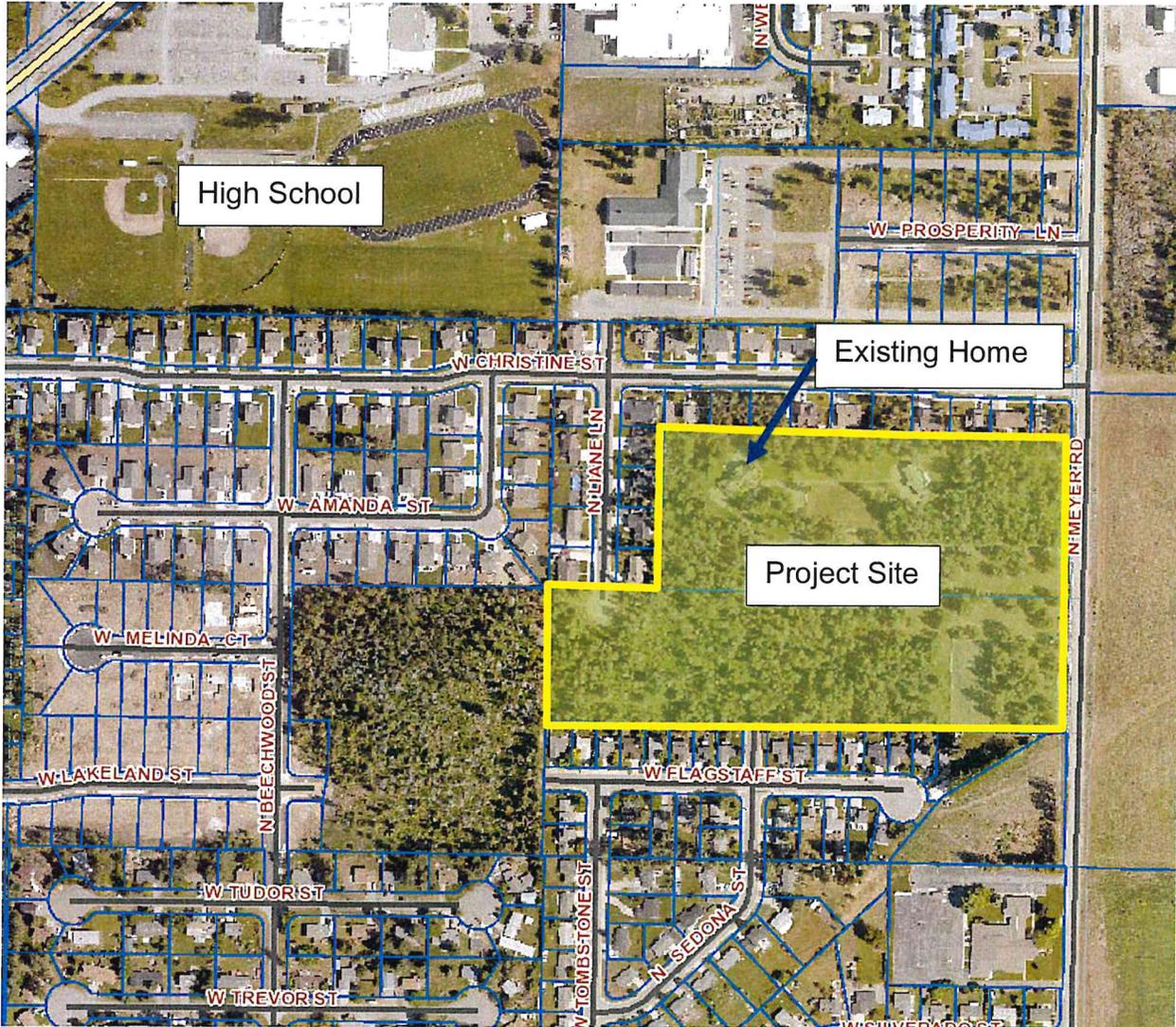


Figure 1: Vicinity Map

The property consists of two parcels, totaling approximately 19 acres. It is located between Flagstaff Street and Christine Street, just west of Meyer. The current use of the northern parcel is residential, consisting of an existing home and some outbuildings which are equestrian in nature. The home will remain, but the outbuildings will be demolished. The southern parcel is vacant. The site is generally forested with new growth pines and is considered flat, with

approximately 10 feet of relief across the entire site. As such, there are no physical limitations that would prohibit land development as proposed. The northern parcel is part of the Park Rose Ranch subdivision and has a City zoning of R-2S. The southern parcel is subject to this proposed annexation, which is being processed concurrently with the subdivision annexation with a proposed zoning of R-2S.

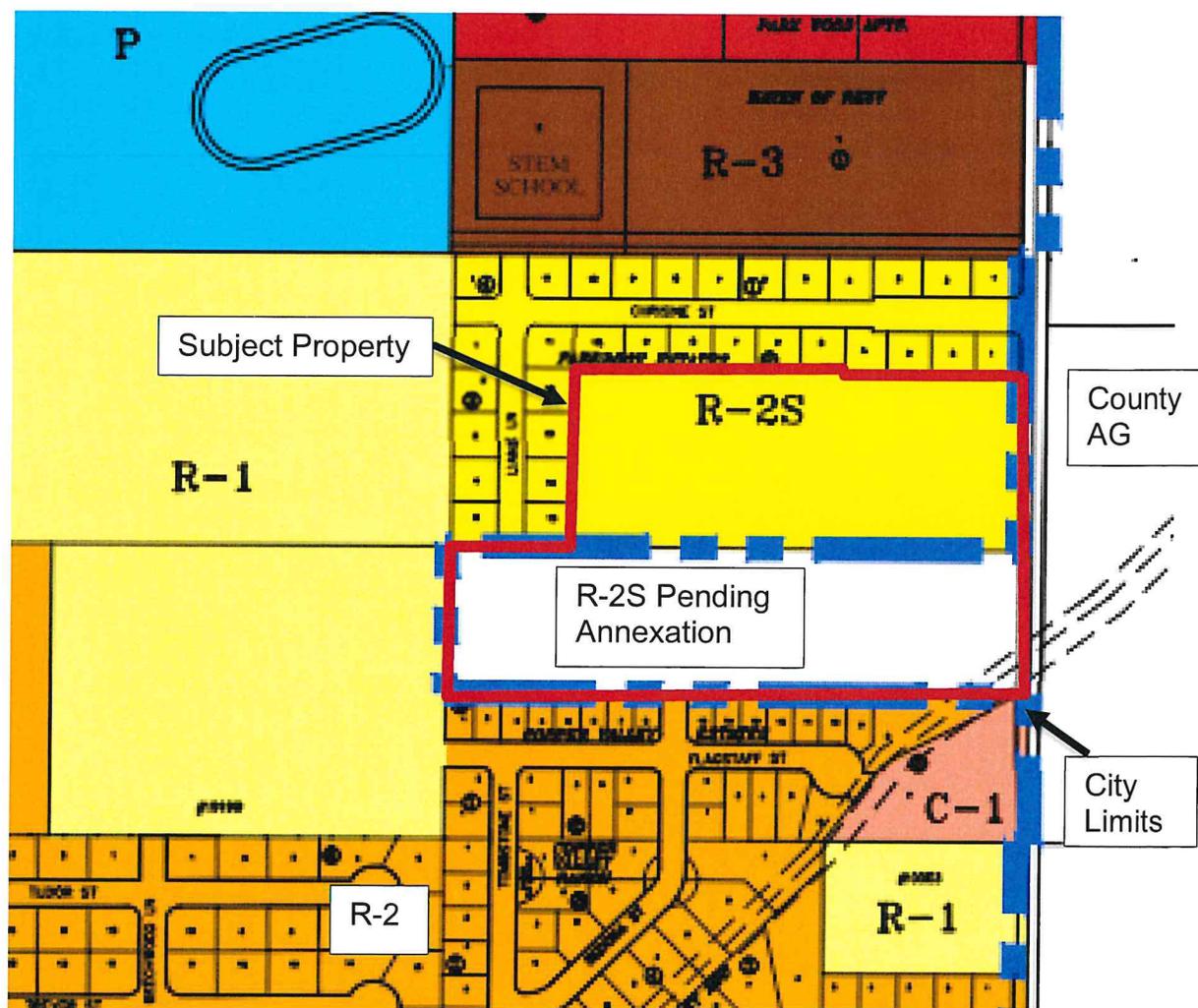


Figure 2: Current Zoning Map

As shown in the above map, the adjacent zoning is County Agricultural to the east. To the west is R-1 and R-2S zoning. To the north is R-2S zoning, and to the South is R-2 and C-1 Zoning.

**Annexation:**

As shown on the above map, the southern of the two parcels is currently in the county, and it has a county zoning designation as Agricultural Suburban. This application proposes to annex that 9.75 acre parcel into the City with a zoning designation of R-2S, which is consistent with

the zoning of the northern parcel as well as with the “Residential” land use designation found on the Future Land Use Map in the City’s Comprehensive Plan. As such, to be consistent with the Land Use Map, the proposed land use will be single family residential.

### **Annexation Impact Analysis:**

As required by the annexation application, an analysis of the impact that the proposed annexation will have on streets, schools, water, police and fire protection, sewer, and public service is required.

With regards to streets, the annexation encompasses land which as shown in the subdivision plan covers approximately 32 single family lots. Based on the Institute of Traffic Engineering Trip Generation Manual, these 32 lots will generate 9.44 average daily trip ends per home, equating to 302 trip ends. The impact of these trips is both anticipated by the City’s transportation master plan and is covered by the City’s Circulation impact fee. Accordingly, at the time of building permit, each lot will contribute \$1,269.11 towards building traffic infrastructure such as traffic signals, street widening, etc. The total Circulation impact fee generated by this annexation will amount to over \$40,000. The total Circulation impact fee for the entire subdivision will generate over \$71,000.

With regards to schools, the existing tax generated for the school district by the property to be annexed is \$36 per year. After development and construction of homes similar to those found in adjacent subdivisions, that tax revenue is expected to jump to over \$31,000 per year. That equates to an 870% increase in revenue for this property. The Lakeland Joint School District has requested that the owner of the subject property either donate land or money to offset the additional students expected to move into these homes. While on the surface that may seem like a reasonable ask, it’s important to note that the cost of any up-front donation (either land or money) would ultimately get spread across and applied to the cost of each new home. On average, only 1 in 3 homes have school aged children, which means that two thirds of any donation would be borne by households that have no children in school. Instead, the increase in tax revenue which is borne by all of the new homes should offset any impact to the school district.

With regards to water and sewer, the extensions of water and sewer mains across the property will provide for logical extensions of city infrastructure. The payment of cap fees for both water and sewer at the time of building permit will offset the impact to each, respectively.

With regards to Public Services, Police and Fire Protection, the annexation in of itself will have no impact because there are no homes built or population increase just based on incorporation and zoning. The construction of the subdivision and the homes will increase the need for those services, but the additional property tax revenue garnered by the City offsets those costs. As property values increase, the offset increases as well. In addition to the property tax revenue,

the interconnection of the adjacent streets associated with the construction will help decrease emergency response times in the area.

**Subdivision:**

As shown on the attached subdivision plan, the proposed 18.9 acre subdivision will result in 57 single family residential lots. The lots range in size from a minimum of 7,800 sf to a maximum of 43,336 sf with the average size in the neighborhood of 13,258 sf. All lots exceed the minimum requirements of the zone in which they are located. It is anticipated that the subdivision will be constructed in a single phase

Meyer Road is already improved across the frontage of the property, and it is important to note that the build out of the street network as proposed will complete the neighborhood connectivity anticipated by both the Park Rose Estates subdivision and the Copper Valley Estates Subdivision. The extensions of Liane and Sedona will allow for residents to access Meyer road via an additional connection. Those internal streets will be built to the City's local street standard and are designed such that they provide a great neighborhood feel while still promoting proper circulation and connectivity. It will also complete the missing pedestrian connections, thus allowing students to walk to and from school via neighborhood streets rather than along the pathway on Meyer.

An existing 12" diameter water main is located within Meyer Road and will serve as the primary water source for this subdivision. Additional 8" water connections will be made at the end of Liane and Sedona, both of which will provide for additional looping and interconnectivity. Gravity sewer is available in Sedona and, with some grading work, is of sufficient depth and capacity to serve the entire property. Stormwater will be collected in street side swales for treatment and discharge into drywells. Dry utilities are located along Meyer Road and are stubbed in from both Liane and Sedona, and they are available to serve any future development on site.

**Comprehensive Plan Analysis:**

The proposed annexation and subdivision comply with the City's adopted comprehensive plan as follows (*policy in italics*):

**Land Use:**

*Consider and include the following criteria in the development of future zoning, subdivision, and other ordinances, and plans.*

- *A wide range of housing, especially that which is affordable to local citizens*
- *A system of pathways and open spaces to connect the community and to encourage walking, biking, outdoor recreation and social gathering.*

- *A transportation network that provides easy access between local jobs, homes, commerce, and recreation.*

The proposed R-2S zoning is consistent with the future land use map designation of Residential. The residential housing mix in Rathdrum is very diverse, especially in this area. There are apartments to the north along Meyer, smaller single family lots located in Copper Valley Estates, and average sized lots in Park Rose Estates and Timber Landings. Our goal is to create a neighborhood with a lot mix that targets the empty nester community as well as the “move up” market. By adding these higher value lots to the surrounding community, it will help provide a balance of residential land use by filling that niche market. The location of this proposed project is such that it is sandwiched between three existing subdivisions and upon completion will provide both pedestrian and vehicular connectivity between them, thus promoting easier access and encouraging walking between neighborhoods.

*Maintain regulatory standards that encourage private property land uses and infill development consistent with expressed local values.*

The proposed single-family development is consistent with the land use within the three adjacent subdivisions. The proposed annexation and subdivision will complete an infill development as encouraged by the comprehensive plan.

*Encourage development within currently established areas of the community and more intense use of developed land.*

The proposed development is adjacent to currently established residential neighborhoods and will serve as an extension of those neighborhoods.

*Evaluate any proposed annexation carefully to assure it supports well planned development, uniform boundaries, orderly growth and the goals and policies of the comprehensive plan.*

The proposed annexation is considered an infill annexation and will provide for a uniform City boundary along the west side of Meyer Road. It is well planned and will provide for an orderly infill growth as encouraged by the comprehensive plan.

#### **Public Safety:**

*Require new development to provide sufficient emergency vehicular access for emergency equipment and adequate water supply and pressure for the purposes of fire protection.*

All streets are designed to meet fire code and provide for enhanced vehicular access between neighborhoods in this area of Rathdrum. The water supply mains are sized

such that they will provide both adequate flow and pressure. Fire hydrants are spaced in accordance with fire code.

*Require new development to be designed and constructed to address the minimization of hazards and the enhancement of the effective provision of law enforcement and protection.*

The subdivision has been designed such that the interconnection of streets will enhance emergency response time, and the presence of new street lighting throughout will enhance the effectiveness of law enforcement patrols in the area.

#### **Sewer and Water:**

*Promote development in areas with municipal sewer and water systems in place.*

There are existing water and sewer mains located in the adjacent streets.

*Encourage land development patterns that permit the most economical extension of sewer lines.*

Development of this property as proposed will extend gravity sewer in an economical way such that maximum depth is maintained and all new homes within will be served without the construction of a new lift station.

*Focus the development of infrastructure in areas within the City limits and areas where growth will occur in the short term.*

The development of this infrastructure is both within the City limits and in an area where growth will occur in the near term.

#### **Transportation:**

*Incorporate lighting, sidewalks and connections to enhance neighborhoods, pedestrian and bike pathways, public safety, etc.*

The new streets will connect existing neighborhoods and will include street lighting, sidewalks, and pedestrian crossings to enhance safety and connectivity.

#### **Housing:**

*Encourage the provision of opportunities for a variety of attractive neighborhood characteristics in terms of price range, amenities, natural settings, and proximity to other areas of activity.*

This neighborhood will incorporate the natural treed setting as well as the large existing home located on site. The variety in lot sizes will provide for a range of housing plans and prices. This new neighborhood is also within short walking distance of Thayer Park and the shopping center surrounding Super One Foods.

*Promote the development and maintenance of adequate lighting, pathways, buffering and other features necessary to assure safer neighborhoods in future developments. Maintain design standards for streets, lighting, public open spaces, and emergency vehicle access that ensures a high level of public safety.*

The completion of the neighborhood street system as proposed will enhance pedestrian and vehicular connectivity, thus reducing potential emergency response time and enhancing public safety. All streets will be designed to current City standards and will include provisions for street lights and sidewalks.

*Protect the continuity and inherent character of existing neighborhoods in planning and zoning decisions.*

The approval of the annexation and subdivision as proposed will ensure that the property is developed such that the single-family residential character of the neighborhood is preserved.

*Encourage and promote the development of street and pathway networks that provide convenient and safe vehicular, pedestrian, and bicycle navigation throughout the community.*

The completion of the neighborhood street system as proposed will enhance pedestrian and vehicular connectivity, thus providing for safe and convenient vehicular and pedestrian navigation in this part of Rathdrum.

*Encourage infill and redevelopment of existing lots.*

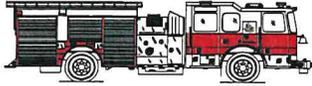
The development as proposed is an infill development wherein a large, somewhat opulent, single family home has been incorporated into the design of the subdivision.

**Conclusion:**

The proposed annexation and subdivision is supported by the comprehensive plan and the proposed subdivision meets the requirements of the City's subdivision ordinance; therefore, we are requesting approval of the annexation and subdivision of the property as presented.

# **Northern Lakes Fire Protection District**

Proudly serving the areas of and surrounding Hayden and Rathdrum



Hayden Area (208) 772-5711 • Fax: (208) 772-3044  
Rathdrum Area (208) 687-1815 • Fax (208) 687-2088  
[www.northernlakesfire.com](http://www.northernlakesfire.com)

December 3, 2019

City of Rathdrum Planning & Zoning  
8047 W. Main Street  
Rathdrum, ID 83858

Attn: Cary Siess,

The Northern Lakes Fire Protection District has reviewed the preliminary subdivision request Timber Glade, 57 single-family residential lots, located at Liane Lane and Meyer Rd. in Rathdrum.

***The Fire District approves of the preliminary subdivision with the following requirements.***

- **Final subdivision drawings shall be submitted to Northern Lakes Fire prior to start of construction.**
- Roadways shall be reviewed by Fire District prior to start of construction. Roads with fire hydrants shall be no less than twenty-six (26) feet wide.
- Fire flows shall meet the requirements of the 2015 Idaho Fire Code. Dwellings smaller than 3,600 sq. ft. require a fire flow of 1,000 gpm for a duration of 1 hour. Dwellings larger than 3,600 sq. ft. require higher fire flows depending on the square footage..
- Proposed locations of fire hydrants shown are approved.
  - **Fire hydrants shall be operational before the start of construction to any dwellings.**
  - **Fire hydrants shall be outfitted with 5" Storz adapter with cover and hydrant marking flags.**
- Address numbers shall be provided and visible from access road fronting the property.
- If any type of construction occurs other than 1 and 2 family dwellings homes will be reviewed for the need for fire sprinkler systems, this may require larger water line sizing.
- 2015 Idaho Fire Code requirements shall apply when building permits are applied for. Additional requirements may apply depending on size and type of occupancy constructed.

If you have any questions, please call 208-772-5711.

Thank you,

*Tyler Drechsel*

Tyler Drechsel  
Fire Marshal

## **Mari K. Davey**

---

**From:** Raymond,Amanda R (BPA) - TERR-BELL-1 <arraymond@bpa.gov>  
**Sent:** Wednesday, March 4, 2020 7:32 AM  
**To:** Mari K. Davey  
**Cc:** Murray,Jamie C (BPA) - TERR-KALISPELL  
**Subject:** RE: Timber Glade Annexation and Subdivision

Thank you for allowing Bonneville Power Administration (BPA) to review the proposed annexation and subdivision of Timber Glade. Parcel 52N04W312170 is not encumbered with a BPA easement and we have no further comment.

We appreciate you contacting us for comment.

Thanks,

### ***Amanda Raymond***

Realty Specialist – Bell  
Real Property Services  
Bonneville Power Administration  
E. 2410 Hawthorne Rd, Mead, WA 99021  
(509) 468-3081 – office  
(509) 309-9788 – cell  
arraymond@bpa.gov

---

**From:** Mari K. Davey <mari@rathdrum.org>  
**Sent:** Tuesday, March 3, 2020 3:34 PM  
**To:** Ali Marienau; KMPO <amarienau@kmpo.net>; Raymond,Amanda R (BPA) - TERR-BELL-1 <arraymond@bpa.gov>; Angela Craner (angela.craner@usps.gov) <angela.craner@usps.gov>; becky.meyer@lakeland272.org; william.baker@avistacorp.com; Carey Borchardt: CHARTER <carey.borchardt@charter.com>; Chris Larson <clarson@nlfpd.com>; David Callahan: KC (dcallahan@kcgov.us) <dcallahan@kcgov.us>; Eric Singer <eric@rathdrum.org>; Glen Miles <gmiles@kmpo.net>; Murray,Jamie C (BPA) - TERR-KALISPELL <jcmurray@bpa.gov>; Jamie Howard; AVISTA <jamie.howard@avistacorp.com>; Jason Nebel; CHAPTER <jason.nebel@charter.com>; Jeremy Hofer: KEC <jhofer@kec.com>; KC EMS <info@kcemss.org>; Kevin Jump <kevin@rathdrum.org>; Kristie McEnroe <Kristie.mcenroe@deq.idaho.gov>; Lori Brickey <lbrickey@northernlakesfire.com>; Mary Shaw <mshaw@kcgov.us>; Mathew Colling (mcolling@phd1.idaho.gov) <mcolling@phd1.idaho.gov>; Michael Lenz; PF Highway District <mlenz@postfallshd.com>; Mike McPhee; BPA <mdmcphee@bpa.gov>; Paula Roukema; PF Highway District <paula@postfallshd.com>; Penney Laird <plaird@northernlakesfire.com>; PF Highway District <info@postfallshd.com>; Seth Rounds; AVISTA <seth.rounds@avistacorp.com>; Shirley PF Highway District <shirley@postfallshd.com>; Stacy Simmkins; ITD (stacy.simkins@itd.idaho.gov) <stacy.simkins@itd.idaho.gov>; todd.kiesbuy@avistacorp.com; Tomi McLean <tomi@rathdrumpolice.org>; Tyler Drechsel <tylerd@nlfpd.com>; William Roberson <William.Roberson@itd.idaho.gov>  
**Cc:** Cary Siess <cary@rathdrum.org>  
**Subject:** [EXTERNAL] Timber Glade Annexation and Subdivision

Please see the attached notices and please provide comments.

Thank you

*Mari Davey*

# Lakeland Joint School District #272

Dr. Becky W. Meyer, Superintendent of Schools

15506 N Washington Street, Rathdrum, Idaho 83858

208/687-0431, ext. 1107

becky.meyer@lakeland272.org ~ web.lakeland272.org



**LJSD Vision: A community committed to academic excellence ... dedicated to student success.**

---

Date: 05/07/2020

RE: Timber Glade Development

The Lakeland Joint School District recognizes that development will occur, and we are always excited to see our district grow. We openly welcome families and new children into our district to become part of the Lakeland family. However, the impact of development can be substantial for our district. With no impact fees and without developers considering setting aside some land for schools, it is difficult for us to keep up, as there is no funding mechanism from the state of Idaho for school construction and land acquisition.

For larger developments and annexations, the District has been asking for a donation of land to help mitigate the impact of growth. We understand that this is not feasible for smaller developments like the Timber Glade Development. We believe the best way to address the impact of smaller developments is to use a formula.

Based on current Kootenai County data, 1,000 new households equals the need for a new elementary school. A 10 acre site suitable for a school is likely to be valued near \$500,000, or \$500 per household. The Timber Glade development is 32 lots and this equals a recommended donation of \$16,000. We believe that responsible development with school site inclusion planning is critical for our community and it is difficult for us to be in support of this development with no consideration of our land acquisition and growth needs.

We look forward to working with planning agencies and developers to improve the quality of both our schools and future neighborhoods. In the event that you would like to request our presence at future meetings to discuss the direct effects of development on our district, please contact our office at 208.687.0431.

Thank you,

A handwritten signature in black ink, appearing to read 'Becky Meyer'.

Dr. Becky Meyer, Superintendent of Schools

A handwritten signature in black ink, appearing to read 'Brian Wallace'.

Brian Wallace, Chief Finance/Operations Officer

**From:** Brian Wallace <[Brian.Wallace@lakeland272.org](mailto:Brian.Wallace@lakeland272.org)>  
**Sent:** Friday, March 6, 2020 2:18 PM  
**To:** [mike@stegmanns.us](mailto:mike@stegmanns.us)  
**Cc:** [becky.meyer@lakeland272.org](mailto:becky.meyer@lakeland272.org); Wade Jacklin <[wjacklin@gmail.com](mailto:wjacklin@gmail.com)>; Ray Kimball <[rkimball@whipplece.com](mailto:rkimball@whipplece.com)>; Kristie Williams <[krissy.williams@lakeland272.org](mailto:krissy.williams@lakeland272.org)>  
**Subject:** Re: Timber Glade

Mike,

Sorry for the delayed reply. I was in Boise the first part of this week and am behind on my emails. Thank you for your email and the additional details on the Timber Glade project. Our district is fortunate to be in a growing community and we are not anti-growth. However, managing the impact of growth is a challenge for Idaho school districts because we must have local voters approve additional levies or bonds to finance school facilities. Thanks again for reaching out and we would very much like to meet with you to discuss future plans.

Sincerely,

Brian Wallace  
Chief Financial/Operations Officer  
Lakeland School District #272

On Tue, Mar 3, 2020 at 7:31 PM Mike Stegmann US <[mike@stegmanns.us](mailto:mike@stegmanns.us)> wrote:

Dear Mr. Wallace,

We are in receipt of the School District's letter regarding the Timber Glade Subdivision and have a deep appreciation for the struggles faced by our growing community. As you can imagine, with only a 20 acre site to work with, a 5 to 10 acre donation for a school is both onerous and financially untenable. It is, however, worth noting that current taxable base value of the property is approximately \$850K. After development and home construction, that same land will have a taxable base value of approximately \$19M. This increase is not unsubstantial and should go a long way towards mitigating the impact the District will see from this subdivision.

As an infill subdivision within walking distance to Elementary, Jr. High, and High Schools, there will be no impact to the district's bus routes. The infill will also provide sidewalks that will connect existing neighborhoods, which will allow for children to walk to school via neighborhood sidewalks rather than along busy streets like Meyer Road.

That said, although it is not feasible for this project to absorb the cost of such a significant donation, we do have a potential to work with the school district on future projects that would be better suited for such a donation. As such, we would prefer to work with the district in the early planning stages rather than as a reaction to a request for comment. That helps us incorporate the District's needs into our neighborhoods and provides a cooperative partnership where both parties meet their goals.

Accordingly, we look forward to meeting to discuss further. We would love to be involved in helping the District plan for the future.

Best Regards,

Mike Stegmann  
Wild Horse Investments, LLC

**PUBLIC WORKS DEPARTMENT**

8047 W. Main Street  
Rathdrum, ID 83858  
P 208.687.2700  
F 208.687.1377

# Memo

**To:** Cary Siess (via email)  
**From:** Kevin Jump  
**CC:**  
**Date:** March 11, 2020  
**Re:** Timber Glade Annexation/Subdivision – Initial Review Comments

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Please find herein our pre-annexation review comments for the proposed 19-acre residential subdivision.

**Meyer Road Frontage Improvements:**

The City of Rathdrum recently completed frontage improvements along the west-side of Meyer Road, within the limits of the project's Meyer Road frontage.

**Interior Streets:**

There are two public streets which are to be extended into the subject property. The development of the property will require:

- Northern extension of Sedona Street
- Southern extension of Liane Lane

All roadways within the proposed development will be owned and maintained by the City of Rathdrum; thus, those roadways will be required to be constructed to the City's Standards.

**Sanitary Sewer Collection System Extensions:**

Sanitary sewer is available to the subject property via an existing gravity sewer main within existing Sedona Street. New, public sanitary sewer mains will be constructed, branching off the existing main to collect sanitary sewer from the project. The sanitary sewer will be routed to the existing Cooper Valley Lift Station.

**Water Infrastructure Extensions:**

Water is available to the subject property via existing water mains within existing Sedona Street and existing Liane Lane. New, public water mains will be extended into the proposed development. The new water mains shall be looped. The development of the property requires connection to both of the referenced existing Sedona Street and Liane Lane water mains.

If the development seeks to have direct access onto Meyer Road, then the City will require that the internal water system be connected to the existing 12" diameter water main in Meyer Road.

**Stormwater Management:**

Stormwater will be collected and mitigated via grass filtration basins and permanent drywell injections per City standards. A stormwater management plan shall be designed to use best management practices (BMPs) during and after construction in accordance with accepted standard construction practices and City of Rathdrum Standards.

**Pedestrian Pathways & Sidewalks:**

In accordance with the City's Standards for Local Roadways, 5-foot minimum width concrete sidewalks shall parallel the new roadways. Further, where existing roadways are required to connect to new roadways, sidewalks are required to be extended to the existing sidewalks on the existing roadways.

**Comprehensive Plan Consistency Analysis:** The relevant goals and policies established within the Rathdrum Comprehensive Plan that pertain to the proposal, including an analysis of the proposal’s consistency are as follows:

Goal/Policy	Consistent	Discussion
<b>II A. Population</b>		
<b>II A. Population, Goal 1: Address changing growth trends and capacities to work toward a moderate and stable rate of long-range population growth with orderly development.</b>	Yes	The population of the area has been growing at a steady rate for the last several years. Annexation of area to support orderly residential growth, where the infrastructure for such growth will be paid by the project proponent / developer and can be extended to other properties within the city and its ACI provides for stable growth over time. The proposed zoning and density is consistent with other development in Rathdrum.
<b>II A. Population, Goal 2: Guide future development to maintain and enhance the quality of life of the population living within and directly adjacent to the community.</b>	To Be Determined	The Council shall determine “enhanced quality of life.”
<b>II B. Land Use</b>		
<p><i>II B. Lands Use, Goal 1, Policy B: Consider and include the following criteria in the development of future zoning, subdivision and other ordinances, and plans.</i></p> <ul style="list-style-type: none"> <li>• <i>Economically and socially integrated neighborhoods</i></li> <li>• <i>A wide range of housing, especially that which is affordable to local citizens</i></li> <li>• <i>A central business core, in the tradition of a community Main Street district</i></li> <li>• <i>Pockets of neighborhood commercial businesses to provide retail conveniences without the need to travel by car</i></li> <li>• <i>A system of pathways and open spaces to connect the community and to encourage walking, biking, outdoor recreation and social gathering</i></li> <li>• <i>Industrial divisions whose waste and output are compatible with sustaining this rural community’s excellent natural environment</i></li> <li>• <i>A transportation network that provides easy access between local jobs, homes, commerce and recreation</i></li> <li>• <i>A transportation network that accommodates regional traffic needs while giving priority to local access, convenience, connection, safety, potential for public transit and economy</i></li> </ul>	Yes	<p>The proposed R-2S district allows for single family development on vacant non-agricultural land and provides for additional housing stock.</p> <p>Sidewalks are included in the proposed future subdivision development connecting to the City’s existing sidewalk system.</p> <p>Improvements within the proposed subdivision will provide appropriate transportation for the area at the time of future development.</p> <p>This property is not currently, and does not appear to have been recently, utilized for agricultural purposes.</p>

Goal/Policy	Consistent	Discussion
<ul style="list-style-type: none"> <li>• <i>Support for preservation of agricultural lands around the community.</i></li> </ul>		
<p><b>II B. Land Use, Goal 2: Avoid annexation except to support well planned development, uniform boundaries, orderly growth and the goals and policies of the comprehensive plan.</b></p>	To Be Determined	The Council shall determine if the annexation meets the criteria. The proposal does provide for uniform City boundaries by eliminating an existing “peninsula” of County zoned property surrounded on three sides by City zoned property.
<p><i>II B. Land Use, Goal 2, Policy A: Encourage development within currently established areas of the community and more intense use of developed land.</i></p>	To Be Determined	The property is within the City’s Area of Interest. The Council shall determine if the annexation meets the criteria.
<p><i>II B. Land Use, Goal 2, Policy B: Evaluate any proposed annexation carefully to assure it supports well planned development, uniform boundaries, orderly growth and the goals and policies of the comprehensive plan.</i></p>	To Be Determined	The Council shall determine if the annexation meets the criteria

**Rathdrum City Code Analysis:** Several chapters of the Rathdrum City Code (RCC) Title 11, Zoning, provide regulations for the proposed annexation. Those portions of the RCC that pertain to the proposal and an analysis of the proposals conformance with that requirement are as follows:

Code	Consistent	Discussion
<b>Rathdrum City Code (RCC) Title 11, Zoning</b>		
<b>RCC 11, Chapter 11, Annexation and Zoning</b> contains the requirements and criteria for annexation and zoning requests.	Yes and To Be Determined	
<b>RCC 11-11-1, Authority; Procedure:</b> Idaho Code section 50-222 provides that any land lying contiguous or adjacent to any city in the State of Idaho, or to any addition or extension thereof may be annexed by the city only if the land is lying in the area of city impact and the land is laid off into blocks containing not more than five (5) acres of land each, whether the same shall have been or shall be laid off, subdivided or platted in accordance with any statute of this State or otherwise, or whenever the owner or proprietor or any person by or with his authority, has sold or begun to sell such contiguous or adjacent lands by metes and bounds in tracts not exceeding five (5) acres. An owner of land of any size may request that the tract of land be annexed by the city whether the land is or is not contained in the city's area of impact by submitting such request in writing to the city council. If the tract of land is surrounded by or borders the city, the council may, by ordinance, declare the land by proper legal description thereof to be a part of such city. In any annexation of adjacent territory, the annexation shall include all portions of highways lying wholly or partially within the annexed area.	Yes	The owner of the land, consisting of 9.75 acres, has requested that the tract of land be annexed by the city. The land is contained in the city's area of impact. The owner submitted the request in writing on January 29, 2020. The annexation includes portions of Meyer Road.
<b>RCC 11-11-2, Initiation of Annexation and Zoning Procedures:</b> Annexation and zoning procedures may be initiated in one of the following ways: A. By adoption of a motion by the Commission; B. By adoption of a motion by the City Council; C. By the filing of an application, to be provided by the Administrator, by a property owner or a person who has existing interest in property within the area proposed to be changed or affected by said annexation.	Yes	The property owner submitted an application requesting annexation, in writing, on January 29, 2020.

<p><b>RCC 11-11-3, Criteria for Granting Annexation:</b> Criteria for granting an annexation request shall be as follows:</p>	<p>Yes and To Be Determined</p>	<p>This section is provided by sub-section below.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-3-A:</b> The concerned property has a common boundary with the City limits.</li> </ul>	<p>Yes</p>	<p>The subject property has a common boundary with the city limits on three sides of the proposed annexation area. The proposed annexation is consistent with the criteria.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-3-B-1:</b> The City should grow within a well-defined area.</li> </ul>	<p>Yes</p>	<p>The proposed annexation area is within the City’s identified and mapped Area of City Impact / Future Land Use Map. The proposed annexation is consistent with the criteria.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-3-B-2:</b> Growth in new areas should be allowed when suitable vacant land is no longer available to accommodate the growth or when a specific use is proposed which is beneficial to the citizens of Rathdrum.</li> </ul>	<p>To Be Determined</p>	<p>Annexation of the area will provide correction of a peninsula of County zoned property surrounded on three sides by City of Rathdrum corporate limits. Annexation provides for ease of planning and application of development regulation.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-3-B-3:</b> Growth should only be allowed when public utility services are sufficient to accommodate the new growth.</li> </ul>	<p>Yes</p>	<p>Public utility services can be extended to the property and will be required prior to any development. Public right of way dedication of interior streets will also be required. Utility demand for future uses will be determined at the time of development.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-3-B-4:</b> The physical development of the City should reflect the best interests and needs of the City.</li> </ul>	<p>To Be Determined</p>	<p>This requested annexation will provide for consistency and ease of application of development regulations over a contiguous land area by eliminating a peninsula of county zoning. The Commission and Council shall determine “best interests”.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-3-B-5:</b> Ensure adequate information and analysis is available upon which to base land use decisions.</li> </ul>	<p>To Be Determined</p>	<p>The property is located within Rathdrum’s Area of City Impact (ACI) and identified as “Residential” which supports the proposed future subdivision development. The application information submitted incorporates further information and analysis.</p>
<p><b>RCC 11-11-4, Action by Commission and City Council, §A, Commission:</b></p>	<p>Yes</p>	
<ul style="list-style-type: none"> <li>• <b>§11-11-4-A-1: Public Hearing:</b> No more than sixty (60) days following the filing of an application, or upon motion by the Commission or the City Council, the Commission shall conduct at least one public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing,</li> </ul>	<p>Yes</p>	<p>A Public Hearing before the Planning and Zoning Commission was scheduled for March 18, 2020, within 60 days of receipt of the application (January 29, 2020). Notice of the hearing, including time, place and a summary of the request was published in the Coeur d’Alene Press on February 29, 2020. Due to a State of Emergency regarding the</p>

<p>notice of time, place and a summary of the request shall be published in the official newspaper of the City. Additional notice by regular mail shall be provided to property owners within three hundred feet (300') of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed annexation and zoning as determined by the Administrator. When notice is required for two hundred (200) or more property owners, in lieu of the mail notification, three (3) notices in the official newspaper of the City is sufficient; provided that, the third notice appears at least ten (10) days prior to the public hearing. Following the Commission's hearing, if the Commission makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the Commission forwards its recommendation to the City Council.</p>		<p>Covid-19 virus threat issued by the Governor of Idaho, the hearing was postponed and re-scheduled for April 15, 2020. Notice of the hearing was re-posted in the Coeur d'Alene Press on March 31, 2020.</p> <p>Notice by regular mail to all property owners of land situated within three hundred feet of the external boundaries of the proposal was provided on March 4, 2020 in compliance with this section and again on April 3, 2020 due to the hearing postponement.</p> <p>In addition, a Public Notice was posted on the property on March 4, 2020 and April 6, 2020. Notice was also posted on the City's web site and notice board outside of City Hall on March 2, 2020 and April 3, 2020. All notices included the date, time and place of the hearings as well as a summary of the proposal, and the description and location of the subject property.</p> <p>Notice of the proposed annexation was also forwarded to other agencies with jurisdiction on March 3, 2020.</p> <p>Furthermore, prior to the date of the public hearing, the City issued a written staff report dated March 11, 2020, integrating any comments received regarding the application, and made available to the public a copy of the Staff Report for review and inspection. A copy of the staff report was provided to the Applicant or the Applicant's designated representative and the Planning Commission prior to the hearing.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-4-A-2:</b> Recommendation: Within sixty (60) days from the close of the public hearing, the Commission shall transmit its recommendation to the City Council. The Commission may recommend that the annexation and zoning request be granted as requested, it may recommend a modification of the request, or it may recommend that the request be denied. The Commission shall ensure that any recommendations are in accordance with the Comprehensive Plan and established goals and policies and shall specify: <ul style="list-style-type: none"> <li>a. The ordinance and standards used in evaluating the application;</li> </ul> </li> </ul>	<p>Yes</p>	<p>A staff report incorporating the recommendation of the Planning and Zoning Commission was prepared and forwarded to the Council on or before May 8, 2020. The staff report incorporates the ordinances and standards used in evaluating the application, and reasons for approval as found herein.</p>

<p>b. The reasons for approval or denial;  c. The actions, if any, that the applicant could take to obtain annexation and zoning.</p>		
<p><b>RCC 11-11-4, Action by Commission and City Council, §B, City Council:</b></p>	<p>Yes and  To Be  Determined</p>	
<ul style="list-style-type: none"> <li>• <b>§11-11-4-B-1:</b> Public Hearing: The City Council, prior to adopting, revising, or rejecting the recommendation by the Commission, shall conduct at least one public hearing using the same notice and hearing procedures as the Commission. Following the City Council hearing, if the City Council makes a material change from what was presented at the public hearing, further notice and hearing shall be provided before the City Council adopts the amendment.</li> </ul>	<p>Yes and  To Be  Determined</p>	<p>A public hearing in front of the City Council has been scheduled for May 13, 2020. Notice of the hearing, including time, place and a summary of the request was published in the Coeur d'Alene Press on April 28, 2020. Notice by regular mail to all property owners of land situated within three hundred feet of the external boundaries of the proposal was provided on April 29, 2020 in compliance with this section.</p> <p>In addition, a Public Notice was posted on the property on April 29, 2020. Notice was also posted on the City's web site and notice board outside of City Hall on April 29,2020. All notices included the date, time and place of the hearings as well as a summary of the proposal, and the description and location of the subject property.</p> <p>Furthermore, due to the continued closure of City Hall, project materials were posted on the City's web site on May 5, 2020, including but not limited to the previous Staff Report, application narrative, legal description, maps and all exhibits contained in the Staff Report. The City issued a new written staff report on or before May 8, 2020, integrating any comments received regarding the application, and made available to the public a copy of the Staff Report for review and inspection on the City web site. A copy of the staff report was provided to the Applicant or the Applicant's designated representative and the City Council prior to the hearing.</p> <p>If change from what is included within the proposal is requested, further notice and hearing shall be provided.</p>
<ul style="list-style-type: none"> <li>• <b>§11-11-4-B-2:</b> Findings And Conclusions: Upon revising or rejecting the recommendation by the Commission, City Council shall establish its own findings and conclusions and shall specify:</li> </ul>	<p>To Be  Determined</p>	<p>The City Council shall be responsible for determining compliance, approval, denial and actions which could be taken to obtain annexation and zoning.</p>

<p>a. The ordinance and standards used in evaluating the application;</p> <p>b. The reasons for approval or denial;</p> <p>c. The actions, if any, that the applicant could take to obtain annexation and zoning</p>		
<p><b>RCC 11-11-5, Criteria for Granting Requested Zoning:</b> Criteria for granting requested zoning shall be the same as those listed in Chapter 4 of Title 11.</p>	<p>Yes and To Be Determined</p>	
<p><b>RCC 11-4A-2-1-A and B, R-2S Residential District, Purpose and Criteria:</b> Zoning is proposed to be Residential R-2S. The purpose of the R-2S district is to provide opportunities for single-family neighborhood development subject to the same criteria as provided for the R-1 District as follows:</p> <ul style="list-style-type: none"> <li>• <b>§11-4A-2-B-1:</b> <i>In areas where the physical limitations of soil, topography or other natural factors limit development to a low density.</i></li> <li>• <b>§11-4A-2-B-2:</b> <i>In areas where permanent low-density living is appropriate.</i></li> <li>• <b>§11-4A-2-B-3:</b> <i>In areas where municipal water facilities and sewage disposal facilities are provided.</i></li> </ul>	<p>Yes and To Be Determined</p>	<p>The proposal provides opportunity for single-family neighborhood development. Factors limiting density in this case is the choice of the developer, but existing conditions such as the existing surrounding neighborhood may factor into such decision. The Council shall determine “appropriate”. The density is consistent with properties in the area. City water and sewer mains are located adjacent to the subject site. Such utilities can be extended to the property. The area is identified in City water and sewer master planning.</p>
<p><b>RCC 11-4A-2-1-C, R-2S Residential District, Principal Uses Permitted Outright:</b> The same as permitted in the R-1 district.</p> <ul style="list-style-type: none"> <li>• Manufactured homes in compliance with subsection 11-5-2K of this title.</li> <li>• Public libraries.</li> <li>• Publicly owned and operated parks.</li> <li>• Single-family dwellings.</li> </ul>	<p>To Be Determined</p>	<p>Use of the property will be limited to those identified herein at the time of individual lot permitting if the proposed zoning is approved.</p>
<p><b>RCC 11-4A-2-1-D, R-2S Residential District, Conditional Uses:</b> The same as permitted in the R-1 district.</p> <ul style="list-style-type: none"> <li>• Bed and breakfast inns.</li> <li>• Churches.</li> <li>• Guesthouses.</li> <li>• Home occupations.</li> <li>• Nursery/daycare for children.</li> <li>• Schools.</li> <li>• Other uses determined by the commission to be in keeping with the purpose and intent of this district.</li> </ul>	<p>To Be Determined</p>	<p>Use of the property will be limited to those identified herein at the time of individual lot permitting if the proposed zoning is approved.</p>
<p><b>RCC 11-4A-2-1-E, R-2S Residential District, Accessory Uses Permitted:</b> Uses customarily incidental to a principal use, such as unattached</p>	<p>To Be Determined</p>	<p>Use of the property will be limited to those identified herein at the time of individual lot</p>

<p>garages, carports and storage sheds, are permitted outright provided that the accessory structures meet the qualifications as set forth in the definition for an "accessory use or structure" (section 11-3-2 of this title) and applicable lot density and setback provisions.</p>		<p>permitting if the proposed zoning is approved.</p>
<p><b>RCC 11-4A-2-1-F, R-2S Residential District, Lot Area, Density And Setback Provisions:</b></p> <ol style="list-style-type: none"> <li>1. Minimum lot area: Seven thousand five hundred (7,500) square feet.</li> <li>2. Maximum number of dwelling structures per lot: One.</li> <li>3. Maximum lot width to depth ratio: 1:2.5.</li> <li>4. Minimum front yard: Twenty feet (20') measured from edge of street right of way to front of building.</li> <li>5. Minimum side yard flanking street of corner lot: Twenty feet (20') from street right of way.</li> <li>6. Minimum side yard: Eight feet (8') wide.</li> <li>7. Minimum rear yard: Twenty feet (20') deep.</li> <li>8. Maximum building height: Thirty five feet (35') in height.</li> <li>9. Minimum size for a single-family dwelling unit: Nine hundred twenty (920) square feet.</li> <li>10. Minimum driveway requirements: Twenty five feet (25') in length, excluding sidewalks.</li> <li>11. Setback requirements must be measured from a legally established property line.</li> <li>12. Maximum lot coverage: Thirty five percent (35%).</li> </ol>	<p>To Be Determined</p>	<p>Development of the property will be limited to the provisions identified herein at the time of individual lot permitting if the proposed zoning is approved.</p>

# Timber Glade Annexation

## IN FAVOR

**Deven Smith** <smith.deven.01@gmail.com> **7268 E Lund St, Rathdrum ID**

Annexation - In favor

I think this move is good for the city. The city surrounds the land around this plot anyways and these new potential homes would bring in more income for the city.

**Wade Jacklin** <wpjacklin@gmail.com> **3764 E Nettleton Gulch Rd, Coeur d'Alene, ID 83815**

Hi Cary, Please mark me "in favor" of both annexation approval and subdivision approval for Timber Glade.

Thank you, Wade Jacklin

**Brett Nearing** <brett@kootenaititle.com> **714 E. Maple Place Hayden, ID 83835.**

I am in favor of Timber Glades

Thank You

**Debbie Hislop** <dhislop@kootenaititle.com> **1450 Northwest Boulevard, Suite 200, Coeur d'Alene, ID 83814**

Good Afternoon Cary, My name is Deborah A. Hislop, I live in Kootenai County.

I want to let you know that I am in favor of the Timber Glade Annexation / Subdivision,

Thank you, -Deb Hislop

**Kelly Smith** <kelly@kootenaititle.com> **2051 N Ridgeview Dr., in Post Falls, ID**

I, Kelly J Smith, am in favor of Timber Glade.

Thank you and have a nice afternoon. 😊

**J.T. Jacobsen** <jt@kootenaititle.com> **765 N. Chisholm CT, Post Falls, Id 83854**

I support and am in favor of the infill annexation and subdivision of Timber Glade.

Thank you! J.T. Jacobsen

**Emelyn Hopkins** <duediligence@kootenaititle.com> **29855 N Good Hope Road, Athol, ID 83801**

Good Afternoon, I would like to let you know I am in favor of Timber Glade. Thanks,

Emelyn Hopkins

**Debbie Matthews** <debbiem@kootenaititle.com> **316 S. 12<sup>th</sup> Street, Coeur d'Alene, ID 83814**

I am in favor of Timber Glade.

Thank you, Debbie Matthews

**Angela Adams** <angela@kootenaititle.com> **2534 West Grange Avenue Post Falls Idaho 83854**

I would like it stated that I am in favor of Timber Glade

Angela Adams

**Alicia Mills** <alicia@kootenaititle.com> **5696 N Parkwood Circle, CDA, ID 83815**

I support this infill annexation and subdivision in Rathdrum

Have a Fabulous day! Alicia Mills

**Sam Johnson** <spudracingcda@gmail.com> **2535 Tiatan St, Post Falls, ID 83854**

Hi Cary,

I am writing in support of the annexation and subdivision of Timber Glade being heard at tonight's meeting.

Thank you, Sam Johnson

**NEUTRAL**

## OPPOSED

**Sarah Santos** <drmartinez@live.com> **No Address Provided**

My husband and I are OPPOSED to this annexation and subdivision. We live on Christine St, with our home backing up to the property under consideration. We were excited about raising our daughter (now 5 months old) in this home. Rathdrum is a wonderful community; however, all of that is at risk with the over-building. The city has failed at providing infrastructure to support the rapid growth. The streets are becoming more congested. The schools cannot support the current student population, let alone those that will already be moving into the approved projects. There is a serious lack of businesses (and also no draw for businesses to want to be here). Another point is that per kcgov.us, Rathdrum has the highest taxes in all of Kootenai County. That seems inappropriate given we have to leave this city for many things, including shopping, doctor and hospital visits, government services, etc. We, as the taxpayers, are responsible for financing the city council's lack of discretion. Why aren't any of these builders being required to contribute to the infrastructure and school buildings necessary for the increased population? Why is the council allowing Rathdrum to lose it's small town charm? We moved here knowing we would drive into other towns for certain things, and that was fine because we wanted the quietness of this area. We don't want this huge influx of people, with homes on top of each other (like in other over-populated regions), and we don't want the traffic, lack of resources, and lack of educational buildings to become the norm here. We want our town to grow, but responsibly. There are already too many housing projects in the works that requires updated schooling and infrastructure. The city is already playing catch-up. How big of a hole are you willing to go into to take the developer's money?

When you look at rathdrum.org, the "Welcome to Rathdrum, Idaho" page states the following: "Rathdrum, Idaho offers small town living at its best. Located in the Idaho Panhandle, nestled on the edge of the Rathdrum Prairie and surrounded by beautiful mountains, Rathdrum has a neighborhood atmosphere, yet is only minutes from big city amenities. Rathdrum may just be the ideal town you're looking for... here you can experience small town charm and friendliness." Rathdrum is quickly losing this. Different council-members were voted in as they promised to slow the growth and to move forward responsibly. We are asking you to follow through on those promises and to ensure your current residents don't lose what we hold dearest. If this project is approved, we will leave the city. It is becoming too much, and we don't want to continue to hear more construction for years to come -- especially with an infant at home.

Please consider the effects of the already approved subdivisions before adding more on and expecting taxpayers to foot the bill. We are fed up.

Thank you,  
Sarah and Gabriel Santos

**Daryn Jacobson** <darynj68@yahoo.com> **5322 W Anderson Ave. Rathdrum, Id 83858**

Timber Glades Annexation and Subdivision---- OPPOSED

To whom it may concern:

My name is Jacob Munyer, and I am on the planning and zoning commission for the City of Rathdrum. I am a teacher/coach (Lakeland High school), parent, and a Rathdrum community member of about 12 years. I just wanted to let the city council know why I voted no with regards to the zoning of the new annexation. I am not against the annexation at all; it is a piece of land that is within our city limits and will need to be annexed sooner or later.

My concern lies in the zoning of the new annexation. Christine Street and Liane (known as Park Rose Estate) is zoned R2S, but when it was developed most of the homes and lots on Christine and Liane meet the R1 zoning (min of 10,000 sq ft lots). The homes that are just east of the STEM charter school (between STEM and Meyer Rd.) are zoned R3 (multi family). The developer came in and developed (and is continuing to develop) fourteen shop lots instead of multi-family dwellings (i.e. apartments). This property could have been developed as 250 apartments, but instead the developer considered what was best for our city and he was gracious enough to build fourteen quality homes. Timber Landings is another development that is close to this annexation and is zoned R1 and R2 the majority of the lots are a minimum of 10,000 sq ft. The neighborhood southeast of the projected project (Flagstaff St) is the only neighborhood that is truly a R2S is the Cooper Basin neighborhood which is more than 15 years old and only is one side of the projected project and of that side is about 80% of homes. The other 20% of the street is met with undeveloped property owned by the Church of Jesus Christ of Latter Day Saints. The majority of homes around this proposed project are the minimum of 10,000 sq ft lots (R1). As a matter of fact there is a home within the proposed project that is a 4,000 sq ft home on a lot size of 43,000 sq ft. I am sure who ever owns this home will not want two roads of smaller homes as their neighbors.

My thought is that the proposed annexation should be zoned R1. The developer can be responsible and accountable for a good quality development and can develop on bigger lots with less homes, which produces less traffic (which Meyer is a mess right now) and that will still be meeting our city's comprehensive plan. As we move forward as a growing community I just want to be responsible and reflective as my role as a planning and zoning commissioner and a community member.

As developers come into our community, they need to know and understand that we have a great town. We don't want to grow so fast that we do not have the infrastructure to withstand the increased growth in such a short time. I appreciate the developers that are in the business to make towns better not just to make money. I believe Raymond Kimball, a representative of the developer, is responsible and cares about OUR neighborhoods. I would hope that the city council would rescind the recommendation of zoning the new annexation as R2S, and be able to look how we can develop a new neighborhood that has bigger lots and fewer homes to help our city to grow more responsibly. I also would like to commend the responsible developers that have preceded this project site and even though the current zoning was for more density the developers chose to go with less density. Currently the proposed project, 9.75 acres, the new annexation and the remaining acreage is zoned R2S, I would hope that this proposed project follow their predecessors in the surrounding neighborhoods and build quality homes on bigger lots with a R1 (min 10,000 sq ft lots) feel even though the zoning is listed as R2S.

Thanks for your time and service,  
Jacob Munyer  
6896 Amanda St Rathdrum ID 83858

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF RATHDRUM, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR ANNEXATION OF ONE PARCEL OF REAL PROPERTY TOTALING APPROXIMATELY 9.75 ACRES; PROVIDING ANNEXATION OF ADJACENT RIGHTS OF WAY TOTALING APPROXIMATELY 1.4 ACRES; PROVIDING ZONING OF THE PROPERTY SO ANNEXED AS RESIDENTIAL R-2; PROVIDING FOR AMENDMENT TO THE OFFICIAL ZONING MAP; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, the owner of the real property referenced in Section 1 has petitioned the City Council of the City of Rathdrum for annexation of said property and the subsequent zoning of said property as Residential R-2; and

WHEREAS, public hearings were held before both the Rathdrum Planning & Zoning Commission on April 15, 2020 and the Rathdrum City Council on May 13, 2020 in accordance with law, and with testimony taken, findings of fact and conclusions of law reached; and

WHEREAS, the City Council, based upon the recommendation of the Planning and Zoning Commission and upon its own findings, determined that said annexation is provided for under existing law in that the land in question adjoins the corporate limits, that the proposed zoning is suitable and compatible with surrounding land uses and that said land uses would fit in with the general development of the City and would be in the best interest of the citizens of the City of Rathdrum:

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF RATHDRUM, KOOTENAI COUNTY, IDAHO, AS FOLLOWS:

SECTION 1: That the following described property generally located west of N Meyer Road, south of W Christine Street and north of W Flagstaff Street, which are contiguous and adjacent to the Rathdrum city limits, are hereby annexed into City of Rathdrum:

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 31, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 31 BEARS N01° 10' 15"E A DISTANCE OF 2649.21 FEET; AND THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

THENCE N01° 10' 15"E ALONG SAID SECTION LINE A DISTANCE OF 330.00 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE N88° 57' 17"W ALONG THE NORTH LINE OF THE PLAT OF COPPER VALLEY ESTATES AS RECORDED IN BOOK G OF PLATS, PAGE 456 A DISTANCE OF 1319.51 FEET TO THE NORTHWEST CORNER OF SAID PLAT, SAID POINT MARKED BY A 5/8" REBAR WITH NO CAP;

THENCE N01° 11' 20"E ALONG THE EAST LINE OF LOT 2, BLOCK 11 OF THE FINAL PLAT OF TIMBER LANDING ESTATES 2ND ADDITION AS RECORDED IN BOOK L OF PLATS, PAGES 305-305C A DISTANCE OF 331.54 FEET TO THE SOUTHWEST CORNER OF LOT 2, BLOCK 1 OF SAID FINAL PLAT OF PARK ROSE RANCH AS RECORDED IN BOOK J OF PLATS, PAGES 406-406A, SAID POINT MARKED BY A 5/8" REBAR WITH A YELLOW PLASTIC CAP MARKED "TATE ENG PLS 4565";

THENCE S88° 59' 03"E ALONG THE SOUTH LINE OF BLOCK 1 OF SAID FINAL PLAT OF PARK ROSE RANCH A DISTANCE OF 1294.41 FEET TO THE SOUTHWEST CORNER OF THE EAST 25 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE N01° 10' 15"E A DISTANCE OF 662.24 FEET PARALLEL TO AND 25 FEET WEST OF THE EAST LINE OF SAID SECTION 31 TO THE NORTHWEST CORNER OF THE EAST 25 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE S89° 00' 33"E A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32;

THENCE S01°10'15"W A DISTANCE OF 1324.54 FEET ALONG THE EAST LINE OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32.

THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.

Pursuant to Idaho Code Sections 50-223 and 63-215, a legal description of the City's new municipal boundaries is also attached hereto as Exhibit A, along with a map thereof as Exhibit B.

SECTION 2: That the annexed property be zoned as R-2S.

SECTION 3: That the Rathdrum official zoning map shall be amended to depict the annexed lands described herein to be designated as R-2S zoning. All prior zoning designations for the described and depicted lands shall be deemed superseded by this ordinance. The administrative

staff of the City of Rathdrum shall take all steps necessary to memorialize the provisions of this ordinance.

SECTION 4: This ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

SECTION 5: This ordinance shall be effective upon passage and publication as provided by law.

Enacted by the City Council as an Ordinance of the City of Rathdrum on the \_\_\_\_ day of May, 2020.

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

Vic Holmes, Mayor

ATTEST:

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Sherri Halligan, City Clerk

STATE OF IDAHO )

: ss.

County of Kootenai )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public, personally appeared Vic Holmes and Sherri Halligan, known to me to be the Mayor and City Clerk of the City of Rathdrum, respectively, that they executed the foregoing instrument and acknowledged to me that they executed the same for and on behalf of the City of Rathdrum.

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

\_\_\_\_\_  
Notary Public for the State of Idaho

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

## EXHIBIT A

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.



## ANNEXATION AGREEMENT

### Timber Glade 2020 Annexation

THIS AGREEMENT is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **CITY OF RATHDRUM**, a municipal corporation organized pursuant to the laws of the State of Idaho, hereinafter termed the "City," 8047 W. Main Street, Rathdrum, Idaho 83858, and **Wild Horse Investments, LLC**, a registered Idaho Limited Liability Company, the address of whom is 14899 W. Stub Avenue, Rathdrum, ID 83835, hereinafter collectively referred to as the "Owner."

WHEREAS, the Owner owns property which Owner has consented to annexation into the corporate limits of the City of Rathdrum. Said property consists of approximately 11.15 acres and is more particularly described as follows:

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 31, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 31 BEARS N01° 10' 15"E A DISTANCE OF 2649.21 FEET; AND THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

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THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.

WHEREAS, the Mayor and City Council of the City of Rathdrum have determined it to be in the best interests of the City to annex the Described Lands, subject to the Owner performing the covenants and conditions hereafter set forth;

NOW THEREFORE, IN CONSIDERATION of the covenants and conditions set forth herein, the parties agree as follows:

**1.0 Purpose:**

Owner(s) enter into this Agreement to obtain annexation of the Described Lands, while City seeks to obtain partial mitigation of the effects of annexation of the Described Lands. Owner acknowledges that city has no duty to annex the Described Lands and that the promises of Owner constitute an inducement for City to do so. The term "Owner" is deemed to include any successor in interest in the Described Lands.

For the Purposes of this Agreement, the term "development" shall include, but not be limited to subdivision and residential construction on any portion of the described lands.

**2.0 Municipal Utilities:**

**2.1 Water:** Owner agrees to use the City's public water supply system at such time as the Described Lands are developed. The Owner agrees to transfer the Owner's water rights attached to the Described Lands to the City upon development, to be defined within a Development Agreement for development of the Described Lands. Use of the existing on-site water irrigation system will be temporarily allowed for interim agricultural purposes. Transfer of the water rights does not eliminate the requirements for the Owner to construct the necessary infrastructure to serve the Described Lands.

**2.1.1** At the time of any subsequent development, the Owner will be required to construct all water infrastructure in conformance with the most current adopted version of the City of Rathdrum's Master Plan Update, state law, and all City policies and standards.

- 2.1.2** At such time as Owner connects to the Rathdrum Water System, Owner agrees to be responsible for all required fees and charges, including all connection and/or capitalization charges generally applicable at the time service is requested. In addition, the cost for development of all on-site and off-site infrastructure is the responsibility of the Owner.
- 2.1.3** All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer or Public Works Director with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of all water mains. The City shall be notified at least twenty-four (24) hours before testing.
- 2.1.4** The City represents that it owns, operates, and maintains a potable water supply and distribution system within its borders, which water system and mains have at the present time projected sufficient capacity to accommodate the anticipate potable water and fire protection needs of the Property. Such available capacity may, however, be consumed by supplying developments within the City that precede development of the land addressed by this Agreement. The City does not warrant that it will have sufficient water system capacity to supply the needs of Owner when Owner desires to proceed with development. The City does agree that it will endeavor, within the limits of its rights and resources, to add capacity and supply Owner's development if capacity is deficient at the time Owner seeds to develop.
- 2.2 Sewer:** Owner agrees to use City of Rathdrum Sanitary Sewer system to serve future development of the Described Lands subject to this Agreement.
- 2.2.1** At the time of any subsequent development, the Owner will be required to construct all sewer infrastructure in conformance with the most current adopted version of the City of Rathdrum's Master Sewer Plan Update, state law, and all City sewer policies and standards.
- 2.2.2** At such time as Owner connects to the Rathdrum Sanitary Sewer, Owner agrees to be responsible for all required fees and charges, including all connection and/or capitalization charges generally applicable at the time service is requested. In addition, the cost for development of all on-site and off-site infrastructure is the responsibility of the Owner.
- 2.2.3** The City does not warrant that sanitary sewer capacity will be available at the time Owner requests connection to the specified public systems. The City represents that it owns, operates and maintains a sanitary sewer collection system, which sewer system components and mains have, at the present time, sufficient capacity to accommodate the anticipated sanitary sewer needs of the Property., Such current condition is not warranted to remain in perpetuity. Further, treatment for wastewater from Rathdrum is

provided pursuant to contract with the City of Post Falls, and Rathdrum cannot provide assurance that the Post Falls treatment facility will always have available capacity for development. IN the event that capacity for wastewater demand is in limited supply for Rathdrum users, the City agrees to use its best efforts to work with the Owner and the City of Post Falls to make treatment capacity available without adversely affecting existing system users. Owner agrees it shall be solely responsible for carrying out any system to connect proposed development to the existing City system in the size and location reasonable required by the City.

- 2.2.4** All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer or Public Works Director with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of sanitary sewer mains. The City shall be notified at least twenty-four (24) hours before testing.

**3.0 *Construct to City Standards:***

Owner agrees that all improvements required by this Agreement or by City codes shall be built to City standards or to the standards of any public agency providing service to the development, adhering to all City policies and procedures; including, but not limited to the sanitary sewer improvements, water lines, fire hydrants, flood works, stormwater management, curbs, sidewalks, pathways and streets. Such policies include extending the public utility lines in a manner acceptable to the City and the serving entity to make service available to adjoining lands and to maintain continuity of municipal systems at minimal public cost.

**4.0 *Applicable Standards:***

The Owner agrees that all laws, standards, policies and procedures regarding public improvement construction that the Owner is required to comply with or otherwise meet pursuant to this Agreement or City codes shall be those in effect when construction is commenced. If Owner fails to comply with applicable laws in the course of constructing improvements, public or otherwise, on the lands subject to this Agreement, Owner consents to the issuance of stop work orders, suspension of issuance of building permits or denial of certificates of occupancy until such compliance is attained.

**5.0 *As-Built Drawings:***

Accurate as-built drawings shall be provided to the City within thirty (30) days of the date of substantial completion of construction of any public improvements. If as-builts are not provided as required by this agreement, City is authorized to suspend further issuance of building permits or site approvals upon the Described Lands or to discontinue utility service. In no event shall City accept public improvements for maintenance or allow occupancy of constructed improvements upon the Described Lands until suitable "as-

builds” are provided and until planned improvements have complied with inspection requirements and have been accepted for public maintenance or approved for private use. The use of sureties may be allowed when in the public interest and consistent with City Code requirements.

## **6.0 Considerations:**

Owner agrees to provide specific consideration to the City in the amounts and at the times specified herein. The considerations specified are deemed by the parties to be a reasonable consideration for City benefits to the Owner’s use or development of its lands annexed hereby, including, but not limited to: public safety, street services, community and traffic planning, fire protection and public utilities. The considerations are detailed in Sections 6.1 - 6.3.

- 6.1.** Upon the proper execution and recordation of this Agreement, the City will prepare for passage an annexation ordinance annexing the Described Lands. The parties agree that until the date of publication of the annexation ordinance, no final annexation of Owner’s property shall occur.
- 6.2** The right-of-way that is required as consideration of annexation is the minimum rights-of-way to be dedicated. Nothing herein is intended to over-ride or substitute for any city code or transportation plan requirements in effect at the time of development of the property as provided in Section 5.0 above.
- 6.3** Owner agrees to comply with Northern Lakes Fire Protection District requirements at the time of development.

## **7.0 Annexation:**

Upon proper execution and recordation of this Agreement, and upon performance of the prerequisite steps called for herein, the City will, to the extent lawfully permitted, adopt and thereafter publish an ordinance annexing the Described Lands.

## **8.0 No Development of Annexed Lands Prior to Completion of a Development Agreement:**

Owner has requested, and the City has approved, Residential Medium Density (R-2S), and Public (P) zoning on the Described Lands. Rathdrum City Code 11-10-3 requires that a Development Agreement between the Owner and City be entered prior to development. As such, the Owner specifically agrees not to seek any development approval from the City including, but not limited to, applications for building permits, site development or subdivision, before entering into such an Agreement. The Owner further agrees that the City may withhold any and all development approvals until such time as the required Development Agreement is executed by both parties and hereby waives any and all claims it may have against the City for withholding development approvals as contemplated by this Section 8.0. The parties agree that the Development Agreement must include, at a minimum, the provisions contained herein described in Sections 8.1 through 8.5.

- 8.1** Dedication of City standard rights-of-way and easements along Meyer Road and any other rights-of-ways necessary for the development of the Described Lands and as determined necessary by the City to allow for construction and maintenance of

roadways, sidewalks/paths, utilities, drainage swales, and other necessary infrastructure to City standards.

- 8.2** Provisions for the construction or implementation of surcharges and other financing methods necessary to construct and/or upgrade the necessary water, sewer and transportation infrastructure to provide service to the Described Lands. The parties generally agree that the Owner, at the Owner's sole cost and expense, shall be responsible for the necessary design and construction directly.
- 8.3** Provisions for municipal land donation as required by Rathdrum City Code 12-5 to serve the public interest, convenience, health, welfare and safety. Where a fee is preferred by the Owner to be paid in lieu of land donation, the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required to be donated in compliance with City Code. The land and/or fees received shall be without restriction or limitation of any kind.
- 8.4** A conceptual site plan depicting the disposition of uses, infrastructure, and proposed project phasing on the Described Lands.
- 8.5** Provisions for the dedication and/or utilization of at least 10 acres of property within the Described Lands for Public use, as determined by the City and defined within the Development Agreement.

**9.0** ***Covenant to Run with the Land:***

The covenants herein to be performed by Owner shall be binding upon Owner and Owner's heirs, assigns, and successors in interest, and shall be deemed to be covenants running with the land.

**10.0** ***Severability:***

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and be interpreted to effectuate the purposes of the entire Agreement to the greatest extent possible.

**11.0** ***Merger and Amendment:***

All promises and prior negotiations of the parties merge into this Agreement. The parties agree that this Agreement shall only be amended in writing and signed by both parties. The parties agree that this Agreement shall not be amended by a change in law. The parties agree that Agreement is not intended to replace any other requirement of City Code and that its execution shall not constitute a waiver of requirements established by City ordinance or other applicable provisions of law.

**12.0** ***Enforcement - Attorney's Fees:***

Should either party require the services of legal counsel to enforce compliance with the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and related costs of enforcement.

IN WITNESS WHEREOF, the City of Rathdrum has caused this Agreement to be executed by its Mayor and City Clerk, and the Owner has executed this Agreement to be effective the day and year first above written.

CITY OF RATHDRUM

\_\_\_\_\_  
Vic Holmes, Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Sherri Halligan, City Clerk

STATE OF IDAHO            )  
  ) ss.  
County of Kootenai        )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public, personally appeared Vic Holmes and Sherri Halligan known to me to be the Mayor and City Clerk, respectively, of the City of Rathdrum that executed the foregoing instrument and acknowledged to me that said City of Rathdrum executed the same.

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



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF RATHDRUM, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR ANNEXATION OF ONE PARCEL OF REAL PROPERTY TOTALING APPROXIMATELY 9.75 ACRES; PROVIDING ANNEXATION OF ADJACENT RIGHTS OF WAY TOTALING APPROXIMATELY 1.4 ACRES; PROVIDING ZONING OF THE PROPERTY SO ANNEXED AS RESIDENTIAL R-2; PROVIDING FOR AMENDMENT TO THE OFFICIAL ZONING MAP; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE HEREOF.

WHEREAS, the owner of the real property referenced in Section 1 has petitioned the City Council of the City of Rathdrum for annexation of said property and the subsequent zoning of said property as Residential R-2; and

WHEREAS, public hearings were held before both the Rathdrum Planning & Zoning Commission on April 15, 2020 and the Rathdrum City Council on May 13, 2020 in accordance with law, and with testimony taken, findings of fact and conclusions of law reached; and

WHEREAS, the City Council, based upon the recommendation of the Planning and Zoning Commission and upon its own findings, determined that said annexation is provided for under existing law in that the land in question adjoins the corporate limits, that the proposed zoning is suitable and compatible with surrounding land uses and that said land uses would fit in with the general development of the City and would be in the best interest of the citizens of the City of Rathdrum:

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF RATHDRUM, KOOTENAI COUNTY, IDAHO, AS FOLLOWS:

SECTION 1: That the following described property generally located west of N Meyer Road, south of W Christine Street and north of W Flagstaff Street, which are contiguous and adjacent to the Rathdrum city limits, are hereby annexed into City of Rathdrum:

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 31, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 31 BEARS N01° 10' 15"E A DISTANCE OF 2649.21 FEET; AND THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

THENCE N01° 10' 15"E ALONG SAID SECTION LINE A DISTANCE OF 330.00 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE N88° 57' 17"W ALONG THE NORTH LINE OF THE PLAT OF COPPER VALLEY ESTATES AS RECORDED IN BOOK G OF PLATS, PAGE 456 A DISTANCE OF 1319.51 FEET TO THE NORTHWEST CORNER OF SAID PLAT, SAID POINT MARKED BY A 5/8" REBAR WITH NO CAP;

THENCE N01° 11' 20"E ALONG THE EAST LINE OF LOT 2, BLOCK 11 OF THE FINAL PLAT OF TIMBER LANDING ESTATES 2ND ADDITION AS RECORDED IN BOOK L OF PLATS, PAGES 305-305C A DISTANCE OF 331.54 FEET TO THE SOUTHWEST CORNER OF LOT 2, BLOCK 1 OF SAID FINAL PLAT OF PARK ROSE RANCH AS RECORDED IN BOOK J OF PLATS, PAGES 406-406A, SAID POINT MARKED BY A 5/8" REBAR WITH A YELLOW PLASTIC CAP MARKED "TATE ENG PLS 4565";

THENCE S88° 59' 03"E ALONG THE SOUTH LINE OF BLOCK 1 OF SAID FINAL PLAT OF PARK ROSE RANCH A DISTANCE OF 1294.41 FEET TO THE SOUTHWEST CORNER OF THE EAST 25 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE N01° 10' 15"E A DISTANCE OF 662.24 FEET PARALLEL TO AND 25 FEET WEST OF THE EAST LINE OF SAID SECTION 31 TO THE NORTHWEST CORNER OF THE EAST 25 FEET OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 31;

THENCE S89° 00' 33"E A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32;

THENCE S01°10'15"W A DISTANCE OF 1324.54 FEET ALONG THE EAST LINE OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32.

THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.

Pursuant to Idaho Code Sections 50-223 and 63-215, a legal description of the City's new municipal boundaries is also attached hereto as Exhibit A, along with a map thereof as Exhibit B.

SECTION 2: That the annexed property be zoned as R-2S.

SECTION 3: That the Rathdrum official zoning map shall be amended to depict the annexed lands described herein to be designated as R-2S zoning. All prior zoning designations for the described and depicted lands shall be deemed superseded by this ordinance. The administrative

staff of the City of Rathdrum shall take all steps necessary to memorialize the provisions of this ordinance.

SECTION 4: This ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

SECTION 5: This ordinance shall be effective upon passage and publication as provided by law.

Enacted by the City Council as an Ordinance of the City of Rathdrum on the \_\_\_\_ day of May, 2020.

APPROVED by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

Vic Holmes, Mayor

ATTEST:

---

Sherri Halligan, City Clerk

STATE OF IDAHO )

: ss.

County of Kootenai )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public, personally appeared Vic Holmes and Sherri Halligan, known to me to be the Mayor and City Clerk of the City of Rathdrum, respectively, that they executed the foregoing instrument and acknowledged to me that they executed the same for and on behalf of the City of Rathdrum.

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

\_\_\_\_\_  
Notary Public for the State of Idaho

Residing at: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

## EXHIBIT A

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 31, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 31 BEARS N01° 10' 15"E A DISTANCE OF 2649.21 FEET; AND THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

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THENCE S01°10'15"W A DISTANCE OF 1324.54 FEET ALONG THE EAST LINE OF THE WEST 25 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 32.

THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.



## ANNEXATION AGREEMENT

### Timber Glade 2020 Annexation

THIS AGREEMENT is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **CITY OF RATHDRUM**, a municipal corporation organized pursuant to the laws of the State of Idaho, hereinafter termed the "City," 8047 W. Main Street, Rathdrum, Idaho 83858, and **Wild Horse Investments, LLC**, a registered Idaho Limited Liability Company, the address of whom is 14899 W. Stub Avenue, Rathdrum, ID 83835, hereinafter collectively referred to as the "Owner."

WHEREAS, the Owner owns property which Owner has consented to annexation into the corporate limits of the City of Rathdrum. Said property consists of approximately 11.15 acres and is more particularly described as follows:

THAT PORTION OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 31 AND THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 52 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SAID SECTION 31, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 31 BEARS N01° 10' 15"E A DISTANCE OF 2649.21 FEET; AND THE TRUE POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PROPERTY:

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THENCE N88°49'45"W A DISTANCE OF 25 FEET TO THE EAST QUARTER CORNER OF SAID SECTION 31 AND THE TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS DESCRIPTION,

CONTAINING 11.15 ACRES, MORE OR LESS.

WHEREAS, the Mayor and City Council of the City of Rathdrum have determined it to be in the best interests of the City to annex the Described Lands, subject to the Owner performing the covenants and conditions hereafter set forth;

NOW THEREFORE, IN CONSIDERATION of the covenants and conditions set forth herein, the parties agree as follows:

**1.0 Purpose:**

Owner(s) enter into this Agreement to obtain annexation of the Described Lands, while City seeks to obtain partial mitigation of the effects of annexation of the Described Lands. Owner acknowledges that city has no duty to annex the Described Lands and that the promises of Owner constitute an inducement for City to do so. The term "Owner" is deemed to include any successor in interest in the Described Lands.

For the Purposes of this Agreement, the term "development" shall include, but not be limited to subdivision and residential construction on any portion of the described lands.

**2.0 Municipal Utilities:**

**2.1 Water:** Owner agrees to use the City's public water supply system at such time as the Described Lands are developed. The Owner agrees to transfer the Owner's water rights attached to the Described Lands to the City upon development, to be defined within a Development Agreement for development of the Described Lands. Use of the existing on-site water irrigation system will be temporarily allowed for interim agricultural purposes. Transfer of the water rights does not eliminate the requirements for the Owner to construct the necessary infrastructure to serve the Described Lands.

**2.1.1** At the time of any subsequent development, the Owner will be required to construct all water infrastructure in conformance with the most current adopted version of the City of Rathdrum's Master Plan Update, state law, and all City policies and standards.

- 2.1.2** At such time as Owner connects to the Rathdrum Water System, Owner agrees to be responsible for all required fees and charges, including all connection and/or capitalization charges generally applicable at the time service is requested. In addition, the cost for development of all on-site and off-site infrastructure is the responsibility of the Owner.
- 2.1.3** All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer or Public Works Director with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of all water mains. The City shall be notified at least twenty-four (24) hours before testing.
- 2.1.4** The City represents that it owns, operates, and maintains a potable water supply and distribution system within its borders, which water system and mains have at the present time projected sufficient capacity to accommodate the anticipate potable water and fire protection needs of the Property. Such available capacity may, however, be consumed by supplying developments within the City that precede development of the land addressed by this Agreement. The City does not warrant that it will have sufficient water system capacity to supply the needs of Owner when Owner desires to proceed with development. The City does agree that it will endeavor, within the limits of its rights and resources, to add capacity and supply Owner's development if capacity is deficient at the time Owner seeds to develop.
- 2.2 Sewer:** Owner agrees to use City of Rathdrum Sanitary Sewer system to serve future development of the Described Lands subject to this Agreement.
- 2.2.1** At the time of any subsequent development, the Owner will be required to construct all sewer infrastructure in conformance with the most current adopted version of the City of Rathdrum's Master Sewer Plan Update, state law, and all City sewer policies and standards.
- 2.2.2** At such time as Owner connects to the Rathdrum Sanitary Sewer, Owner agrees to be responsible for all required fees and charges, including all connection and/or capitalization charges generally applicable at the time service is requested. In addition, the cost for development of all on-site and off-site infrastructure is the responsibility of the Owner.
- 2.2.3** The City does not warrant that sanitary sewer capacity will be available at the time Owner requests connection to the specified public systems. The City represents that it owns, operates and maintains a sanitary sewer collection system, which sewer system components and mains have, at the present time, sufficient capacity to accommodate the anticipated sanitary sewer needs of the Property., Such current condition is not warranted to remain in perpetuity. Further, treatment for wastewater from Rathdrum is

provided pursuant to contract with the City of Post Falls, and Rathdrum cannot provide assurance that the Post Falls treatment facility will always have available capacity for development. IN the event that capacity for wastewater demand is in limited supply for Rathdrum users, the City agrees to use its best efforts to work with the Owner and the City of Post Falls to make treatment capacity available without adversely affecting existing system users. Owner agrees it shall be solely responsible for carrying out any system to connect proposed development to the existing City system in the size and location reasonable required by the City.

**2.2.4** All required public improvements associated with development of the Described Lands shall be inspected and tested during construction by Owner's engineer with all such costs of testing and inspection to be borne by the Owner. The Owner shall provide the City Engineer or Public Works Director with inspection field reports and test results accompanied by a certification that the improvements have been installed in compliance with applicable City requirements. A representative of the City shall be present at the pressure testing of sanitary sewer mains. The City shall be notified at least twenty-four (24) hours before testing.

### **3.0 *Construct to City Standards:***

Owner agrees that all improvements required by this Agreement or by City codes shall be built to City standards or to the standards of any public agency providing service to the development, adhering to all City policies and procedures; including, but not limited to the sanitary sewer improvements, water lines, fire hydrants, flood works, stormwater management, curbs, sidewalks, pathways and streets. Such policies include extending the public utility lines in a manner acceptable to the City and the serving entity to make service available to adjoining lands and to maintain continuity of municipal systems at minimal public cost.

### **4.0 *Applicable Standards:***

The Owner agrees that all laws, standards, policies and procedures regarding public improvement construction that the Owner is required to comply with or otherwise meet pursuant to this Agreement or City codes shall be those in effect when construction is commenced. If Owner fails to comply with applicable laws in the course of constructing improvements, public or otherwise, on the lands subject to this Agreement, Owner consents to the issuance of stop work orders, suspension of issuance of building permits or denial of certificates of occupancy until such compliance is attained.

### **5.0 *As-Built Drawings:***

Accurate as-built drawings shall be provided to the City within thirty (30) days of the date of substantial completion of construction of any public improvements. If as-builts are not provided as required by this agreement, City is authorized to suspend further issuance of building permits or site approvals upon the Described Lands or to discontinue utility service. In no event shall City accept public improvements for maintenance or allow occupancy of constructed improvements upon the Described Lands until suitable "as-

builds” are provided and until planned improvements have complied with inspection requirements and have been accepted for public maintenance or approved for private use. The use of sureties may be allowed when in the public interest and consistent with City Code requirements.

**6.0 Considerations:**

Owner agrees to provide specific consideration to the City in the amounts and at the times specified herein. The considerations specified are deemed by the parties to be a reasonable consideration for City benefits to the Owner’s use or development of its lands annexed hereby, including, but not limited to: public safety, street services, community and traffic planning, fire protection and public utilities. The considerations are detailed in Sections 6.1 - 6.3.

- 6.1.** Upon the proper execution and recordation of this Agreement, the City will prepare for passage an annexation ordinance annexing the Described Lands. The parties agree that until the date of publication of the annexation ordinance, no final annexation of Owner’s property shall occur.
- 6.2** The right-of-way that is required as consideration of annexation is the minimum rights-of-way to be dedicated. Nothing herein is intended to over-ride or substitute for any city code or transportation plan requirements in effect at the time of development of the property as provided in Section 5.0 above.
- 6.3** Owner agrees to comply with Northern Lakes Fire Protection District requirements at the time of development.

**7.0 Annexation:**

Upon proper execution and recordation of this Agreement, and upon performance of the prerequisite steps called for herein, the City will, to the extent lawfully permitted, adopt and thereafter publish an ordinance annexing the Described Lands.

**8.0 No Development of Annexed Lands Prior to Completion of a Development Agreement:**

Owner has requested, and the City has approved, Residential Medium Density (R-2S), and Public (P) zoning on the Described Lands. Rathdrum City Code 11-10-3 requires that a Development Agreement between the Owner and City be entered prior to development. As such, the Owner specifically agrees not to seek any development approval from the City including, but not limited to, applications for building permits, site development or subdivision, before entering into such an Agreement. The Owner further agrees that the City may withhold any and all development approvals until such time as the required Development Agreement is executed by both parties and hereby waives any and all claims it may have against the City for withholding development approvals as contemplated by this Section 8.0. The parties agree that the Development Agreement must include, at a minimum, the provisions contained herein described in Sections 8.1 through 8.5.

- 8.1** Dedication of City standard rights-of-way and easements along Meyer Road and any other rights-of-ways necessary for the development of the Described Lands and as determined necessary by the City to allow for construction and maintenance of

roadways, sidewalks/paths, utilities, drainage swales, and other necessary infrastructure to City standards.

- 8.2** Provisions for the construction or implementation of surcharges and other financing methods necessary to construct and/or upgrade the necessary water, sewer and transportation infrastructure to provide service to the Described Lands. The parties generally agree that the Owner, at the Owner's sole cost and expense, shall be responsible for the necessary design and construction directly.
- 8.3** Provisions for municipal land donation as required by Rathdrum City Code 12-5 to serve the public interest, convenience, health, welfare and safety. Where a fee is preferred by the Owner to be paid in lieu of land donation, the amount of such fee shall be based upon the fair market value of the amount of land which would otherwise be required to be donated in compliance with City Code. The land and/or fees received shall be without restriction or limitation of any kind.
- 8.4** A conceptual site plan depicting the disposition of uses, infrastructure, and proposed project phasing on the Described Lands.
- 8.5** Provisions for the dedication and/or utilization of at least 10 acres of property within the Described Lands for Public use, as determined by the City and defined within the Development Agreement.

**9.0** ***Covenant to Run with the Land:***

The covenants herein to be performed by Owner shall be binding upon Owner and Owner's heirs, assigns, and successors in interest, and shall be deemed to be covenants running with the land.

**10.0** ***Severability:***

Should any provision of this Agreement be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and be interpreted to effectuate the purposes of the entire Agreement to the greatest extent possible.

**11.0** ***Merger and Amendment:***

All promises and prior negotiations of the parties merge into this Agreement. The parties agree that this Agreement shall only be amended in writing and signed by both parties. The parties agree that this Agreement shall not be amended by a change in law. The parties agree that Agreement is not intended to replace any other requirement of City Code and that its execution shall not constitute a waiver of requirements established by City ordinance or other applicable provisions of law.

**12.0** ***Enforcement - Attorney's Fees:***

Should either party require the services of legal counsel to enforce compliance with the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and related costs of enforcement.

IN WITNESS WHEREOF, the City of Rathdrum has caused this Agreement to be executed by its Mayor and City Clerk, and the Owner has executed this Agreement to be effective the day and year first above written.

CITY OF RATHDRUM

\_\_\_\_\_  
Vic Holmes, Mayor

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Sherri Halligan, City Clerk

STATE OF IDAHO            )  
  ) ss.  
County of Kootenai        )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public, personally appeared Vic Holmes and Sherri Halligan known to me to be the Mayor and City Clerk, respectively, of the City of Rathdrum that executed the foregoing instrument and acknowledged to me that said City of Rathdrum executed the same.

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



**RIGHT OF WAY USE AGREEMENT  
INTERMAX NETWORKS**

**IT IS HEREBY AGREED BY AND BETWEEN THE CITY OF RATHDRUM 8047 W. Main Street, Rathdrum, ID 83858 and INTERMAX NETWORKS, 7400 N. Mineral Drive, Suite 300, Coeur d'Alene, ID 83815** that use of the City's rights-of-way is hereby granted to Intermax Networks, to operate and maintain a Telecommunications System in the City of Rathdrum, Idaho, upon the following express terms and conditions:

**SECTION 1 - DEFINITIONS**

**1.1 (A) Captions.** Throughout this Right-of-Way Use Agreement, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Right-of-Way Use Agreement. The captions shall not affect the meaning and interpretation of this Right-of-Way Use Agreement.

**1.1 (B) Definitions.** For the purposes of this Right-of-Way Use Agreement the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Where a term in this Right-of-Way Use Agreement is not defined in this Section and there exists a definition for the term in the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996) (the "Telecommunications Act"), the Telecommunications Act definition shall apply. Other terms in this Right-of-Way Use Agreement that are not defined in this Section shall be given their common or ordinary meaning.

**1.2 "City"** shall mean City of Rathdrum, Idaho, and all the incorporated territory within as of the effective date of this Right-of-Way Use Agreement and any other areas later added thereto by annexation or other means.

**1.3 "City Council"** shall mean the City Council of the City of Rathdrum, Idaho.

**1.4 "Customer"** means any person(s) who legally receives any one or more of the services provided by INTERMAX NETWORKS utilizing the Telecommunications System.

**1.5 "Days"** shall mean calendar days.

**1.6 "Facility(ies)"** means all wires, lines, cables, towers, antenna, conduits, equipment and supporting structures, and/or any other tangible component of INTERMAX NETWORKS's Telecommunications System, located in the City's rights-of-way, utilized by INTERMAX NETWORKS in the operation of activities authorized by this Right-of-Way Use Agreement. The abandonment by INTERMAX NETWORKS of any Facilities as defined herein shall not act to remove the same from this definition.

**1.7** "FCC" shall mean the Federal Communications Commission.

**1.8** "Right-of-Way Use Agreement" shall mean the right granted by this Right-of-Way Use Agreement and conditioned as set forth herein by which the City authorizes INTERMAX NETWORKS to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Telecommunications System in the City. The right-of-way granted herein shall be a non-exclusive right-of-way.

**1.9** "Right-of-Way Service Area" shall mean that area within the incorporated City limits in which INTERMAX NETWORKS shall extend its services.

**1.10** "Grantee" shall refer to, as incorporated or used herein, Intermax Networks.

**1.11** "Gross Operating Revenues" shall have a meaning consistent with any existing or future City Code. Gross Operating Revenues shall include any and all compensation in whatever form, from any source, directly earned by INTERMAX NETWORKS or any affiliate of INTERMAX NETWORKS or any other person who would constitute an operator of INTERMAX NETWORKS's Telecommunications System under applicable local, state and/or federal law, derived from the provision of Telecommunications Services originating or terminating in the City and/or charged to a circuit location in the City regardless of where the circuit is billed or paid, excepting telephone services originating and terminating within the City.

**1.12** "Network Telephone Service" means the provision of transmission services capable of providing voice and data networking, video conferencing, distance learning, and security or similar communication or transmission services for hire via a local network, channel or similar communication or transmission system. Network Telephone Service includes intrastate or interstate services and specifically excludes cable television or open video system service, broadcast services or other multi-channel video services.

**1.13** "Permittee" means any person who has been granted a permit by the assigned permitting authority.

**1.14** "Permitting Authority" means the head of the City division or department authorized to process and grant permits required to perform work in the City's rights-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to the Permitting Authority shall include the designee of the department, division or agency head.

**1.15** "Person" means any individual, sole proprietorship, corporation, partnership, association, joint venture or other form of organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

**1.16** "Penalties" means any and all monetary penalties provided for in this Right-of-Way Use Agreement.

**1.17** "Right-of-Way" or "Rights-of-Way" shall mean the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court,

sidewalk, parkway or driveway now or hereafter existing as such within all incorporated areas of the City.

**1.18 "Street" or "Streets"** shall mean the surface of and the space above and below the right-of-way of any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway or driveway now or hereafter existing as such within all incorporated areas of the City.

**1.19 "Telecommunications Services"** shall mean:

A. Services interconnecting interexchange carriers, competitive carriers, and/or wholesale telecommunications providers for the services described in Section 1.12;

B. Services connecting interexchange carriers and/or competitive carriers to telephone companies providing local exchange services for the services described in Section 1.12;

C. Services connecting interexchange carriers or competitive carriers to any entity, other than another interexchange carrier, competitive carriers, or telephone company providing local exchange services for the services described in Section 1.12;

D. Services interconnecting any entities, other than interexchange carriers, competitive carriers, or telephone companies providing local exchange services for the services described in Section 1.12;

E. Other telecommunications services as authorized by the Federal Communications Commission or the Idaho Public Utilities Commission; and

F. Telecommunications Services include intrastate and interstate services and specifically exclude cable television or open video system services, broadcast services or other multi-channel video services.

**1.20 "Telecommunications System"** means all wires, cables, ducts, conduits, vaults, poles, towers, antenna, and other necessary Facilities owned or used by INTERMAX NETWORKS for the purpose of providing Telecommunications Services and located in, under and above the City streets and/or rights-of-way, excluding ducts, conduits and vaults leased from another City user, franchisee, licensee or permittee.

**1.21 "IPUC"** shall mean the Idaho Public Utilities Commission.

**1.22 "Year", "Annual" or "Annually"** means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided for in this Right-of-Way Use Agreement.

## **SECTION 2 - RIGHT-OF-WAY USE AGREEMENT**

**2.1 Grant of Right-of-Way Use.** The City hereby grants to Intermax Networks, a non-exclusive right-of-way which authorizes INTERMAX NETWORKS, subject to the terms of this Right-of-Way Use Agreement, to construct a Telecommunications System and offer Telecommunications Services in, along, among, upon, across, above, over, under or in any matter connected with the rights-of-way located in the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any rights-of-way or extensions thereof and additions thereto, such poles, towers, antenna, wires, cables, conductors, ducts, conduits, vaults, utility access covers, pedestals, amplifiers, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the Telecommunications System. Said right-of-way use shall constitute both a right and an obligation to provide the services of a Telecommunications System as required by the provisions of this Agreement. No reference in this Right-of-Way Use Agreement to a “Right-of-Way” or “Street” shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of a Telecommunications System, and INTERMAX NETWORKS shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Right-of-Way Use Agreement.

**2.2 Right-of-Way Use Agreement Term.** The term of this Right-of-Way Use Agreement shall be ten (10) years from the effective date unless extended in accordance with the provisions in Sections 2.7 and 2.12 of this Right-of-Way Use Agreement or terminated sooner in accordance with this Right-of-Way Use Agreement. This provision does not affect the City's right to revoke this Right-of-Way Use Agreement for cause, because of a breach of any promise, condition or stipulation stated herein.

**2.3 Right-of-Way Use Agreement Non-Exclusive.** The use granted herein shall be non-exclusive. The City specifically reserves the right to grant, at any time, such additional rights-of-way for a Telecommunications System as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke or terminate any rights previously granted to INTERMAX NETWORKS. The grant of any additional right-of-way shall not of itself be deemed to constitute a modification, revocation or termination of rights previously granted to INTERMAX NETWORKS. Any right-of-way granted pursuant to this Right-of-Way Use Agreement shall confer and impose substantially similar rights and obligations. In establishing the rights and obligations pursuant to a right-of-way, consideration shall be given to the services to be provided, the area to be served, the commitments made by the applicant to the City, the regulatory authority of the City and the investment proposed by such applicant. In no event will the City impose discriminatory rights or obligations on any use applicant.

#### **2.4 Authority Granted.**

A. Subject to local, state and federal law, this Right-of-Way Use Agreement grants the authority, right and privilege to INTERMAX NETWORKS to operate and maintain a Telecommunications System including the lines, equipment, conduits, towers, antenna and other facilities necessary for the provision of Network Telephone Service, as defined in Section 1.12 of this Right-of-Way Use Agreement and other Telecommunications Services as defined herein, in, upon, along, above, over and under the streets and rights-of-way in the City.

B. INTERMAX NETWORKS's right to operate and maintain its Telecommunications System is subject to the terms, conditions and requirements of the Right-of-Way Use Agreement Agreement, this Right-of-Way Use Agreement and the City Charter and INTERMAX NETWORKS's right to construct, erect, install or modify its Telecommunications System is specifically subject to the requirement that INTERMAX NETWORKS obtain permits as set forth in this Right-of-Way Use Agreement.

C. INTERMAX NETWORKS expressly acknowledges and agrees, by acceptance of this Right-of-Way Use Agreement, that its rights under this Right-of-Way Use Agreement are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety, health and welfare of the public and INTERMAX NETWORKS agrees to comply with all such applicable general laws and ordinances enacted by the City pursuant to such police power. The City, by the granting of this Right-of-Way Use Agreement, does not render or to any extent lose, waive, impair or lessen the lawful powers and rights now or hereafter vested in the City to regulate the use of its rights-of-way and tax, regulate or license the use thereof, and INTERMAX NETWORKS, by its acceptance of this Right-of-Way Use Agreement, acknowledges and agrees that all lawful powers and rights, whether regulatory or otherwise, as are or may be from time to time vested in or reserved to the City, shall be in full force and effect and INTERMAX NETWORKS shall be subject to the exercise thereof by the City at any time.

D. INTERMAX NETWORKS expressly acknowledges and agrees, by acceptance of this Right-of-Way Use Agreement, that lines, equipment, conduits and other facilities and appurtenance in the City rights-of-way which are subsequently acquired by INTERMAX NETWORKS and which, if acquired prior to this original right-of-way grant, would have been subject to this Right-of-Way Use Agreement and the permitting authority related thereto, shall be subject to the provisions of this Right-of-Way Use Agreement and all permits related thereto.

E. In return for promises made and subject to the stipulations and conditions stated herein, the City grants to INTERMAX NETWORKS permission to use the City's rights-of-way to provide Telecommunications Services to persons within the Right-of-Way Use Agreement Service Area. To the extent of the City's interests, permission is similarly granted to INTERMAX NETWORKS to use areas outside the City's rights-of-way, which are reserved by regulation, practice or dedication for public telephone utilities, but in such areas, INTERMAX NETWORKS's use is also subject to conditions now or hereafter recognized by the City as generally applicable to telecommunications or underground conduit utilities.

## **2.5 Limits on Permission.**

A. As used in Section 2.4, E, "Telecommunications Services" means such services as those defined in Section 1.19 of this Right-of-Way Use Agreement provided by INTERMAX NETWORKS to persons within the City. Permission is not granted to use the City rights-of-way for any other purpose, including but not limited to providing cable television service as defined in 47 USC § 522 or distribution of multi-channel video programming or any other video

programming. INTERMAX NETWORKS stipulates that this Right-of-Way Use Agreement extends no such rights or privileges.

B. Permission does not extend to areas outside those listed in Section 2.4, E of this Right-of-Way Use Agreement, or otherwise to any area outside the authority of the City to extend right-of-way use permission, such as buildings or private areas not reserved for utilities. INTERMAX NETWORKS is solely responsible to make its own arrangements for any access to such places.

C. This Right-of-Way Use Agreement does not extend permission to municipal buildings or other municipally owned or controlled structures. For such locations, INTERMAX NETWORKS shall make specific arrangements directly with the municipal department or division controlling such building or other structure.

D. Permission granted by this Right-of-Way Use Agreement is non-exclusive. INTERMAX NETWORKS stipulates the City may grant similar permission to others.

E. INTERMAX NETWORKS shall not permit installations by others in the Right-of-Way Use Agreement Service Area without assuring they have the necessary skills, certifications, insurance, bonds, and permits. INTERMAX NETWORKS is responsible for determining if the requirements of the City have been met. INTERMAX NETWORKS remains responsible for all third party installation, maintenance, and repair of the Telecommunications System for compliance with this Right-of-Way Use Agreement.

F. No privilege or exemption is granted or conferred by this Right-of-Way Use Agreement except as may be specifically prescribed.

G. Any privilege claimed under this Right-of-Way Use Agreement in any street or right-of-way shall be subordinate to any prior lawful occupancy or any subsequent exercise of City police power. The grant of this Right-of-Way Use Agreement shall not impart to INTERMAX NETWORKS any fee title property rights in or on any public or private property to which INTERMAX NETWORKS does not otherwise have title.

H. Limited Rights - This Right-of-Way Use Agreement is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide INTERMAX NETWORKS with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Right-of-Way Use Agreement does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Rights-of-Way covered by this Right-of-Way Use Agreement, including without limitation the right to perform work on its roadways, streets or appurtenant drainage facilities, water and waste water facilities and including constructing, altering, paving, widening, grading, or excavating such streets.

**2.6 Right-of-Way Use Agreement Service Area.** The Right-of-Way Use Agreement Service Area shall be that area within the present or future city limits of the City of Rathdrum, Idaho.

**2.7 Periodic Public Review of Right-of-Way Use Agreement.**

A. The City shall, at five-year intervals, conduct a comprehensive, public review of this Right-of-Way Use Agreement. The first review shall begin upon the fifth anniversary of the effective date of this Right-of-Way Use Agreement and occur every five (5) years thereafter. One purpose of such reviews shall be to ensure that this Right-of-Way Use Agreement continues to effectively serve the public in light of new developments in telecommunications law and regulation, telecommunications technology, local regulatory environment and community needs and interests. Another purpose of such reviews shall be to accurately and completely evaluate compliance by INTERMAX NETWORKS with this Right-of-Way Use Agreement and to identify any violations by INTERMAX NETWORKS of any provision(s) of this Right-of-Way Use Agreement. Both the City and INTERMAX NETWORKS agree to make a full and good faith effort to participate in such reviews in a manner that accomplishes the goals stated.

B. During such reviews, the City may require INTERMAX NETWORKS to make available records, documents and other information necessary for the effective completion of such reviews and may inquire in particular whether INTERMAX NETWORKS is supplying services equivalent to those proposed by INTERMAX NETWORKS during the process leading to the granting of this Right-of-Way Use Agreement.

C. The periodic reviews described in this Section may be, but need not be, made coincident with reviews involved in the consideration of INTERMAX NETWORKS requests for Right-of-Way Use Agreement renewal, Right-of-Way Use Agreement extension or approval of transfer of ownership of the Telecommunications System. Nothing in this Section shall be construed to prohibit the City and INTERMAX NETWORKS from engaging in a continuous review of the performance of INTERMAX NETWORKS. The City may also, at any time, conduct a public hearing on any issue related to compliance by INTERMAX NETWORKS with this Right-of-Way Use Agreement or any permit related thereto.

D. After completion of each such review described herein, if the City is satisfied INTERMAX NETWORKS has substantially complied with this Right-of-Way Use Agreement during the previous five years and is satisfied the public interest will be served by extending the term of this Right-of-Way Use Agreement, it may, with the consent of INTERMAX NETWORKS, extend the term set forth in Section 2.2 of this Right-of-Way Use Agreement by one (1) additional year. In no event, however, shall the total term of this Right-of-Way Use Agreement, including any extensions, exceed twenty-five (25) years.

**2.8 Right-of-Way Use Agreement Renewal or New Right-of-Way Use Agreement.**

A. The City may establish appropriate requirements for new rights-of-way or right-of-way renewals consistent with federal, state, and local law.

B. Nothing in this Right-of-Way Use Agreement shall be construed to require renewal of this Right-of-Way Use Agreement.

**2.9 Renegotiation.** In the event that any provision of this Right-of-Way Use Agreement becomes invalid or unenforceable and the City or INTERMAX NETWORKS expressly finds that such provision constituted a consideration material to entering into this Right-of-Way Use Agreement, or in the event of significant change in the law regulating this Right-of-Way Use Agreement or change in municipal authority to act under the terms of this Right-of-Way Use Agreement, or in the event of significant change or advancement in technology governing INTERMAX NETWORKS's functions, the City and INTERMAX NETWORKS may mutually agree to renegotiate any or all of the terms of this Right-of-Way Use Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have one hundred twenty (120) days to conduct and complete the renegotiation. Nothing in this Right-of-Way Use Agreement shall be construed to require acceptance by either the City or INTERMAX NETWORKS of an offer to renegotiate.

**2.10 Revocation.**

A. In addition to any rights set out elsewhere in this Right-of-Way Use Agreement, the City reserves the right to declare a forfeiture or otherwise revoke this Right-of-Way Use Agreement and all rights and privileges pertaining thereto in the event that:

(1) The City determines INTERMAX NETWORKS is in violation of any material provision of this Right-of-Way Use Agreement and fails to correct the violation after written notice of the violation and proposed forfeiture and a reasonable opportunity thereafter to correct the violation as noted in Section 9.2 of this Right-of-Way Use Agreement; or

(2) INTERMAX NETWORKS is found by a court of competent jurisdiction to have engaged in any actual or attempted fraud or deceit upon the City, persons or customers; or

(3) INTERMAX NETWORKS becomes insolvent, unable or unwilling to pay its debts as they become due, or is adjudged a bankrupt; or

(4) INTERMAX NETWORKS fails, refuses, neglects or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding INTERMAX NETWORKS's construction, maintenance, and operation of its Telecommunications System.

B. For purposes of this Section, the following are material provisions of this Right-of-Way Use Agreement, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Right-of-Way Use Agreement:

(1) The invalidation, failure to pay or any suspension of INTERMAX NETWORKS's payment of any fees or taxes due the City under this Right-of-Way Use Agreement;

(2) Any failure by INTERMAX NETWORKS to submit timely reports regarding the calculation of any gross revenue-based fees or taxes due the City under this Right-of-Way Use Agreement;

(3) Any failure by INTERMAX NETWORKS to maintain the liability insurance required under this Right-of-Way Use Agreement;

(4) Any failure by INTERMAX NETWORKS to maintain and provide the City a copy of a Performance Bond as required under this Right-of-Way Use Agreement;

(5) Any failure by INTERMAX NETWORKS to otherwise fully comply with the requirements of this Right-of-Way Use Agreement.

C. Upon occurrence of one or more of the events set out above, following sixty (60) days written notice to INTERMAX NETWORKS of the occurrence and the proposed forfeiture and an opportunity for INTERMAX NETWORKS to be heard, the City may, by ordinance or other appropriate document, declare a forfeiture. In a hearing of INTERMAX NETWORKS, INTERMAX NETWORKS shall be afforded due process rights as if the hearing were a contested case hearing subject to Idaho law, including the right to cross-examine witnesses and to require that all testimony be on the record. Findings from the hearing shall be written and shall stipulate the reasons for the City's decision. If forfeiture is lawfully declared, all rights of INTERMAX NETWORKS under this Right-of-Way Use Agreement shall immediately be divested without a further act upon the part of the City.

**2.11 Receivership.** The City shall have the right to declare a forfeiture or otherwise revoke this Right-of-Way Use Agreement one hundred eighty (180) days after the appointment of a receiver, or trustee, to take over and conduct the business of INTERMAX NETWORKS, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have vacated prior to the expiration of said one hundred eighty (180) days, or unless:

(1) Within one hundred eighty (180) days after his/her election or appointment, such receiver or trustee shall have been approved by the City and shall fully have complied with all the provisions of this Right-of-Way Use Agreement and remedied all defaults thereunder; and

(2) Such receiver or trustee, within said one hundred eighty (180) days, shall have executed an agreement, duly approved by the City as well as the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Right-of-Way Use Agreement.

**2.12 Expiration.** Upon expiration of this Right-of-Way Use Agreement, the City shall have the right, at its own election, to:

- (1) Extend this Right-of-Way Use Agreement, as provided for herein, for up to a total of five (5) years, though nothing in this provision shall be construed to require such extension;
- (2) Renew this Right-of-Way Use Agreement, in accordance with applicable valid law;
- (3) Invite additional right-of-way applications or proposals;
- (4) Terminate this Right-of-Way Use Agreement without further action; and
- (5) Take such other action as the City deems appropriate.

**2.13 Non-Discrimination.** No person shall be discriminated against in the providing of the services and/or materials herein under and the INTERMAX NETWORKS shall not refuse to serve or hire any person because of such person's race, creed, sex, color, or national origin. Also, INTERMAX NETWORKS will in no manner discriminate against any person because of such person's race, creed, sex, color, or national origin in the performance of this Right-of-Way Use Agreement. Any such discrimination shall be deemed a violation of this Right-of-Way Use Agreement and shall render this Right-of-Way Use Agreement subject to forfeiture.

**2.14 Other Codes and Ordinances.** Nothing in this Right-of-Way Use Agreement shall be deemed to waive the requirements of the other lawful codes and ordinances of the City regarding permits, fees to be paid or manner of construction.

**2.15 Survival of Terms.** Sections 4.9, 6.3, 7 and 10 of this Right-of-Way Use Agreement shall continue in effect as to INTERMAX NETWORKS notwithstanding any expiration, forfeiture or revocation of this Right-of-Way Use Agreement.

### **SECTION 3 - ENFORCEMENT AND ADMINISTRATION BY THE CITY**

**3.1 City Jurisdiction and Supervision.** The City, through its Administrator or designee, shall have continuing regulatory jurisdiction and supervision over the operation and enforcement of this Right-of-Way Use Agreement and may from time to time adopt such reasonable rules and regulations as it may deem necessary for the conduct of the business contemplated herein. All questions of application, interpretation, conflict or ambiguity arising out of or in connection with this Right-of-Way Use Agreement are to be determined by the City Administrator or designee, except only where otherwise specifically stated, or in the event that a different person or body may be designated by the City through written notice to INTERMAX NETWORKS.

**3.2 Grantee to Have No Recourse.** Subject to state and federal law, INTERMAX NETWORKS shall have no recourse other than non-monetary declaratory or injunctive relief against the City and shall be awarded no monetary recovery whatsoever for any incidental or consequential damages, including but not limited to lost profits, arising out of any provision or requirement of this Right-of-Way Use Agreement, nor from the City's regulation under this Right-of-Way Use Agreement, nor from the City's exercise of its authority to grant additional rights-of-way.

**3.3 Acceptance of Power and Authority of City.** INTERMAX NETWORKS expressly acknowledges by acceptance of this Right-of-Way Use Agreement that:

(1) It has relied upon its own investigation and understanding of the power and authority of the City to grant and enforce this Right-of-Way Use Agreement and that it has no objection to the exercise of the City's power and authority therein;

(2) It has not been induced to enter into this Right-of-Way Use Agreement arrangement by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of this Right-of-Way Use Agreement that is not specifically included herein;

(3) It has carefully read the terms and conditions contained herein and INTERMAX NETWORKS is willing to and does accept all the obligations of such terms and conditions to the extent not inconsistent with state or federal law and further agrees that it will not set up as against the City any claim that any provision of this Right-of-Way Use Agreement is unreasonable, arbitrary, invalid or void subject to its rights herein; and

(4) The matters contained in INTERMAX NETWORKS's application and all subsequent applications or proposals for renewals of this Right-of-Way Use Agreement, and as stated in any and all other presentations to the City, except as inconsistent with law, regulations or local ordinance, are incorporated into this Right-of-Way Use Agreement as though set out verbatim.

**3.4 Acts Discretionary, Reservation of Authority.** All City acts undertaken pursuant to this Right-of-Way Use Agreement shall be deemed discretionary, guided by the provisions of this Right-of-Way Use Agreement and considerations of the public health, safety, aesthetics and convenience. INTERMAX NETWORKS stipulates and agrees that this Right-of-Way Use Agreement is subject to the City Code of the City of Rathdrum, as it now exists or is subsequently amended. INTERMAX NETWORKS understands the Code's provisions are incorporated herein, where applicable. INTERMAX NETWORKS agrees that the City reserves all municipal powers now or hereafter granted by law, including without limitation, the power to tax and license, regulate activities of land use, protect the public health and safety and regulate and control use of the public right-of-way.

**3.5 Delegation of Authority to Regulate.** The City reserves the right to delegate its regulatory authority wholly or in part to the federal government, state government and/or to agents

of the City, including but not limited to an agency which may be formed to regulate several City rights-of-way.

#### **SECTION 4 - OPERATION IN STREETS AND RIGHTS-OF-WAY**

**4.1 Use of Streets.** INTERMAX NETWORKS may, subject to terms of this Right-of-Way Use Agreement, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the City streets and rights-of-way such lines, cables, conductors, ducts, conduits, vaults, utility access covers, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Telecommunications System within the City. All installation, construction, alteration and/or maintenance under this Right-of-Way Use Agreement of any and all Telecommunications System Facilities within City streets and rights-of-way incident to INTERMAX NETWORKS's provision of Telecommunications Services shall, regardless of who performs installation, construction, alteration and/or maintenance, be and remain the responsibility of INTERMAX NETWORKS.

**4.1.1 Location of Facilities.** INTERMAX NETWORKS shall be a member of the Kootenai County 1 Call Utility Council. Within forty-eight (48) hours after any City department, user, franchisee, licensee, permittee notifies INTERMAX NETWORKS of a proposed street excavation, INTERMAX NETWORKS shall, at INTERMAX NETWORKS's expense:

- (1) Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;
- (2) Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
- (3) Notify the excavator that INTERMAX NETWORKS does not have any underground Facilities in the vicinity of the proposed excavation.

#### **4.1.2 Rights-of-Way Occupancy.**

- (1) Nothing in this Right-of-Way Use Agreement shall give INTERMAX NETWORKS the right to attach its Cable System to structures or poles owned by the City without consent of the City.
- (2) INTERMAX NETWORKS shall:
  - (a) Locate and install all transmission lines, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;
  - (b) Keep and maintain all transmission lines, equipment and structures in a safe condition, and in good order and repair;

- (c) Employ professional care;
  - (d) Place any fixtures in any right-of-way in such manner as not to interfere with the usual travel of the right-of-way or cause unsafe conditions of any sort;
  - (e) Submit a traffic control plan to the City Engineer for approval and receive such approval at least 48 hours prior to commencing construction except in the case of emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and
  - (f) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.
- (3) INTERMAX NETWORKS shall not make street cuts or curb cuts unless absolutely necessary, and only after a permit has been obtained from the City under such conditions as the City shall in its sole discretion determine.
- (4) Before beginning any excavation or other construction activity on a right-of-way that crosses or abuts any private property, INTERMAX NETWORKS shall clearly mark with non-polluting water-soluble spray paint the excavation area. After such excavation or other construction activity, INTERMAX NETWORKS shall restore such property to not less than the City's standards.
- (5) INTERMAX NETWORKS shall locate, mark, and map any of its installed cable or Cable System for the City at no expense to the City. INTERMAX NETWORKS shall install underground warning tape at least twelve (12) inches above all fiber optic cable where such installation is done by means of open trenching. Where cable is placed by boring or plowing, all fiber optic cable will be accompanied by a metallic tracer wire and all coaxial trunk and feeder cable shall serve as its own tracer for locating purposes.

#### **4.2 Construction or Alteration.**

**4.2.1 Permits.** INTERMAX NETWORKS shall in all cases comply with all lawful City ordinances and regulations regarding the acquisition of permits and other such items as may be reasonably required in order to install, construct, alter and maintain the Telecommunications System. INTERMAX NETWORKS shall apply for and obtain all permits necessary for installation, construction, alteration and/or maintenance of any such Facilities, and for excavation and laying of any Telecommunications System Facilities within City streets and rights-of-way. INTERMAX NETWORKS will not be charged for any applicable fees due for any such permits.

#### **4.2.2 Schedule and Maps.**

A. Prior to beginning installation, construction, alteration or maintenance of the Telecommunications System, INTERMAX NETWORKS shall provide the City with an initial

work schedule for work to be conducted in City streets and rights-of-way and the estimated total cost of such work. INTERMAX NETWORKS shall, upon request, provide information to the City regarding its progress in completing or altering the Telecommunications System.

B. Upon completion of construction or alteration of the Telecommunications System, INTERMAX NETWORKS shall provide the City with a map showing the location of its installed Telecommunications System, as built. Such "as-built" maps shall be in a form acceptable to the City.

C. INTERMAX NETWORKS shall provide a map to the City's Engineering Department, or its successor, showing the location of INTERMAX NETWORKS's optical fibers in City streets and rights-of-way on a scale of 3500 feet per inch or in whatever standard scale the City adopts for general use:

- (1) One year after the effective date of this Right-of-Way Use Agreement; and
- (2) Annually thereafter.

#### **4.2.3 Good Engineering.**

A. INTERMAX NETWORKS promises all of its property and facilities shall be constructed, operated and maintained in good order and condition in accordance with good engineering practice. In connection with the civil works of INTERMAX NETWORKS's Telecommunications System, such as, but not limited to, trenching, paving, compaction and locations, INTERMAX NETWORKS promises to comply with the edition of the American Public Works Association Standard Specifications which is in current or future use by the City, together with the City's Supplemental Specifications thereto, all as now or hereafter amended.

B. INTERMAX NETWORKS promises that the Telecommunications System shall comply with the applicable federal, state and local laws, the National Electric Safety Code and the Idaho "Rules Governing the Use of National Electric Code," where applicable.

**4.2.4 Public Works Contractors.** INTERMAX NETWORKS covenants that all work performed under this Right-of-Way Use Agreement, whether by INTERMAX NETWORKS or its contractors, shall be performed by Idaho Licensed Public Works Contractors.

### **4.3 Facilities Placement.**

**4.3.1 General Standards.** The Telecommunications System shall be constructed and maintained in such manner as not to obstruct, hinder, damage or otherwise interfere with sewers, water pipes, other utility fixtures or any other property of the City, or any other pipes, wires, conduits or other facilities that may have been installed in City streets or rights-of-way by or under the City's authority. INTERMAX NETWORKS shall maintain a minimum underground horizontal separation of five (5) feet from City water facilities and ten (10) feet from above-ground City water facilities; PROVIDED, that for development in new areas, the City, together with INTERMAX NETWORKS and other utility purveyors or authorized users of City streets or rights-

of-way, will develop and follow the City's determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Right-of-Way Use Agreement.

**4.3.2 Limited Access.** INTERMAX NETWORKS must follow the City standards for the placement of facilities in City streets and rights-of-way, including City requirements for location of facilities in specific City streets and rights-of-way, and must in any event install facilities in a manner that minimizes interference with the use of City streets and rights-of-way by others, including others that may have or may install telecommunications facilities in City streets and rights-of-way. The City may require that INTERMAX NETWORKS install facilities at a particular time, at a specific place and/or in a particular manner as a condition of access to a particular City street or right-of-way and the City may exclude INTERMAX NETWORKS's access to a particular street or right-of-way in accordance with City requirements for placement of facilities.

**4.3.3 Consistency with Designated Use.** Notwithstanding the grant to use City streets and rights-of-way contained in this Right-of-Way Use Agreement, no street or right-of-way shall be used by INTERMAX NETWORKS if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such street or rights-of-way were created or dedicated or presently used under state and local laws.

**4.3.4 Non-Interference.** INTERMAX NETWORKS shall exert its best efforts to construct and maintain the Telecommunications System so as not to interfere with other uses of City streets or rights-of-way. INTERMAX NETWORKS shall, where possible in the case of aboveground lines, make use of existing poles and other facilities available to INTERMAX NETWORKS. INTERMAX NETWORKS shall individually notify all residents affected by any proposed installation, construction, alteration or maintenance of the Telecommunications System of such work where and when such notification is reasonably possible.

**4.3.5 Undergrounding.** The City finds that overhead lines and aboveground wire facilities and installations in the streets or rights-of-way and other right-of-way areas adversely impact upon the public use and enjoyment of property in the City, including an aesthetic impact. Therefore, INTERMAX NETWORKS shall place underground all of its transmission lines that are located or are to be located above or within City streets or rights-of-way in the following cases where:

- (1) All existing utilities are located underground;
- (2) Transmission or distribution facilities of the local exchange carrier and/or the electric utility are underground or hereafter placed underground;
- (3) Statute, ordinance, policy or other regulation of the City requires utilities to be placed underground;
- (4) INTERMAX NETWORKS is unable to obtain pole clearance;

(5) Underground easements are obtained from developers of new residential areas; or

(6) Utilities are overhead but residents prefer same to be located underground (such undergrounding to be provided at residents' expense).

INTERMAX NETWORKS hereby states it is familiar with and understands local procedures, custom and practice relating to the one-number locator service program. Consistent with any general municipal undergrounding policy or program now or hereafter developed, the City may require INTERMAX NETWORKS's participation in municipally imposed undergrounding or related requirements as a condition of INTERMAX NETWORKS's installation or continued maintenance of overhead facilities authorized under this Right-of-Way Use Agreement. INTERMAX NETWORKS hereby agrees to coordinate its underground installation and planning activities with the City's underground plan and policies.

**4.4 Coordination with Other Users.** INTERMAX NETWORKS shall coordinate its activities with other utilities and users of City streets and rights-of-way scrupulously to avoid unnecessary cutting, damage or disturbance of such streets and rights-of-way and shall conduct its planning, design, installation, construction, alteration and maintenance of the Telecommunications System at all times so as to maximize the life and usefulness of the paving and municipal infrastructure. In addition, the City may determine with respect to right-of-way uses, in the exercise of reasonable discretion, when and where reasonable accommodation shall be made by INTERMAX NETWORKS to the City for public needs or, where requested, other third party needs, how such accommodation should be made and a reasonable apportionment of any expenses of same; PROVIDED, that this Right-of-Way Use Agreement creates no third party beneficial interests or accommodation. Notwithstanding the foregoing, it remains the responsibility of INTERMAX NETWORKS to anticipate and avoid conflicts with other City streets or rights-of-way occupants or users, other utilities, franchisees or permittees. The City assumes no responsibility for such conflicts. Further, INTERMAX NETWORKS shall give appropriate notices to any other City streets or rights-of-way occupants or users, other utilities, franchisees, permittees, divisions of the City or other units of government owning or maintaining facilities which may be affected by INTERMAX NETWORKS's planning, design, installation, construction, alteration or maintenance of the Telecommunications System.

#### **4.5 Relocation.**

A. The City shall have the right during the term of this Right-of-Way Use Agreement, as it may be extended, renewed or otherwise altered in accordance with this Right-of-Way Use Agreement, to require INTERMAX NETWORKS to change the location of its Telecommunications System within City streets and rights-of-way when the public convenience and necessity requires such change. If the City or any government entity elects or requires a third party to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair, install, maintain or otherwise alter any cable, wire, towers, antenna, wire conduit, pipe, line, pole, wire holding structure, structure or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids,

INTERMAX NETWORKS shall, upon request, except as otherwise hereinafter provided, at no expense to the City, remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, utility access covers and any other facilities which it has installed.

B. If the City requires INTERMAX NETWORKS to remove or relocate its facilities located within City streets or rights-of-way, the City will make a reasonable effort to provide INTERMAX NETWORKS with an alternate location for its facilities within City streets or rights-of-way.

C. The City shall provide INTERMAX NETWORKS with the standard notice given under the circumstances to other users, franchisees, licensees or permittees.

D. If during the term of this Right-of-Way Use Agreement, as it may be extended, renewed or otherwise altered in accordance with this Right-of-Way Use Agreement, another entity which holds a right-of-way or any utility requests INTERMAX NETWORKS to remove or relocate its Telecommunications System Facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or the more efficient use of such facilities, or to "make ready" the requesting party's facilities for use by others, or because INTERMAX NETWORKS is using a facility which the requesting party has a right or duty to remove, INTERMAX NETWORKS shall do so. The parties involved may decide among themselves who is to bear the cost of removal or relocation; PROVIDED, that the City shall not be liable for any such cost(s).

E. Any person requesting INTERMAX NETWORKS to remove or relocate its facilities shall give INTERMAX NETWORKS no less than forty-five (45) days advance written notice advising INTERMAX NETWORKS of the date or dates removal or relocation is to be undertaken; PROVIDED, that no advance written notice shall be required in emergencies or in cases where public health and/or safety or property is endangered.

F. If INTERMAX NETWORKS fails, neglects or refuses to remove or relocate its facilities as directed by the City, or in emergencies or where public health and/or safety or property is endangered, the City may do such work or cause it to be done and the cost, including all direct, indirect and/or consequential costs and expenses incurred by the City due to INTERMAX NETWORKS's failure, neglect or refusal thereof shall be paid solely by INTERMAX NETWORKS. If INTERMAX NETWORKS fails, neglects or refuses to remove or relocate its facilities as directed by another user, franchisee or utility, that user, franchisee or utility may do such work or cause it to be done, and if INTERMAX NETWORKS would have been liable for the cost of performing such work, the cost, including all direct, indirect and/or consequential costs and expenses incurred by such user, franchisee or utility thereof to the party performing the work or having the work performed shall be paid solely by INTERMAX NETWORKS.

G. If INTERMAX NETWORKS causes any damage to private property or public property in the process of removing or relocating its facilities, INTERMAX NETWORKS shall pay the owner of the property for such damage.

H. INTERMAX NETWORKS does hereby promise to protect and save harmless the City, its officers, agents and employees from any customer or third party claims for service interruption or other losses in connection with any removal or relocation of INTERMAX NETWORKS's Telecommunications System Facilities.

**4.6 Movement of Buildings.** INTERMAX NETWORKS shall, upon request by any person holding a building permit, right-of-way or other approval issued by the City, temporarily remove, raise or lower its transmission or other wires appurtenant to the Telecommunications System to permit the movement of buildings. The expense for such removal, raising or lowering shall be paid by the person requesting the same and INTERMAX NETWORKS shall be authorized to require such payment in advance. The City shall require all building movers to provide not less than three (3) business day's notice to INTERMAX NETWORKS for such temporary wire changes.

**4.7 Tree Trimming.** INTERMAX NETWORKS, with twenty-four (24) hour notice to the property owner, shall have the authority to trim or cause to have trimmed trees upon and overhanging streets, alleys, sidewalks and rights-of-way so as to prevent the branches of such trees from coming in contact or otherwise interfering with the Telecommunications System; PROVIDED, that the cost for such trimming of trees shall be paid solely by INTERMAX NETWORKS.

**4.8 Restoration.**

A. Whenever INTERMAX NETWORKS damages or disturbs any area in or near City streets, rights-of-way, paved area or public improvement, INTERMAX NETWORKS shall, at its sole cost, expense and liability, restore such area in or near City streets, rights-of-way, paved area or public improvement to at least its prior condition, or the City standard, whichever is greater, to the satisfaction of the City.

B. Whenever any opening is made by INTERMAX NETWORKS in a hard surface pavement in any City street or right-of-way, INTERMAX NETWORKS shall refill, restore, patch and repave entirely all surfaces opened as determined necessary by the City in order to maintain and preserve the useful life thereof.

C. For pavement restorations, any patch or restoration shall be thereafter properly maintained in good condition and repair by INTERMAX NETWORKS until such time as the area is resurfaced or reconstructed.

D. The City hereby reserves the right, after providing reasonable notice to INTERMAX NETWORKS, to remove and/or repair any work done by INTERMAX NETWORKS which, in the determination of the City, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid solely by INTERMAX NETWORKS.

E. Should INTERMAX NETWORKS fail, neglect, refuse or delay in performing any obligation here or elsewhere stated, or where the City deems necessary to protect the public right-of-way or to avoid liability, risk or injury to the public or the City, the City may

proceed to perform or cause to have performed such obligation, including any remedial or preventative action deemed necessary, at INTERMAX NETWORKS's sole expense and liability, but no action or inaction by the City shall relieve INTERMAX NETWORKS of its obligation to hold the City harmless as set forth in Section 7.6 of this Right-of-Way Use Agreement. Prior to undertaking corrective effort, the City shall make a reasonable effort to notify INTERMAX NETWORKS, except no notice is needed if the City declares an emergency or determines a need for expedient action. This remedy is supplemental and not alternative to any other municipal right.

F. Whenever INTERMAX NETWORKS damages or disturbs any area in or near City streets, rights-of-way, paved area or public improvement, INTERMAX NETWORKS stipulates that the City may, without limitation:

(1) Require INTERMAX NETWORKS to repave an entire lane or greater affected area within any cut or disturbed location; and/or

(2) Require INTERMAX NETWORKS to common trench with any other underground installation in City streets or rights-of-way, with cost sharing to be negotiated between the parties involved, or in the absence of agreement, as directed by the City in a non-discriminatory manner.

G. All requirements of this Section pertaining to public property shall also apply to the restoration of private easements and other private property.

H. If INTERMAX NETWORKS causes any damage to private property in the process of restoring facilities, INTERMAX NETWORKS shall pay the owner of the property for such damage.

I. All of INTERMAX NETWORKS's work under this Section shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

J. INTERMAX NETWORKS shall perform all restoration work promptly.

#### **4.9 City Right to Require Removal of Property.**

A. At the expiration of the term for which this Right-of-Way Use Agreement is granted, providing no extension or renewal is granted by the City, or upon the forfeiture or revocation of this Right-of-Way Use Agreement, as provided for in this Right-of-Way Use Agreement, the City shall have the right to require INTERMAX NETWORKS to remove, at INTERMAX NETWORKS's sole expense, all or any part of the Telecommunications System from all City streets and rights-of-way within the Right-of-Way Use Agreement Service Area, where the abandoned Facilities interfere with reasonable uses of City streets and rights-of-way. If INTERMAX NETWORKS fails to do so, the City may perform the work and collect the cost thereof from INTERMAX NETWORKS. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of INTERMAX NETWORKS effective upon filing of the lien with the Kootenai County Recorder.

B. Any order by the City Council to remove any of INTERMAX NETWORKS's Telecommunications System Facilities shall be mailed to INTERMAX NETWORKS not later than thirty (30) calendar days following the date of expiration of this Right-of-Way Use Agreement. INTERMAX NETWORKS shall file written notice with the Clerk of the City Council not later than thirty (30) calendar days following the date of expiration or termination of this Right-of-Way Use Agreement of its intention to remove any Telecommunications System Facilities intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed no later than twelve (12) months following the date of expiration of this Right-of-Way Use Agreement.

C. INTERMAX NETWORKS shall not remove any underground Facilities which require trenching or other opening of City streets or rights-of-way along the extension of the Facilities to be removed, except as hereinafter provided. INTERMAX NETWORKS may voluntarily remove any underground Facilities from City streets and rights-of-way which have been installed in such a manner that they can be removed without trenching or other opening of City streets and rights-of-way along the extension of the Facilities to be removed.

D. Subject to applicable law, INTERMAX NETWORKS shall remove, at its sole cost and expense, any underground Facilities by trenching or opening City streets and rights-of-way along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination, in the sole discretion of said Council, that removal is required in order to eliminate or prevent a hazardous condition. Underground Facilities in City streets and rights-of-way that are not removed shall be deemed abandoned and title thereto shall be vested in the City.

**4.10 Emergency Repairs.** In the event that emergency repairs to the Telecommunications System are necessary, INTERMAX NETWORKS shall notify the City of the need for such repairs. INTERMAX NETWORKS may immediately initiate such emergency repairs and shall apply for appropriate permits the next business day following discovery of the emergency.

**4.11 City Right of Inspection.** The City shall have the right to inspect and approve all installation, construction, alteration or maintenance work performed by INTERMAX NETWORKS within the Right-of-Way Use Agreement Service Area and to make such tests as it deems necessary to ensure compliance with the terms and conditions of this Right-of-Way Use Agreement and other pertinent provisions of law, the cost thereof to be paid solely by INTERMAX NETWORKS, but no action or inaction by the City shall create any duty or obligation by the City to inspect, test or approve any installation, construction, alteration or maintenance work performed by INTERMAX NETWORKS. In addition, the City may require INTERMAX NETWORKS to furnish certification from a qualified independent engineer that INTERMAX NETWORKS's Facilities are constructed in accordance with good engineering practice and reasonably protect the public from damage, injury and harm.

**4.12 After-Acquired Facilities.** INTERMAX NETWORKS expressly acknowledges and agrees, by acceptance of this Right-of-Way Use Agreement, that any Telecommunications

System Facilities located within City streets or rights-of-way which are subsequently acquired by INTERMAX NETWORKS or upon addition or annexation to the City of any area in which INTERMAX NETWORKS retains or acquires any such Facilities (if acquired prior to this original Right-of-Way Use Agreement grant) and which would have been subject to this Right-of-Way Use Agreement and the permitting authority related thereto shall immediately be subject to the provisions of this Right-of-Way Use Agreement and all permits related thereto.

**4.13 Information.** INTERMAX NETWORKS hereby promises to maintain and supply to the City, at INTERMAX NETWORKS's sole expense, any information requested by the City to coordinate municipal functions with INTERMAX NETWORKS's activities within City streets and rights-of-way. INTERMAX NETWORKS shall provide such information, upon request, either in hard copy and/or electronic format compatible with the City's data base system, as now or hereafter existing, including the City's geographic information service (GIS) data base. INTERMAX NETWORKS shall keep the City informed of its long-range plans so as to allow coordination with the City's long-range plans.

## **SECTION 5 - SYSTEM DESIGN AND STANDARDS**

### **5.1 Initial Telecommunications System Construction.**

**5.1.1 Construction Schedule.** A detailed construction schedule, which shall be subject to City approval, shall be submitted by INTERMAX NETWORKS to the City's Public Works Division no later than forty-five (45) days prior to the commencement of construction. For the purposes of this Right-of-Way Use Agreement, "commencement of construction," as finally determined by the City if necessary, shall mean the beginning of installation of any part of the Telecommunications System including, but not limited to, strand mapping, system design, the construction of any facility, building or structure, or the stringing of any wire or the laying of any conduit, or the installation of any active or passive electronic equipment to facilitate the activation of the Telecommunications System.

**5.1.2 Construction Timeline.** INTERMAX NETWORKS shall commence construction of the Telecommunications System during the calendar year 2015 and shall complete initial activation procedures within six (6) months of the effective date of this Right-of-Way Use Agreement.

**5.2 Technical Standards.** The technical standards used in the design, construction, alteration, maintenance and operation of the Telecommunications System shall comply, at a minimum, with the applicable technical standards promulgated by the Federal Communications Commission ("FCC") or the Idaho Public Utilities Commission ("IPUC"), as now or hereafter constituted or amended, and any and all other applicable federal, state or local law, regulations or technical standards which may currently or may subsequently concern any services which INTERMAX NETWORKS provides or may provide using the Telecommunications System. The City may establish reasonable technical standards for the performance of the Telecommunications System if the FCC or IPUC permit it to do so or if the FCC or IPUC standards are repealed in whole or in part.

**5.3 Performance Testing.** INTERMAX NETWORKS shall perform all tests of the Telecommunications System as required by and at the intervals as required by the FCC and/or any and all federal, state and local law or regulations, and all other tests reasonably necessary to determine compliance with technical standards required by this Right-of-Way Use Agreement.

## **SECTION 6 - CUSTOMER SERVICE POLICIES**

**6.1 City Reservation of Rights.** The City reserves the right to enforce any and all customer service and consumer protection standards at any time that such standards are established by state or federal law or regulation as applicable to telecommunications system operations should such right be granted to the City by such state or federal law or regulation.

**6.2 Response to Customers.** INTERMAX NETWORKS shall promptly respond to all requests from customers of the Telecommunications System for service, repair, installation, information or any other such reasonable and appropriate requests and shall render effective service, make repairs promptly and interrupt service only for good cause and for the shortest time possible as required by state and/or federal law or regulation. INTERMAX NETWORKS shall promptly respond to complaints from customers of the Telecommunications System and shall attempt to promptly resolve such complaints as required by state and/or federal law or regulation.

**6.3 City Right-of-Way Use Agreement Contact Identified.** INTERMAX NETWORKS shall provide all appropriate and pertinent contact information for the person identified by the City as responsible for handling questions and complaints for the City regarding INTERMAX NETWORKS's operation in City streets and rights-of-way to any and all customers of the Telecommunications System and any interested persons. Said information shall be provided to such customers in a format acceptable to the City.

**6.4 Notice of Change in Services.** Throughout the term of this Right-of-Way Use Agreement, INTERMAX NETWORKS shall provide the City written notice of any intended deletions, additions or other modifications to the Telecommunications Services authorized by this Right-of-Way Use Agreement to be provided by INTERMAX NETWORKS.

**6.5 Complaints.** INTERMAX NETWORKS hereby acknowledges the City's interest in the prompt resolution of all complaints made to the City regarding INTERMAX NETWORKS's operation in City streets and rights-of-way and INTERMAX NETWORKS shall work in close cooperation with the City to resolve such complaints.

**6.6 Regulation of Rates and Charges.** The City expressly reserves the right to regulate rates and charges for Telecommunications Services and equipment in accordance with and to the extent provided by applicable federal or state laws, rules or regulations.

**6.7 Non-Discrimination.** No person shall be discriminated against in the providing of the services and/or materials herein under and INTERMAX NETWORKS shall not refuse to serve or hire any person because of such person's race, creed, sex, color, or national origin. Also,

INTERMAX NETWORKS will in no manner discriminate against any person because of such person's race, creed, sex, color, or national origin in the performance of this Right-of-Way Use Agreement. Any such discrimination shall be deemed a violation of this Right-of-Way Use Agreement and shall render this Right-of-Way Use Agreement subject to forfeiture.

## **SECTION 7 - COMPENSATION AND FINANCIAL PROVISIONS**

### **7.1 Fees.**

#### **7.1.1 Payment of Right-of-Way Use Agreement Fee.**

A. For the reason that the Rights-of-Way to be used by INTERMAX NETWORKS in the operation of its Telecommunications System within the boundaries of the City are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and that the grant to INTERMAX NETWORKS to use the said Rights-of-Way is a valuable property right without which INTERMAX NETWORKS would be required to invest substantial capital in Rights-of-Way costs and acquisitions, and because the City will incur costs in regulating and administering the Right-of-Way Use Agreement, INTERMAX NETWORKS shall pay to the City quarterly an amount equal to five percent (5%) of INTERMAX NETWORKS's Gross Revenues derived from the operation of the Telecommunications System to provide Telecommunications Services in the City. In the event that the City may lawfully increase the percentage of Right-of-Way Use Agreement fees collected from INTERMAX NETWORKS, but not effective before expiration of the initial term, then the Right-of-Way Use Agreement fees will be increased automatically after the giving of thirty (30) days prior written notice to INTERMAX NETWORKS.

B. In the event the Right-of-Way Use Agreement is revoked or otherwise terminated prior to its expiration date, INTERMAX NETWORKS shall file with the City, within 90 days of the date of revocation or termination, a verified revenue statement showing the Gross Revenues received by it since the end of the previous year and shall make adjustments at that time for the Right-of-Way Use Agreement fees due up to the date of revocation or termination.

#### **7.1.2 Other Fees.**

A. INTERMAX NETWORKS shall pay the City all reasonable costs of granting, enforcing or reviewing the provisions of this Right-of-Way Use Agreement as ordered by the City Administrator or designee, whether as a result of accrued in-house staff time or out-of-pocket expenses or administrative costs. Such obligation further includes municipal fees related to receiving and approving permits, licenses or other required approvals, inspecting plans and construction, or relating to the preparation of a detailed statement.

B. Upon request of INTERMAX NETWORKS, the City will submit proof of any charges or expenses incurred as defined in Section 7.1.2, A of this Right-of-Way Use Agreement. Said charges or expenses shall be paid by INTERMAX NETWORKS no later than thirty (30) days after INTERMAX NETWORKS's receipt of the City's billing thereof.

C. INTERMAX NETWORKS shall pay all other taxes and fees applicable to its operations and activities within the City, all such obligations also being a condition of this Right-of-Way Use Agreement. Such payments shall not be deemed right-of-way fees or payments in lieu thereof.

## **7.2 Payments.**

A. INTERMAX NETWORKS shall make all required payments in the form, intervals and manner requested by the City and shall furnish the City any and all information related to the City's revenue collection functions reasonably requested.

## **7.3 Financial Records.**

A. INTERMAX NETWORKS shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. The City shall have the right, as necessary or desirable for effectively administering and enforcing this Right-of-Way Use Agreement, to inspect at any time during normal business hours upon thirty (30) days prior written notice, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by INTERMAX NETWORKS and/or any parent company of INTERMAX NETWORKS pursuant to the rules and regulations of the FCC, IPUC and other regulatory agencies, and other like materials INTERMAX NETWORKS and/or any parent company of INTERMAX NETWORKS which directly relate to the operation of this Right-of-Way Use Agreement.

B. Access to the aforementioned records referenced in Section 7.3, A shall not be denied by INTERMAX NETWORKS to representatives of the City on the basis that said records contain "proprietary" information. However, to the extent allowed by Idaho law, the City shall protect the trade secrets and other confidential information of INTERMAX NETWORKS and/or any parent company of INTERMAX NETWORKS.

C. INTERMAX NETWORKS hereby agrees to meet with a representative of the City upon request to review its methodology of record keeping, financial reporting, and other procedures, the understanding of which the City deems necessary for understanding the meaning of such reports and records.

D. The City agrees to request access to only those books and records, in exercising its rights under this Right-of-Way Use Agreement, which it deems reasonably necessary for the enforcement and administration of this Right-of-Way Use Agreement.

## **7.4 Auditing.**

A. The City or its authorized agent may at any time conduct an independent audit of the revenues of INTERMAX NETWORKS in order to verify the accuracy of payments made to the City. INTERMAX NETWORKS and each parent company of INTERMAX NETWORKS shall cooperate fully in the conduct of such audit. In case of audit, the City director

of budget and finance may require INTERMAX NETWORKS to furnish a verified statement of compliance with INTERMAX NETWORKS's obligations or in response to any questions. Said certificate may be required from an independent certified public accountant at INTERMAX NETWORKS's sole expense. All audits will take place on INTERMAX NETWORKS's premises or at offices furnished by INTERMAX NETWORKS, which shall be a location within the City of Rathdrum. INTERMAX NETWORKS agrees, upon request of the Mayor/City Administrator, to provide copies of all documents filed with any federal, state or local regulatory agency, to mail to the City on the same day as filed, postage prepaid, affecting any of INTERMAX NETWORKS's facilities or business operations in City.

## **7.5 Insurance.**

**7.5.1 Coverages.** INTERMAX NETWORKS shall maintain, throughout the term of this Right-of-Way Use Agreement, liability insurance insuring INTERMAX NETWORKS, its officers, employees and agents, with regard to all claims and damages specified in Section 7.5 herein, in the minimum amounts as follows:

(1) **Commercial Liability Insurance.**

On or before the date this Right-of-Way Use Agreement is fully executed by the parties, INTERMAX NETWORKS shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage. This coverage will have a per job aggregate endorsement and Idaho stop gap coverage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Right-of-Way Use Agreement. The policy shall name the City, its elected and appointed officials, officers, agents and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Idaho. If INTERMAX NETWORKS uses any contractors and/or subcontractors to perform any of the work referenced in this Right-of-Way Use Agreement, such contractors and/or subcontractors shall maintain the same minimum limits of liability and comply with all other provisions discussed above in this subsection entitled "Commercial Liability Insurance."

(2) **Commercial Automobile Liability Insurance.**

On or before the date this Right-of-Way Use Agreement is fully executed by the parties, INTERMAX NETWORKS shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance with a minimum liability limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Right-of-Way Use Agreement. The policy shall

name the City, its elected and appointed officials, officers, agents and employees as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice (any language in the clause to the effect of "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall be crossed out and initialed by the insurance agent). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Idaho. If INTERMAX NETWORKS uses any contractors and/or subcontractors to perform any of the work referenced in this Right-of-Way Use Agreement, such contractors and/or subcontractors shall maintain the same minimum limits of liability and comply with all other provisions discussed above in this subsection entitled "Commercial Automobile Liability Insurance."

(3) **Umbrella Liability Insurance.**

INTERMAX NETWORKS and its contractors and/or subcontractors shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. On or before the date this Right-of-Way Use Agreement is fully executed by the parties, INTERMAX NETWORKS shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of Three Million Dollars (\$3,000,000). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Idaho.

Providing coverage in the amounts as set forth above shall not be construed to relieve INTERMAX NETWORKS from liability in excess of those limits.

**7.5.2 Proof of Insurance.** INTERMAX NETWORKS shall file with the City copies of all certificates of insurance showing up-to-date coverages, additional insured coverages and evidence of payment of premiums as set forth above. INTERMAX NETWORKS shall file and maintain a certificate of insurance along with written evidence of payment of the required premiums with the manager of the Clerk/Treasurer, or his or her designee.

**7.5.3 Alteration of Insurance.** Insurance coverages, as required by this Right-of-Way Use Agreement, shall not be changed, cancelled or otherwise altered without approval of the City. INTERMAX NETWORKS shall provide the City no less than thirty (30) days prior written notice of any such proposed change, cancellation or other alteration. The City may, at its option, review all insurance coverages. If it is determined by the City that circumstances require and that it is reasonable and necessary to increase insurance coverage and liability limits above such coverage and limits as are set forth in this Right-of-Way Use Agreement, in order to adequately cover the risks of the City, INTERMAX NETWORKS and INTERMAX NETWORKS's officers, agents and employees, the City may require additional insurance to be acquired by INTERMAX NETWORKS. Should the City exercise its right to require additional insurance, the City will provide INTERMAX NETWORKS with written notice.

**7.5.4 Failure to Procure.** INTERMAX NETWORKS acknowledges and agrees, by acceptance of this Right-of-Way Use Agreement, that failure to procure and maintain the insurance coverages as detailed in Section 7.5.1 of this Right-of-Way Use Agreement shall constitute a material breach of this Right-of-Way Use Agreement, as provided for in Section 2.10,

B, 3) of this Right-of-Way Use Agreement. In the event of such failure to procure and maintain the referenced insurance coverages, the City may immediately suspend INTERMAX NETWORKS's operations under this Right-of-Way Use Agreement, terminate or otherwise revoke this Right-of-Way Use Agreement and/or, at its discretion, procure or renew such insurance in order to protect the City's interests and be reimbursed by INTERMAX NETWORKS for all premiums in connection therewith.

**7.6 Performance Bond.** Prior to the effective date of this Right-of-Way Use Agreement, INTERMAX NETWORKS shall furnish to the City proof of the posting of a performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of Twenty-Five Thousand Dollars (\$25,000), conditioned that INTERMAX NETWORKS shall well and truly observe, fulfill and perform each term and condition of this Right-of-Way Use Agreement. INTERMAX NETWORKS shall pay all premiums charged for said bond. Said bond shall be effective to continue obligation for the term of this Right-of-Way Use Agreement, including any extensions, and thereafter until INTERMAX NETWORKS or any successor or assign of INTERMAX NETWORKS has liquidated all of its obligations with the City that may have arisen from the acceptance of this Right-of-Way Use Agreement by INTERMAX NETWORKS or from its exercise of any privilege herein granted. Said bond shall contain a provision stating that said bond shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice having been provided to the City. The form and content of said bond and any associated documents shall be approved in advance by the City Attorney, or his or her designee. INTERMAX NETWORKS shall provide a duplicate copy of said bond to the City and said duplicate copy shall be kept on file at the City Clerk's office or its successor(s). Neither the provisions of this Section nor any performance bond accepted by the City pursuant thereto, nor any damages or other amounts recovered by the City thereunder, shall be construed to excuse faithful performance by INTERMAX NETWORKS or to limit liability of INTERMAX NETWORKS under this Right-of-Way Use Agreement either to the full amount of the performance bond or otherwise, except as otherwise provided herein.

## **7.7 Indemnity, No Estoppel, No Duty.**

A. INTERMAX NETWORKS shall, at its sole expense, protect, defend, indemnify and hold harmless the City, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the City from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising directly or indirectly from or out of, relating to or in any way connected with the performance or non-performance, by reason of any intentional or negligent act, occurrence or omission of INTERMAX NETWORKS, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors, whether or not such acts or omissions were authorized or contemplated by this Right-of-Way Use Agreement or applicable law, including by not limited to the construction, installation, maintenance, alteration or modification of the Telecommunication System; arising from actual or alleged injury to persons or property, including the loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed; arising out of or alleged to arise out of any claim for damages for INTERMAX NETWORKS's invasion of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation; arising out of or alleged to arise out of INTERMAX NETWORKS's failure to comply with any and all provisions of any statute, regulation or resolution of the United States, State of Idaho or any local agency applicable to INTERMAX NETWORKS and its business. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve INTERMAX NETWORKS from its duty of defense against liability or of paying any judgment entered against such party. Notwithstanding any provision of this Section to the contrary, INTERMAX NETWORKS shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage or liability arises out of or in connection with negligent acts or omissions of the City.

B. Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs, or expenses, such judgment shall be conclusive against INTERMAX NETWORKS, not only as to the amount of such damage, but as to its liability, provided INTERMAX NETWORKS has reasonable notice or actually knew, or should have known, of the pendency of such suit. Under such circumstances, INTERMAX NETWORKS may also request the opportunity to defend or participate in the suit with legal counsel of its choice, at its expense, said request not to be unreasonably denied.

C. No action, error or omission, or failure to act by the City, its agents, officers, officials or employees, in connection with administering its rights, duties or regulatory functions related to this Right-of-Way Use Agreement shall be asserted by INTERMAX NETWORKS, directly, indirectly or by way of seeking indemnification or as an assertion that the City has waived or is estopped to assert any municipal right hereunder, against the City, its boards, departments, divisions, officers, officials or employees.

D. It is not the intent of this Right-of-Way Use Agreement to acknowledge, create, imply or expand any duty or liability of the City with respect to its role as a franchising

authority, in the exercise of its police powers or for any other purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group or entity.

## **SECTION 8 – REPORTING REQUIREMENTS**

All reports required under Section 8 of this Right-of-Way Use Agreement may be requested by the City to be provided by INTERMAX NETWORKS in hard copy and/or electronic format compatible with City databases, including, but not limited to, the GIS system.

**8.1 Quarterly Reports.** Within thirty (30) calendar days after the end of the reporting quarter, INTERMAX NETWORKS shall submit to the City a completed form reporting any and all revenues for the previous quarter. Said reports shall be verified by an officer or other authorized representative of INTERMAX NETWORKS. Said reports shall contain an accurate statement in summarized form, as well as in detail, of INTERMAX NETWORKS’s gross revenues and the computation basis and method. These reports shall be in a form reasonably required by the City. The City may, from time to time, make such reasonable amendments to the forms as are required to ensure that all gross revenues are reported clearly and accurately.

**8.2 Annual Reports.** Not later than one hundred-twenty (120) days following the end of INTERMAX NETWORKS’s fiscal year each year, INTERMAX NETWORKS shall present, at its sole expense, a written report to the City which shall include:

(1) Full financial statements for the previous year, including income statement, balance sheet, cash flow statement, and appropriate explanatory footnotes, for Intermax Networks and a full income statement with appropriate explanatory footnotes for the Telecommunications System with specific breakouts for the System within the corporate limits of the City of Rathdrum. All financial statements shall be certified by an officer or other authorized representative of INTERMAX NETWORKS to be an accurate reflection of INTERMAX NETWORKS’s books and records. In the event any audited financial report has not been published by the date due under this Section, then the audited financial report shall be deemed presented on time if presented within thirty (30) days after publication.

(2) A current list of all of INTERMAX NETWORKS’s officers and directors or partners, if any, including postal addresses, telephone numbers and, where applicable, electronic mail addresses.

(3) The names and business postal addresses, telephone numbers and, where applicable, the electronic mail addresses of the Telecommunications System’s local manager and engineer.

(4) Complete and accurate maps of the Telecommunications System including the location of Facilities.

(5) A description of future plans by INTERMAX NETWORKS to expand or alter the Telecommunications System and/or expand or alter services provided over the Telecommunications System.

**8.3 Monitoring and Compliance Reports.** Only upon request of the City, but no more than once per year, INTERMAX NETWORKS shall provide a written report of any and all technical performance tests for the Telecommunications System required by the FCC, IPUC or any other governmental agency having jurisdiction over the Telecommunications System.

**8.4 Additional Reports.** INTERMAX NETWORKS shall prepare and furnish to the City or any other entity exercising lawful regulatory authority in connection with this Right-of-Way Use Agreement, at the times and in the form prescribed by the City or such other regulatory entity, such additional reports with respect to INTERMAX NETWORKS's operations, affairs, transactions or property, as may be reasonably necessary and appropriate to the performance of the rights, functions or duties of the City or such other regulatory entity in connection with this Right-of-Way Use Agreement.

**8.5 Communication with Regulatory Agencies.** INTERMAX NETWORKS shall simultaneously file with the City a copy of each petition, application, tariff, report or any other communication related to the Telecommunications System transmitted by INTERMAX NETWORKS to, or received by INTERMAX NETWORKS from, any federal, state or other regulatory commissions or agencies having competent jurisdiction to regulate the construction or operation of the Telecommunications System, including, specifically, the FCC and the IPUC. In addition, INTERMAX NETWORKS and its affiliates shall within ten (10) days of any communication transmitted by INTERMAX NETWORKS to, or received by INTERMAX NETWORKS from, any judicial or regulatory agency regarding any alleged or actual violation of a law, regulation or other requirement related to the Telecommunications System, provide the City a copy of the communication, whether specifically requested by the City to do so or not.

**8.6 Preservation of Confidential Information.** The City shall protect information provided to the City by INTERMAX NETWORKS designated as confidential or proprietary by INTERMAX NETWORKS, given such information had been so designated at the time it was provided to the City, to the maximum extent permissible under Idaho state law as it may now or hereafter exist.

## **SECTION 9 – REMEDIES AND PROCEDURE FOR REMEDYING RIGHT-OF-WAY USE AGREEMENT VIOLATIONS**

### **9.1 Remedies for Right-of-Way Use Agreement Violations.**

A. In addition to the remedies set forth elsewhere in this Right-of-Way Use Agreement, the City shall have the right to assert any or all of the following remedies in the event INTERMAX NETWORKS violates or defaults on, as determined by the City, any provision of this Right-of-Way Use Agreement:

(1) Drawing upon or foreclosing all or any part of any security provided under this Right-of-Way Use Agreement, including without limitation the Faithful Performance Bond provided for under Section 7.6 herein; PROVIDED, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the violation or default. Should the City take such action as described herein, INTERMAX NETWORKS shall be responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs incurred by the City;

(2) Commence an action at law for monetary damages or seek other equitable relief;

(3) In the case of substantial violation or default, as determined by the City, of a material provision of this Right-of-Way Use Agreement, declare this Right-of-Way Use Agreement to be revoked;

(4) Seek specific performance of any provision of this Right-of-Way Use Agreement, which reasonably lends itself to such remedy, as an alternative to seeking damages.

B. In determining which remedy or remedies, as set forth herein, are appropriate, the City shall take into consideration the nature and extent of the violation or default, the remedy needed to prevent such violations or defaults from occurring in the future, whether INTERMAX NETWORKS has a history of previous violations of the same or similar kind and such other considerations as are appropriate under the circumstances.

## **9.2 Procedure for Remediating Right-of-Way Use Agreement Violations.**

**9.2.1 Notice of Violation.** In the event the City determines INTERMAX NETWORKS has not complied with any term or condition of this Right-of-Way Use Agreement, the City shall notify INTERMAX NETWORKS of the exact nature of the alleged noncompliance.

**9.2.2 INTERMAX NETWORKS's Right to Cure or Respond.** INTERMAX NETWORKS shall have thirty (30) days from receipt of notice by the City of any alleged noncompliance with any term or condition of this Right-of-Way Use Agreement to:

(1) Respond to the City contesting the assertion of noncompliance; or

(2) Cure such violation or default or, in the event that by the nature of the violation or default such violation or default cannot be cured within a thirty (30) day period, initiate reasonable steps to remedy such violation or default and notify the City of the steps being taken and the projected date such remedy will be completed.

**9.2.3 Public Hearing.** In the event INTERMAX NETWORKS fails to respond to a notice, as described herein, or in the event INTERMAX NETWORKS fails to cure such violation or default pursuant to the procedures set forth herein, the City shall schedule a public hearing to investigate any alleged violation or default. The City shall provide INTERMAX

NETWORKS twenty (20) calendar days notice of the time and place of such hearing and provide INTERMAX NETWORKS an opportunity to be heard at such hearing.

**9.3 Enforcement.** In the event the City, after such hearing as described in subsection 9.2.3 of this Right-of-Way Use Agreement has been conducted, upholds its determination that INTERMAX NETWORKS has violated or defaulted on any provision of this Right-of-Way Use Agreement, the City may impose any of the remedies set out in Section 9.1, A of this Right-of-Way Use Agreement.

**9.4 Failure to Enforce.** INTERMAX NETWORKS shall not be relieved of any of its obligations to comply promptly with any provision of this Right-of-Way Use Agreement by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in INTERMAX NETWORKS's conduct.

**9.5 Acts of Nature.** INTERMAX NETWORKS shall not be held in violation, default or noncompliance with the provisions of this Right-of-Way Use Agreement, nor suffer any enforcement or penalty related thereto, where such violation, default or noncompliance is caused by acts of nature, power outages or other events reasonably beyond its ability to control. However, INTERMAX NETWORKS shall take all reasonable steps necessary to provide service despite such occurrences.

**9.6 Alternative Remedies.** Nothing in this Right-of-Way Use Agreement shall be deemed to bar the right of the City or INTERMAX NETWORKS to seek or obtain judicial relief from any violation of this Right-of-Way Use Agreement or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Right-of-Way Use Agreement nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by INTERMAX NETWORKS, or to seek and obtain judicial enforcement of INTERMAX NETWORKS's obligations under this Right-of-Way Use Agreement by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

## **SECTION 10 – MISCELLANEOUS PROVISIONS**

**10.1 Posting and Publication.** INTERMAX NETWORKS shall assume the cost of posting and publication of this Right-of-Way Use Agreement as such posting and publication is required by law, and such is payable upon INTERMAX NETWORKS's filing of acceptance of this Right-of-Way Use Agreement.

**10.2 Service of Notice.** Except as otherwise specifically provided herein, any notice required or permitted to be given under this Right-of-Way Use Agreement shall be deemed sufficient if provided in writing and when (1) delivered personally to the following addressee(s) or deposited with the United States Postal Service, postage paid, certified or registered mail; (2) sent by overnight or commercial air courier; or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

Notices to the City shall be addressed to the following:

Rathdrum City Hall  
8047 W. Main Street  
Rathdrum, ID 83858  
Attn: Mayor/City Administrator  
Facsimile Number: 208-687-0261

Notices to INTERMAX NETWORKS shall be addressed to the following:

Intermax Networks  
7400 Mineral Drive  
Suite 300  
Coeur d'Alene, ID 83815  
Attn: Mike Kennedy  
Office: (208) 762-8065

**10.3 Compliance with Laws.** INTERMAX NETWORKS shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as the general ordinances, resolutions, rules and regulations of the City, pursuant to the City's lawful authority, heretofore or hereafter adopted or established during the entire term of this Right-of-Way Use Agreement. In the event any valid and superior law, rule or regulation of any governing authority or agency having jurisdiction contravenes the provisions of this Right-of-Way Use Agreement subsequent to its adoption, then the provisions of this Right-of-Way Use Agreement shall be superseded only to the limited extent that the provisions hereof are in conflict and contrary to any such law, rule or regulation. Nothing in this Right-of-Way Use Agreement shall limit the City's right of eminent domain under state law. Nothing in this Right-of-Way Use Agreement shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid or manner of construction.

**10.4 Governing Law and Venue.** This Right-of-Way Use Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, and venue for any litigation arising out of or in connection with privileges extended herein is stipulated to be in Kootenai County.

**10.5 Severability.** If any section, subsection, sentence, clause, phrase or portion of this Right-of-Way Use Agreement is for any reason declared by a court of competent jurisdiction to be void, invalid or unenforceable, such portion shall be deemed a separate, distinct and independent provision and such declaration shall not affect the validity of the remaining portions thereof. In such event, the City and INTERMAX NETWORKS shall negotiate in good faith to modify this Right-of-Way Use Agreement as may be necessary to meet the requirements of the law and/or to effectuate the intention of this Right-of-Way Use Agreement. In the event that such modifications are barred by any legal requirements governing any party, the City and INTERMAX NETWORKS shall use their best efforts to otherwise avoid prejudice to the respective parties' interests and to implement changes to effectuate the intent in entering into this Right-of-Way Use Agreement.

**10.6 Guarantee of Performance.** INTERMAX NETWORKS hereby agrees that it enters into this Right-of-Way Use Agreement voluntarily and in order to secure and in consideration of the grant from the City of a ten-year right-of-way. Performance pursuant to the terms and conditions of this Right-of-Way Use Agreement is guaranteed by INTERMAX NETWORKS.

## **10.7 Force Majeure.**

A. For the purposes of this Section, the term “Force Majeure” shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within in the control of the parties hereto.

B. If INTERMAX NETWORKS is wholly or partially unable to carry out its obligations under this Right-of-Way Use Agreement as a result of a Force Majeure, INTERMAX NETWORKS shall provide the City prompt notice of such Force Majeure, describing the same in reasonable detail, and INTERMAX NETWORKS’s obligations under this Right-of-Way Use Agreement, other than for payment of moneys due, shall not be deemed in violation or default for the duration of the Force Majeure. INTERMAX NETWORKS agrees to use its best efforts to remedy as soon as possible, under the circumstances, INTERMAX NETWORKS’s inability, by reason of Force Majeure, to carry out its responsibilities and duties under this Right-of-Way Use Agreement.

**10.8 City Right of Intervention.** If the City otherwise has the right to intervene, INTERMAX NETWORKS expressly acknowledges and agrees, by acceptance of this Right-of-Way Use Agreement, not to oppose such intervention by the City in any suit or proceeding to which INTERMAX NETWORKS is a party related to this Right-of-Way Use Agreement.

**10.9 Consent.** Wherever the consent or approval of either INTERMAX NETWORKS or the City is specifically required in this Right-of-Way Use Agreement, such consent or approval shall not be unreasonably withheld.

**10.10 No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Right-of-Way Use Agreement.

**10.11 Right-of-Way Use Agreement Acceptance.** INTERMAX NETWORKS shall execute and return to the City, within sixty (60) days after the date of authorization of the Right-of-Way Use Agreement by the Rathdrum City Council, three (3) original Right-of-Way Use Agreement, by which INTERMAX NETWORKS acknowledges that it has carefully read the terms and conditions of the Right-of-Way Use Agreement and accepts all of the terms and conditions of the Right-of-Way Use Agreement and this Right-of-Way Use Agreement and agrees to abide by the same. In accepting this Right-of-Way Use Agreement, INTERMAX NETWORKS shall indicate that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept this Right-of-Way Use Agreement, that the Right-of-Way Use Agreement represents the entire agreement between INTERMAX NETWORKS and the City and that INTERMAX NETWORKS accepts all reasonable risks related to the interpretation of the Right-of-Way Use Agreement and this Right-of-Way Use Agreement. The executed Right-of-Way Use shall be returned to the City accompanied by the Performance Bond as required in Section 7.6 of this Right-of-Way Use Agreement and evidence of insurance as required in Sections 7.5.1 and 7.5.2 of this Right-of-Way Use Agreement. In the event

INTERMAX NETWORKS fails to submit a Right-of-Way Use Agreement as provided for herein, or fails to provide the required accompanying documents, this Right-of-Way Use Agreement shall be null and void.

**10.12 Previous Rights Abandoned.** This Right-of-Way Use Agreement supersedes any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercisable by INTERMAX NETWORKS pursuant to any previous right-of-way in the City.

**10.13 Effective Date.** This Right-of-Way Use Agreement and the Right-of-Way Use Agreement Ordinance shall be effective thirty (30) days after its adoption by the City Council, approval by the mayor, acceptance by INTERMAX NETWORKS and publication as required by law.

## **SECTION 11 – TRANSFER OF OWNERSHIP OR CONTROL**

A. This Right-of-Way Use Agreement shall not be assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.

B. INTERMAX NETWORKS shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition of or acquisition by any other party of, control of INTERMAX NETWORKS. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of INTERMAX NETWORKS shall make the Right-of-Way Use Agreement subject to cancellation unless and until the City Council shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control, the City Council may inquire into the qualifications of the prospective controlling party, and INTERMAX NETWORKS shall assist the City Council in any such inquiry.

C. The proposed assignee must show its legal and technical qualifications and its financial responsibility as determined by the City Council and must agree to comply with all the provisions of the Right-of-Way Use Agreement. Unless INTERMAX NETWORKS and the City Council otherwise agree on an extension of time, the City Council shall be deemed to have consented to a proposed transfer or assignment in the event it has not acted within one hundred twenty (120) days following receipt of a completed FCC Form 394, or other replacement form in the future that fulfills the same requirements, and any information required by the terms of the Right-of-Way Use Agreement or applicable federal, state or local law.

D. The consent or approval of the City Council to any transfer of the Right-of-Way Use Agreement shall not constitute a waiver or release of the right of the City in and to the rights-of-way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Right-of-Way Use Agreement.

E. By its acceptance of this Right-of-Way Use Agreement, INTERMAX NETWORKS specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Right-of-Way Use Agreement by INTERMAX NETWORKS. In no event shall a transfer of ownership or change of control be approved without the successor in interest becoming a signatory to this Right-of-Way Use Agreement.

F. For the purpose of this Section, a change of control of INTERMAX NETWORKS shall be defined as any acquisition of INTERMAX NETWORKS or INTERMAX NETWORKS's parent's voting stock by a person or group of persons acting in concert which results in that person or group of persons owning more than fifty percent (50%) of the voting stock of INTERMAX NETWORKS or INTERMAX NETWORKS's parent.

G. Within 30 days of any transfer or sale and upon request, if approved or deemed granted by the City, INTERMAX NETWORKS shall file with the City a copy of the deed, agreement, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by INTERMAX NETWORKS.

H. Standards. The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and INTERMAX NETWORKS shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Right-of-Way Use Agreement by INTERMAX NETWORKS.

I. Common Control Exemption. Notwithstanding anything to the contrary in this Section, the prior written approval of the City Council shall not be required for any sale, assignment or transfer of the Right-of-Way Use Agreement, Cable System or ownership to an entity controlling, controlled by, or under the same common control as INTERMAX NETWORKS.

APPROVED BY THE CITY COUNCIL of the City of Rathdrum on the 11<sup>th</sup> day of May 2020

CITY OF RATHDRUM

INTERMAX NETWORKS

\_\_\_\_\_  
Vic Holmes, Mayor

By: \_\_\_\_\_  
Mike Kennedy, President

Attest:

\_\_\_\_\_  
Sherri L. Halligan, City Clerk

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, a Notary Public in and for said State, personally appeared **Mike Kennedy**, known to me to be President of **Intermax Networks**, the corporation that executed the within Instrument, known to me to be the person who executed the within Instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the within Instrument pursuant to its by-laws or a resolution of its directors.

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 in and for the State of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO                    )  
  ) ss.  
County of Kootenai                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for said State of Idaho, personally appeared Vic Holmes and Sherri L. Halligan, known or identified to me to be the Mayor and City Clerk, respectively, of the City of Rathdrum that executed the said instrument, and acknowledged to me that such municipal 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.

\_\_\_\_\_  
Notary Public in and for the State of Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

## **MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING by and between the Sheriff's Office of Kootenai County, and the police departments of the cities of Coeur d'Alene, Post Falls, Rathdrum, and Spirit Lake, is entered into for the purpose of establishing a mutual aid compact and granting authority to officers in each agency to exercise peace officer authority in the jurisdiction of the other agencies upon request.

### **RECITALS**

**WHEREAS**, the parties to this agreement are law enforcement agencies of the State of Idaho authorized to enter into mutual aid compacts pursuant to Idaho Code §67-2337; and

**WHEREAS**, violations of criminal laws and traffic laws are serious and continuous problems plaguing law enforcement which often cross jurisdictional boundaries; and

**WHEREAS**, the communities which are served by the parties to this agreement suffer negative impacts from these violations and will benefit from a collaborative effort on the part of law enforcement to enforce laws.

**NOW THEREFORE**, in consideration of the mutual terms and conditions and the recitals set forth above, the Sheriff's Office of Kootenai County, and the police departments of the cities of Coeur d'Alene, Post Falls, Rathdrum, and Spirit Lake understand as follows:

#### **1. Purpose**

The purpose of this Memorandum of Understanding is to provide authority by which officers of the participating law enforcement agencies may conduct law enforcement stops and investigations of violations of criminal laws and traffic laws in neighboring communities and counties. This Memorandum of Understanding will make it possible for the participating agencies to act in collaboration to enforce state laws and to take joint action in prevention programs. This Memorandum of Understanding is not intended to create a separate legal entity.

#### **2. Consent to Extension of Peace Officer Authority**

The participating Sheriff and Chiefs of Police, acting in their capacity as the head of their respective offices and department, extends authority to act as a peace officer within their jurisdiction, with regards to law enforcement investigations of violations of criminal laws and traffic laws, to all acting peace officers employed by the agencies which are a party to this Memorandum of Understanding, which officers are assigned specifically to or requested to conduct investigations. Such authority is also granted to peace officers

employed by the agencies which are a party to this Memorandum of Understanding who are asked to assist a party agency whether or not such officer routinely conducts investigations of driving under the influence crimes.

All powers, privileges, rights, and responsibilities of each peace officer acting outside his jurisdiction but pursuant to this Memorandum of Understanding shall be the same as when the peace officer is acting within the jurisdiction of the officer's employing agency.

### **3. Procedures**

Requests for assistance under this Memorandum of Understanding shall be specific as to the duration of the request and the scope of the request, and should be made through currently established lines of communication between the agencies. When it is known that a request will encompass a considerable amount of officer time and resources, the requesting agency shall communicate directly to an officer in a command status

Officers entering the jurisdiction of another agency under the provisions of this Memorandum of Understanding shall notify the on-duty supervisor of the jurisdictional agency of the officer's presence and purpose.

Officers who are employed by the jurisdictional agency shall have the primary responsibility for making and processing arrests within their jurisdiction. If an officer makes a physical arrest outside the county from which his employing agency is located, that officer must relinquish custody of the suspect to an officer who has primary jurisdiction in the county where the arrest is made. All offices involved in such an investigation outside their jurisdiction retain the responsibility to prepare a report and forward such report to the primary law enforcement agency of the jurisdiction.

All officers involved in an investigation outside their jurisdiction pursuant to this Memorandum of Understanding retain the responsibility to cooperate fully with the prosecuting agency of the jurisdiction in which the crime occurred, including the responsibility to honor all subpoenas.

Individuals designated by the parties may mutually establish pre-determined problem areas which shall be a focus of the enforcement activities under the Memorandum of Understanding. This agreement may be supplemented with schedules and lists of personnel that would be requested under these circumstances. The parties may also establish mutual training sessions to more effectively carry out the purpose of this Memorandum of Understanding.

### **4. Standard of Conduct**

Each peace officer acting in accordance with this Memorandum of Understanding shall maintain standards of professional conduct required by the officer's current departmental policies and procedures.

It shall be the sole duty and responsibility of an officer's employing agency to determine if there has been a breach of professional standards. Each agency shall have the responsibility to notify its officers of restrictions of jurisdiction or peace officer status due to a breach of professional standards, or other action that would limit peace officer authority for the officer.

Where an officer-involved shooting, deadly force incident, or critical incident occurs involving one or more of the agencies involved, the Critical Incident Task Force (CITF) of the county in which the incident occurred shall be automatically activated and the respective CITF Agreement shall be subscribed to by all participating agencies.

## **5. Liability**

Assumption of liability shall be as prescribed by I.C. §67-2337(4), as well as any other state or federal laws consistent with I.C. §67-2337. The employing agency shall be responsible for, and assume any liability arising from, the acts of its employees participating in police actions regardless of which jurisdiction is the point of occurrence.

## **6. Amendment, Duration, and Termination**

This Memorandum of Understanding may be amended by agreement of all parties. This agreement shall remain in full force and effect until terminated upon thirty (30) days written notice by any party to all other signing parties. The effective date of such notice shall be three (3) days after the date of posting with the United State Postal Service. Such notice shall be sent to the Sheriff or Chief of Police of each participating agency.

**This Memorandum of Understanding shall be effective upon the execution of each party affixing an authorized signature and date to this original document. It does not supersede, change or negate other agreements entered into between the parties to this agreement.**

**IN WITNESS WHEREOF**, the respective parties hereby give their consent and do execute this Memorandum of Understanding by and through their authorized representative.

**Kootenai County Sheriff's Department**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Coeur d'Alene Police Department**

By: \_\_\_\_\_

Title : \_\_\_\_\_

Date: \_\_\_\_\_

**Post Falls Police Department**

By: [Signature]  
Title: Mayor, City of Post Falls  
Date: 4/12/13

**Rathdrum Police Department**

By: \_\_\_\_\_

Title : \_\_\_\_\_

Date: \_\_\_\_\_

**Spirit Lake Police Department**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# PROCLAMATION



*WHEREAS*, Memorial Day each year serves as a solemn reminder of the scourge of war and its bitter aftermath of sorrow; and

*WHEREAS*, this day has traditionally been devoted to paying homage to loved ones who lie in hallowed graves throughout the land, having sacrificed their lives that war might end; and

*WHEREAS*, in tribute to these silent dead it is fitting that we lift up our voices together in supplication to Almighty God for wisdom in our search for an enduring peace; and

*WHEREAS*, the final Monday in May has been set aside as a national holiday to remember those that have passed from this life:

*NOW, THEREFORE*, I, Vic Holmes, Mayor of the City of Rathdrum, do hereby proclaim the day of Monday, the 25<sup>th</sup> day of May, 2020 as a day of remembrance in the City of Rathdrum to honor all those that have made a difference in our lives and that have sacrificed all in providing each of us a better place to live, love and worship according to the dictates of our own conscience.

## Memorial Day

Mayor, Rathdrum, Idaho May 2020

