

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004**

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2	UNIVERSITY OF IDAHO Railroad Land Exchange	Motion to approve
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4	ITEM PULLED FROM AGENDA	
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5b	Colleges & Universities – Funding Equity	Motion to approve
5c	Community Colleges – Funding Equity	Motion to approve
5d	Community Colleges – Occupancy Costs	Motion to approve
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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY

REFERENCE

April 22, 2004	Approval to continue negotiations for purchase.
June 17, 2004	Authorization to present purchase agreement to the Board.
August 12, 2004	Approval of Idaho State University's purchase of University Place-Idaho Falls from the University of Idaho Foundation, subject to certain conditions.
October 15, 2004	Executive Committee approved contract leases and memorandums of understanding (MOU's)

SUBJECT

Idaho State University (University) requests authorization to issue approximately \$4,500,000 of bonds (2004B Bonds) to finance the acquisition of the land and improvements comprising University Place in Idaho Falls (University Place-Idaho Falls). The exact amount of the 2004B Bonds will be available at the meeting.

APPLICABLE STATUTE, RULE OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Section V.F.1.

BACKGROUND

The Board approved the University's purchase of University Place-Idaho Falls from the University of Idaho Foundation, Inc. (UI Foundation) at its meeting on August 12, 2004, subject to certain conditions which have been satisfied.

University Place-Idaho Falls consists of approximately 23 acres of land with three buildings situated thereon: the Samuel H. Bennion Student Union Building owned by the University, the Fred H. Tingey Administration Building owned by the UI Foundation and the Center for Higher Education owned by the State of Idaho. After the acquisition, the Center for Higher Education building will continue to be owned by the State of Idaho, with the land upon which it is situated owned by the University. The University and the University of Idaho will continue to offer courses, seminars and other events at University Place-Idaho Falls together with complete student services.

BUSINESS AFFAIRS AND HUMAN RESOURCES
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INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY – continued

DISCUSSION

Documents relating to the issuance and sale of the 2004B Bonds are being prepared by bond counsel (Hawley Troxell Ennis & Hawley, LLP). The University has obtained an “A” category rating on the 2004B Bonds from Standard and Poor’s Public Finance Ratings and Moody’s Investors Service, and the University has determined that it is advantageous to purchase bond insurance from Financial Security Assurance Inc. to result in a rating of “AAA/Aaa” on the 2004B Bonds.

The 2004B Bonds would be issued as Additional Bonds under the Board’s Resolution adopted September 17, 1992 (Original Resolution), as previously amended and supplemented, and under the Supplemental Resolution authorizing issuance of the 2004B Bonds (Supplemental Resolution). The 2004B Bonds would be issued on a parity with all other bonds issued under the Original Resolution, secured by the pledge of the University’s Pledged Revenues, including but not limited to the University’s Student Facilities Fee/Facilities, the Matriculation Fee, and Revenues of the Housing System.

IMPACT

Culmination of this transaction will allow ownership of the University Place – Idaho Falls property to remain in state government ownership. The University of Idaho Foundation will be able to use proceeds of the sale for necessary purposes.

STAFF COMMENTS AND RECOMMENDATIONS

The item has been before the Board several times; this should culminate proceedings in this matter.

Please note: bond pricing will occur during the day of October 21, 2004, and be finalized by approximately 1:00 p.m. Accordingly, the University requests consideration of this agenda item after 2:00 p.m. on October 21, 2004.

BOARD ACTION

Action on this agenda item consists of a motion to approve the Supplemental Resolution for the 2004B Bonds. The title of the Supplemental Resolution is as follows:

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004**

**INSTITUTION / AGENCY AGENDA
IDAHO STATE UNIVERSITY – continued**

A SUPPLEMENTAL RESOLUTION authorizing the issuance and sale of \$_____ General Revenue Bonds, Series 2004B, of the Board of Trustees of Idaho State University; authorizing the execution and delivery of a bond purchase agreement and providing for other matters relating to the authorization, issuance, sale, and payment of the Series 2004B Bonds.

Motion:

Motion to approve Supplemental Resolution authorizing the issuance and sale of \$_____ General Revenue Bonds, Series 2004B, of the Board of Trustees of Idaho State University; authorizing the execution and delivery of a bond purchase agreement and providing for other matters relating to the authorization, issuance, sale, and payment of the Series 2004B Bonds.

Moved by _____ Seconded by _____ Carried Yes____ No____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: F. Bonds and Other Indebtedness

April 2002

F. Bonds and Other Indebtedness

1. General Powers

The University of Idaho, Idaho State University, Lewis-Clark State College, and Boise State University may, by a majority vote of all the members of the Board, borrow money with or without the issuance of bonds pursuant to Chapter 38, Title 33, Idaho Code. The Board must act by formal resolution. Such indebtedness is not an obligation of the state of Idaho but is an obligation solely of the respective institutions and the respective board of trustees. Any indebtedness is to be used to acquire a project, facility, or other asset that may be required by or be convenient for the purposes of the institution. Student fees, rentals, charges for the use of the projected facility, or other revenue may be pledged or otherwise encumbered to pay the indebtedness. Refunding bonds also may be issued.

Eastern Idaho Technical College is not authorized to borrow money under Chapter 38, Title 33, Idaho Code.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO

REFERENCE

September 24-25, 1998	Board approval for University to execute warranty deed transferring land near Highway 95 to City of Moscow.
June 17-18, 1999	Board approval for University to acquire small parcels of land adjacent to Highway 95.

SUBJECT

The University of Idaho (UI) requests approval to acquire 10.11 acres of railroad property in Moscow and to fund the acquisition by exchanging 5.09 acres of UI Regents property in Moscow.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Policies and Procedures, Section V.I.1 and Section V.I.2.

BACKGROUND

WATCO, the corporation owning both parallel railroad rights-of-way on the north and east sides of the University, notified UI of its intention to dispose of its southern railroad property last year. The property is between 100 and 130 feet wide. Aside from the value of the property to UI for its adjacency to UI facilities and view sheds, the property is desirable for completion of planned stream enhancements to Paradise Creek, campus entrance improvements, and use for additional parking. The property's desirability and availability for motor business, high-density residential, and industrial uses, makes acquisition the only viable method to ensure the character of many prominent features of the University are not compromised by development benefiting from proximity to the University without necessarily contributing to the design aspects of the campus development plan.

The 2.64 acres of Regents' property to be used for direct exchange to WATCO was acquired in 1999 to help accommodate the construction of the Hwy 95 south couplet. While using the property as an entrance park to the City had been considered, the alternative use of the property as an exchange piece to secure property needed to achieve the University's and City's goal of completing the Paradise Path/Parkway also is desirable and is not precluded by the Regents' original authorization to purchase the south couplet parcels. The 2.45-acre parcel at the intersection of Farm Road and A Street is a remnant from the North Farm managed by the College of Agricultural and Life Sciences. The parcel is isolated from the College's programmatic needs by the completion of A Street and the subsequent commercial and residential development in the area.

**INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO - continued**

DISCUSSION

The University is seeking approval to complete the property transactions as provided for in the attached Acquisition and Exchange Outline, Railroad Graphic, and Purchase, Sale, and Exchange Agreement (Exhibits A, A1 and A2).

In 2000, the University updated its Long Range Campus Development Plan (LRCDP) in support of its Strategic Plan. Acquisition of as much of the available railroad property as feasible is consistent with the LRCDP and will facilitate the University's strategic goal to develop a residential campus of choice, assist with presenting facilities and campus design features important for recruitment and retention efforts, and accommodate a land use plan that improves connections between downtown Moscow and the university with seamless parkways and aesthetic academic/commercial transitions. The latter is demonstrated by the fact that every major campus gateway identified in the Plan (with the exception of the completed Sweet Ave entrance) is located at the property being sought via this acquisition.

Failure to acquire this property will eliminate an opportunity to secure ownership of a substantial piece of undeveloped property between the University and downtown Moscow. The inevitable commercial and residential development will result in the fragmentation of property and its conversion into uses that will likely compromise future campus land use and development initiatives.

While the 2.45 acres of Regents' property at the intersection of A Street and Farm Road has commercial development potential, it is not adjacent to or integral for University programs. The 2.64 acres of Regents' property near the intersection of highways 8 and 95 consists of three relatively small and isolated parcels whose full commercial value can only be realized when combined with adjoining City and railroad property. As a part of the arrangements necessary to make the transaction possible without budgeted funds, the University is relying on the City of Moscow to convey, as part of the exchange, its property interest in the abandoned Hwy 95 right-of-way near the south couplet (see Exhibit B, Exchange Agreement) to the Regents or its designee (WATCO). In return, UI will convey a property interest to the City needed for recognizing an existing bike and pedestrian path and enabling completion of the remainder of the linear path/parkway on affected Regents' property between Hwy 95 and the Bill Chipman Trail (see Exhibit C, Paradise Path Easement Agreement). Development of this City path/parkway is consistent with UI's campus development goals.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO - continued

As part of this transaction, the University will grant an easement across the property it is acquiring (see Exhibit D, Rail Line Easement Agreement) to WATCO (also known as the Palouse River, Coulee City Railroad), for a short segment of line necessary for the relocation of tracks that make this transaction possible. Also through this transaction, the Regents will secure an easement across the railroad for future road construction (see Exhibit E, Peterson Street Easement Agreement) consistent with recent north campus planning efforts and will also secure access and use of a portion of the remaining railroad property that will facilitate possible future stream enhancements for Paradise Creek (see Exhibit F, Paradise Creek License).

The University has completed appraisals to determine appropriate property values and has completed environmental site assessments of all subject properties to be acquired.

IMPACT

Since there are not budgeted funds available for UI to make the acquisition, WATCO has agreed to accept UI property in exchange for railroad property. The properties the University could exchange are located adjacent to other WATCO properties and are of particular value to WATCO because they enhance the commercial development potential of the remaining railroad property. As for the Regents' property at the intersection of Farm Road and A Street (northeast of the Palouse Mall), that parcel has no current programmatic value to the University and its commercial potential generates the exchange value necessary to complete the acquisition of the railroad property and represents an appropriate use of University assets that can be employed to achieve land use and community development priorities of the University of Idaho. Exhibit A details the values of the various properties being exchanged.

STAFF COMMENTS AND RECOMMENDATIONS

Staff has reviewed the request for conformance with Board policy, and recommends approval.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO - continued

BOARD ACTION

A motion to approve the University of Idaho's request to (1) acquire 10.11 acres of railroad property in Moscow; (2) fund the acquisition by exchanging 5.09 acres of UI Regents property in Moscow; (3) grant an easement to the City of Moscow to accommodate the Paradise Path linear parkway; (4) grant an easement to WATCO to accommodate location of a rail line; (5) accept an easement for future road construction across the railroad right-of-way; and (6) accept a license to make stream enhancements on railroad right-of-way.

Moved by _____ Seconded by _____ Carried Yes ____ No _____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection:I. Real and Personal Property and Services

April 2002

1. Authority

- a. The Board may acquire, hold, and dispose of real and personal property pursuant to Article IX, Section 2 and Article IX, Section 10, Idaho Constitution, pursuant to various sections of Idaho Code.
- b. Leases of office space or classroom space by any institution, school or agency except the University of Idaho are acquired by and through the Department of Administration pursuant to Section 67-5708, Idaho Code.
- c. All property that is not real property must be purchased consistent with Sections 67-5715 through 67-5737, Idaho Code, except that the University of Idaho may acquire such property directly and not through the Department of Administration. Each institution, school and agency must designate an officer with overall responsibility for all purchasing procedures.
- d. Sale, surplus disposal, trade-in, or exchange of property must be consistent with Section 67-5722, Idaho Code, except that the University of Idaho may dispose of such property directly and not through the Department of Administration.
- e. If the executive director finds or is informed that an emergency exists, he or she may consider and approve a purchase or disposal of equipment or services otherwise requiring prior Board approval. The institution, school or agency must report the transaction in the Business Affairs and Human Resources agenda at the next regular Board meeting together with a justification for the emergency action.

2. Acquisition of Real Property

- a. Any interest in real property acquired for the University of Idaho must be taken in the name of the Board of Regents of the University of Idaho.
- b. Any interest in real property acquired for any other institution, school or agency under the governance of the Board must be taken in the name of the state of Idaho by and through the State Board of Education.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

c. This does not preclude a foundation or other legal entity separate and apart from an institution, school or agency under Board governance from taking title to real property in the name of the foundation or other organization for the present or future benefit of the institution, school or agency. (See Section V.E.)

d. Acquisition of an option, lease, or any other present or future interest in real property by or on behalf of an institution, school or agency requires prior Board approval if the term of the lease exceeds five (5) years or if the cost exceeds two hundred fifty thousand dollars (\$250,000) annually.

e. Appraisal.

An independent appraiser must be hired to give an opinion of fair market value before an institution, school or agency acquires fee simple title to real property.

f. Method of sale - exchange of property.

The Board will provide for the manner of selling real property under its control, giving due consideration to Section 33-601(4), applied to the Board through Section 33- 2211(5), and to Chapter 3, Title 58, Idaho Code. The Board may exchange real property under the terms, conditions, and procedures deemed appropriate by the Board.

g. Execution.

All easements, deeds, and leases excluding easements, deeds, and leases delegated authority granted to the institutions, school and agencies must be executed and acknowledged by the president of the Board or another officer designated by the Board and attested to and sealed by the secretary of the Board as being consistent with Board action.

UNIVERSITY OF IDAHO
Railroad Property Exchange and Acquisition Item


LIST OF ATTACHMENTS


Exhibit A:	Acquisition and Exchange Outline
Exhibit A1:	Railroad Graphic
Exhibit A2:	Purchase, Sale and Exchange Agreement
Exhibit B:	Exchange Agreement
Exhibit C:	Paradise Path Easement Agreement
Exhibit D:	Rail Line Easement Agreement
Exhibit E:	Peterson Street Easement Agreement
Exhibit F:	Paradise Creek License


EXHIBIT A


ACQUISITION AND EXCHANGE OUTLINE


(see Exhibit A1 – Railroad Graphic and
Exhibit A2 – Purchase, Sale and Exchange Agreement)

-  Regents acquire from WATCO approximately 10.11 acres of former railroad right-of-way immediately north and east of Regents' property in Moscow. Appraised value is \$1,604,660.

-  Regents dispose of 2.45 acres of vacant land (as exchange property) at the intersection of Farm Road and A Street. Parcel at upper left corner of Exhibit A2. Appraised value is \$554,000.

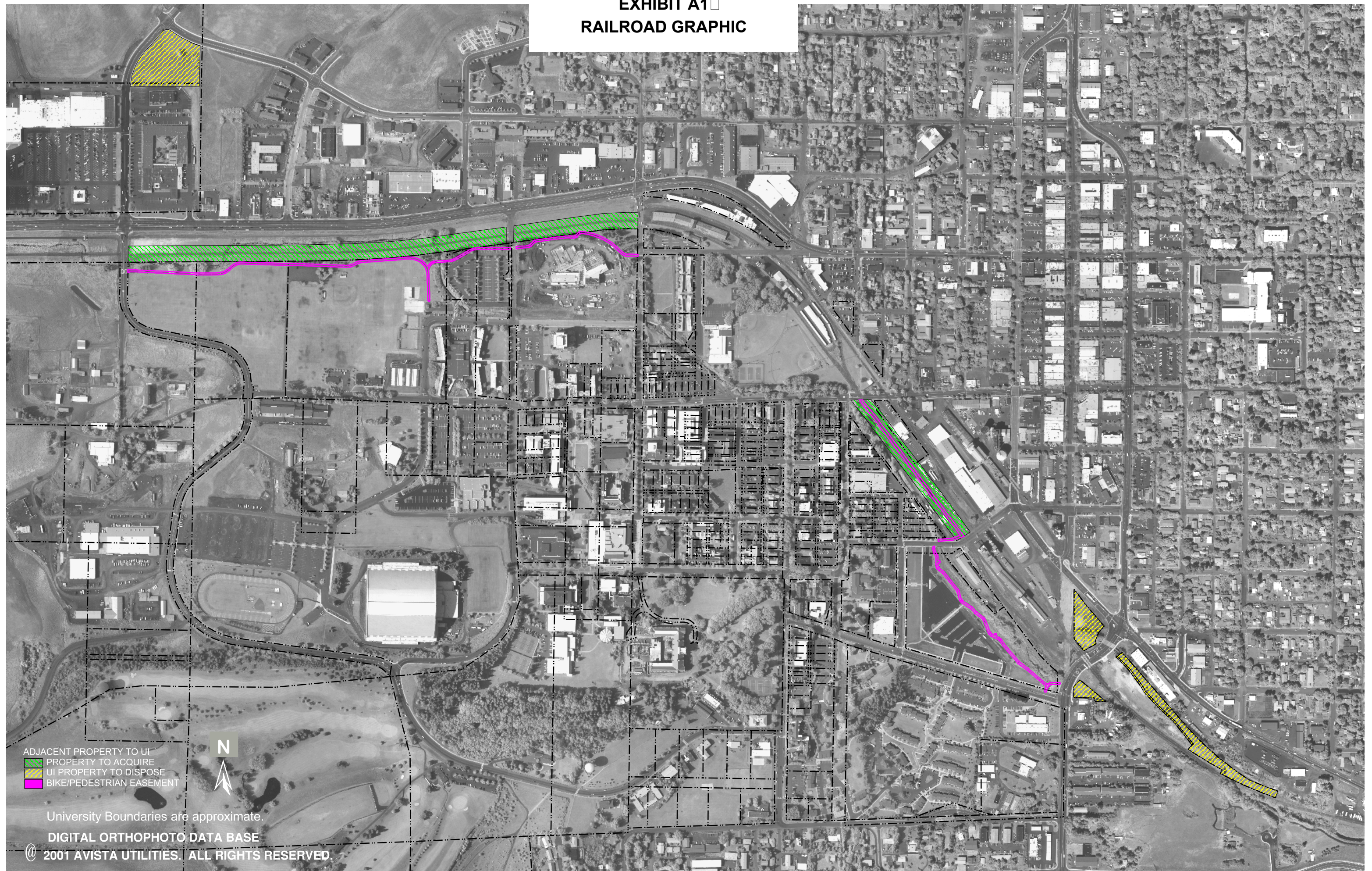
-  Regents dispose of 1.76 acres of vacant land (as part of an exchange with WATCO) lying east of US Hwy 95. Appraised value is \$168,000. Two separate parcels: "long slender" and "small triangle".

-  Regents dispose of 0.88 acres of vacant land (as part of an exchange with WATCO) lying west of US Hwy 95. Appraised value is \$187,000. Larger parcel northwest of two parcels described above.

-  Regents grant easements to City of Moscow for existing and new bike/pedestrian path through existing and new Regents' property. In return, the City of Moscow conveys 0.97 acres immediately adjacent to the Regents 0.88 acre parcel (appraised value of the City parcel is \$151,000) directly to WATCO.

The difference in values between the WATCO and UI/City of Moscow parcels (\$1,604,660 - \$1,060,000 = \$544,660.) will be donated to UI by WATCO.

EXHIBIT A1
RAILROAD GRAPHIC



ADJACENT PROPERTY TO UI
PROPERTY TO ACQUIRE
UI PROPERTY TO DISPOSE
BIKE/PEDESTRIAN EASEMENT



University Boundaries are approximate.

DIGITAL ORTHOPHOTO DATA BASE

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EXHIBIT A2

PURCHASE, SALE AND EXCHANGE AGREEMENT

PURCHASE, SALE AND EXCHANGE AGREEMENT

THIS PURCHASE, SALE AND EXCHANGE AGREEMENT ("**Agreement**") is entered into on _____, 2004, by and between **Palouse River and Coulee City Railroad, Inc.**, a Washington corporation ("**Palouse**"), and **Regents of the University of Idaho**, a public corporation and state educational institution organized and existing under the Constitution and laws of the state of Idaho ("**Regents**").

1. PROPERTY TO BE PURCHASED BY REGENTS.

Palouse shall sell and Regents shall purchase that certain real property located in the City of Moscow, County of Latah, State of Idaho, consisting of two parcels of land comprising approximately 10.11 acres, and shown in green on **Exhibit "A"** attached hereto and made a part hereof, together with all easements, rights and appurtenances thereto ("**Palouse Property**"), all in accordance with the terms and conditions hereinafter set forth. The legal description of the Palouse Property shall be determined by the survey to be obtained pursuant to Section 9(e) and upon such determination shall automatically be made a part hereof.

2. PROPERTY TO BE PURCHASED BY PALOUSE.

Regents shall sell and Palouse shall purchase that certain real property located in the City of Moscow, County of Latah, State of Idaho, consisting of five parcels of land comprising approximately 6.06 acres, as more particularly described on **Exhibit "B"** attached hereto and made a part hereof, together with all easements, rights and appurtenances thereto ("**Regents Property**"), all in accordance with the terms and conditions hereinafter set forth.

3. EASEMENTS TO BE EXCHANGED.

Palouse shall grant, or cause to be granted, to Regents a non-exclusive, perpetual easement sixty (60) feet wide over, through and across the property lying between the southern right-of-way line of Highway 8 and the northern boundary line of the Palouse Property in line with Peterson Street to the north ("**Peterson Street Easement**") according to the terms and conditions of the Peterson Street Easement Agreement attached hereto as **Exhibit "C"** and made a part hereof. The legal description of the Peterson Street Easement shall be determined by the survey to be obtained pursuant to Section 9(e) and upon such determination shall automatically be made a part hereof.

Regents shall grant to Palouse a non-exclusive easement over, through and across the western most three hundred (300) feet of the Palouse Property, or so much thereof (either more or less) as is required to relocate the Palouse River and Coulee City Railroad line onto the right-of-way immediately to the north of the Palouse Property, including twenty (20) feet on both sides of the tracks as a buffer zone ("**Rail Line Easement**"), according to the terms and conditions of the Rail Line Easement Agreement attached hereto as **Exhibit "D"** and made a part hereof. The legal description of the Rail Line Easement shall be determined by a survey to be obtained by Regents possibly after closing, at Regents' cost and expense, and upon such determination and acceptance by Palouse, which shall not be unreasonably withheld, conditioned or delayed, shall automatically be made a part hereof.

4. LICENSE FOR ENTRY.

Each party hereto grants to the other a license to enter upon the properties subject to this Agreement for all purposes reasonably related to a full and adequate determination of the suitability of the property, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits.

5. LICENSE FOR PARADISE CREEK.

Palouse shall grant, or cause to be granted, to Regents a non-exclusive, perpetual license to enter upon portions of the property immediately north of the Palouse Property for the investigation, study, maintenance, enhancement and improvement of Paradise Creek and its associated riparian habitat according to the terms and conditions of the Paradise Creek License attached hereto as **Exhibit "E"** and made a part hereof. The legal description of the Paradise Creek License shall be determined by a survey to be obtained by Regents possibly after closing, at Regents' cost and expense, and upon such determination and acceptance by Palouse, which shall not be unreasonably withheld, conditioned or delayed, shall automatically be made a part hereof.

6. PURCHASE PRICE.

The purchase price of the Palouse Property and the consideration for the Peterson Street Easement and the Paradise Creek License is the sum of One Million Six Hundred Four Thousand Six Hundred Sixty Dollars (\$1,604,660). The Purchase Price of the Regents Property and the consideration for the Rail Line Easement is One Million Sixty Thousand Dollars (\$1,060,000). Regents shall pay the purchase price for the Palouse Property and the Peterson Street Easement and the Paradise Creek License by conveying the Regents Property to Palouse, and granting the Rail Line Easement. The balance of the purchase price, in the amount of Five Hundred Forty-Four Thousand Six Hundred Sixty Dollars (\$544,660), for the Palouse Property and the Peterson Street Easement and the Paradise Creek License shall be deemed a charitable donation from Palouse to Regents, and Palouse and Regents accept and acknowledge the same. Palouse shall pay the purchase price for the Regents Property and the consideration for the Rail Line Easement by conveying the Palouse Property to Regents and granting the Peterson Street Easement and Paradise Creek License.

7. MUTUAL CONDITIONS SUBSEQUENT.

Notwithstanding anything to the contrary in this Agreement, neither party shall be obligated to purchase the respective properties unless at or prior to closing each of the following conditions has been met or both parties have waived said conditions in writing. Each party agrees to reasonably cooperate with the other to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) Palouse and Regents have entered into, and Palouse and Regents agree to enter into, the Peterson Street Easement Agreement attached hereto as **Exhibit "C"** and made a part hereof. The Peterson Street Easement Agreement shall be deposited into the escrow referred to in Section 10 with instructions that the same be recorded immediately after the

recording of the Quit Claim Deeds conveying the Palouse Property to the Regents and the Regents Property to Palouse.

(b) Palouse and Regents have entered into, and Palouse and Regents agree to enter into, the Rail Line Easement Agreement attached hereto as **Exhibit "D"** and made a part hereof. The Rail Line Easement Agreement shall be deposited into the escrow referred to in Section 10 with instructions that the same be recorded immediately after the recording of the Quit Claim Deeds conveying the Palouse Property to the Regents and the Regents Property to Palouse.

(c) Palouse and Regents have entered into, and Palouse and Regents agree to enter into, the Paradise Creek License attached hereto as **Exhibit "E"** and made a part hereof. The Paradise Creek License shall be deposited into the escrow referred to in Section 10 with instructions that the same be recorded immediately after the recording of the Quit Claim Deeds conveying the Palouse Property to the Regents and the Regents Property to Palouse.

(d) In the event either party, at any time prior to waiver or satisfaction of such party's conditions, deems any of the conditions set forth in this Section 7, or, in the case of Palouse, Section 8, or, in the case of Regents, Section 9, unsatisfied, such party may terminate this Agreement upon fifteen (15) days' prior written notice to the other and this Agreement shall terminate. In addition, and without limiting the foregoing, in the event all of the conditions set forth in this Section 7 and in Section 9 have not been satisfied or waived in writing by Regents within one (1) year after the date of this Agreement (and this Agreement has not theretofore been terminated by Regents), Palouse may at any time thereafter, so long as said conditions have not been satisfied or waived in writing by Regents, terminate this Agreement upon fifteen (15) days' prior written notice to Regents, and this Agreement shall terminate if the condition or conditions specified in said notice of termination have not been satisfied or waived in writing by Regents prior to expiration of said fifteen (15) day period. In addition, and without limiting the foregoing, in the event all of the conditions set forth in this Section 7 and in Section 8 have not been satisfied or waived in writing by Palouse within one (1) year after the date of this Agreement (and this Agreement has not theretofore been terminated by Palouse), Regents may at any time thereafter, so long as said conditions have not been satisfied or waived in writing by Palouse, terminate this Agreement upon fifteen (15) days' prior written notice to Palouse, and this Agreement shall terminate if the condition or conditions specified in said notice of termination have not been satisfied or waived in writing by Palouse prior to expiration of said fifteen (15) day period. Notwithstanding any of the foregoing, neither party shall have the right to terminate this Agreement if such party is in default under this Agreement. In the event of any such termination of this Agreement, both parties shall be released from any further obligations hereunder except for liabilities, actual or contingent, which arose prior to the date of termination.

8. PALOUSE CONDITIONS SUBSEQUENT.

Notwithstanding anything to the contrary in this Agreement, Palouse shall not be obligated to purchase the Regents Property unless at or prior to closing each of the following conditions has been met or Palouse has waived said conditions in writing. Regents agrees to reasonably cooperate with Palouse to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) Palouse has entered into such agreements and received the necessary approvals, specifically including any applicable approvals from the U.S. Surface Transportation Board, to permit Palouse to reestablish the Palouse rail line adjacent to Highway 8.

(b) Title to the Regents Property and Rail Line Easement shall be good and marketable and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except easements of record at the date of closing, and except the lien of real property taxes not yet due and payable and those exceptions approved in writing by Palouse ("**Palouse Permitted Exceptions**").

(c) Escrow Holder shall be prepared to obtain from Latah County Title Company, a standard coverage ALTA Owner's Policy of Title Insurance (including any endorsements reasonably required by Palouse) in the amount of \$506,000, insuring that marketable fee simple title to the Regents Property and an easement estate interest in the Rail Line Easement is vested in Palouse, subject only to the Palouse Permitted Exceptions.

(d) Palouse has obtained or been provided with such surveys, soils tests, engineering studies, and environmental tests and audits, which shall show the Regents Property to be suitable to Palouse, in Palouse's sole opinion.

(e) Palouse has specifically and finally approved the terms of this transaction in accordance with its policies and procedures.

9. REGENTS CONDITIONS SUBSEQUENT.

Notwithstanding anything to the contrary in this Agreement, Regents shall not be obligated to purchase the Palouse Property unless at or prior to closing each of the following conditions has been met or Regents has waived said conditions in writing. Palouse agrees to reasonably cooperate with Regents to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) City of Moscow is committed to transfer to Palouse at the Regents' direction, Parcel 1 as described on Exhibit "B." Regents and Palouse acknowledge and agree that as of the date of this Agreement, Regents does not own Parcel 1 as described on Exhibit "B".

(b) Regents and the City of Moscow, Idaho have entered into, upon terms and conditions reasonably acceptable to Regents, an easement agreement pertaining to extensions and connections for the Paradise Trail.

(c) Title to the Palouse Property and Peterson Street Easement shall be good and marketable and shall be free and clear of all liens, encumbrances, easements, assessments, restrictions, tenancies (whether recorded or unrecorded) and other exceptions to title, except those exceptions approved in writing by Regents ("**Regents Permitted Exceptions**").

(d) Escrow Holder shall be prepared to obtain from Latah Count Title Company, a standard coverage ALTA Owner's Policy of Title Insurance (including any endorsements reasonably required by Regents) in the amount of \$1,603,786, insuring that marketable fee

simple title to the Palouse Property is vested in Regents, subject only to the Regents Permitted Exceptions.

(e) Regents have obtained or been provided with such surveys, soils tests, engineering studies, and environmental tests and audits, which shall show the Palouse Property to be suitable to Regents', in Regents' sole opinion. Without limiting the generality of the foregoing, Palouse, at Palouse's cost and expense, shall have provided Regents with a legal description and survey for the Peterson Street Easement and the Palouse Property. Upon acceptance of the legal descriptions by Regents, such legal descriptions shall become a part of this Agreement without further action by either party.

(f) The Board of Regents of the University of Idaho have specifically and finally approved the terms of this transaction in accordance with their policies and procedures.

10. ESCROW HOLDER.

Prior to closing, the parties shall open an escrow with Latah County Title ("**Escrow Holder**"). After all of the conditions of closing as set forth in Sections 7 and 8 have been met or waived, Palouse shall deposit into escrow a duly executed and acknowledged Quit Claim Deed conveying the Palouse Property to Regents, subject only to the Regents Permitted Exceptions, together with instructions to deliver and record the Quit Claim Deed when (a) Escrow Holder is in a position to transfer the Regents Property to Palouse, subject only to the Palouse Permitted Exceptions, and (b) recordation of the Rail Line Easement Agreement. After all of the conditions of closing as set forth in Sections 7 and 9 have been met or waived, Regents shall deposit into escrow a duly executed and acknowledged Quit Claim Deed conveying the Regents Property to Palouse, subject only to the Palouse Permitted Exceptions together with instructions to deliver and record the Quit Claim Deed when (x) Escrow Holder is in a position to transfer the Palouse Property to Regents, subject only to the Regents Permitted Exceptions, (y) recordation of the Paradise Creek License, and (z) recordation of the Peterson Street Easement Agreement.

11. CLOSING.

Closing shall be the date on which the Quit Claim Deeds are recorded which shall be as soon as practicable after all conditions set forth in Sections 7, 8 and 9 have been satisfied or waived. Possession passes to each respective party on closing.

12. TRACK REMOVAL.

Palouse will remove within twelve months from the date of closing the railroad tracks, ties, associated equipment and any other personal property not attached to the Palouse Property from all portions of the Palouse Property, except within the Rail Line Easement where the tracks, ties and associated equipment may, in Palouse's discretion, remain for use in relocating the Palouse River and Coulee City Railroad line onto the right-of-way immediately to the north of the Palouse Property. Palouse shall indemnify, defend, and save Regents, its successors assigns, and agents harmless from any and all claims liabilities, losses, costs, charges, or expenses (including without limitation reasonable attorneys' fees) which Regents may incur as a result of Palouse' personal property remaining after closing. This indemnification

shall survive closing and the termination of this Agreement, and shall continue so long as Palouse's personal real property remains on the subject real property.

13. SECTION 1445 AFFIDAVIT.

At or prior to closing, Palouse shall deliver to Regents an affidavit in compliance with Section 1445 of the Internal Revenue Code providing Palouse's United States taxpayer identification number and business address and stating whether or not Palouse is a "foreign person" as defined in the Internal Revenue Code and regulations applicable thereto ("**Code**"). If Palouse fails to deliver such affidavit or is a "foreign person" as defined in the Code, Regents shall be entitled to withhold from the purchase price, and to pay to the Internal Revenue Service, such amounts as are required to be withheld by the Code, and Palouse agrees to cooperate with Regents and to furnish Regents with such tax forms and information as are reasonably required to insure Regents' compliance with the Code.

14. COSTS.

Escrow fees, title insurance premiums for issuance of standard owner's policies of title insurance as required by Sections 8(c) and 9(d) and recording fees for all deeds and easement agreements shall be paid equally by both parties. Taxes, rentals and utilities shall be prorated as of the time of closing. Regents is a tax exempt entity and the Regents Property is not currently subject to property taxation. As such, property taxes shall not be prorated for the Regents Property and Palouse shall be responsible for all property taxes charged against the Regents Property after the date of closing.

15. COMMISSIONS.

Each party represents and warrants that it has not dealt with or contracted with any broker, agent or finder to act in their behalf in connection with this transaction except for Shelley L. Bennett, Bennett & Associates, Inc. ("**Broker**") who was retained by Palouse. Palouse agrees that it shall be solely responsible for all brokerage commissions and fees due to Broker and that said commissions and fees shall be paid by Palouse from the purchase price out of escrow. . Subject to any applicable limits of liability specified in Idaho Code §§ 6-901 through 6-929, known as the Idaho Tort Claims Act, each party agrees to indemnify and hold harmless the other party from all claims arising from any misrepresentation by the indemnifying party pursuant to this Section 15 and Palouse further agrees to indemnify, defend and hold harmless Regents from all claims arising from Palouse's failure to pay all brokerage commissions and fees due to Broker.

16. REPRESENTATION CONFIRMATION.

Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the REGENTS and PALOUSE.

Section 1:

- A. ☐ The broker working with the REGENTS is acting as an AGENT for the REGENTS.
- B. ☐ The broker working with the REGENTS is acting as a LIMITED DUAL AGENT for the REGENTS.
- C. ☒ The broker working with the REGENTS is acting as a NONAGENT for the REGENTS.

Section 2:

- A. ☒ The broker working with the PALOUSE is acting as an AGENT for the PALOUSE.
- B. ☐ The broker working with the PALOUSE is acting as a LIMITED DUAL AGENT for the PALOUSE.
- C. ☐ The broker working with the PALOUSE is acting as a NONAGENT for the PALOUSE.

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure brochure and has elected the relationship confirmed above. In addition, each party confirms that the broker's agency office policy was made available for inspection and review.

EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKER UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

Listing Agency: Bennett & Associates, Inc.
 Selling Agency: None
 Responsible Broker: Shelley L. Bennett

17. PROPERTIES SOLD AS-IS.

The provisions of this Section 17 shall survive closing. Each party is relying solely upon such party's inspections as to the condition of properties. Except as expressly set forth in this Agreement, neither party nor such party's employees or agents are making, have made and each party expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the properties or this transaction including, without limitation, the existence of hazardous waste, or the suitability of the property for any intended use. Each party must independently verify all information and reports regarding any aspect or feature of the property. Each party is purchasing its respective property in "As Is" condition with all faults including both latent and patent defects and each party releases the other from any and all liability relating to any aspect or condition of the properties, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the

Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

18. SUCCESSORS.

This Agreement shall be binding on the heirs, successors, assigns and personal representatives of the parties hereto.

19. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

20. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default.

(b) In the event of a default, the nondefaulting party may:

(i) Terminate this Agreement upon written notice to the defaulting party, and recover from the defaulting party all damages incurred by the nondefaulting party;

(ii) Seek specific performance of this Agreement, and, in addition, recover all damages incurred by the nondefaulting party. The parties declare it to be their intent that this Agreement may be specifically enforced;

(iii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party; and

(iv) Pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting party.

21. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below:

Palouse: Brad Snow
Palouse River and Coulee City Railroad
315 W Third St
Pittsburg, KA 66762

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

22. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

23. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

24. CONSTRUCTION.

In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. Furthermore, “**person**” shall include

individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

25. TIME PERIOD COMPUTATION.

All time periods in this Agreement shall be deemed to refer to calendar days unless the time period specifically references business days; provided that if the last date on which to perform any act or give any notice under this Agreement shall fall on a Saturday, Sunday or local, state or national holiday, such act or notice shall be deemed timely if performed or given on the next succeeding business day.

26. BINDING AGREEMENT.

This Agreement shall not be binding or enforceable until both parties have fully executed this Agreement and have delivered to each other an original counterpart of this Agreement fully executed by the delivering party.

27. 1031 EXCHANGE.

Regents acknowledges that Palouse may wish to structure this transaction as a tax deferred exchange of like-kind property within the meaning of Section 1031 of the Code. Regents agrees to reasonably cooperate with Palouse to effect such an exchange; provided, however, that (i) Regents not be required to acquire or take title to any exchange property, (ii) Regents shall not be required to incur any expense (excluding attorneys' fees) or liability whatsoever in connection with the exchange, including, without limitation, any obligation for the payment of any escrow, title, brokerage or other costs incurred with respect to the exchange, (iii) no substitution of Palouse shall release Palouse from any of its obligations, warranties or representations set forth in this Agreement or from liability for any prior or subsequent default under this Agreement by Palouse, its successors or assigns, which obligations shall continue as the obligations of a principal and not of a surety or guarantor, (iv) Palouse shall give Regents at least five (5) business days' prior notice of the proposed changes required to effect such exchange and the identity of any party to be substituted in the escrow, (v) Palouse shall be responsible for preparing all additional agreements, documents and escrow instructions (collectively, the "**Exchange Documents**") required by the exchange, at its sole cost and expense, and (vi) Palouse shall be responsible for making all determinations as to the legal sufficiency, tax considerations and other considerations relating to the proposed exchange, the Exchange Documents and the transactions contemplated thereby, and Regents shall in no event be responsible for, or in any way be deemed to warrant or represent any tax or other consequences of the exchange transaction arising by reason of Regents' performance of the acts required hereby.

28. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

EXECUTED as of the date first above written.

PALOUSE:

Palouse River and Coulee City Railroad, Inc.

By: _____
Name: _____
Its: _____

REGENTS:

Regents of the University of Idaho

By: _____
Jay Kenton, Vice President Finance and
Administration

List of Exhibits and Schedules

- Exhibit A - Site Plan
- Exhibit B - Legal Description of University Property
- Exhibit C - Peterson Street Easement Agreement
- Exhibit D - Rail Line Easement Agreement
- Exhibit E - Paradise Creek License

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EXHIBIT B

EXCHANGE AGREEMENT

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT ("**Agreement**") is entered into on _____, 2004, by and between **City of Moscow, Idaho**, a municipal corporation of the State of Idaho ("**City**"), and **Regents of the University of Idaho**, a public corporation and state educational institution organized and existing under the Constitution and laws of the state of Idaho ("**Regents**").

1. **PROPERTY TRANSFERRED TO REGENTS.**

City shall transfer and Regents, or Regents' designee shall acquire that certain real property located in the City of Moscow, County of Latah, State of Idaho, more particularly described on **Exhibit "A"** attached hereto and made a part hereof, together with all easements, rights and appurtenances thereto ("**City Property**"), all in accordance with the terms and conditions hereinafter set forth.

2. **PROPERTY TRANSFERRED TO CITY.**

Regents shall transfer and City shall acquire an easement in that certain real property located in the City of Moscow, County of Latah, State of Idaho, more particularly described on **Exhibit "B"** attached hereto and made a part hereof, ("**Regents Property**"), all in accordance with the terms and conditions hereinafter set forth.

3. **LICENSE FOR ENTRY.**

Each party hereto grants to the other a license to enter upon the properties subject to this Agreement for all purposes reasonably related to a full and adequate determination of the suitability of the property, including, without limitation, the right to conduct surveys, soils tests, engineering studies, and environmental tests and audits.

4. **EXCHANGE.**

In consideration for an easement in the Regents Property, the City shall transfer fee title to the City Property to Regents, or Regents' designee. In consideration for fee title to the City Property, the Regents shall convey an easement in the Regents Property to City.

5. **CITY CONDITIONS SUBSEQUENT.**

Notwithstanding anything to the contrary in this Agreement, City shall not be obligated to transfer the City Property to Regents unless at or prior to closing each of the following conditions has been met or City has waived said conditions in writing. Regents agrees to reasonably cooperate with City to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) City and the Palouse River and Coulee City Railroad, Inc. ("**Palouse**") have entered into, upon terms and conditions reasonably acceptable to City, a purchase and sale agreement for the acquisition and sale of certain real properties within the City of Moscow.

(b) City and the Palouse have entered into, upon terms and conditions reasonably acceptable to City, an easement agreement pertaining to extensions and connections for the Paradise Path and Chipman Trail.

(c) City has obtained or been provided with such surveys, soils tests, engineering studies, and environmental tests and audits as City may desire, which shall show the Regents Property to be suitable to City, in City's sole opinion.

(d) City and Regents have entered into, and City and Regents agree to enter into, the Paradise Path Easement Agreement attached hereto as **Exhibit "C"** and made a part hereof.

(e) City has obtained all proper approvals for this transaction, including approval from the City Council.

(f) In the event City, at any time, deems any of the conditions set forth in this Section 5 unsatisfied, City may terminate this Agreement upon fifteen (15) days' prior written notice to Regents and this Agreement shall terminate. In addition, and without limiting the foregoing, in the event all of the conditions set forth in Section 6 have not been satisfied or waived in writing by Regents within one (1) year after the date of this Agreement (and this Agreement has not theretofore been terminated by Regents), City may at any time thereafter, so long as said conditions have not been satisfied or waived in writing by Regents, terminate this Agreement upon fifteen (15) days' prior written notice to Regents, and this Agreement shall terminate if the condition or conditions specified in said notice of termination have not been satisfied or waived in writing by Regents prior to expiration of said fifteen (15) day period. Notwithstanding any of the foregoing, neither party shall have the right to terminate this Agreement if such party is in default under this Agreement. In the event of any such termination of this Agreement, both parties shall be released from any further obligations hereunder except for liabilities, actual or contingent, which arose prior to the date of termination.

6. REGENTS CONDITIONS SUBSEQUENT.

Notwithstanding anything to the contrary in this Agreement, Regents shall not be obligated to acquire the City Property unless at or prior to closing each of the following conditions has been met or Regents has waived said conditions in writing. City agrees to reasonably cooperate with Regents to execute any documents which may be necessary or convenient to the performance of these conditions:

(a) Regents have acquired from Palouse or Palouse is otherwise committed to transfer to Regents, upon terms and conditions reasonably acceptable to Regents, certain real properties within the City of Moscow.

(b) Regents and the Palouse have entered into or Palouse is otherwise committed to convey to Regents, upon terms and conditions reasonably acceptable to Regents, an easement agreement pertaining to the southern extension of Peterson Street into the University of Idaho campus.

(c) Regents have obtained or been provided with such surveys, soils tests, engineering studies, and environmental tests and audits, as Regents may desire, which shall show the City Property to be suitable to Regents, in Regents' sole opinion.

(d) Regents have approved this transaction.

(e) Regents have sold that certain real property consisting of approximately 2.45 acres of land located at the intersection of Farm Road and A Street ("**Farm Road Property**"), upon terms and conditions acceptable to Regents.

(f) In the event Regents, at any time, deems any of the conditions set forth in this Section 6, unsatisfied, Regents may terminate this Agreement upon fifteen (15) days' prior written notice to City and this Agreement shall terminate. In addition, and without limiting the foregoing, in the event all of the conditions set forth in Section 5 have not been satisfied or waived in writing by City within one (1) year after the date of this Agreement (and this Agreement has not theretofore been terminated by City), Regents may at any time thereafter, so long as said conditions have not been satisfied or waived in writing by City, terminate this Agreement upon fifteen (15) days' prior written notice to City, and this Agreement shall terminate if the condition or conditions specified in said notice of termination have not been satisfied or waived in writing by City prior to expiration of said fifteen (15) day period. Notwithstanding any of the foregoing, neither party shall have the right to terminate this Agreement if such party is in default under this Agreement. In the event of any such termination of this Agreement, both parties shall be released from any further obligations hereunder except for liabilities, actual or contingent, which arose prior to the date of termination.

7. ESCROW HOLDER.

Prior to closing, the parties shall open an escrow with Latah County Title ("**Escrow Holder**"). After all of the conditions of closing as set forth in Section 5 have been met or waived, City shall deposit into escrow a duly executed and acknowledged Quit Claim Deed conveying the City Property to Regents, or Regents' designee, together with instructions to deliver and record the Quit Claim Deed when (a) Escrow Holder is in a position to transfer the Regents Property to City, and (b) recordation of the Paradise Path Easement Agreement. After all of the conditions of closing as set forth in Section 6 have been met or waived, Regents shall deposit into escrow a duly executed and acknowledged Paradise Path Easement Agreement conveying an easement in the Regents Property to City, together with instructions to deliver and record the Paradise Path Easement Agreement when Escrow Holder is in a position to transfer the City Property to Regents, or Regents' designee.

8. CLOSING.

Closing shall be the date on which the Quit Claim Deed and Paradise Path Easement Agreement are recorded which shall be as soon as practicable after all conditions set forth in Sections 5 and 6 have been satisfied or waived. Possession passes to each respective party on closing.

9. COSTS.

Escrow fees and recording fees for the deed and easement agreement shall be paid equally by both parties. There shall be no prorations or title insurance premiums at closing.

10. COMMISSIONS.

Each party represents and warrants that it has not dealt with or contracted with any broker, agent or finder to act in their behalf in connection with this transaction. Each party

agrees to indemnify, defend and hold harmless the other party from all claims arising from any misrepresentation by the indemnifying party pursuant to this Section 10.

11. PROPERTIES EXCHANGED AS-IS.

The provisions of this Section 11 shall survive closing. Each party is relying solely upon such party's inspections as to the condition of properties. Except as expressly set forth in this Agreement, neither party nor such party's employees or agents are making, have made and each party expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the properties or this transaction including, without limitation, the existence of hazardous waste, or the suitability of the property for any intended use. Each party must independently verify all information and reports regarding any aspect or feature of the property. Each party is purchasing its respective property in "As Is" condition with all faults including both latent and patent defects and each party releases the other from any and all liability relating to any aspect or condition of the properties, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

12. SUCCESSORS.

This Agreement shall be binding on the successors and assigns of the parties hereto.

13. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

14. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations (or breached any of its representations or warranties) under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default.

(b) In the event of a default, the nondefaulting party may:

(i) Terminate this Agreement upon written notice to the defaulting party, and recover from the defaulting party all damages incurred by the nondefaulting party;

(ii) Seek specific performance of this Agreement, and, in addition, recover all damages incurred by the nondefaulting party. The parties declare it to be their intent that this Agreement may be specifically enforced;

(iii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party; and

(iv) Pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting party.

15. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below:

City: City of Moscow
118 E. 4th Street
P.O. Box 9203
Moscow, ID 83843

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

16. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

18. CONSTRUCTION.

In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

19. TIME PERIOD COMPUTATION.

All time periods in this Agreement shall be deemed to refer to calendar days unless the time period specifically references business days; provided that if the last date on which to perform any act or give any notice under this Agreement shall fall on a Saturday, Sunday or local, state or national holiday, such act or notice shall be deemed timely if performed or given on the next succeeding business day.

20. BINDING AGREEMENT.

This Agreement shall not be binding or enforceable until both parties have fully executed this Agreement and have delivered to each other an original counterpart of this Agreement fully executed by the delivering party.

21. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

EXECUTED as of the date first above written.

CITY:

REGENTS

City of Moscow, Idaho

Regents of the University of Idaho

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

List of Exhibits

Exhibit A - Legal Description of City Property
Exhibit B - Legal Description of Regents Property
Exhibit C – Paradise Path Easement Agreement

EXHIBIT C

PARADISE PATH EASEMENT AGREEMENT

PARADISE PATH EASEMENT AGREEMENT

THIS PARADISE PATH EASEMENT AGREEMENT ("**Agreement**") is entered into on _____, 200____, by and between **City of Moscow, Idaho**, a municipal corporation of the State of Idaho ("**City**"), and **Regents of the University of Idaho**, a public corporation and state educational institution, organized and existing under the Constitution and laws of the state of Idaho ("**Regents**").

1. GRANT OF EASEMENT.

Regents, as grantor, hereby grants to City a perpetual, nonexclusive easement ("**Paradise Path Easement**") for ingress and egress by pedestrian traffic, law enforcement, emergency and maintenance personnel, and the installation, operation, maintenance, repair and replacement of any improvements associated with pedestrian, law enforcement, emergency or maintenance traffic, including, without limitation, paving, stripping, lighting, and signs, upon, over and across ten (10) feet on both sides of the line drawn on **Exhibit "A"** attached hereto and made a part hereof ("**Easement Property**"). City may, but shall not be obligated to, improve, pave, maintain, or provide law enforcement over the Easement Property. The Paradise Path Easement shall be a burden on the Easement Property, and shall run with the land.

2. MAINTENANCE AND REPAIR.

Regents, at Regents' cost and expense, shall maintain and repair or cause to be maintained and repaired, and Regents hereby agrees to maintain and repair, the Easement Property in good condition. Regents may, but shall not be obligated to, install improvements upon, over or across the Easement Property, including, without limitation, paving, stripping, lighting, telephones and signs.

In the event City elects to improve, pave, or maintain the Easement Property, prior to the start of such work, City shall obtain Regents' prior written approval to the plans and specifications for the work. Such work shall be performed at the City's cost and expense. Such work shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All work performed in the Easement Property shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay use or enjoyment of the Easement Property or surrounding properties by either party.

3. OBSTRUCTIONS.

No buildings, structures or other improvements unreasonably obstructing pedestrian traffic shall be constructed within the Easement Property. For purposes of this Agreement, pedestrian traffic shall include walking, cycling (non-motorized), skating, other common forms of non-motorized, on-the-ground travel, and wheelchair or similar conveyances, whether or not powered or motorized, operated by a person with a disability and permitted on restricted bike paths or pedestrian walkways by City.

4. *RELOCATION.*

From time to time upon prior written notice to City, Regents may relocate, modify or change the course of the Palouse Path Easement provided that such relocation, modification or change: (a) does not unduly impact pedestrian traffic, (b) is improved to the same or better condition as the former location, (c) maintains the continuity of the Paradise Path Easement (provided that minor breaks in the path are permitted, for example to cross a street, traverse a court yard, or sidestep a building), and (d) Regents, at Regents cost and expense, records in the official records of Latah County a revised Exhibit "A" to this Agreement showing the new location of the Paradise Path Easement which shall replace the Exhibit "A" attached hereto.

5. *INSURANCE.*

Each party shall maintain at its sole cost and expense commercial general liability insurance, covering bodily injury in the sum of not less than the maximum limit on liability set forth in the Idaho Tort Claims Act (currently \$500,000) per person and per occurrence and property damage in the same amount per occurrence. All insurance required hereunder shall be on an occurrence basis or on a claims made basis covering claims occurring during the policy period and reported within three years of the date of occurrence, and shall be maintained in full force and effect in a company or companies authorized to do business in the state of Idaho. All insurance required hereunder and obtained by City shall name "The State of Idaho and The Regents of the University of Idaho, its agents, its employees, and its assigns" as additional insureds. All insurance required hereunder and obtained by Regents shall name "City of Moscow, its agents, its employees, and its assigns" as additional insureds. Such insurance policies shall contain a clause in which the insurance company will endeavor to give written notice to the additional insured thirty (30) days in advance of the cancellation of such insurance. Certificates of insurance and additional insured endorsements shall be provided upon written request from the other party. Said certificates and endorsements shall evidence compliance with all provisions of this Section 5.

6. *PROPERTY CONVEYED AS-IS.*

City is relying solely upon City's inspections as to the condition of the Easement Property. Except as expressly set forth in this Agreement, neither Regents nor Regents' agents or employees are making, have made and Regents expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the Easement Property including, without limitation, the existence of hazardous waste, or the suitability of the Easement Property for any intended use. City must independently verify all information and reports regarding any aspect or feature of the Easement Property. City is acquiring an interest in the Easement Property in "As Is" condition with all faults including both latent and patent defects and City releases Regents from any and all liability relating to any existing aspect or condition of the Easement Property, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or

federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

7. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

8. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default; provided that neither party shall be deemed to be in default if such failure to perform (other than the failure to pay money) cannot be rectified within such thirty (30) day period and within the thirty (30) day period such party has begun and is diligently proceeding to rectify the particulars of such default.

(b) In the event of a default, the nondefaulting party may:

(i) Seek specific performance of this Agreement. The parties declare it to be their intent that this Agreement may be specifically enforced; or

(ii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party.

(c) Notwithstanding Section 8(b), the liability of Regents or City for damages resulting from or relating to the performance or nonperformance of this Agreement shall be limited to the cost of performing such item; it being specifically agreed and understood that, in no event, shall Regents or City be liable to any person for special, incidental or consequential damages on account thereof.

9. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party. If a notice must be given to a person

other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of Latah County. All notices to City or Regents shall be given to the appropriate party at the address set forth below:

City: City of Moscow
118 E. 4th Street
P.O. Box 9203
Moscow, ID 83843

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

10. BREACH SHALL NOT PERMIT TERMINATION.

It is expressly agreed that no breach of this Agreement shall entitle any person or party to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such person or party may have hereunder by reason of any breach of this Agreement.

11. SUCCESSORS.

This Agreement shall inure to the benefit of and be binding upon City and Regents, their successors and assigns, and upon any person acquiring the Easement Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

12. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

13. MODIFICATION AND TERMINATION.

This Agreement may not be modified in any respect or terminated, in whole or in part, except with the consent of City and Regents, or their successors or assigns, and then only by written instrument duly executed and acknowledged by all required parties and recorded in the official records of Latah County, Idaho.

14. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

15. WAIVER.

The failure of a person to insist upon strict performance of any of the terms or obligations contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms or obligations contained herein by the same or any other person.

EXECUTED as of the date first above written.

CITY:

REGENTS:

City of Moscow, Idaho

Regents of the University of Idaho

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTESTED TO:

Stephanie Kalasz, City Clerk

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of July, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Regents of the University of Idaho, the body politic and corporate that executed the within instrument or the person who executed the instrument on behalf of said body politic and corporate, and acknowledged to me that such body politic and corporate 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 for Idaho
Residing at _____
My commission expires _____

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EXHIBIT D

RAIL LINE EASEMENT AGREEMENT

RAIL LINE EASEMENT AGREEMENT

THIS RAIL LINE EASEMENT AGREEMENT ("**Agreement**") is entered into on _____, 200____, by and between **Palouse River and Coulee City Railroad, Inc.**, a Washington corporation ("**Palouse**"), and **Regents of the University of Idaho**, a public corporation and state educational institution organized and existing under the Constitution and laws of the state of Idaho ("**Regents**").

1. GRANT OF EASEMENT.

Regents, as grantor, hereby grants to Palouse, its respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, a nonexclusive easement ("**Rail Line Easement**") for ingress and egress by railroad traffic, and the installation, operation, maintenance, repair and replacement of any improvements associated with railroad traffic, including, without limitation, rail tracks, railroad ties, underlayment, switching equipment, and signs, upon, over and across the property described in **Exhibit "A"** attached hereto and made a part hereof ("**Easement Property**"). The Rail Line Easement shall be a burden on the Easement Property, appurtenant to and for the benefit of the property described on **Exhibit "B"** attached hereto and made a part hereof and each and every portion thereof ("**Benefited Property**"), and shall run with the land.

2. IMPROVEMENTS.

Prior to the construction, expansion or modification of any improvements within the Easement Property, the party having the work performed shall obtain the other party's prior written approval to the plans and specifications for the improvements in accordance with the procedures set forth in Section 5. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All work performed in the Easement Property shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay use or enjoyment of the Easement Property by either party. The person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to their prior condition all improvements damaged or destroyed in the performance of such work. The Contracting Party shall not permit any liens to stand against the Easement Property or the Benefited Property for any work done or materials furnished in connection with the performance of such work; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall indemnify, defend and hold harmless the other party from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

3. MAINTENANCE AND REPAIR.

Palouse, at Palouse's cost and expense, shall maintain and repair or cause to be maintained and repaired, and Palouse hereby agrees to maintain and repair, the Easement Property and all improvements installed by or for the benefit of Palouse in good condition.

4. OBSTRUCTIONS.

No buildings, structures or other improvements obstructing train traffic shall be constructed within the Easement Property. Nothing in the foregoing sentence shall prevent the construction, operation and maintenance of railroad crossing guards or other railroad safety improvements.

5. APPROVAL PROCEDURES.

Before any action requiring a party's approval is commenced, sufficient information shall be sent to such party to enable that party to make a reasonable decision as to the proposal. No party shall have the right to unreasonably withhold, condition or delay its approval to the proposal. Each party must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such party disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If a party rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such party shall be deemed to have approved the same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

6. INSURANCE.

Each party shall maintain at its sole cost and expense commercial general liability insurance, covering bodily injury in the sum of not less than the maximum limit on liability set forth in the Idaho Tort Claims Act (currently \$500,000) per person and per occurrence and property damage in the same amount per occurrence. All insurance required hereunder shall be on an occurrence basis or on a claims made basis covering claims occurring during the policy period and reported within three years of the date of occurrence, and shall be maintained in full force and effect in a company or companies authorized to do business in the state of Idaho. All insurance required hereunder and obtained by Palouse shall name "The State of Idaho and The Regents of the University of Idaho, its agents, its employees, and its assigns" as additional insureds. All insurance required hereunder and obtained by Regents shall name "Palouse River and Coulee City Railroad, Inc., its agents, its employees, and its assigns" as additional insureds. Such insurance policies shall contain a clause in which the insurance company will endeavor to give written notice to the additional insured thirty (30) days in advance of the cancellation of such insurance. Certificates of insurance and additional insured endorsements shall be provided upon written request from the other party. Said certificates and endorsements shall evidence compliance with all provisions of this Section 6.

7. TAXES.

Palouse shall timely pay when due all taxes assessed against the Easement Property, if any; subject, however, to the right to contest the amount or validity of all or any part of said taxes and assessments.

8. PROPERTY CONVEYED AS-IS.

Palouse is relying solely upon Palouse's inspections as to the condition of the Easement Property. Except as expressly set forth in this Agreement, neither Regents nor Regents' agents are making, have made and Regents expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the Easement Property including, without limitation, the existence of hazardous waste, or the suitability of the Easement Property for any intended use. Palouse must independently verify all information and reports regarding any aspect or feature of the Easement Property. Palouse is acquiring an interest in the Easement Property in "As Is" condition with all faults including both latent and patent defects and Palouse releases Regents from any and all liability relating to any existing aspect or condition of the Easement Property, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

9. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

10. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default; provided that neither party shall be deemed to be in default if such failure to perform (other than the failure to pay money) cannot be rectified within such thirty (30) day period and within the thirty (30) day period such party has begun and is diligently proceeding to rectify the particulars of such default.

(b) In the event of a default, the nondefaulting party may:

(i) Seek specific performance of this Agreement, and, in addition, recover all damages incurred by the nondefaulting party. The parties declare it to be their intent that this Agreement may be specifically enforced;

(ii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party; and

(iii) Pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting party.

11. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of Latah County. All notices to Palouse or Regents shall be given to the appropriate party at the address set forth below:

Palouse: _____

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

12. TERMINATION.

(a) It is expressly agreed that no breach of this Agreement shall entitle any person or party to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such person or party may have hereunder by reason of any breach of this Agreement.

(b) The Rail Line Easement shall terminate at such time as Palouse expressly abandons use of the Easement Property or Palouse can no longer use the Easement Property for the uses permitted under this Agreement; for example because of an inability to route railroad traffic through the Easement Property. At such time as Palouse agrees to abandon use of the Easement Property or the Rail Line Easement otherwise terminates, Regents shall pay to Palouse the sum of one dollar (\$1.00) and upon payment, Palouse shall quit claim to Regents all right, title and interest Palouse may have in and to the Easement Property.

13. SUCCESSORS.

This Agreement shall inure to the benefit of and be binding upon Palouse and Regents, their heirs, successors, assigns and personal representatives, and upon any person acquiring either the Easement Property or the Benefited Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

14. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

15. MODIFICATION AND TERMINATION.

This Agreement may not be modified in any respect or terminated, in whole or in part, except with the consent of Palouse and Regents, or their successors or assigns, and then only by written instrument duly executed and acknowledged by all required parties and recorded in the official records of Latah County, Idaho.

16. JOINT AND SEVERAL.

In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

18. CONSTRUCTION.

In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. Furthermore, "**person**" shall include individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

19. WAIVER.

The failure of a person to insist upon strict performance of any of the terms or obligations contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms or obligations contained herein by the same or any other person.

20. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

EXECUTED as of the date first above written.

PALOUSE:

REGENTS:

Palouse River and Coulee City Railroad, Inc.

Regents of the University of Idaho

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

STATE OF _____)
)
County of _____)

ss.

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Palouse River and Coulee City Railroad, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Regents of the University of Idaho, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

EXHIBIT E

PETERSON STREET EASEMENT AGREEMENT

PETERSON STREET EASEMENT AGREEMENT

THIS PETERSON STREET EASEMENT AGREEMENT ("**Agreement**") is entered into on _____, 200____, by and between **Palouse River and Coulee City Railroad, Inc.**, a Washington corporation ("**Palouse**"), and **Regents of the University of Idaho**, a public corporation and state educational institution, existing under the Constitution and laws of the state of Idaho ("**Regents**").

1. GRANT OF EASEMENT.

Palouse, as grantor, hereby grants to Regents, its respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, a perpetual, nonexclusive easement ("**Peterson Street Easement**") for ingress and egress by vehicular and pedestrian traffic, the installation, operation, maintenance, repair and replacement of any improvements associated with vehicular and pedestrian traffic, including, without limitation, sidewalks, curbing, cross walks, traffic signals, lights, stripping, paving and signs, the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, telephones, communication lines, electrical conduits or systems, gas mains and other public or private utilities or systems, and signs upon, over and across the property described in **Exhibit "A"** attached hereto and made a part hereof ("**Easement Property**"). The Peterson Street Easement shall be a burden on the Easement Property, appurtenant to and for the benefit of the property described on **Exhibit "B"** attached hereto and made a part hereof and each and every portion thereof ("**Benefited Property**"), and shall run with the land.

2. IMPROVEMENTS.

Prior to the construction, expansion or modification of any improvements within the Easement Property, the party having the work performed shall obtain the other party's prior written approval to the plans and specifications for the improvements in accordance with the procedures set forth in Section 5. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All work performed in the Easement Property shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay use or enjoyment of the Easement Property by either party. The person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to their prior condition all improvements damaged or destroyed in the performance of such work. The Contracting Party shall not permit any liens to stand against the Easement Property or the Benefited Property for any work done or materials furnished in connection with the performance of such work; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall indemnify, defend and hold harmless the other party from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, arising out of or in any way

connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

3. MAINTENANCE AND REPAIR.

Regents, at Regents' cost and expense, shall maintain and repair or cause to be maintained and repaired, and Regents hereby agrees to maintain and repair, the Easement Property and all improvements installed by or for the benefit of Regents in good condition. Notwithstanding the foregoing sentence, Regents shall not maintain the railroad tracks, track underlayment, ties, or crossing guard, which maintenance shall be performed by Palouse, but Regents shall maintain and repair the ramp and track pad designed to provide smooth vehicular traffic over the railroad tracks.

4. OBSTRUCTIONS.

No buildings, structures or other improvements obstructing vehicular, train or pedestrian traffic shall be constructed within the Easement Property. Nothing in the foregoing sentence shall prevent the construction, operation and maintenance of railroad crossing guards, traffic signals, speed bumps, or other traffic calming improvements. There shall be no parking within the Easement Property, including, without limitation automobile or rail car parking, where such parking obstructs vehicular, train or pedestrian traffic.

5. APPROVAL PROCEDURES.

Before any action requiring a party's approval is commenced, sufficient information shall be sent to such party to enable that party to make a reasonable decision as to the proposal. No party shall have the right to unreasonably withhold, condition or delay its approval to the proposal. Each party must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such party disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If a party rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such party shall be deemed to have approved the same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

6. INSURANCE.

Each party shall maintain at its sole cost and expense commercial general liability insurance, covering bodily injury in the sum of not less than the maximum limit on liability set forth in the Idaho Tort Claims Act (currently \$500,000) per person and per occurrence and property damage in the same amount per occurrence. All insurance required hereunder shall be on an occurrence basis or on a claims made basis covering claims occurring during the policy period and reported within three years of the date of occurrence, and shall be maintained in full force and effect in a company or companies authorized to do business in the state of Idaho. All insurance required hereunder and obtained by Palouse shall name "The State of

Idaho and The Regents of the University of Idaho, its agents, its employees, and its assigns" as additional insureds. All insurance required hereunder and obtained by Regents shall name " Palouse River and Coulee City Railroad, Inc., its agents, its employees, and its assigns" as additional insureds. Such insurance policies shall contain a clause in which the insurance company will endeavor to give written notice to the additional insured thirty (30) days in advance of the cancellation of such insurance. Certificates of insurance and additional insured endorsements shall be provided upon written request from the other party. Said certificates and endorsements shall evidence compliance with all provisions of this Section 6.

7. TAXES.

Palouse shall timely pay when due all taxes assessed against the Easement Property; subject, however, to the right to contest the amount or validity of all or any part of said taxes and assessments.

8. PROPERTY CONVEYED AS-IS.

Regents is relying solely upon Regents' inspections as to the condition of the Easement Property. Except as expressly set forth in this Agreement, neither Palouse nor Palouse's agents are making, have made and Palouse expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the Easement Property including, without limitation, the existence of hazardous waste, or the suitability of the Easement Property for any intended use. Regents must independently verify all information and reports regarding any aspect or feature of the Easement Property. Regents is acquiring an interest in the Easement Property in "As Is" condition with all faults including both latent and patent defects and Regents release Palouse from any and all liability relating to any existing aspect or condition of the Easement Property, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

9. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

10. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default; provided that neither party shall be deemed to be in default if such failure to perform (other than the failure to pay money) cannot be rectified within such thirty (30) day period and within the thirty (30) day period such party has begun and is diligently proceeding to rectify the particulars of such default.

(b) In the event of a default, the nondefaulting party may:

(i) Seek specific performance of this Agreement, and, in addition, recover all damages incurred by the nondefaulting party. The parties declare it to be their intent that this Agreement may be specifically enforced;

(ii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party; and

(iii) Pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting party.

11. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of Latah County. All notices to Palouse or Regents shall be given to the appropriate party at the address set forth below:

Palouse: _____

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

12. BREACH SHALL NOT PERMIT TERMINATION.

It is expressly agreed that no breach of this Agreement shall entitle any person or party to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such person or party may have hereunder by reason of any breach of this Agreement.

13. SUCCESSORS.

This Agreement shall inure to the benefit of and be binding upon Palouse and Regents, their heirs, successors, assigns and personal representatives, and upon any person acquiring either the Easement Property or the Benefited Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

14. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

15. MODIFICATION AND TERMINATION.

This Agreement may not be modified in any respect or terminated, in whole or in part, except with the consent of Palouse and Regents, or their successors or assigns, and then only by written instrument duly executed and acknowledged by all required parties and recorded in the official records of Latah County, Idaho.

16. JOINT AND SEVERAL.

In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

18. CONSTRUCTION.

In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

19. WAIVER.

The failure of a person to insist upon strict performance of any of the terms or obligations contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms or obligations contained herein by the same or any other person.

20. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

EXECUTED as of the date first above written.

PALOUSE:

REGENTS:

Palouse River and Coulee City Railroad, Inc.

Regents of the University of Idaho

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Palouse River and Coulee City Railroad, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Regents of the University of Idaho, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

EXHIBIT F

PARADISE CREEK LICENSE



Boise • Ketchum • Pocatello • Reno
www.hteh.com

PARADISE CREEK LICENSE

THIS PARADISE CREEK LICENSE ("**Agreement**") is entered into on _____, 200____, by and between **Palouse River and Coulee City Railroad, Inc.**, a Washington corporation ("**Palouse**"), and **Regents of the University of Idaho**, a public corporation and state educational institution organized and existing under the Constitution and laws of the state of Idaho ("**Regents**").

1. GRANT OF LICENSE.

Palouse, as grantor, hereby grants to Regents (at its sole cost and expense), its respective contractors, employees, agents and students, a perpetual, nonexclusive License ("**License**") for the investigation, study, maintenance, enhancement and improvement of Paradise Creek and its associated riparian habitat, upon, over and across the property described in **Exhibit "A"** attached hereto and made a part hereof ("**License Property**"). The Regents may, but shall not be obligated to, exercise the License. The License shall be a burden on the License Property and shall run with the land. In the event Regents does not initiate use of the License by September 30, 2014, this License shall be deemed terminated and Regents shall cooperate to the fullest reasonable extent in recording such termination when such recording is requested in writing by Palouse.

2. IMPROVEMENTS.

Prior to the construction, expansion or modification of any improvements associated with Paradise Creek within the License Property or modification or relocation of Paradise Creek, Regents shall obtain Palouse's prior written approval to the plans and specifications for the improvements in accordance with the procedures set forth in Section 3. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto.

3. APPROVAL PROCEDURES.

Before any action requiring Palouse's approval is commenced, sufficient information shall be sent to Palouse to enable Palouse to make a reasonable decision as to the proposal. Palouse shall not unreasonably withhold, condition or delay its approval to the proposal. Palouse must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if Palouse disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval and guidance on what would be approved by Palouse. If Palouse rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, Palouse shall be deemed to have approved the same provided that, when the approval was sought, Regents stated in writing to Palouse that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

4. INSURANCE.

Regents shall maintain at its sole cost and expense commercial general liability insurance, covering bodily injury in the sum of not less than the maximum limit on liability set forth in the Idaho Tort Claims Act (currently \$500,000) per person and per occurrence and property damage in the same amount per occurrence. All insurance required hereunder shall be on an occurrence basis or on a claims made basis covering claims occurring during the policy period and reported within three years of the date of occurrence, and shall be maintained in full force and effect in a company or companies authorized to do business in the state of Idaho. All insurance required hereunder and obtained by Regents shall name "Palouse River and Coulee City Railroad, Inc., its agents, its employees, and its assigns" as additional insureds. Such insurance policies shall contain a clause in which the insurance company will endeavor to give written notice to the additional insured thirty (30) days in advance of the cancellation of such insurance. Certificates of insurance and additional insured endorsements shall be provided upon written request from Palouse. Said certificates and endorsements shall evidence compliance with all provisions of this Section 4.

5. TAXES.

Palouse shall timely pay when due all taxes assessed against the License Property, if any; subject, however, to the right to contest the amount or validity of all or any part of said taxes and assessments.

6. PROPERTY CONVEYED AS-IS.

Regents is relying solely upon Regents' inspections as to the condition of the License Property. Except as expressly set forth in this Agreement, neither Palouse nor Palouse's agents are making, have made and Palouse expressly disclaims any representations or warranties, express or implied, with respect to any aspect, feature or condition of the License Property including, without limitation, the existence of hazardous waste, or the suitability of the License Property for any intended use under this License. Regents must independently verify all information and reports regarding any aspect or feature of the License Property. Regents is acquiring an interest in the License Property in "As Is" condition with all faults including both latent and patent defects and Regents release Palouse from any and all liability relating to any existing aspect or condition of the License Property, known or unknown, foreseeable or unforeseeable, actual or contingent, arising by statute, common law or otherwise. As used herein "**hazardous waste**" shall mean any hazardous waste or pollutants, contaminants or hazardous waste as defined by the Federal Water Pollution Control Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1990 and any amendments thereto, the Resource Conservation and Recovery Act and any amendments thereto or any similar state, local or federal law, rule or regulation, including, without limitation, asbestos or asbestos containing materials, PCBs, petroleum and petroleum products and urea-formaldehyde.

7. ATTORNEYS' FEES.

In the event either party initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing party in any such action or proceeding (in addition

to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

8. DEFAULT.

(a) Neither party shall be deemed to be in default of this Agreement except upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from the other party specifying the particulars in which such party has failed to perform its obligations under this Agreement unless such party, prior to expiration of said thirty (30) day period (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default; provided that neither party shall be deemed to be in default if such failure to perform (other than the failure to pay money) cannot be rectified within such thirty (30) day period and within the thirty (30) day period such party has begun and is diligently proceeding to rectify the particulars of such default.

(b) In the event of a default, the nondefaulting party may:

(i) Seek specific performance of this Agreement, and, in addition, recover all damages incurred by the nondefaulting party. The parties declare it to be their intent that this Agreement may be specifically enforced;

(ii) Perform or pay any obligation or encumbrance necessary to cure the default and offset the cost thereof from monies otherwise due the defaulting party or recover said monies from the defaulting party; and

(iii) Pursue all other remedies available at law, it being the intent of the parties that remedies be cumulative and liberally enforced so as to adequately and completely compensate the nondefaulting party.

9. NOTICES.

(a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of Latah County. All notices to Palouse or Regents shall be given to the appropriate party at the address set forth below:

Palouse: _____

Regents: Regents of the University of Idaho
Vice President, Finance and Administration
Box 443168
Moscow, ID 83844-3168

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Agreement shall be deemed given upon receipt.

(b) For the purpose of this Agreement, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

10. BREACH SHALL NOT PERMIT TERMINATION.

It is expressly agreed that no breach of this Agreement shall entitle any person or party to terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such person or party may have hereunder by reason of any breach of this Agreement.

11. SUCCESSORS.

This Agreement shall inure to the benefit of and be binding upon Palouse and Regents, their heirs, successors, assigns and personal representatives, and upon any person acquiring the License Property, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

12. CAPTIONS AND HEADINGS.

The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or Agreements contained herein.

13. MODIFICATION AND TERMINATION.

This Agreement may not be modified in any respect or terminated, in whole or in part, except with the consent of Palouse and Regents, or their successors or assigns, and then only by written instrument duly executed and acknowledged by all required parties and recorded in the official records of Latah County, Idaho.

14. JOINT AND SEVERAL.

In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

15. ENTIRE AGREEMENT.

This Agreement contains the entire Agreement between the parties hereto and supersedes all prior Agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

16. CONSTRUCTION.

In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. Furthermore, "**person**" shall include individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

17. WAIVER.

The failure of a person to insist upon strict performance of any of the terms or obligations contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms or obligations contained herein by the same or any other person.

18. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is not intended to create, nor shall it in any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

EXECUTED as of the date first above written.

PALOUSE:

REGENTS:

Palouse River and Coulee City Railroad, Inc.

Regents of the University of Idaho

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Palouse River and Coulee City Railroad, Inc., the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

STATE OF IDAHO)
) ss.
County of _____)

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Regents of the University of Idaho, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO

SUBJECT

The University of Idaho requests approval to acquire a former fraternity house located on the UI campus.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Policies and Procedures, Section V.I.1 and Section V.I.2.

BACKGROUND

In 1962 the University of Idaho, in the name of the Board of Regents, entered into a "Site Agreement" wherein the Regents ground leased property on Nez Perce Drive in Moscow to Tau Kappa Iota Corporation for the construction of a fraternity house. In January 2003, the University of Idaho was notified that the TKE House would cease operations at the end of the spring semester. Based on that notification and subsequent discussions with representatives of TKI, the parties formed "a committee of three consisting of a member of the Regents, a member from the Corporation, and a neutral person selected by these two," as required by the 1962 Agreement, to establish a purchase price. Board of Regents member Paul Agidius served on the committee.

DISCUSSION

The "committee of three" has agreed upon a purchase price of \$400,102. Based on the obligations of the 1962 Site Agreement, the University is proposing to acquire the former fraternity house. The University plans to seek opportunities for other living groups or University-affiliated organizations to improve and utilize the facility through a new ground lease rather than, or prior to, improving and using the building for itself.

IMPACT

The purchase price for the house is \$400,102. Acquisition of the property will be provided through one-time, non-appropriated UI funds.

STAFF COMMENTS AND RECOMMENDATIONS

According to University staff, two appraisals were conducted on this structure: one using an "income" approach and one using a "cost of construction" approach. The committee of three evaluated both appraisals and agreed upon the proposed purchase price. Member Agidius may wish to expand upon the process.

Staff has reviewed the original agreement between the fraternity and the University and believes the process undertaken by the University is in compliance with that agreement.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO (continued)

BOARD ACTION

A motion to approve the University of Idaho's request to purchase the house owned by Tau Kappa Iota Fraternity for the purchase price of \$400,102 and according to the obligations set forth in the 1962 Site Agreement and the terms specified in the Contract for Sale.

Moved by _____ Seconded by _____ Carried Yes ____ No _____

Office of the Idaho State Board of Education
Capital Project Tracking Sheet
As of September 24, 2004

History Narrative

1 **Institution/Agency:** University of Idaho **Project:** Purchase of former Tau Kappa Epsilon residence
2 **Project Description:** Purchase of 3-story plus basement residential building build in 1963 and located at 745 Nez Perce Dr. Moscow, Idaho
3 **Project Use:** Undetermined (UI obligated to purchase per 1962 site agreement between UI and Tau Kappa Iota)
4 **Project Size:** Approximately 14,350 gross square feet

	Sources of Funds				Use of Funds			
	PBF	ISBA	Other *	Total Sources	Planning	Use of Funds Const	Other	Total Uses
Initial Cost of Project			\$ 400,102	\$ 400,102			\$ 400,102	\$ 400,102
History of Revisions:								
				\$ -				\$ -
				\$ -				\$ -
				\$ -				\$ -
Total Project Costs	\$ -	\$ -	\$ 400,102	\$ 400,102	\$ -	\$ -	\$ 400,102	\$ 400,102

History of Funding:	PBF	ISBA	* Other Sources of Funds-----				Total Funding
			Institutional Funds	Student Revenue	Other	Total Other	
Sep-04			\$ 400,102			\$ 400,102	\$ 400,102
						-	-
						-	-
					-	-	-
Total	\$ -	\$ -	\$ 400,102	\$ -	\$ -	\$ 400,102	\$ 400,102

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CONTRACT OF SALE

THIS CONTRACT OF SALE ("**Contract**") is made as of the date last written below the signatures of the parties (the "**Effective Date**") by and between the **Board of Regents of the University of Idaho**, a state educational institution, and a body corporate organized and existing under the Constitution and laws of the state of Idaho ("**Buyer**"), and **Tau Kappa Iota Fraternity**, an Idaho nonprofit corporation ("**Seller**").

In and for the consideration of the payment of purchase price as hereinafter set forth, Buyer and Seller hereby agree as follows:

1. Purchase. Seller hereby agrees to sell and Buyer hereby agrees to purchase all improvements located on that certain real property located in the City of Moscow, County of Latah, State of Idaho, known as Lot No. 6 of South Nez Perce Drive and more particularly described as:

Beginning at a point 192.6 feet west and 13.6 feet north of the center section eighteen (18) township thirty-nine (39) north, range five (5) west of the Boise Meridian and running thence north 1° 36' west 194.9 feet; thence north 88° 31' east 73.7 feet; thence north 72° 21' east 73.7 feet; thence south 26° 04' east 187.8 feet; thence south 77° 09' west 226.6 feet more or less to the point of beginning and containing 0.80 acres more or less;

together with all easements and rights appurtenant to said improvements and all other right, title and interest of Seller under that certain Site Agreement entered into by and between Buyer and Seller on July 27, 1962 ("**Subject Property**") in accordance with the terms and conditions hereinafter set forth.

2. Purchase Price. The total Purchase Price for the Subject Property is the sum of Four Hundred Thousand One Hundred Two Dollars (\$400,102) payable on or before the Closing Date.

3. Warranties. The provisions of this Section 3 shall survive closing.

(a) Property Condition. Except as described in the Building Systems Evaluation prepared by Associated Architects, LLP dated July 14, 2003, Seller hereby represents and warrants to Buyer that the Subject Property is in good operating condition and repair, ordinary wear and tear excepted, and has been maintained in accordance with good business and maintenance practices. Seller does not know of any material latent defects in the Subject Property.

(b) Seller's Authority. Seller hereby represents and warrants to Buyer that Seller is a corporation duly formed and validly existing under the laws of the State of Idaho. The individuals entering into this Contract on behalf of Seller have the authority to bind the Seller. Entering into this Contract and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action and do not violate Seller's articles of incorporation, bylaws or any other agreement to which Seller is a party.

(c) Clear Title. Seller has and shall deliver to Buyer good and marketable title to the Subject Property, free and clear of all mortgages, pledges, security interests, liens and encumbrances. On or before the Closing Date and without limiting Seller's representation or warranty, Seller shall discharge and cause to be released those certain liens in favor of the Idaho Department of Labor filed of record with the Idaho Secretary of State as Instrument Nos. T184648 and T182397.

(d) Buyer's Warranties. Buyer hereby represents and warrants to Seller that any individuals entering into this Contract on behalf of Buyer have authority to bind Buyer. Entering into this Contract and consummation of the transactions contemplated hereby have been duly authorized by all necessary action and do not violate any agreement to which Buyer is a party.

(e) **Site Agreement.** Buyer and Seller acknowledge and agree that the Site Agreement by and between Buyer and Seller dated July 27, 1962 shall terminate and be of no further force or effect as of the Closing Date.

4. Closing.

(a) Closing shall occur within _____ (____) days from the Effective Date or such earlier date mutually agreeable to Buyer and Seller ("**Closing Date**"). Closing shall occur at the office of Latah County Title Company, 106 E. Second St., Moscow, ID 83843 ("**Escrow Company**").

(b) On or before the Closing Date, Seller shall deliver to Escrow Company the following:

(i) A duly executed and acknowledged Quit Claim Deed, in the form of Exhibit "A" attached hereto and made a part hereof, conveying any right, title or interest Seller may have to the real property;

(ii) A duly executed and acknowledged Warranty Bill of Sale, in the form of Exhibit "B" attached hereto and made a part hereof, conveying the Subject Property to Buyer;

(iii) Instructions to Escrow Company to pay, discharge and release any lien or encumbrance against the Subject Property; and

(iv) All keys, security codes, manuals, instructions or other items or materials pertaining to the Subject Property.

(c) On or before the Closing Date, Buyer shall deliver to Escrow Company the purchase price in cash or its equivalent plus an amount sufficient to cover Buyer's share of the closing costs.

(d) Upon receipt of the Quit Claim Deed, Warranty Bill of Sale and the purchase price, Escrow Company shall cause any lien upon the Subject Property to be

released and record the Quit Claim Deed in the official records of Latah County, Idaho, deliver the balance of the purchase price to Seller (less Seller's share of the closing costs, amount to discharge any lien or encumbrance and amount delivered to the University of Idaho Foundation, Inc.) and deliver the Warranty Bill of Sale to Buyer. Buyer shall be entitled to possession of the Subject Property on the Closing Date.

5. Costs. Buyer shall pay the costs of recording the Quit Claim Deed. Escrow fees shall be shared equally between Buyer and Seller. At Closing, Buyer shall forgive and discharge Seller's debt to Buyer of \$3,389.40.

6. Attorneys' Fees. If a suit, action, or other proceeding arising out of or related to this Contract is instituted by any party to this Contract, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expert witness fees, and costs (a) incurred in any settlement negotiations, (b) incurred in preparing for, prosecuting, or defending any suit, action, or other proceeding, and (c) incurred in preparing for, prosecuting or defending any appeal or any suit, action, or other proceeding. For purposes of this section, "attorneys' fees" shall mean and include attorneys' fees and any paralegal fees. This section shall survive closing and shall survive and remain enforceable notwithstanding any rescission of this Contract or any determination by a court of competent jurisdiction that all or any portion of the remainder of this Contract is void, illegal, or against public policy.

7. Default. Time is of the essence of this Contract. Upon the expiration of ten (10) days' written notice from either party stating the other party has failed to perform its obligations hereunder, such party shall be deemed to be in default unless such failure to perform is cured within the ten (10) day period. Upon a default, the non-defaulting party may seek such remedies as may be available at law or in equity, including, without

limitation, specific performance. Buyer and Seller acknowledge and agree that this Contract may be specifically enforced.

8. Notices. All notices given pursuant to this Contract shall be in writing and shall be given by personal service, U.S. Mail, certified, return receipt requested, or other reliable delivery service such as Federal Express or UPS, postage or delivery charges prepaid, addressed to the appropriate party at the address set forth below:

To Buyer: Regents of the University of Idaho
Vice President, Finance and Administration
P.O. Box 443168
Moscow, ID 83844-3168

To Seller: Tau Kappa Iota Fraternity
James O'Connor, President
106 S. Hayes
Moscow, ID 83843

All notices given pursuant to this Contract shall be deemed given upon receipt. For the purpose of this Contract, the term "**receipt**" shall mean the earlier of any of the following: (a) the date of delivery of the notice or other document as shown on the return receipt; (b) the date of receipt of the notice or other document by the person or entity to whom it was addressed; or (c) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (i) the date of the attempted delivery or refusal to accept delivery, (ii) the date of the postmark on the return receipt, or (iii) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

9. General.

(a) Successors. This Contract shall be binding upon the heirs, successors, assigns and personal representatives of the parties hereto.

(b) Headings. Section headings are for convenience only and shall not be deemed to define, limit or construe the contents of any terms, consents or conditions in this Contract.

(c) Entire Agreement. This Contract, together with the exhibits attached hereto, contains the entire agreement between the parties hereto and supersedes all prior understandings and agreements, oral or written, with respect to the subject matter hereof. The provisions of this Contract shall be construed as a whole and not strictly for or against any party, and may not be modified or amended in any manner except by an instrument in writing signed by both Buyer and Seller.

(d) Third Party Beneficiary Rights. This Contract is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto.

EXECUTED as of the date last written below.

BUYER:
Regents of the University of Idaho

SELLER:
Tau Kappa Iota Fraternity

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

Dated: _____

Dated: _____

List of Exhibits

Exhibit "A" – Quit Claim Deed
Exhibit "B" - Warranty Bill of Sale

Recording Requested By and
When Recorded Return to:

Board of Regents of the University of Idaho
Office of Finance and Administration
Administration Building Room 211
P.O. Box 443168
Moscow, ID 83844-3168

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

EXHIBIT "A"

Quit Claim Deed

This quit claim deed is made by and between **Tau Kappa Iota Fraternity**, an Idaho nonprofit corporation ("**Seller**") and **Regents of the University of Idaho**, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("**Buyer**").

Seller, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, the receipt whereof is acknowledged, does by these presents remise, release and forever quitclaim unto Buyer and to Buyer's successors and assigns, all right, title and interest now owned or hereafter acquired in that certain parcel of land situate, lying, and being in the County of Latah, State of Idaho, bounded and particularly described as follows:

Beginning at a point 192.6 feet west and 13.6 feet north of the center section eighteen (18) township thirty-nine (39) north, range five (5) west of the Boise Meridian and running thence north 1° 36' west 194.9 feet; thence north 88° 31' east 73.7 feet; thence north 72° 21' east 73.7 feet; thence south 26° 04' east 187.8 feet; thence south 77° 09' west 226.6 feet more or less to the point of beginning and containing 0.80 acres more or less

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder or remainders, rents, issues, and profits thereof. To have and to hold all and singular and to its successors and assigns forever.

IN WITNESS WHEREOF, Seller has executed this Quit Claim Deed this _____ day of _____, 20____.

SELLER:

Tau Kappa Iota Fraternity

By: _____
Name: _____
Its: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of October, 2004, before me, _____, a Notary Public in and for said State, personally appeared _____, known or identified to me to be the _____ of Tau Kappa Iota Fraternity, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Notary Public for Idaho
Residing at _____
My commission expires _____

EXHIBIT "B"

WARRANTY BILL OF SALE

Tau Kappa Iota Fraternity, an Idaho nonprofit corporation ("**Seller**") in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid to Seller by **Regents of the University of Idaho**, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("**Buyer**"), hereby grants, sells, transfers, delivers and conveys to Buyer the following:

All improvements located on that certain real property located in the City of Moscow, County of Latah, State of Idaho, known as Lot No. 6 of South Nez Perce Drive and more particularly described as:

Beginning at a point 192.6 feet west and 13.6 feet north of the center section eighteen (18) township thirty-nine (39) north, range five (5) west of the Boise Meridian and running thence north 1° 36' west 194.9 feet; thence north 88° 31' east 73.7 feet; thence north 72° 21' east 73.7 feet; thence south 26° 04' east 187.8 feet; thence south 77° 09' west 226.6 feet more or less to the point of beginning and containing 0.80 acres more or less;

together with all easements and rights appurtenant to said improvements and all other right, title and interest of Seller under that certain Site Agreement entered into by and between Buyer and Seller on July 27, 1962 ("**Subject Property**").

Seller represents and warrants to Buyer that the Subject Property is free from any and all encumbrances and liens, that Seller has good and marketable title to the Subject Property and all rights and authority to convey the Subject Property to Buyer. Seller will warrant and defend clear title to the Subject Property against all claims and demands made against Buyer, and Buyer's successors, and assigns, forever.

IN WITNESS WHEREOF, Seller has executed this Warranty Bill of Sale this
_____ day of _____, 20____.

SELLER:

Tau Kappa Iota Fraternity

By: _____

Name: _____

Its: _____

THE REGENTS OF THE UNIVERSITY OF IDAHO
AND
TAU KAPPA IOTA CORPORATION
1962

COPY

SITE AGREEMENT

WHEREAS, it has been the policy of The Regents of the University of Idaho for many years past to sponsor and provide living facilities for all students at the University of Idaho; and

WHEREAS, this basic policy and program is implemented and benefited when living groups construct and finance their own housing facilities thus relieving the University of the responsibility of financing further housing; and

WHEREAS, an area has been developed on the University campus in order to make available further building sites for living group houses, to be financed independently or by the University;

NOW, THEREFORE, this agreement is made and entered into this 27th day of July 1962 by and between The Regents of the University of Idaho, a body politic and corporate, organized and existing under and by virtue of the Constitution of the State of Idaho, which said party is hereinafter referred to as the University, and the Tau Kappa Iota Corporation, Moscow, incorporated under the laws of Idaho as a social and benevolent corporation and hereinafter referred to as the Corporation;

WITNESSETH:

The University does hereby let, demise and lease unto the Corporation Lot No. 6 on Nez Perce Drive for a period of ninety-nine years from the date of this contract with possession on signature of this contract; provided, however, that such rental is based upon full compliance of all provisions contained in this contract and the specific understanding that the building constructed upon the site shall not be used by the Corporation or any other party for any purpose than the housing of students enrolled at the University of Idaho, and such

care-takers, janitors, housekeepers, or other personnel of a character commonly housed by a chapter house; provided, however, that the primary purpose of such building shall be and remain the housing of students enrolled at the University of Idaho.

The Corporation agrees to pay to the University the rental sum of ten dollars for each fiscal year, with the first payment of ten dollars to be paid by 1 November 1962 to cover the year 1 July 1962 - 30 June 1963, and thereafter each payment shall be made on 1 July at the beginning of each fiscal year, and to construct on said site at its own expense a living unit to house sixty men, more or less, and to cost not less than one hundred fifty thousand dollars, furniture excluded.

In event of any non-compliance by the Corporation with such provisions or regulations, and the suspension of the fraternity charter, or the suspension of the Tau Kappa Iota Corporation (Tau Kappa Epsilon) as a recognized fraternal group on the campus of the University of Idaho for a major period, then in such event the University shall purchase such building at its then depreciated current value in the manner set forth in Paragraph 20 hereinafter.

In the event that the Corporation shall not have substantially constructed a fraternity building on the designated site by 1 January 1965, this contract shall become void.

The University representative for the purpose of administration and operation of this agreement shall be the Financial Vice President.

This agreement is entered into and is dependent upon the following provisions and understanding:

1. PROPERTY DESCRIPTION

University Lot 6 abuts along the south side of Nez Perce Drive on the University of Idaho campus. Along the south side of Nez Perce Drive there is a concrete sidewalk running parallel to the street which is six feet wide. Lot 6 is further shown on the sketch attached hereto.

Moscow, Idaho, by metes and bounds, as established and recognized as follows:

Beginning at a point 192.6 feet west and 13.6 feet north of the center of section eighteen (18) township thirty-nine (39) north, range five (5) west of the Boise Meridian and running thence north $1^{\circ} 36'$ west 194.9 feet; thence north $88^{\circ} 31'$ east 73.7 feet; thence north $72^{\circ} 21'$ east 73.7 feet; thence south $26^{\circ} 04'$ east 187.8 feet; thence south $77^{\circ} 09'$ west 226.6 feet more or less to the point of beginning and containing 0.80 acres more or less.

It is mutually understood that the Corporation shall have an unexclusive right to the use of Nez Perce Drive as access to the above property; subject to concurrent use by others and to such traffic and parking regulations as might be formally announced by the University.

Further, it is mutually understood that the University reserves the right-of-way for existing utilities and for any utilities to be constructed in the future that may have to pass through or over Lot No. 6 and the right to construct new or re-construct existing utilities in Lot No. 6.

2. UTILITY CONNECTIONS

A. Water

The existing University Water Main enters Lot No. 6 approximately at the southeast corner of Lot No. 6 and thence runs west and crosses the west boundary approximately 35 feet north of the southwest corner of Lot 6. This water main is a six inch cast iron, Universal, water pipe. The Corporation shall connect to this existing University water main at a point designated by the University Engineer. The connection to the existing water main shall be made under the supervision of the University Engineer, and all water shut-off for purpose of connecting shall be authorized only by the University Engineer. The Corporation shall be responsible for installing a suitable and approved water meter for measuring the water used by the Corporation from the said water main. The

Corporation shall be responsible and shall bear all costs for the connection to the existing water main and for the installation of the said water meter, including the necessary shut-off valve in the water service line adjacent to the University water main.

B. Sewers

The storm sewer parallels the southeast boundary of Lots No. 3 & 4 and it shall be the responsibility of the Corporation to connect the storm drains from the proposed building to the storm sewer at a point approximately 250 feet east of the southwest corner of Lot 6. The sanitary sewer runs from south to north approximately 153 feet east of the southeast corner of Lot 6. The sanitary sewer from the building shall connect to this sewer. The cost of the services to these sewers will be the responsibility of the Corporation and connection to the sewers shall be at points designated by the University Engineer.

C. Electric Power

The electric power will be furnished by the local electric power company (currently the Washington Water Power Company). It shall be the responsibility of the Corporation, including all costs, to arrange for electric service from the utility company's overhead power line south of the said lot. This service will be metered in accordance with the electric code of the City of Moscow.

D. Gas

Gas will be furnished by the local gas company (currently the Washington Water Power Company) and connection to the gas line will be at points designated by the gas company and the University Engineer.

3. EXISTING LAWN SPRINKLER WATER LINES

There are three existing water sprinkler lines which cross Lot No. 6 from south to north. In order to construct the proposed building, it will be necessary to route these sprinkler lines around the building, and it shall be the responsibility of the Corporation to have these water sprinkler lines re-routed with

sprinkler heads located at points designated by the University Engineer, and the Corporation shall bear all costs for the re-routing operations including all necessary sprinkler heads. The existing water lines will have to be re-grouped so that all water used for lawn sprinkling purposes by the Corporation first passes through the water meter as set forth in Item 2, A.

4. CARE OF PROPERTY AND BUILDING

It shall be the responsibility of the Corporation to maintain both the property and the building in a condition which will enhance the general area of the campus. The Corporation shall plant and maintain all lawn and shrubs around the proposed building and shall bear all costs of planting of lawn and shrubs, and all sprinkling, including yearly maintenance of the lawn. Similarly, the Corporation shall be responsible and bear all costs for properly maintaining the proposed building. The Corporation shall be responsible for snow removal from the sidewalks on the premises.

5. CONSTRUCTION LIMITS

The Corporation shall set forth in their contract with their Contractor that during the construction of the proposed building, the contractor shall keep all of his operations and storage within the confines of the lot lines on the designated Lot No. 6.

6. ACCESS TO PROPERTY (LOT NO. 1)

During the construction, egress and ingress to Lot No. 6 shall be via Nez Perce Drive, unless other specific arrangements are made with the University Engineer. After construction, all egress and ingress to the property shall be only via or through the limits of Nez Perce Drive. Arrangements for a curb cut for a driveway to the property shall be made with the University Engineer and the Corporation shall be responsible for all costs.

7. BUILDING SET BACK

The minimum set back distance for the proposed building on lot No. 6 shall be 30 feet from Nez Perce Drive (as measured from the curbline) and 10 feet from either side line of the lot.

8. TELEVISION ANTENNA

Exterior television antenna will not be allowed on the proposed building and arrangements shall be made by the Corporation for connection of the University Master Antenna system to the proposed building. This connection shall be made from the overhead service at nearest utility pole. It shall be the responsibility of the Corporation, including all costs, to run from nearest utility pole to the building for required service.

9. WATER CHARGE

The monthly water charges shall be the same as those which are charged by the City of Moscow, the current charges being as follows:

500 cubic feet or less	\$.42.60 minimum charge
Next 501 to 1,200 cubic feet45 cents per 1,000 gallons
Next 1,201 to 3,000 cubic feet33 cents per 1,000 gallons
Next 3,001 cubic feet and over24 cents per 1,000 gallons

The monthly water charges will be paid by the Corporation directly to the University of Idaho.

10. SEWER CHARGES

In addition to the above water charge, monthly sewer service charge will be made in accordance with the rate established, or any rate hereafter established, by the City of Moscow, which current rate is 25¢ per occupant. This monthly service charge for sewer service will be paid by the Corporation directly to the City of Moscow, in accordance with billings from the City.

11. ELECTRIC POWER CHARGES

All electric power charges shall be paid by the Corporation directly to the Power Company in accordance with their monthly billing.

12. GAS CHARGES

All gas charges shall be paid by the Corporation directly to the Gas Company, in accordance with their monthly billing.

13. FIRE PROTECTION

The Corporation shall be responsible for all necessary fire protection measures as required for the proposed building. It agrees to allow inspection by the Moscow Fire Department and to carry out its instruction.

14. GARBAGE

Garbage service as provided by the City of Moscow shall be utilized and paid for by the Corporation.

15. PARKING OF OCCUPANT VEHICLES

There will be no specific areas provided for parking vehicles of the occupants of the building. Parking privileges for vehicles of the occupants will be allowed on Ben Parce Drive; however, all privileges for such parking will conform with any and all regulations set up for parking on this particular street and must be shared with other living groups in the area.

16. LIABILITY

The Corporation covenants and agrees that it will indemnify, protect and hold harmless the University against and from all claims, demands, causes of action, damages, suits or costs whatsoever asserted by any person, firm or corporation, whenever arising out of or in any way connected with the use and occupancy of said premises by the Corporation, and that should the Corporation fail or refuse to defend any such claims, the University shall have the right to defend such claims in the Corporation's name.

17. INSURANCE

The Corporation, at its expense, shall carry the following insurance:

- A. Fire and comprehensive insurance on the building in the amount of not less than the indebtedness on the property or 80% of depreciated current value, whichever amount is greater.
- B. Liability insurance in an amount not less than fifty thousand dollars.
- C. Boiler insurance.

18. BUILDING PLANS

Prior to initiation of construction, building plans will be submitted to the University for approval and also shall be approved by the Idaho Rating and Surveying Bureau for fire safety factors.

19. MORTGAGE

The Corporation shall not mortgage or borrow on the building more than 75% of the construction value of the building at the time of original financing. At no time shall borrowing on the building exceed 75% of depreciated current value of the building, exclusive of land.

In case of default on any obligation for which the building is pledged, and action is taken by the mortgagee to foreclose on the property, the University shall have the option to take title of the building by assuming the outstanding balance of the mortgage and said privilege shall exist for 180 days following written notice by the mortgagee to the University of intent to foreclose.

If the Corporation shall default on the mortgage and the University does not exercise its option to take over the building, resulting in possession of the building by the mortgagee, then, in that event, it is understood that the mortgagee may operate the property or lease or sell to another formal living group recognized by the University, provided that all provisions of this agreement shall apply to other parties and that the unit shall be used only for housing regular University students.

20. GENERAL

Failure of the Corporation to comply with the provisions of this contract, or Failure of Tau Kappa Iota Corporation to observe the social and moral regulations of the University to the extent that the Chapter shall have its charter suspended for a major period or revoked shall be just cause for the University to void this agreement, in which event the University shall purchase the living unit at depreciated current value, which amount shall be set by a committee of three consisting of a member of the Regents, a member from the Corporation, and a neutral person selected by these two.

At the end of the ninety-nine year period the building shall become the property of the University without payment.

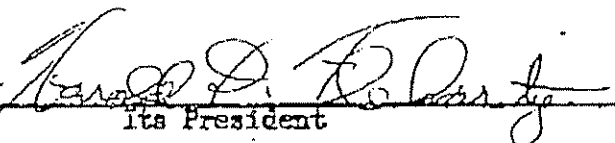
21. OTHER STRUCTURES

It is agreed that any and all structural and/or non-structural construction, including driveways, shall receive written approval from the University prior to initiation or accomplishment. It is understood that it is the intent of the University of Idaho to prohibit the development of any vehicular parking area within lot 6.

ATTACHMENT: Diagram of Lot 6, Nez Perce Drive, University of Idaho Campus.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed the day and year first above written.

TAU KAPPA IOTA CORPORATION

by 
Its President

Attest:


Its Secretary

THE REGENTS OF THE UNIVERSITY OF IDAHO, a body
politic and corporate organized and existing
under and by virtue of the Constitution of the
State of Idaho,

by Kenneth A. Nink
Financial Vice President of the University
of Idaho and duly authorized agent of The
Regents of the University of Idaho.

Attest:

Robert H. Jones
President of the University of Idaho.

STATE OF IDAHO)
County of Latah) ss.

On this 27th day of July, 1962, before me,
George W. Nelson, a Notary Public in and for the
State aforesaid, personally appeared D. R. Theophilus, to me known to
be the President of the University of Idaho, and Kenneth A. Dick, to me
known to be the Financial Vice President of the University of Idaho, and
an authorized agent of The Regents of the University of Idaho, the
Corporation whose name is subscribed to the above and foregoing agree-
ment, and acknowledged to me that such Corporation executed the same.

WITNESS my hand and official seal the day and year last above
written.

George W. Nelson
Notary Public, residing at Moscow, Idaho.

My commission expires 2-6-65
GEORGE W. NELSON, Notary Public
Latah County, Moscow, Idaho
My Commission Expires 2-6-65

STATE OF IDAHO

County of LATAH

} ss.

On this 31st day of JULY, 1962, before me,

EDWARD L. JESSE,

a Notary Public in and for the

State aforesaid, personally appeared HAROLD D. FLEHARTY,

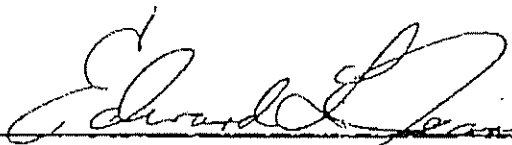
known to me to be the President of the Tau Kappa Iota Corporation, a
social and benevolent corporation organized and existing under and by

virtue of the laws of the State of Idaho, being the Corporation whose

name is subscribed to the above and foregoing agreement, and acknowledged

to me that such Corporation executed the same.

WITNESS my hand and official seal at MOSCOW, Idaho, the
day and year last above written.



Notary Public, residing at MOSCOW,

Idaho.

My commission expires 8-16-64

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004**

**INSTITUTION / AGENCY AGENDA
COLLEGES AND UNIVERSITIES OF THE STATE BOARD**

NOTE: Item pulled from the Agenda.

(TAB 4: Concurrent Enrollment Fee – North Idaho)

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

REFERENCE

June 17-18, 2004

Board approved guidelines for institutions and agencies to use for submission of FY 2006 budget requests.

August 12-13, 2004

Board approved institution and agency budget requests for FY 2006.

SUBJECT

FY06 Budget Request Revisions / Additions

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

At the August, 2004 meeting the Board approved agency and institution budget requests to be forwarded to the Division of Financial Management (DFM) and Legislative Services Office (LSO). Since that time, there have been several revisions and/or additions to the budget requests as approved by the Board. The revisions occur because of changes in calculations, suggestions from DFM and LSO, and new items not previously reviewed by the Board.

DISCUSSION

Only Board approved requests may be forwarded to (DFM) and (LSO-BPA) for funding consideration. The Board needs to be fully aware of the individual budget requests submitted on its behalf.

IMPACT

The items being requested will align Board approval with actual agency and institution requests.

STAFF COMMENTS

Individual cover sheets for each request (with motions) are shown on the following pages.

Displayed on the following page is a summary of all agency and institution budget requests, as originally approved by the Board in August vs. actual submissions to DFM and LSO, with comments describing the changes.

Staff will discuss in greater detail if necessary.

BOARD ACTION

The purpose of this cover sheet is to introduce individual budget items that follow under Tab 5. There is a motion associated with each individual budget item.

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

**Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
B. Budget Policy**

April 2002

1. Budget Requests

For purposes of Item 1., the community colleges (CSI and NIC), the State Historical Society, and the State Library are included.

a. Submission of Budget Requests

The Board is responsible for submission of budget request for the institutions, school and agencies under its governance to the executive and legislative branches of government. Only those budget requests which have been formally approved by the Board will be submitted by the office to the executive and legislative branches.

b. Direction by the Office of the State Board of Education

The preparation of all annual budget requests is to be directed by the Office of the State Board of Education which designates forms to be used in the process. The procedures for the preparation and submission of budget requests apply to operational and capital improvements budgets.

c. Preparation and Submission of Annual Budget Requests

Annual budget requests to be submitted to the Board by the institutions, school and agencies under Board governance are due in the Office of the State Board of Education on the date established by the executive director.

d. Presentation to the Board

Annual budget requests are formally presented to the designated committee by the chief executive officer of each institution, school or agency or his or her designee. The designated committee will review the requests and provide recommendations to the Board for their action.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD

REFERENCE

August 12-13, 2004

Board approved College and University FY 2006 budget requests.

SUBJECT

Adjust Occupancy Costs to the amount requested by the institutions in the FY 2006 budget request.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V. B.1

BACKGROUND

At its August 2004 meeting, the State Board of Education approved an FY 2005 Supplemental Appropriation request for College and University unfunded Occupancy Costs, in the amount of \$1,460,100; and an Enhancement request for FY 2006 Occupancy Costs in the amount of \$592,400. Subsequent to publishing the August agenda, adjusted requests properly submitted by Idaho State University and the University of Idaho did not get incorporated by Board staff into the final worksheet presented to the Board.

ISU shifted occupancy from four quarters in FY 2005 to two quarters in FY 2005 and two quarters in FY 2006 (Performing Arts Center), but the two quarters in FY 2006 were not included in the material presented to the Board. For the UI (Water Center), a shift from occupancy of four quarters in FY 2005 to three quarters in FY 2005 and one quarter in FY 2006 is required. Also for the same UI building, an increase in the percentage use for General Education (from 21% to 50%) combined with a decrease in the replacement value from \$48,000,000 to \$36,686,039 needs to be accounted for. These changes result in a total increase of \$855,900 of which \$189,000 is in the FY 2005 Supplemental Occupancy Costs and \$666,900 is in the FY 2006 Enhancement request.

These amounts have been included in the revised budget material submitted to the legislative and Executive budget offices.

DISCUSSION

Because the ISU building will be occupied two quarters in FY 2006, the Occupancy Costs for this building need to be funded. Because the UI will occupy more space in the Idaho Water Center than previously planned, an increase in the percentage use for General Education from 21% to 50% is appropriate.

IMPACT

ISU and UI need these amounts to enable the institutions to properly maintain and operate their buildings.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD - continued

STAFF COMMENTS AND RECOMMENDATIONS

Occupancy cost requests should properly reflect the funds needed due to the adjusted quarters and percentage of General Education use. These revisions are in agreement with budget development guidelines issued by the Division of Financial Management and Legislative Services Office.

BOARD ACTION

A motion to increase the College and University FY 2005 Supplemental request for Occupancy Costs by \$189,000 and the FY 2006 Enhancement request for Occupancy Costs by \$666,900.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

B. Budget Policy

April 2002

1. Budget Requests

For purposes of Item 1., the community colleges (CSI and NIC), the State Historical Society, and the State Library are included.

a. Submission of Budget Requests

The Board is responsible for submission of budget request for the institutions, school and agencies under its governance to the executive and legislative branches of government. Only those budget requests which have been formally approved by the Board will be submitted by the office to the executive and legislative branches.

b. Direction by the Office of the State Board of Education

The preparation of all annual budget requests is to be directed by the Office of the State Board of Education which designates forms to be used in the process. The procedures for the preparation and submission of budget requests apply to operational and capital improvements budgets.

c. Preparation and Submission of Annual Budget Requests

Annual budget requests to be submitted to the Board by the institutions, school and agencies under Board governance are due in the Office of the State Board of Education on the date established by the executive director.

d. Presentation to the Board

Annual budget requests are formally presented to the designated committee by the chief executive officer of each institution, school or agency or his or her designee. The designated committee will review the requests and provide recommendations to the Board for their action.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD

REFERENCE

August 12-13, 2004

Board approved FY 2006 institution and agency budget requests.

SUBJECT

Adjustment to Unfunded Enrollment Workload Adjustment and Funding Equity budget enhancements for FY 2006.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

At its August 2004 meeting, the State Board of Education voted to include an FY 2006 Enhancement request for the FY 2006 Funding Equity and Unfunded Enrollment Workload Adjustment ("IOU") in the amounts of \$10,920,000 and \$5,189,100, respectively. These amounts represent the total amount needed since the equity and EWA-IOU calculations were initiated. Previous Board direction and institution budget requests spread this total need over five years. To be consistent with prior direction from the Board and prior year budget requests, the amount requested was reduced to \$3,221,800, or 20%, of the total need. Neither category has been appropriated in previous years.

DISCUSSION

This adjustment in the FY 2006 Funding Equity and Unfunded Enrollment Workload Adjustment will provide consistency with budget requests in prior years.

IMPACT

To be able to fund multi-year enrollment increases and for institutions to be in a position to recruit and retain quality faculty, expand and enhance programs and be able to properly serve their constituencies, these requests are important.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends Board approval of the proposed amounts, which will maintain consistency with prior years. The total need is therefore spread over five years.

BOARD ACTION

A motion to approve an adjustment in the FY 2006 budget request for the College and Universities for the Funding Equity and Unfunded Enrollment Workload Adjustment in the amount of \$3,221,800.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

B. Budget Policy

April 2002

1. Budget Requests

For purposes of Item 1., the community colleges (CSI and NIC), the State Historical Society, and the State Library are included.

a. Submission of Budget Requests

The Board is responsible for submission of budget request for the institutions, school and agencies under its governance to the executive and legislative branches of government. Only those budget requests which have been formally approved by the Board will be submitted by the office to the executive and legislative branches.

b. Direction by the Office of the State Board of Education

The preparation of all annual budget requests is to be directed by the Office of the State Board of Education which designates forms to be used in the process. The procedures for the preparation and submission of budget requests apply to operational and capital improvements budgets.

c. Preparation and Submission of Annual Budget Requests

Annual budget requests to be submitted to the Board by the institutions, school and agencies under Board governance are due in the Office of the State Board of Education on the date established by the executive director.

d. Presentation to the Board

Annual budget requests are formally presented to the designated committee by the chief executive officer of each institution, school or agency or his or her designee. The designated committee will review the requests and provide recommendations to the Board for their action.

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COMMUNITY COLLEGES

REFERENCE

August 12-13, 2004

Board approved Community Colleges FY2006 budget requests which did not include an enhancement for Unfunded Enrollment Workload Adjustment as originally submitted.

SUBJECT

Approve Community College Unfunded Enrollment Workload Adjustment budget enhancement for FY2006.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

The College of Southern Idaho (CSI) requests an enhancement for Unfunded Enrollment Workload Adjustment "EWA IOU" in the amount of \$630,200. CSI included the item in the original budget request; due to staff oversight it was not brought to the Board in the August meeting.

DISCUSSION

The adjustment described follows the original budget request for the Community Colleges as submitted to the Division of Financial Management. This enhancement was not brought before the Board in August because the Community Colleges have typically not included this item in their budget requests, and the Unfunded Enrollment Workload Adjustment "EWA IOU" calculation has historically not included either of the Community Colleges.

IMPACT

The EWA IOU Enhancement for CSI will increase the overall Community College budget request by \$630,200.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of this enhancement request as it is consistent Board policy and direction.

BOARD ACTION

A motion to approve an adjustment in the FY2006 budget request for the Community Colleges for the unfunded Enrollment Workload Adjustment "EWA IOU" for CSI in the amount of \$630,200.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

B. Budget Policy

April 2002

1. Budget Requests

For purposes of Item 1., the community colleges (CSI and NIC), the State Historical Society, and the State Library are included.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COMMUNITY COLLEGES

REFERENCE

August 12-13, 2004

Board approved Community Colleges FY 2006 budget requests.

SUBJECT

Shift Community College Occupancy Costs from FY 2005 Supplemental to FY 2006 budget request.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V. B.1

BACKGROUND

The FY 2006 Community College budget request submitted to the Division of Financial Management (DFM) contained a supplemental request for FY 2005 unfunded Occupancy Costs in the amount of \$115,200, and for an Enhancement request for FY 2006 Occupancy Costs in the amount of \$176,000. These amounts were based on a percentage of use estimated for FY 2005 and FY 2006 of 33% and 67%, respectively for the Fine Arts Addition at the College of Southern Idaho. CSI has asked to move their FY05 Supplemental Request into the FY 2006 request. With the Board's permission, a revised budget request will be submitted to DFM to include the FY 2005 unfunded Occupancy Costs with the FY 2006 Occupancy Costs into the FY 2006 Enhancement request.

DISCUSSION

The adjustments described will align the institution request with what has been submitted to DFM.

IMPACT

The net impact is no change to the total FY 2006 budget request.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends this adjustment.

BOARD ACTION

A motion to revise the Community College budget request to move \$115,200 for FY 2005 unfunded occupancy costs into the FY 2006 occupancy cost request.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COMMUNITY COLLEGES

SUBJECT

Approve Community College (North Idaho College only) FY 2006 Enhancement requests for new equipment.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

North Idaho College (NIC) requests additional funding for:

- New equipment in outreach centers in Bonners Ferry and Plummer
- New equipment to upgrade the NIC testing center
- Development of "hybrid" courses (combination of traditional classroom setting using new technology)

DISCUSSION

These requested additions were not submitted by NIC to OSBE staff prior to the August meeting, so therefore have not previously been reviewed by the Board. Further, these items do not meet the definition of "maintenance of current operations", which was the guidance provided to agencies and institutions (with specific exceptions) at the beginning of the budget development process.

IMPACT

The equipment Enhancement for NIC will increase the overall Community College budget request by \$504,800.

STAFF COMMENTS AND RECOMMENDATIONS

Staff notes these items have not been reviewed by the Board. No recommendation is provided.

BOARD ACTION

A motion to approve an adjustment in the FY 2006 budget request for the North Idaho College for Enhancements for equipment in the amount of \$504,800.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

OR

A motion to NOT approve an adjustment in the FY 2006 budget request for the North Idaho College for Enhancements for equipment in the amount of \$504,800.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE:

APPLICABLE

**Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
B. Budget Policy**

April 2002

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
IDAHO STATE HISTORICAL SOCIETY

SUBJECT

Enhancement budget requests (2) for the Idaho State Historical Society.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

The Idaho State Historical Society included two enhancements in their FY2006 budget submission to OSBE. These items were not available for Board review at the August meeting.

Enhancement #1 - The Idaho State Historical Society requests additional staff to deal with the backlog of historic records in the Historical Library and Archives Division. This request is in response to a recommendation made by the State Historic Records Advisory Board (SHRAB), a federally-mandated advisory group appointed to identify needs within Idaho for the proper handling of governmental and other historically significant records. This enhancement request is for general fund support of one new position in the amount of \$54,000.

Enhancement #2 – The Idaho State Historical Society requests \$75,000 to support the Bicentennial Commemoration of the Lewis & Clark Expedition. Of this amount \$50,000 is requested from the General Fund and \$25,000 spending authority from dedicated license plate sales. The Lewis & Clark Committee recommended \$100,000 in general fund support. In FY 2004, \$50,000 of this recommendation was appropriated. ISHS is requesting an additional \$50,000 in General Funds. This appropriation and the \$25,000 in dedicated monies will be used as pass-through for local organizations..

DISCUSSION

The new position requested is necessary for the Historical Society to handle the backlog and maintain timely processing and appropriate preservation.

Recipients of the Lewis & Clark Bicentennial grants are located along the Lewis & Clark route in Idaho. Recipients of the grant awards will be decided by the Idaho Lewis & Clark Bicentennial Committee. Without this funding it is less likely that the need for commemoration activities will be met at the most critical time, when the Bicentennial is at its peak in terms of national and regional awareness.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004**

**INSTITUTION / AGENCY AGENDA
IDAHO STATE HISTORICAL SOCIETY– continued**

IMPACT

Funding will allow the Historical Society to come closer to meeting the federal guidelines for the handling of historic documents. The funding will also allow the agency to meet the needs outlined by the Lewis & Clark Committee.

STAFF COMMENTS AND RECOMMENDATIONS

Because these items were not identified by the agency as enhancements in June 2004, the Board did not provide direction for the enhancements to be prepared for the August agenda. The agency director has asked these enhancement requests be considered at the October meeting.

Staff understands the particular needs of the State Historical Society, specifically the Lewis & Clark celebration support funds. However, these two enhancements were not prioritized by the agency heads council, and were not submitted by the agency to the Board for its consideration until after the August meeting. No recommendation is provided.

BOARD ACTION

A motion to allow the Idaho State Historical Society to request two FY 2006 budget enhancements for a total of \$129,000.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

OR

A motion to NOT allow the Idaho State Historical Society to request two FY 2006 budget enhancements for a total of \$129,000.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
B. Budget Policies

October 2002

B. Budget Policies

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
IDAHO DIVISION OF VOCATIONAL REHABILITATION

SUBJECT

Supplemental Requests for FY 2005

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

The Idaho Division of Vocational Rehabilitation (IDVR) originally submitted two Supplemental budget requests with the August agenda. Both were related to a legislative transfer of program responsibility and funding for a Community Employment program. Since August, IDVR withdrew one supplemental based upon comments from the Executive and legislative budget offices. The withdrawn supplemental provided funding of \$180,400 for one-half of June billings to Community Rehabilitation Providers that otherwise would have been paid by the Department of Health and Welfare.

The second supplemental request, also approved by the Board in the August meeting, is for one-time startup costs of \$82,900 for CSE Work Services. This supplemental has been adjusted to request two new FTP for the CSE Work Services program.

DISCUSSION

The IDVR originally had these two FTP in their budget request as an adjustment – not part of a Supplemental request. After discussions with their DFM analyst IDVR included the two FTP in the supplemental request. Total funds requested, \$82,900, has not changed from the original submission.

IMPACT

This supplemental will provide the personnel necessary to assist in the operation of the CSE Work Services.

STAFF COMMENTS AND RECOMMENDATIONS

This supplemental is not increasing the total number of full time positions for IDVR. It is just transferring the positions to where they are most needed. Staff recommends this request.

BOARD ACTION

A motion to allow the Idaho Division of Vocational Rehabilitation to request two additional FTP as part of their FY 2005 Supplemental budget request.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004**

GOVERNING POLICIES AND PROCEDURES

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
B. Budget Policies

October 2002

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD

SUBJECT

Decrease in total Maintenance of Current Operations (MCO) request for Scholarships and Grants, Special Programs

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

The original FY2006 budget request for Scholarships and Grants, as approved in August, was for \$7,443,200 General Funds and \$790,400 in federal funds. In the FY2005 appropriation, the Legislature transferred the administration and funding for the Robert C. Byrd Honors Scholarship from the State Department of Education (SDE) to the Office of the State Board of Education (OSBE). The transfer included an ongoing appropriation for federal funding in the amount of \$204,000.

In the original MCO budget request for FY2006, the \$204,000 was not removed from the total request for new spending authority. The result was an excess of federal spending authority request was overstated by \$204,000 in federal funds.

DISCUSSION

The revised budget request for the Scholarships and Grants program is \$7,443,200 in General Funds (no change) and \$586,400 in federal funds.

IMPACT

The net impact is a reduction in the budget request of \$204,000.

STAFF COMMENTS AND RECOMMENDATIONS

Staff recommends approval of this request.

BOARD ACTION

A motion to revise the FY 2006 budget request for the Scholarships and Grants Program budget request with a reduction of \$204,000 in federal funds spending authority.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

GOVERNING POLICIES AND PROCEDURES

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
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October 2002

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD

SUBJECT

Increased state support for the TechHelp program to support food and manufacturing facilities in the state of Idaho.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.B.1

BACKGROUND

TechHelp, Idaho's manufacturing extension center since 1996, is a proven federal/state/private partnership for economic improvement in the state. In the last quarter of 2003 (Oct-Dec), TechHelp had over \$17 million of positive economic impact, a number supported by Synovate, an independent survey house. In the years 2001 and 2002, the TechHelp program generated more than \$54 million in economic impact. TechHelp achieves this impact through:

- A needs-based approach. TechHelp provides manufacturers and their employees with the processes and technologies that will most impact their operations. It is the leading provider of lean manufacturing and new product development expertise in Idaho.
- Taking skills and expertise to companies in all parts of the state as a partner with Idaho's three state universities. TechHelp specialists and University staff and students work on projects from offices in Boise, Idaho Falls and Post Falls.
- Training programs and industry conferences to raise awareness of new ways in which companies can improve their operations.

This record of high impact and improving the economic well-being of local companies and the state of Idaho, has brought the center strong support from the Governor's Office, Idaho's congressional delegation, Idaho legislators and local manufacturers. The partnership is recognized as a state investment that is providing a quantifiable return.

Current state General Fund support is \$164,800. Total annual funding (appropriated, client fees, federal, match) is \$2,507,800.

DISCUSSION

In 2000, The Idaho Science and Technology Strategy outlined the competitive challenges facing Idaho, including a poorly developed infrastructure for technology transfer and commercialization. TechHelp is helping address these challenges with a range of services, spearheaded by two key programs:

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD– continued

- Lean for Food Processors Program - a program tailored to the Idaho food industry that will boost productivity of Idaho's food processors by up to 35% annually. Sponsored by TechHelp and University of Idaho Extension, the program is designed to eliminate waste and increase productivity in Idaho food companies through lean manufacturing.
- New Product Innovation Program-a program that enables Idaho companies to produce new products and increase profitability, by exposing them to the latest product development processes and rapid prototyping tools. Sponsored by TechHelp and Boise State University, this program is a key to profitability in the state-most corporate profit comes from products developed in the last five years.

IMPACT

To take these programs to all parts of Idaho, TechHelp requests \$280,000. This funding will:

- Generate \$8 million dollars of additional cost savings, investment and job creation and retention for Idaho manufacturers and food processors.
- Leverage \$700,000 of federal funding.
- Continue the New Product Development program in Idaho.
- Provide access to new programs for manufacturers and food processors in underserved South Central Idaho.
- Secure a net revenue gain for the state through additional taxation revenues from improvements to Idaho companies.

STAFF COMMENTS AND RECOMMENDATIONS

This item was not submitted by the agency to the Board in June, 2004; therefore an enhancement budget request was not prepared for the August agenda. The program director has requested this item be considered at the October meeting.

The TechHelp program has a track record of assisting the food processing and manufacturing industries in Idaho. The program is a cooperative venture of several state and federal agencies, including Boise State University, Idaho State University and the University of Idaho.

Staff has reviewed this request and will be available to answer questions.

**BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004**

**INSTITUTION / AGENCY AGENDA
COLLEGE AND UNIVERSITIES OF THE STATE BOARD– continued**

BOARD ACTION

A motion to allow the TechHelp program to request a budget enhancement of \$280,000 for Fiscal Year 2006.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: V. FINANCIAL AFFAIRS
B. Budget Policies

October 2002

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
Fifty-seventh Legislature Second Regular Session - 2004

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 795

BY APPROPRIATIONS COMMITTEE

1 AN ACT

2 APPROPRIATING MONEYS FOR SPECIAL PROGRAMS FOR FISCAL YEAR 2005; LIMITING THE
3 NUMBER OF FULL-TIME EQUIVALENT POSITIONS; AND PROVIDING LEGISLATIVE INTENT
4 REGARDING MONEYS APPROPRIATED FOR CATEGORY B OF THE IDAHO ROBERT R. LEE
5 PROMISE SCHOLARSHIP PROGRAM.

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. There is hereby appropriated to the Board of Regents of the
8 University of Idaho and the State Board of Education for Special Programs the
9 following amounts to be expended for the designated programs according to the
10 designated expense classes from the listed funds for the period July 1, 2004,
11 through June 30, 2005:

12 FOR
13 FOR TRUSTEE AND
14 PERSONNEL OPERATING BENEFIT
15 COSTS EXPENDITURES PAYMENTS TOTAL

16 I. FOREST UTILIZATION RESEARCH:

17 FROM:

18 General Fund \$ 488,000 \$ 93,400 \$ 581,400

19 II. IDAHO GEOLOGICAL SURVEY:

20 FROM:

21 General Fund \$ 769,200 \$ 25,700 \$ 794,900

22 III. SCHOLARSHIPS AND GRANTS:

23 FROM:

24 General Fund \$7,330,500 \$ 7,330,500

25 Federal Grant Fund 440,000 440,000

26 TOTAL \$7,770,500 \$ 7,770,500

27 IV. IDAHO MUSEUM OF NATURAL HISTORY:

28 FROM:

29 General Fund \$ 492,600 \$ 13,500 \$ 506,100

30 V. IDAHO SMALL BUSINESS DEVELOPMENT CENTERS:

31 FROM:

32 General Fund \$ 286,700 \$ 286,700

33 VI. IDAHO COUNCIL ON ECONOMIC EDUCATION:

34 FROM:

35 General Fund \$ 53,200 \$ 53,200

36 VII. TECHHELP:

37 FROM:

38 General Fund \$ 164,800 \$ 164,800

39 GRAND

40 TOTAL \$1,749,800 \$132,600 \$8,275,200 \$10,157,600

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

41 SECTION 2. In accordance with Section 67-3519, Idaho Code, there is
 42 hereby authorized no more than twenty-four and eighty-hundredths (24.80) full-
 1 time equivalent positions at any point during the period July 1, 2004, through
 2 June 30, 2005, for the Forest Utilization Research Program, Idaho Geological
 3 Survey Program and the Idaho Museum of Natural History as specified in Section
 4 1 of this act, unless specifically authorized by the Governor. The Joint
 5 Finance-Appropriations Committee will be notified promptly of any increased
 6 positions so authorized.

7 SECTION 3. It is the intent of the Legislature that the moneys appropri-
 8 ated for Category B of the Idaho Robert R. Lee Promise Scholarship Program may
 9 only be used for qualifying Category B students who entered a postsecondary
 10 institution for the first time for the 2001-2002 academic year or subsequent
 11 academic years after completion of high school or its equivalent, pursuant to
 12 Sections 33-4303 through 33-4313, Idaho Code.

Statement of Purpose / Fiscal Impact

Statement of Purpose

RS13386

This is the FY 2005 appropriation for the Special Programs under the State Board of Education. The seven Special Programs are the Forest Utilization Research Program and the Idaho Geological Survey at the University of Idaho, the Scholarships & Grants Program administered by the Office of the State Board of Education, the Idaho Museum of Natural History at Idaho State University, and the Idaho Small Business Development Center, TechHelp and the Idaho Council for Economic Education at Boise State University.

Fiscal Note

	FTP	Gen	Ded	Fed	Total
FY 2004 Original Appropriation	24.80	9,628,300	0	236,000	9,864,300
Non-Cognizable Funds and Transfers	0.00	0	0	204,000	204,000
FY 2004 Estimated Expenditures	24.80	9,628,300	0	440,000	10,068,300
Removal of One-Time Expenditures	0.00	0	0	(204,000)	(204,000)
FY 2005 Base	24.80	9,628,300	0	236,000	9,864,300
Personnel Cost Rollups	0.00	27,800	0	0	27,800
Inflationary Adjustments	0.00	0	0	0	0
Replacement Items	0.00	0	0	0	0
Nonstandard Adjustments	0.00	20,500	0	0	20,500
Change in Employee Compensation	0.00	41,000	0	0	41,000
FY 2005 Program Maintenance	24.80	9,717,600	0	236,000	9,953,600
Enhancements					
Special Programs					
1. Honors Scholarship from SDE to OSBE	0.00	0	0	204,000	204,000
FY 2005 Total	24.80	9,717,600	0	440,000	10,157,600
Chg from FY 2004 Orig Approp	0.00	89,300	0	204,000	293,300
% Chg from FY 2004 Orig Approp.	0.0%	0.9%		86.4%	3.0%

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

This appropriation includes intent language that limits the number of full-time equivalent positions for certain Special Programs and restricts eligibility for Idaho Robert R. Lee Promise Scholarship Category B awards.

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BUSINESS AFFAIRS AND HUMAN RESOURCES

October 20-21, 2004

INSTITUTION / AGENCY AGENDA

COLLEGE AND UNIVERSITIES OF THE STATE BOARD

SUBJECT

Second Reading: Changes to BYLAWS: adding Audit Committee.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures; Bylaws, Section L.

Idaho State Board of Education Governing Policies & Procedures; Section I.A.3.a-b.

BACKGROUND

At the March 2004 Board meeting, the Board approved the creation of a new standing Audit Committee. At the June 2004 Board meeting, the Board approved the first reading.

DISCUSSION

The National Association of College and University Business Officers performed a study of Sarbanes-Oxley (SOX) and have made recommendations regarding how to implement applicable SOX sections in higher education. The proposed Audit Committee bylaw follows those recommendations.

IMPACT

The Audit Committee will be created by Board action, but will operate thereafter as an independent body, specifically to address audits of institutions under its control. The bylaws define the structure and general guidelines of the Committee.

STAFF COMMENTS AND RECOMMENDATIONS

The Board previously approved the first reading; staff recommends approval of the second reading of this policy.

BOARD ACTION

A motion to approve the second reading of changes to Idaho State Board of Education Governing Policies and Procedures, Bylaws, Section H., Committees of the Board, to create a new standing Audit Committee.

Moved by_____ Seconded by_____ Carried Yes____ No____

Idaho State Board of Education
GOVERNING POLICIES AND PROCEDURES
SECTION: BYLAWS

Revised June 2004

DRAFT SECOND READING
H. Committees of the Board

4. Audit Committee

a. Purpose

The Audit Committee (hereinafter referred to as the Committee) is appointed by the Board in fulfilling its fiscal oversight responsibilities. The Committee provides oversight to the organizations under its governance (defined in Idaho State Board of Education, Policies and Procedures, Section I. A.1.) for: financial statement integrity, financial practices, internal control systems, financial management, and standards of conduct.

b. Composition

The Committee members shall be appointed by the Board and shall consist of six or more members. Three members of the Committee shall be current Board members and three members shall be independent non-Board members who are permanent residents of the state of Idaho. Each Committee member who is a Board member shall be independent ~~non-executive directors~~, free from any relationship that would interfere with the exercise of her or his independent judgment. The chief financial officers of the institutions and Board office shall serve as ex-officio members of the Committee.

All members shall have an understanding of the Committee and financial affairs and the ability to exercise independent judgment, and at least one member of the Committee shall have current accounting or related financial management expertise in the following areas:

- 1) an understanding of generally accepted accounting principles, experience in preparing, auditing, analyzing, or evaluating complex financial statements, and;
- 2) the ability to assess the general application of such principles in the accounting for estimates, accruals, and reserves, and;
- 3) experience in preparing or auditing financial statements and;
- 4) an understanding of internal controls.

BUSINESS AFFAIRS AND HUMAN RESOURCES

October 20-21, 2004

SECTION: BYLAWS

Revised June 2004

DRAFT SECOND READING

H. Committees of the Board - continued

Appointments shall be for a three-year term. Terms will be staggered such that two members exit and two new members are added each year. The Committee chair shall be appointed by the Board President.

c. Responsibilities and Procedures

It is not the Committee's duty to plan or conduct audits or to determine that the institution's financial statements are complete, accurate and in accordance with generally accepted accounting principles. Management is responsible for the preparation, presentation, and integrity of the financial statements and for the appropriateness of the accounting principles and reporting policies used. The following shall be the principle duties and responsibilities of the Committee:

- 1) Approve the appointment, establish the compensation, and evaluate and oversee the work of the independent auditors. The Committee must approve any services prior to being provided by the independent auditor. The independent auditing firm shall report directly to the Committee and the auditor's "engagement letter" shall be addressed to the Committee and the President of each institution. The Committee shall have the authority to engage the Board's legal counsel and other consultants necessary to carry out its duties.
- 2) Discuss with the independent auditors the audit scope, focusing on areas of concern or interest;
- 3) Review the financial statements, adequacy of internal controls and findings with the independent auditor. The independent auditor's "management letter" shall include management responses and be addressed to the Audit Committee and President of the institution.
- 4) Present the financial statements to the Board and provide detail and summary reports as appropriate.
- 5) Oversee standards of conduct (ethical behavior) and conflict of interest policies of the Board and the institutions under its governance including establishment of confidential complaint mechanisms.
- 6) Monitor the integrity of each organization's financial accounting process and systems of internal controls regarding finance, accounting and stewardship of assets;
- 7) Monitor the independence and performance of each organization's independent auditors and internal auditing departments;
- 8) Provide general guidance for developing ~~Develop a standard~~ risk assessment models for all institutions ~~and agencies~~.

BUSINESS AFFAIRS AND HUMAN RESOURCES
October 20-21, 2004

SECTION: BYLAWS

Revised June 2004

DRAFT SECOND READING

H. Committees of the Board - continued

9) Provide an avenue of communication among the independent auditors, management, the internal audit staff and the Board.

10) Maintain audit review responsibilities of institutional affiliates to include but not limited to foundations and booster organizations.

~~10)11)~~ As a matter of independence, the Committee ~~does not propose or set~~ will not approve policy.

The Committee will meet ~~no fewer than four times per year and more often~~ as needed. The Committee may establish necessary procedures to carry out its responsibilities. Such procedures must be consistent with the Board's Governing Policies and Procedures. The Board's chief fiscal officer, under the direction of the chair, prepares the agenda for and schedules each meeting of the Committee and maintains a written record of the Committee's activities and recommendations. A copy of the written record is included in the official minutes of the State Board of Education and Board of Regents of the University of Idaho.

4.5. Targeted Educational Groups Advisory Council

REFERENCE - APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

BYLAWS: SECTION L. Adoption, Amendment, and Repeal of Bylaws

L. Adoption, Amendment, and Repeal of Bylaws

Bylaws may be adopted, amended, or repealed at any regular or special meeting of the Board by a majority vote of the Board, provided notice has been presented at the preceding meeting of the Board.

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BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO

REFERENCE

June 6, 1997

Approved as a Routine Agenda Item,
p.21.

April 11, 2002

Approved as BAHHR Agenda Item,
p.10,11.

SUBJECT

Amendment to an existing access and utility easement originally granted by Regents permitting construction of independent housing for the developmentally disabled on an adjoining parcel in Moscow owned by Mercy Housing Idaho, Inc.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Section V.I.5.b.2.

BACKGROUND

In 1997 the Regents granted access and utility easements to Stepping Stones, Inc. Since Stepping Stones did not develop their property, this easement automatically terminated in 2002. In 2002, at the request of Stepping Stones, the Regents granted a new easement. This utility and access easement was granted again at no cost, but with the condition that the easement was only effective should the benefited property be developed in a manner consistent with Stepping Stones plan of building independent housing for the developmentally disabled. In October 2004, Mercy Housing, the new owner of the property, notified the University that the federal Department of Housing and Urban Development (HUD), the agency funding this housing project, could not provide funding unless the condition attached to the easement (use of property for disabled housing) was removed. While the purpose of the development had not changed, HUD could not accept the encumbrance on the easement that provided the only access to the property.

DISCUSSION

To accommodate HUD's insistence that the easement not be conditioned on the ultimate use of the benefited property, UI and Mercy Housing drafted amendments (See Exhibits A & B) to the original easement (see Exhibit C) removing the condition that the property benefited by the easement be used for independent housing for the developmentally disabled. The remainder of the easement remains unchanged and the intended purposes for granting the easement remain the same. Approval of the amendment will eliminate the restriction on the no cost easement

BUSINESS AFFAIRS AND HUMAN RESOURCES
OCTOBER 20-21, 2004

INSTITUTION / AGENCY AGENDA
UNIVERSITY OF IDAHO - continued

and enable Mercy Housing, HUD or some subsequent owner to utilize the property for other purposes, though HUD funding for the project still reflects the same intentions that were the basis for original easement approval.

IMPACT

Approval of this amendment will have no direct fiscal or programmatic impact on the University of Idaho.

STAFF COMMENTS AND RECOMMENDATIONS

Staff has reviewed this item for conformance with Board policy and recommends approval.

BOARD ACTION

A motion by the University of Idaho (UI) to approve a proposed amendment to an existing easement between the UI and Independence, Inc., regarding property in Moscow, Idaho adjacent to UI property north of Highway 8 (behind Palouse Mall).

Moved _____ Seconded _____ Carried Yes ____ No ____

KANTOR
TAYLOR
McCARTHY
P.C.

File Number:
331.4

A T T O R N E Y S

October 7, 2004

Susan L. Boyd
sboyd@housinglaw.com

Rod Lewis
President, Board of Regents
University of Idaho
P.O. Box 443162
Moscow, Idaho 83844-3162

RE: Independence Hill Easement

Dear Mr. Lewis:

I have been providing legal counsel to Mercy Housing, Idaho and its subsidiary, Independence Hill, Inc. in its efforts to finance and construct an independent living facility for developmentally disabled adults (the "Project") on property located near the northeast corner of Farm Road and A Street in Moscow, Idaho. The Project is adjacent to land owned by the University of Idaho. In 2002, the University granted to Mercy's predecessor in interest, Stepping Stones, Inc., an easement for access and utilities across University property. This easement provides the only access to the Project from the public street. We are requesting an amendment to an easement granted by the University of Idaho to benefit the Project.

At the time this easement was granted, it was conditioned on the continuing use of the property as housing for developmentally disabled adults, and the easement was granted by the University. The Project is being financed with a capital advance from the U.S. Department of Housing and Urban Development. HUD has conditioned the Project's funding on amending this access easement to remove any condition that would permit the easement to terminate based on the use of the Property. I have been talking with HUD counsel and staff over the past week about this issue, and their position is absolute. They will not fund the Project with any conditions on the access easement. The Project will therefore not go forward without an amendment to the easement.

1501 Fourth Avenue, Suite 1610
Seattle, WA 98101-1662

Phone 206.625.9898
Facsimile 206.625.9951

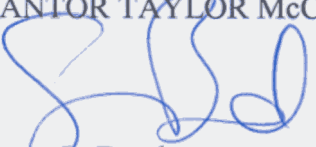
The Project will be subject to a use restriction for the 40-year term of the HUD mortgage, requiring that the property be used only for housing for disabled

October 7, 2004

Page 2

persons. The only possibility of the use restriction terminating prior to the end of this 40 year term would be in the event of a foreclosure on the mortgage by HUD. Such an event is highly unlikely: the mortgage secures a loan that requires no payments and is forgiven as long as the Project continues to operate as housing for disabled persons and otherwise in compliance with HUD regulations. Additionally, Mercy is a very experienced and highly regarded developer and operator of low-income housing projects for all kinds of populations, with an uncompromised mission of providing long-term housing opportunities for such groups. And finally, although HUD is unwilling to guaranty what it would do with the property in the unlikely event of a foreclosure, they are the federal housing agency and are very unlikely to do anything with the Project other than find another operator to continue its use as low-income housing.

This Project is absolutely dependent on getting this easement amendment from the University. I have attached a draft amendment to the easement agreement. I am grateful that you have taken time to consider this request. Please feel free to contact me with any questions you may have. HUD staff have also agreed to talk with you if they can answer any questions. Please get back to me as soon as possible with your response.

KANTOR TAYLOR McCARTHY P.C.

Susan L. Boyd

Recording Requested by and
When Recorded Return to:

EXHIBIT B

UNIVERSITY OF IDAHO
Capital Planning & Budget
Attn: Gerard Billington
Moscow, Idaho 83844-3162

AMENDMENT TO NON-EXCLUSIVE EASEMENT AGREEMENT

This AMENDMENT TO NON-EXCLUSIVE GRANT OF EASEMENT (this "Amendment") is made this ____ day of _____, 2004, by and between THE REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and a body corporate organized and existing under the laws of the State of Idaho ("Grantor"), whose address is Vice President for Finance and Administration, University of Idaho, Moscow, Idaho 83844-3168 and INDEPENDENCE HILL, INC., an Idaho nonprofit corporation ("Grantee"), whose address is 540 N. Eagle Rd., Eagle, Idaho 83616.

This Amendment amends that Non-Exclusive Easement Agreement (the "Original Easement Agreement") entered into between the Grantor and Grantee's predecessor in interest on May 3, 2002 and recorded in the offices of the Latah County Recorder at recording number 465803.

Paragraph 15 of the Original Easement Agreement is hereby amended to read as follows, removing any condition that the Property be used for independent housing for developmentally disabled residents:

"15. TERMINATION: Grantee may terminate this Easement only upon the written express consent of Grantor, or its successors and assigns, and any mortgagee holding a security interest in Grantee's Property, and only by recording a release signed by the same with the Latah County Recorder's Office."

The Original Easement Agreement remains in full force and effect to the extent it is not inconsistent with the foregoing amendment.

[SIGNATURES APPEAR AND ARE NOTARIZED ON THE FOLLOWING PAGES]

GRANTOR

The Regents of the University of Idaho

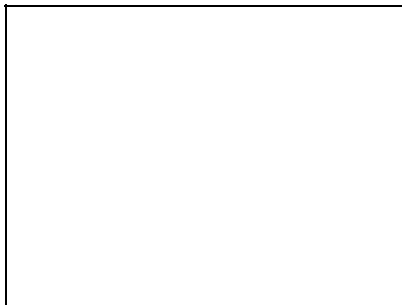
By: _____
Jay D. Kenton, Vice President for Finance & Administration,
University of Idaho

STATE OF IDAHO)
) ss
COUNTY OF LATAH)

On this _____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the State of Idaho, duly commissioned and sworn, personally appeared _____, to me known to be the Vice President for Finance and Administration for the University of Idaho, the University that executed the within instrument, and acknowledged to me that he executed the same for and on behalf of the Board of Regents of the University of Idaho.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Date: _____



NOTARY PUBLIC in and for the State of
Washington residing at _____
My commission expires: _____
PRINT NAME: _____

GRANTEE:

INDEPENDENCE HILL, INC.,
an Idaho nonprofit corporation

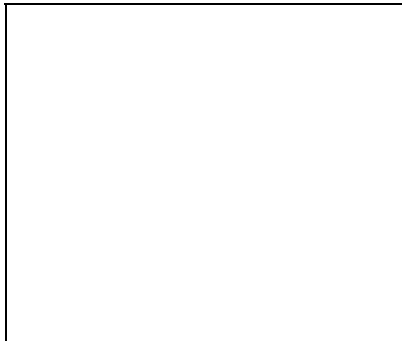
By: _____
Name: _____

STATE OF _____)
) ss
COUNTY OF _____)

On this ____ day of _____, 2004, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me personally known (or proved on the basis of satisfactory evidence) to be the _____, of Independence Hill, Inc., the Idaho non-profit corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation on behalf of such company for the uses and purposes therein mentioned, and each on oath stated that he/she was authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Date: _____



NOTARY PUBLIC in and for the State of
Washington residing at _____
My commission expires: _____
PRINT NAME: _____

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EXHIBIT C

CERTIFIED COPY

165803

Recording Requested By and
When Recorded Return to:

UNIVERSITY OF IDAHO
Capital Planning & Budget
Attn: Gerard Billington
Moscow, Idaho 83844-3162

NO. _____
AT THE REQUEST OF
University of Idaho
DATE & HOUR
5.21.02 2:38
SUSAN PETERSEN
LATAH COUNTY RECORDER

FEE \$ 10 BY S. Peterson

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

NON-EXCLUSIVE EASEMENT AGREEMENT

This NON-EXCLUSIVE GRANT OF EASEMENT (this "Grant") is made this 3rd day of May, 2002, by and between THE REGENTS OF THE UNIVERSITY OF IDAHO, a state educational institution and a body politic and corporate organized and existing under the Constitution and laws of the State of Idaho ("Grantor"), whose address is Vice President for Finance and Administration, University of Idaho, Moscow, Idaho 83844-3168 and Stepping Stones, Inc, an Idaho Non-Profit Corporation, whose business address is 521 S. Main, Moscow, Idaho 83843 ("Grantee").

RECITALS

A. Grantor has agreed to grant to Grantee a non-exclusive utility and access easement through Grantor's property, which property is legally described on Exhibit A, and graphically shown in Exhibit C which are attached hereto and incorporated by reference herein ("Easement Parcel").

B. The Easement Parcel consists of real property to be utilized for the construction, operation, maintenance, repair, replacement, and removal of public or private utilities and for ingress and egress to Grantee's adjacent property which is legally described on Exhibit B attached hereto and incorporated by reference herein ("Grantee's Property").

NOW, THEREFORE, in consideration of the recitals above which are incorporated below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. GRANT: Grantor hereby grants and conveys to Grantee, its successors, agents, and assigns, subject to all the terms, conditions and warranties contained herein, a perpetual (subject to the terms of this Grant), non-exclusive easement through the Easement Parcel, for the purpose of construction, operation, maintenance, repair, replacement and removal of public or private utilities and for those improvements reasonably necessary for vehicular and pedestrian

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ingress and egress to Grantee's Property ("Easement"). All construction, maintenance, operation, repair, replacement, and removal of the Easement shall be strictly limited to the Easement Parcel.

2. NOTICE: Any notice under this Grant shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time-to-time direct in writing:

If to Grantor:

Vice President for Finance and Administration
University of Idaho
PO Box 443168
Moscow, Idaho 83844-3168

If to Grantee:

Stepping Stones, Inc
521 S. Main
Moscow ID 83843
Attn: Chair, Board of Directors

Any notice shall be deemed to have been given on the earlier of: (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day facsimile delivery is verified. Actual notice, however and from whoever received, shall always be effective.

3. BINDING EFFECT: All provisions of this Grant, including the benefits and burdens, are binding upon and inure to the benefit, obligation, and use of the successors, agents, and assigns of the parties hereto. This Grant shall be a burden upon the Easement Parcel, for the benefit of and appurtenant to each and every part of Grantee's Property and shall run with the land.

4. NON-EXCLUSIVE RIGHT: Anything in this instrument to the contrary notwithstanding, Grantee agrees to the following conditions:

a. The Easement herein granted is subject to all easements and encumbrances of record and is non-exclusive, provided that later-granted easements shall be subject to Grantee's rights and uses;

b. All materials, equipment, and their related components and supports placed within the Easement Parcel by Grantee, or Grantee's agents or contractors pursuant to this instrument ("Grantee's Improvements") shall remain the property of the Grantee;

c. Grantor and its successors and assigns shall retain the right to full use of the surface and subsurface of the Easement Parcel, provided, however, that Grantor will not erect

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any permanent structure within the Easement Parcel without the written permission of the Grantee, which permission shall not be unreasonably withheld.

d. Grantee shall at all times maintain, repair and replace Grantee's Improvements in good and clean condition, consistent with or better than the quality and condition of the improvements to Grantor's surrounding property, including, without limitation, repaving and re-striping, when necessary, all paved surfaces to maintain a level, smooth and evenly covered surface. Grantee shall promptly repair and restore any improvements, landscaping or land disturbed by the construction, maintenance, repair or removal of Grantee's Improvements by Grantee or Grantee's agents or contractors to its prior condition; and

c. After recording this instrument, Grantee shall provide Grantor with a certified copy of the recorded instrument showing the date, instrument number, book, and page of recording.

5. INDEMNITY: The Grantee shall, to the extent permitted by law, indemnify, defend and save Grantor, its successors, assigns, and agents harmless from any and all claims, liabilities, losses, costs, charges, or expenses (including, without limitation, reasonable attorneys' fees) which Grantor may incur as a result of any act or omission of the Grantee, and Grantee's agents, contractors, tenants, licensees and invitees, in their use of the Easement Parcel under this Grant. If any action, claim or demand is made against Grantor for any act or omission of the Grantee or Grantee's agents, contractors, tenants, licensees and invitees, Grantee agrees to assume the expense and shall pay all costs, charges, attorneys' fees, settlements, judgments or other expenses incurred by or obtained against Grantor, and also, including all attorneys' fees and costs associated with any appeal proceeding.

6. REMEDIES: In the event of a breach hereunder by any party, the non-breaching party shall have all remedies available at law or in equity, including injunctive or other equitable relief. In any suit, action or appeal therefrom to enforce or interpret this Grant, the prevailing party shall be entitled to recover its costs incurred therein, including reasonable attorneys' fees and costs, and also including reasonable attorney's fees and costs associated with any appeal proceedings. The failure of Grantor to insist upon strict performance of any of the terms or conditions of this Grant shall not be deemed a waiver of any rights or remedies that Grantor may have, and shall not be deemed a waiver of any subsequent breach or default in the terms or conditions of the Grant by the same or any other person.

7. MODIFICATION: This Grant shall not be modified unless expressly agreed to by both parties in writing.

8. RELOCATION: The Grantor reserves the right to, and the Grantee agrees that, the Easement and Easement Parcel may be relocated at the Grantor's sole option and expense.

9. EASEMENT IMPROVEMENTS: Grantor and Grantee agree that Grantee shall, at its sole cost and expense, construct, operate, maintain, repair, replace, and remove the Easement, the Easement Parcel, and the fixtures and improvements therein as contemplated herein; provided however, prior to any such construction, maintenance, repair, replacement or

removal, Grantee will make reasonable attempts to notify and coordinate with Grantor the construction, maintenance, repair, replacement, or removal.

10. **RIGHT OF WAY CLEARING AND MAINTENANCE:** Grantee shall have the right to cut, trim, and remove any and all brush, branches, and trees located within the Easement Parcel. Grantee shall also have the right to control, on a continuing basis and by any prudent and reasonable means, the establishment and growth of trees, brush, and other vegetation located within the Easement Parcel which could, in the opinion of the Grantee, interfere with the reliable operation of Grantee's fixtures and improvements or the exercise of Grantee's rights herein or create a hazard to Grantee's facilities.

11. **CONDITION OF PARCEL:** Following the construction, maintenance, repair, replacement, or removal of the Easement, Grantee shall repair and return the Easement Parcel, to the extent reasonably practical, to the same condition as the Easement Parcel was in prior to Grantee's construction, maintenance, repair, replacement, or removal activities. In the event that Grantee fails to repair and return the Easement Parcel to said same condition, then the Grantor, at its sole discretion, may restore the Easement Parcel, or any portion thereof, and Grantee shall reimburse Grantor for all costs associated therewith within thirty (30) days from receipt of an invoice therefor.

12. **TITLE INSURANCE AND ESCROW:** Should Grantee so desire, at its sole expense, Grantee may apply forthwith for a title insurance policy insuring the easement hereby granted and Grantor will make available for inspection by the title company any evidence of title in its possession.

13. **REPRESENTATIONS AND WARRANTIES:** Grantor and Grantee represent and warrant as of the date herein that they and the person(s) executing on their behalf have the power and authority to execute this Grant and to perform Grantor's and Grantee's obligations herein and if Grantor or Grantee are a corporation, all necessary corporate action to authorize this transaction has been taken.

14. **COMPLIANCE WITH ALL LAWS AND INDUSTRY STANDARDS:** Grantee hereby agrees to comply in all respects with any and all, federal, state and local statutes, laws, ordinances, codes, regulations, and rules in connection with the use of the Easement and Easement Parcel. In addition, with respect to the construction, operation, maintenance, repair replacement, and removal of the Easement, Grantee agrees to comply with all applicable industry standards pertaining thereto.

15. **TERMINATION:** Grantee may terminate this Grant upon express written consent by Grantor and by recording a release with the Latah County Recorder's Office in recordable form with directions for delivery of the same to Grantor, whereupon all rights, duties, and liabilities hereby created shall terminate. In addition, in the event Grantee or its assigns do not construct on all or any portion of Grantee's Property independent housing for developmentally disabled residents within five (5) years of the date of this Grant and use Grantee's Property for the housing of developmental disabled residents for at least thirty (30) days or if (after the project is constructed) the Easement is not utilized for a continuous two (2) year period, all the rights

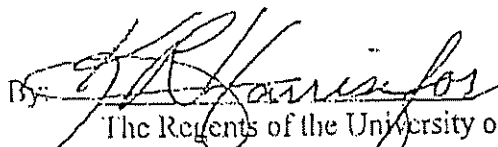
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granted to Grantee herein shall terminate once Grantor, without further act or acknowledgment of Grantee, unilaterally records a termination of this Grant, without any consent by or signature of Grantee. If there is a termination or abandonment of the Easement, Grantee shall remove Grantee's Improvements and return the Easement Parcel to its pre-easement condition.

IN WITNESS WHEREOF, the undersigned have caused this Grant to be executed.

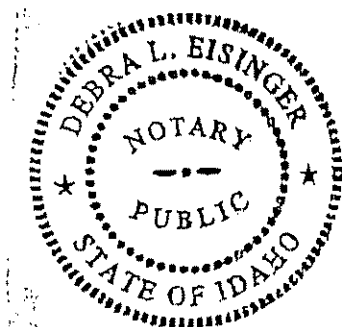
GRANTOR: The Regents of the University of Idaho

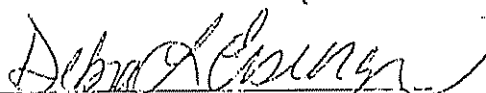
By: 
The Regents of the University of Idaho
by Jerry Wallace, Vice President for Finance & Administration
University of Idaho

STATE OF IDAHO)
) ss.
County of Latah)

On this 3 day of May, 2002 before me, the undersigned, a Notary Public in and for said State of Idaho, personally appeared Ken Harris, known or identified to me to be authorized to sign on behalf of the Vice President for Finance & Administration of the University of Idaho, The University that executed the within instrument, and acknowledged to me that he executed the same for and on behalf of the Board of Regents of the University of Idaho.

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




NOTARY PUBLIC for Idaho
Residing at Latah County
My commission expires 7/21/2004

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GRANTEE: Stepping Stones, Inc., an Idaho Non-Profit Corporation

By: 

Its: _____

Date: _____

STATE OF IDAHO)
) ss.
County of Latah)

On this Wednesday day of May, 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Mike White known or identified to me to be the Chairman of Stepping Stones, Inc., the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

Leah K. Boenke
NOTARY PUBLIC for Idaho
Residing at Moscow, Idaho
My commission expires: 4-15-2004

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EXHIBIT A**Easement Parcel**

A parcel of land located in the SE1/4, Section 12, Township 39 North, Range 6 West, B.M., Latah County, Idaho, more particularly described as follows:

Beginning at the intersection of the East line of the SE1/4 of said Section 12 and the northeasterly right-of-way of A Street, being the beginning of a curve concave to the Northeast and opposite Station 14+79.61 according to the plans of Federal Aid Project No. M-7564(005), Sheet 39, now on file at the City of Moscow Engineer's Office, Moscow, Idaho; thence, northwesterly along said right-of-way curve, 35.0 feet; thence northeasterly on a radial line to the East line of said SE1/4; thence South on said East line to the Point of Beginning. The Easement Parcel is graphically shown on the attached Exhibit C.

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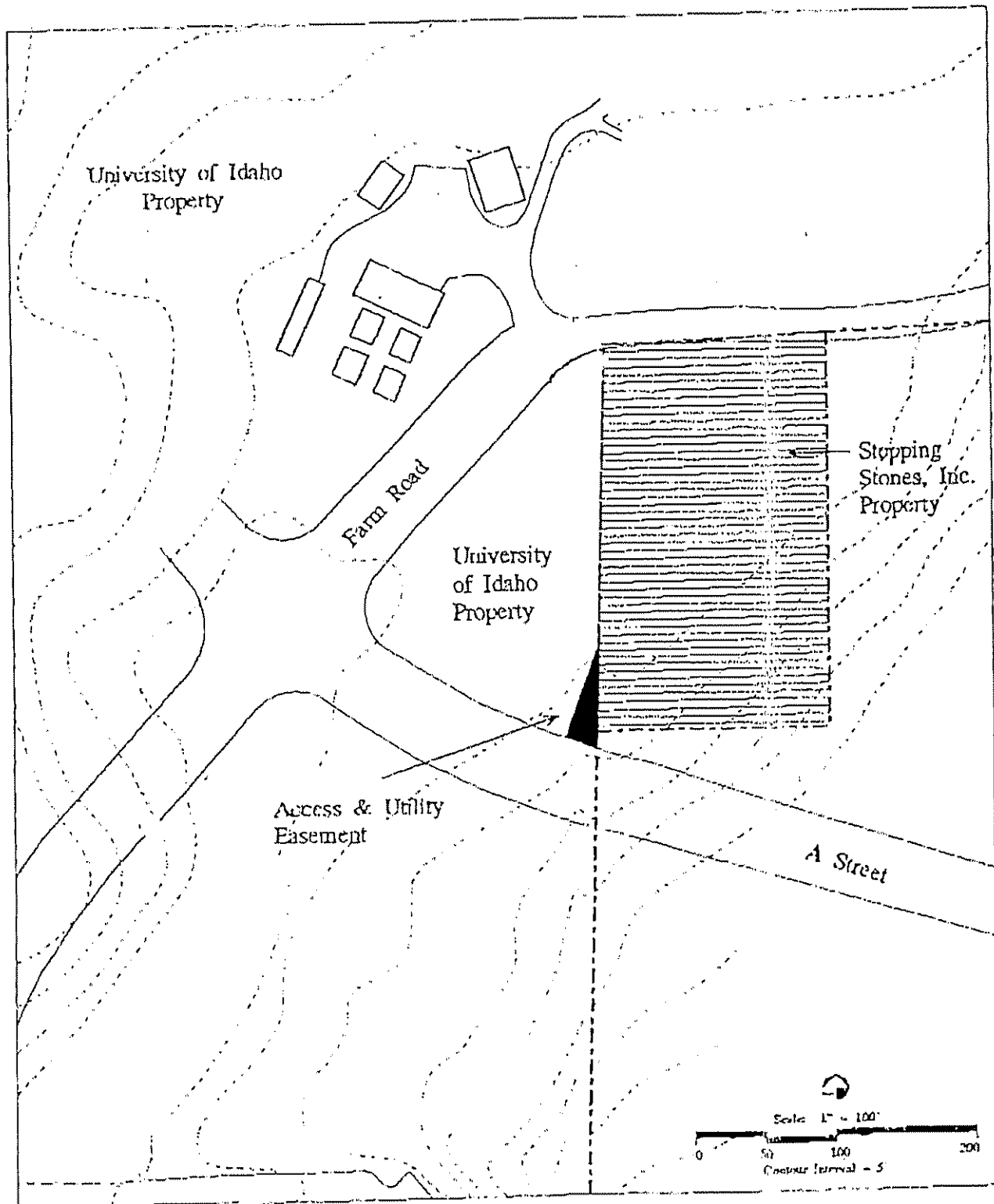
EXHIBIT B**Stepping Stones, Inc. Parcel**

A tract of land located in the NW 1/4 of the SW 1/4 of Section 7, Township 39 North, Range 5 West, B.M. and described as follows:

Beginning at the West 1/4 corner of said Section 7, running thence East along the 1/4 section line a distance of 168 feet; thence South parallel to the West line of Section 7 a distance of 260 feet; thence West parallel to the said 1/4 section line a distance of 168 feet; thence North along the West line of Section 7 a distance of 260 feet to the point of beginning, and containing one acre more or less.

465803

EXHIBIT C: SITE PLAN



I do hereby certify that the foregoing
is a true copy of the original document
on record in this office. Date this 21st
day of July 20 02

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Susan Polorsen
Ex Officio Auditor & Recorder
Latah County, Idaho

[Signature] Deputy

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REFERENCE: APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education

GOVERNING POLICIES AND PROCEDURES

SECTION: V. FINANCIAL AFFAIRS

Subsection: I. Real and Personal Property and Services

April 2002

I. Real and Personal Property and Services

5. Disposal of Real Property

b. Board approval of other transfers

(2) Easements to make a permanent use of real property under the control of an institution, school or agency require prior Board approval - unless easements are to public entities for utilities.

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