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City of Sandpoint v. Independent Highway District Respondent's Brief 2 Dckt. 42517

IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF SANDPOINT, a municipal corporation of the State of Idaho, Plaintiff/Respondent, vs. INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho, Defendant/Appellant.	Supreme Court No. 42517 Bonner County District Court Case No. CV 2013-01342

RESPONDENT'S BRIEF

Appeal from District Court of the First Judicial District
In and for the County of Bonner
Honorable John T. Mitchell, District Judge Presiding

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1. Statement of the Case.

1.1 Nature of the Case/Introduction.

The Independent Highway District (IHD) and the City of Sandpoint (City) agreed in 2003 to settle a series of long festering legal battles over how best to meet the shared statutory obligation to properly maintain roads and streets within the City limits. The judicially approved settlement provides that the City has the burden to maintain IHD streets and roads within the City, with the understanding that all ad valorem taxes imposed by IHD on City residents would be available to the City to fund the obligation. The core documents memorializing the relationship are (1) IHD's written proposal to settle the litigation dated June 24, 2003 ("Offer") ; (2) a Stipulation for Settlement dated July 3, 2003 ("Stipulation"); (3) a Joint Powers Agreement dated July 8, 2003 ("JPA"); (4) a City Resolution dated August 17, 2005 confirming title to the streets lies with IHD, but by mutual agreement control of such is with the City ("Resolution"); and (5) a Memorandum of Understanding dated August 19, 2005 ("MOU").[1] The unequivocal purpose of the core documents is:

> The purpose of this agreement is to divide the jurisdiction, maintenance and control of streets and public rights of way **within the boundaries of the district** between the District and the City and provide for the sharing of ad valorem tax revenue.

JPA R. 37 (emphasis added)

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[1] While contained in the record, these documents are here attached as Exs. 1-5 for the court's convenience.

This action was brought for one reason. IHD's attorney wrote the City on July 11, 2013 that he had opined the ten (10) year old settlement documents were unconstitutional, that the Court approved obligations were illegal and the sharing of revenue would cease "effective immediately". (RP 45) When the opining lawyer was advised there was actually a JPA memorializing the relationship, he then wrote on July 25, 2013 advising IHD Commissioners at that date had, "...elected to terminate the Joint Powers Agreement effectively immediately". (RP 47) Facing the crisis of funding for City roads and a fast approaching winter driving season, the City filed an action for Declaratory Relief on August 16, 2013. The District Court granted summary judgment affirming the documents are legal and enforceable on July 31, 2013. IHD appeals with a scattershot of arguments which attack the core documents in either an artful manipulation of the record or relies on an incorrect reading of the controlling law.

At the heart of this case are two facts IHD ignores. First, the core documents are an agreement to meet a shared statutory primary obligation to maintain streets in the City of Sandpoint. See, I.C. §40-201. Second, to settle ongoing litigation, IHD demanded that the then pending IHD dissolution election be vacated. (Offer, ¶4, RP p. 103)[2] Ten years after the fact, IHD wanted the benefit of the settlement, i.e. that it not be dissolved by pending election, but to be shed of its burden to comply with the contract it executed to settle long standing, and serial,

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[2] There would be no serious challenge that the 2003 County Commissioner approved election was designed to and would have resulted in dissolution of IHD.

litigation. To refuse payment, IHD creates an illusion of unconstitutionality that will not stand the most cursory of reviews.

1.2 Course of Proceedings.

The City filed a Complaint for Declaratory and Injunctive Relief on August 16, 2013, seeking declaration of the legality of the JPA, and validity of the core documents (R. pp. 19-47) IHD moved to dismiss, which was denied on December 9, 2013. The effect of the ruling on the motion to dismiss all but established the validity of the JPA. (R. pp. 154-175) Because the City was faced with imminent winter road maintenance and plowing, it requested, and IHD agreed, to stipulate that IHD would perform under the JPA and pay the ad valorum taxes owed while this matter remained pending. (R. pp. 176-178) Based on the stipulation, the District Court entered a preliminary injunction on December 18, 2013. (R. pp. 179-180)[3]

IHD sought a permissive appeal which this Court declined on July 29, 2014. (R. p. 272) The City then moved for summary judgment seeking finality relying on the legal argument offered in opposition to IHD's motion to dismiss, i.e. that the JPA was valid and enforceable as a matter of law. (R. pp. 190-193) The District Court granted the City's motion on July 31, 2014, which incorporated its findings from its order denying the motion to dismiss. (R. pp. 273-290)

The City thereafter timely filed its memorandum of fees and costs on August 13, 2015. (R. pp. 330-334) The District Court entered an Amended Declaratory and Monetary Judgment on August 22, 2014, which included a declaration ordering IHD to comply with the JPA, and pay

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[3] That payment obligation continues and IHD has complied with its commitment.

all ad valorem taxes owing, including any "collection for delinquent taxes, interests and costs"; it awarded attorney fees as the monetary judgment. (R. pp. 345-349) Because IHD had not yet filed its objection to fees and costs, the District Court granted IHD's motion for reconsideration, considered IHD's timely objection, and then confirmed the attorneys fees previously awarded; that order was entered on October 24, 2014. (R. Supplemental Record, Memorandum Decision and Order Granting In Part (As To Timing Of This Court's Prior Decision) And Denying In Part (As To Amount Of Attorney Fees Previously Awarded) Defendant IHD's Motion For Reconsideration Of Attorney Fees, p. 4 ("Memorandum Decision")

While the parties went back and forth in the necessary language of the judgment to render it final for the purpose of I.R.C.P. 54, the District Court entered final judgment on November 24, 2014, and denied IHD's motion to alter or amend the judgment on April 10, 2015. (R. pp. 385-390) This appeal followed.

1.3 Statement of Facts.

This case has had a long judicial history that played out before the Supreme Court in three previous separate matters. This history is vital to establish the context and basis of the parties' JPA, yet was wholly ignored by IHD. The first matter was ruled on in 1994, City of Sandpoint v. Sandpoint Independent Highway District, 126 Idaho 145, 879 P.2d 1078 (1994) (Sandpoint I). In that case, the City initially sued IHD trying to gain control over the maintenance of streets within the City, and that action addressed who had ultimate authority over the street maintenance and their day-to-day operations within the City limits. The Supreme

Court concluded that because the City did not have a functioning street department, IHD retained general supervisory authority to maintain the streets. Sandpoint I at pp. 150-151.

In response to the ruling in Sandpoint I, the City did organize a functioning street department by ordinance passed May 17, 2000. It then commenced a declaratory judgment asking whether it had executive general supervisory authority over the City's public streets, since the City formed a fully functioning street department in City of Sandpoint v. Sandpoint Independent Highway District, 139 Idaho 65, 72 P.3d 905 (2003) (Sandpoint II). The District Court ruled in favor of the City, but certified the question to the Supreme Court. The Supreme Court in Sandpoint II determined the relevant statutory clause was silent as to the mechanism of transferring responsibility between the Highway IHD and the City. The court reasoned that a multi-step process existed to divest a Highway IHD's liabilities, so it would be inconsistent with the legislative intent to permit a City to exclude its taxpayers from IHD liabilities by just forming a street department. The Supreme Court thus found that statutory dissolution of IHD would be necessary before the City could obtain jurisdiction over the City streets within its boundaries. Sandpoint II, 139 Idaho at 70. The summary judgment issued by the District Court was reversed, and the matter was remanded for further proceedings on June 19, 2003.

The third key decision lead directly to the JPA at issue here in Sandpoint Independent Highway District v. Board of County Commissioners of Bonner County and Bonner County and City of Sandpoint, 138 Idaho 887, 71 P.3d 1034 (2003) (Sandpoint III). That action was brought by IHD to enjoin the County from conducting the very election to dissolve IHD that was called for in Sandpoint II. The City was an Intervenor in that case, as well as one of the petitioners to

dissolve IHD that had been filed in April 2000. The question on appeal was whether the County Commissioners properly determined it was in the best interest for the entire IHD to be dissolved and scheduled an election for a vote on the dissolution. On June 4, 2003, the Supreme Court concurred that the Commissioners' findings were correct; dissolution would be in the best interest of the public. The Court sent the matter back, allowing an election.

With the almost simultaneous remands of Sandpoint II and Sandpoint III confronting the parties, cooler heads prevailed; the City and IHD negotiated a compromise that resolved both companion cases. IHD proposed a settlement that included entry into a Joint Powers Agreement (R. pp. 103-104) The settlement was entered of record on July 3, 2003 as a Stipulation for Settlement. (R. pp. 32-36) During the three years while the appeals of Sandpoint II and Sandpoint III were pending, the parties had agreed to an arrangement that divided the labor; the City maintained the streets within its boundaries, while IHD maintained all other streets outside the City but within IHD boundaries. (R. p. 34)

This arrangement was memorialized in the Stipulation for Settlement, which also provided that the City and IHD would enter into the JPA for future work and funding disbursements. (R. p. 35) IHD and the City represented on the record that they agreed to the following verities that cannot now be disputed by IHD:

1. [T]hat the interests of the taxpayers within the respective entities and of the road users would best be served by continuation of the present arrangements.
2. Based on experience, the City should maintain its own streets and IHD should expand its service area by annexation.
3. That continued litigation and the anticipated dissolution election would be costly and would not be in the best interests of the public.

(R. pp. 34-35) The terms of the settlement called for a joint statement of road control, entry into the JPA, that the City would join to vacate the dissolution election, and the City would not object to future annexations into IHD. (R. pp. 35-36)

The Court approved Stipulation provides:

> 2. The Sandpoint Independent Highway IHD and the City of Sandpoint shall enter into a joint powers agreement made pursuant to Chapter 23, Title 67, Idaho Code which will provide for division of all ad valorem funds received under Chapter 8, Title 40, Idaho Code. Said joint powers agreement is intended to be a **permanent resolution subject to termination only by mutual agreement of both parties**. **The division of funds** shall be made twice yearly. **The joint powers agreement would provide that the Sandpoint Independent Highway IHD pay over to the City of Sandpoint all ad valorem property tax funds received from levies by IHD upon all property located within the city limits**. The joint powers agreement would cover other matters as are appropriate. The tax revenues from IHD levies upon property within the city limits received in the current fiscal year shall be paid by IHD to the City commencing with the 2003 levy. (Emphasis added)

(R. pp. 35-36)

The Court approved the Stipulation by Order dated July 11, 2003. (R. p. 99) Sandpoint III was dismissed with prejudice on June 4, 2004 (CV-00-788). The parties thereafter complied with the Stipulation and entered into the JPA. (R. pp. 37-41) As required by the Stipulation for Settlement, the JPA reflected a "permanent" resolution to the litigation, and thus, as noted by IHD, had no provision for "renegotiation"; it did provide that it could be terminated or amended on mutual agreement. (R. p. 37) No aspect of the JPA, core documents or actions of the parties since 2003 to meet the obligations to the citizens residing in Sandpoint are contra to the rulings in Sandpoint I, II or III.

As a consideration for entering into the JPA, the City agreed to assist in withdrawing the petition to dissolve IHD and agreed not to challenge future annexations to IHD. (R. p. 36) The election did not occur. Future annexations have occurred over the past ten years and include such communities as Dover and Ponderay.

On July 11, 2013, exactly ten (10) years after this Court approved the stipulation, IHD notified the City that it was unilaterally withholding funds and refused to perform its obligations under the JPA. (R. p. 45)[4] On July 25, 2013, IHD notified the City that it unilaterally "elected" to terminate the JPA, and ceased apportioning the ad valorem tax revenues collected within the City limits. (R. p. 47) The City filed its Complaint in this action on August 16, 2013, (Sandpoint IV) seeking declaratory and injunctive relief requiring IHD to comply with the terms of the JPA. (R. pp. 19-47)

The terms of the JPA and the relevant law are not in dispute, as IHD recognized when it moved to dismiss the action under I.R.C.P. 12(b)(6) based on five arguments, now fashioned in part on this appeal. IHD argued the JPA, (1) was an indebtedness prohibited by the Constitution; (2) violated I.C. §40-801 which required an equal division of ad valorem taxes between the City and IHD, while the JPA promised the City all of the tax funds from levies within the City; (3) is unlawful under the Joint Powers Act because there is no termination provision; (4) is an unlawful perpetual contract; and (5) lacked consideration. (R. pp. 158-159) The District Court reviewed all of these bases and denied the motion to dismiss on all grounds.

The City moved for and obtained summary judgment (R. p. 290) and obtained a final declaratory and monetary judgment that the JPA was indeed valid and enforceable; and that IHD was to comply with its terms, and pay the taxes, including any delinquent taxes and interest and costs, whether "past, present and future," plus a quantified attorney fees award. (R. pp. 385-387)

Now on appeal, IHD abandons the majority of its assertions and focuses solely on the court's finding that the JPA complied with both Art. VIII of the Constitution and the Joint Powers Act. While IHD inaccurately restates the District Court's "six conclusions" to argue error, the undisputed facts establish the validity of the JPA and the propriety of the court's award of relief, including attorney fees.

2. Additional Issues/Attorneys' Fees on Appeal.

1. Whether the District Court's entry of summary judgment, judgment and attorney's fees was proper?

2. Whether the City of Sandpoint is entitled to attorney's fees on appeal based on I.C. § 12-117, 12-121, and I.A.R. 41(a)?

3. Argument.

> There shall be a system of state highways in the state, a system of county highways **in each county**, a system of highways **in each highway district, and** a system of highways **in each city**, except as otherwise provided. The improvement of highways and highway systems is hereby declared to be the established and **permanent policy** of the state of Idaho, and the **duty is hereby imposed upon the state, and all counties, cities, and highway districts in the state,** to improve

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[4] Not significant to resolution of the case, but contrary to IHD's continual assertion that it repeatedly requested termination of the JPA, the record is clear that the IHD Commissioners "elected to terminate" the JPA only after the City's attorney contacted counsel for IHD after the cessation of payments. (R. p. 47)

> and maintain the highways within their respective jurisdiction as hereinafter defined, within the limits of the funds available.

I.C. §40-201 (Emphasis added)

This case involves a contract reached in settlement for the faithful performance of a joint statutory duty imposed upon both the City and IHD to improve and maintain roads. Any IHD inference that its mandate or duty has been impaired by entering into a statutorily approved agreement to more effectively deliver highway services to the citizens of Bonner County is misplaced. IHD knows its boundaries and overall supervisory role over streets cannot be lost except upon dissolution, as this Court ruled in Sandpoint I and II. To avoid dissolution, IHD determined it was willing to permit the day-to-day road and highway responsibilities could vest with the City, and the means to provide the necessary funds was agreed upon. There is nothing untoward or conceptually impure in the agreement embodied in the core documents between the City and IHD.

On appeal, IHD offers a parsed scattershot reading of the core documents that apparently argues the core agreements were unconstitutional and thus void, resulted in an invalid loss of IHD "jurisdiction," are invalid under the Joint Powers Act, and should not have included a declaration that interest and penalties were to be remitted under the JPA. All of these conclusions are incorrect. The core documents are to be interpreted based first and foremost on the language used in the four corners of the documents, they are to be read together, and the court is to construe them as a matter of law when not ambiguous. See, State v. Acuna, 154 Idaho 139, 141, 294 P.3d 1151 (Ct. App. 2013); Charpentier v. Welch, 74 Idaho 242, 246-47, 259 P.2d

814 (1953). Farm Bureau Mut. Ins. Co. of Idaho v. Eisenman, 153 Idaho 549, 286 P.3d 185 (Idaho 2012) (an unambiguous contract must be construed as a matter of law). The court also construes constitutional and statutory provisions as a matter of law. See, Idaho Department of Health & Welfare v. McCormick, 153 Idaho 468, 470, 283 P.3d 785 (2012); Thus, this court will reach the same conclusion on review as did the court below: The JPA did not violate the Constitution, the JPA was not illegal or void, and no issues of fact existed to preclude summary judgment on the declaratory relief requested.

Moreover, IHD argues that the form of injunction was improper, and attorney fees improperly granted, both rulings of which are only reviewed for a manifest abuse of discretion, on which the appellant bears the burden of proof. Brady v. City of Homedale, 130 Idaho 569, 572, 944 P.2d 704 (1997); Mihalka v. Shepherd, 145 Idaho 547, 549, 181 P.3d 473 (2008).

3.1 The Joint Powers Agreement is constitutional, and the parties are entitled to provide for apportionment of taxes pursuant to that JPA.

The unsupported claim that the JPA is unconstitutional under Art. VIII §3 ignores the circumstances under which it was executed, the consideration given for it, and the ultimate court approval at inception. The JPA is a contract executed as part of a stipulated settlement to end litigation between the parties after 20 years of conflict over the maintenance of streets within the City of Sandpoint. (See, Sandpoint I, Sandpoint II and Sandpoint III) If the JPA "is unique" in Idaho between a municipality and IHD, it is not because it is an unenforceable debt or liability, but because it is a settlement reached as a result of decades of litigation. Settling litigation of necessity requires finality, and an agreement the parties must stand by and be bound to in order

to permanently resolve the disputes; settlement of litigation is an "obviously" favored public policy. Lomas & Nettleton Co. v. Tiger Enterprises, Inc., 99 Idaho 539, 542, 585 P.2d 949 (1978) (agreements accomplishing this result will be disregarded "only for the strongest of reasons"). Simply because IHD is bound to continue to perform under the Settlement Agreement into the future does not render such settlement unconstitutional.

In fact, Idaho courts have routinely recognized governmental agencies' abilities to settle lawsuits, even in those circumstances which require states to perform monetary obligations long into the future. See e.g., Jeff D. v. Andrus, 899 F.2d 753 (9th Cir. 1990) (state compromised class action requiring mental health service be provided to class of juveniles; settlement agreement reached in 1983 enforced as to all persons entitled to services in perpetuity). Such settlements do not create unconstitutional "debts or liabilities," although under IHD's reasoning, virtually any future commitment would be so defined.

In ignoring the context of settlement, IHD inaccurately states the purpose and terms of the JPA. It then basically misstates the court's ruling on summary judgment, asserting it was based on six conclusions, each which require reversal. See, IHD's Brief, p. 6. However, as is noted in the following response, IHD has inaccurately portrays the court's decision and relevant law concerning the JPA.

a. The Joint Powers Agreement did not create a "multi-year" "indebtedness or liability" subject to Constitutional prohibition.

This case does not involve a debt or liability prohibited by Art. VIII §3 of the Idaho Constitution. This case is about how IHD has agreed to "divide" the funds it statutorily has available annually to meet its statutory duty to maintain the streets within its boundaries.

While IHD emphasizes the District Court's statement that the JPA indeed created a "liability," because that term is more loosely defined, Art. VIII §3 prohibits "indebtedness, or liability...exceeding in that year the income and revenue provided for it in such year." The undisputed facts establish that the JPA did not create a debt or liability which exceeded the levy which IHD makes in each year, and the constitutional provision does not apply, even were the court to term the JPA a "liability." There is no need to separate the analysis of debt/liability from the concept of exceeding revenue for a given year, because only those debts and liabilities that exceed a year's revenue fall within the constitutional prohibition. It is undisputed the JPA created no debt or liability which exceeded the yearly revenues of IHD's levy. No more or less has to be allocated to the City than that actually collected from City residents.

IHD has the power to levy a tax. I.C. §40-801(a). If that levy is made upon property within the limits of any incorporated city, 50% of the funds are automatically apportioned to that incorporated city. IHD has no control over those funds. Id. By agreement, IHD has limited its exposure to the City roads to the balance of the revenue collected. The levy is a burden on all the taxpayers residing in IHD. The levy amount can freely change as circumstances change. The amount can be up, or it can go down. (Aff. of S. Syth, ¶6, R. p. 107) This case is not about

a fixed amount IHD must pay annually in perpetuity. This case is about dividing an annual pot of money and who is going to write the check from that pot of money to fix the roads in Sandpoint, Idaho. The parties agreed in the 2003 how the revenue would be **allocated** to maintain the streets of Sandpoint. The amount allocated to the City is not contingent upon receiving appropriations from the legislative process as contemplated by the Idaho Constitution when referencing indebtedness.[5] The amount paid can never exceed the amount collected.

Thus, the purpose of the constitutional provision is simply not implicated by the JPA. Article VIII §3 of the Idaho Constitution prohibits municipal governments, including cities and other subdivisions of the state, from incurring indebtedness or liability exceeding that year's revenues without a two-thirds approval by the voters. The purpose of the section is "to prevent local government entities from incurring debts without approval from the voters and a clear plan to retire those debts." City of Boise v. Frazier, 143 Idaho 1, 3, 137 P.3d 388 (2006); Taxpayers for Improving Pub. Safety v. Schwarzenegger, 91 Cal. Rptr. 3d 370, 377 (2009). Idaho's limitation on indebtedness was modeled after California's constitution. Frazier, 143 Idaho at 3. California courts have declared that the provision is intended "to prohibit the accumulation of public debt without the consent of the taxpayers, and require governmental agencies to carry on their operations on a cash basis." In re S. Humboldt Cmty. Healthcare Dist., 254 B.R. 758, 760 (Bankr. N.D. Cal. 2000).

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[5] If IHD contends that the JPA creates an ongoing indebtedness by virtue of regular division of its revenue given to the City, it must similarly contend that I.C. §40-801, which requires a 50% remittance to the City, is an unconstitutional "debt". IHD has not, and indeed cannot, demonstrate the unconstitutionality of I.C. §40-801 while using the statute to buttress its argument against the validity of the JPA.

The Idaho Supreme Court declared long ago that a municipality does not violate the constitutional prohibition on indebtedness when it pays expenses out of the revenue for that year. Ball v. Bannock County, 5 Idaho 602, 51 P. 454 (1897). Here, IHD's disbursement to the City pursuant to the JPA are limited to a portion of that year's revenues, as no disbursement will ever require funds beyond what IHD has already collected. This is in accord with the concept that "'[a] sum payable upon a contingency is not a debt, nor does it become a debt until the contingency happens.'" In re Quantification Settlement Agreement Cases, 201 Cal. App. 4th 758, 807, cert. denied, 133 S. Ct. 312 (U.S. 2012) (quoting Doland v. Clark, 143 Cal. 176, 181, 76 P. 958 (1904)). In In re Quantification Settlement Agreement Cases, the court determined that "the state's commitment in the Joint Powers Agreement to pay the excess mitigation costs does not violate Section 1, Article XVI of the California Constitution because the state's commitment is contingent on there being excess mitigation costs, and a contingent obligation does not qualify as a 'debt' or **'liability'** within the meaning of" California's constitutional limit on debt. 201 Cal.App. 4th at 807. (Emphasis added)

Similarly, this case deals only with periodic disbursements from IHD to fulfill its statutory duty to maintain City roads, as the funds are received. Construction and maintenance of roads by statute is the only reason IHD has the power to levy taxes. By its terms, the JPA simply requires IHD to "forward to the City all tax revenues received by IHD collected from properties within the [c]ity..." (R. p. 39) Conversely, a debt is "an 'unconditional promise to pay a fixed sum at some specified time, and is quite different from a contract to be performed in

the future, depending upon a condition precedent, which may never be performed, and which cannot ripen into a debt until performed." 15 McQuillin Mun. Corp. §41:17 (3d ed.).

Merely incurring a future allocation of funds as collected does not create an indebtedness. A contract to pay a fixed price annually, where contingent on the supply furnished, does not create an indebtedness. 15 McQuillin Mun. Corp. §41:22 (2013). For example, "If an obligation is payable out of a special fund only, and the municipality is not otherwise liable, it is generally held that there is no indebtedness." 15 McQuillin Mun. Corp. §41:30 (3d ed.) (citing U.S. v. City of Charleston, 149 F. Supp. 866 (S.D.W.Va. 1957); Law Offices of Cary L. Lapidus v. City of Wasco, 8 Cal. Rptr. 3d 680 (2004). Specifically, moneys to be paid out of the existence of a future potential contingent fund, and not from general city funds, are not considered debt or a future liability, and not prohibited by the Constitution. McQuillin, id. at 1368. See also, Homebuilders Assoc. v. Kansas City, 431 S.W.2d 111 (Mo. 1968) (contract for reimbursement from revenues derived from water main extension were not unconstitutional "debts").

In this case, IHD's disbursement to the City is akin to a potential contingent fund, as IHD is not otherwise liable to pay City any fixed amount at any point; IHD's disbursement amount is entirely conditioned by its collection of taxes on properties within the city. Truly, if IHD elected to have no levy for a tax year, there would be no obligation to pay. It is impossible to convert an agreed allocation of the use of funds, when and if collected as an obligation to pay a sum certain. (As shown by the Affidavit of Ms. Syth, in fact the amount varies each year. (R. pp. 107-108)) As in Lapidus, IHD's promise to disburse tax revenues to the City does not "place a charge upon the general funds of the City, nor create a situation in which future taxpayers might be strapped

with obligations incurred by a prior administration without the ability to meet those obligations or the necessary voter approval." Id. (citations omitted). Taxes levied on property within a city are generally not part of its indebtedness. 15 McQuillin Mun. Corp. §41:17. The JPA is simply what the stipulation states it is; an agreement on the division of revenue. That is not a debt or liability of a sum certain.

Apparently recognizing that there has been no "debt" created beyond the revenue years, IHD now asserts that the inclusion of the term "liability" in Art. VIII §3 means that **any** "obligation" to pay the funds, if levied and collected in the future, violates the Constitution. However, neither the cases cited by IHD nor the undisputed facts here establish such a result.

IHD's analysis starts with the false premise that the JPA creates a legal duty by IHD to levy taxes, which it then must pay over to the City as a future creditor who can "demand payment." IHD asserts that the "obligation" to pay over future years' revenue thus becomes a "liability" prohibited by the Constitution. In reality, the JPA does not require IHD to levy one cent in tax; because the JPA does not obligate IHD to levy, it creates no rights by the City to demand or enforce a tax levy. Rather, to meet its mandate to create and maintain a system of roads and highways, IHD has the authority and obligation to impose a levy. I.C. §40-201 The JPA only establishes a division of IHD's tax revenues once received. The District Court properly analyzed the JPA as creating no "liability" which exceeds the years' revenues.

While IHD claims no authority supports the analysis that IHD will never pay over more than it collects to preclude application of Art. VIII §3, in fact, the City, as outlined above, provided the court with persuasive authority from a variety of sources that properly analyzes

exactly this type of JPA. The "liability" does not bind IHD to pay funds greater than its capacity to pay in the first year; IHD is "liable" only if it assess taxes, and the JPA creates no obligation to pay into the future without the funds in that year to pay. Contrary to IHD's assertion, IHD's former Board **did not** obligate "itself to perpetually levy real property taxes and pay the revenues from such levy to the City." (See, Appellant's Brief, p. 19) Nothing in the JPA obligates IHD to so levy, and thus does not create a liability which may or may not be payable by future revenue. This is the fact that renders all of the cases cited by IHD inapplicable and irrelevant to the issues at hand. IHD details several Idaho cases at length, but they are limited to their facts, and none establish that the District Court incorrectly analyzed the Idaho constitutional prohibition on "multi-year debt." In Williams v. City of Emmett, 51 Idaho 500, 6 P.2d 475 (1931), quoted at length by IHD, the City of Emmett entered into a contract for a "rent to own" sprinkler system arrangement in which it **committed to pay a fixed sum per year**. While the City argued the sums to be paid were from special assessments of local improvement districts, the court noted such district had not yet been formed, and moreover, the City could not "pledge the revenues" from this future source because the City was contracting for the payments and created indebtedness into the future.

Thus, contrary to IHD's argument, the reasoning in Williams does not apply. The City in Williams contracted to pay a fixed sum, year after year, irrespective of where it intended to garner the funds from; had no district been formed, and no revenues generated, and the City would have owed its fixed sum for the purchase of the goods and services from some later income source; any default would subject them to liability for the sums they contracted to pay at

the outset of the contract. The "pledge" of future revenues was not a term of the contract that created **potential** future liability. The debt was fixed at the outset.

The same is true of the remaining authority on which IHD heavily relies, such as Charles Feil v. City of Coeur d'Alene, 23 Idaho 32, 129 P. 643 (1912), Miller v. City of Buhl, 48 Idaho 668, 284 P. 843 (1930), City of Boise v. Frazier, 143 Idaho 1, 137 P.3d 388 (2006), and City of Idaho Falls v. Fuhriman, 149 Idaho 574, 237 P.3d 1200 (2010). All involved contracts for the purchase of goods and services in which the municipality contracted to pay over multiple years. The District Court properly found such case law inapplicable because unlike any of these instances, the contract (the JPA) was instead for a division of revenues, whatever they may be, levied and collected by IHD; they were not fixed sum purchases which created a debt or liability that was owing, irrespective of what the sources of revenue may be. In those instances, the money is owing and is a current liability no matter what future source of revenue is identified to pay the owed amounts.

This significant difference is actually confirmed in a recent ruling, also heavily relied on by IHD. In Greater Boise Auditorium District ("GBAD") v. Frazier, 2015 WL 6080521 (Idaho 2015), the GBAD entered into an agreement for the construction and sale of a new facility. It simultaneously entered into an assignment and lease with a third party financier who would take the debt and lease the facility on one-year terms, renewable for 24 years, to the GBAD; if the GBAD did not have the funds to pay the lease amount in any one year, it could elect not to renew. The court properly found that the agreement, no matter what it was termed, did not run afoul of the Constitutional prohibition contained in Art. VIII §3 because the lease "does not incur

long-term liability," finding the "framers of the Constitution were more concerned with contingent liabilities than potential liabilities."

The GBAD court did confirm that an entity could incur an unconstitutional "liability," but not "indebtedness," if such liability still obligated future payments of fixed sums, using the following example:

> If A by a valid contract employs B to work for him for the term of one year at $50 per month, payable at the end of each and every month, would this contract not be a liability on A as soon as executed? A debt of $50 would accrue thereon at the end of each month, but the liability would be incurred at the time the contract was entered into.

Id. at *6.

The GBAD court went on to find that the lease arrangement was different than those circumstances in which a governmental subdivision is liable for the aggregate payments over the total term of the contract; in those instances, there is "nothing guaranteeing [the governmental subdivision] could continue to make the payments to which it is obligated in future years." Id. Instead, the lease at issue in GBAD:

> ...does not bind the District to any specifiable liability beyond the District's ability to pay in the year in which it was entered. It binds the District to pay rent of one year, something it currently has the funds to do. After the fiscal year's end, if the District has the funds to again pay for one year's rent, then it may renew the lease; if it does not, it does not have to pay anything by the terms of the lease.

Id. at *7.

This is exactly the reasoning the District Court here utilized and which appropriately interprets the constitutional provision against multi-year liabilities. The JPA does not require the payment of an aggregate sum by IHD over the total term of the contract, nor is IHD ever at risk

of paying an amount it does not have. The GBAD court distinguishes those types of "contingent liabilities" which the framers were concerned with, from "potential liabilities" which every governmental entity must have the authority to execute to make "governmental progress." Id. at *9. The underlying policy of Art. VIII §3 which the GBAD court confirmed is to insure that a governmental entity does not get "in over their heads financially," which also recognizes that it makes no sense to disapprove of every "potential liability," which would hamstring a governmental entity unnecessarily. Id. at *9. The JPA here can never expose IHD to financial hardship because any obligation to pay is potential and based on the collection of revenues, which it then apportions to the City. There simply is no multi-year liability which would mortgage their future or bankrupt IHD, and the Constitutional prohibition to long term debt or liability does not preclude the tax apportionment agreement here.

b. The District Court did not rule that agreements between political subdivisions were exempt from the Constitutional prohibition for multi-year exemptions, nor does the City make that distinction.

IHD asserts that the District Court ruled Art. VIII §3 does not apply to an agreement between two government agencies. That is not correct. IHD cites several lines from the District Court's opinion in which it distinguished the cases cited by IHD, which the District Court noted were "all cases involving the municipal purchases of systems or goods" from "private parties." (R. p. 161) However, the trial did not elaborate or rely on the concept of a "private party" purchase, to rule on the constitutional provision; it merely pointed out some of the facts of the cases. Rather, he relied on the fact that these cases involved the purchase of systems and goods for fixed sums for which the governmental entities would be liable over the aggregate term of the

contract. Neither the District Court nor the City made any argument or distinction that Art. VIII §3 does not apply because IHD and the City are both political subdivisions. This portion of IHD's brief is perplexing.

c. The District Court did not find that tax revenues were not general revenues, nor does the City rely on such a distinction.

Similarly, IHD asserts that the District Court "reasoned" that Art. VIII §3 does not apply to IHD property tax revenues because they are not "general revenues." (See, Appellant's Brief, p. 25) Again, while one line of the District Court's opinion restates the context of case law cited, it did not "reason" that taxes were not revenues. (See, R. p. 159-163) The District Court does not distinguish between general revenues or IHD property tax revenues, nor did it base a decision on that analysis. Neither the District Court nor the City claim that the fact that the funds at issue are property taxes impact the reasoning or application of Art. VIII §3 of the Constitution.

d. The District Court did not improperly define indebtedness as limited to goods or services, but simply found the reasoning in those cases limited to their facts.

Again, the District Court did not reason that Art. VIII §3 applies only to an indebtedness or liability for the purchase of a system or goods. As noted above, however, when a governmental entity contracts for the purchase of a system or goods, and agrees to pay the aggregate purchase price of the service or good over the term of the contract into future years, it indeed runs afoul of Art. VIII §3. Neither the District Court nor the City takes the position that there could not be other instances in which a political subdivision incurs a debt or liability which violates the constitutional prohibition. As outlined above, and as confirmed in GBAD, an

unconstitutional "debt" or "liability" does not include the potential apportionment of funds levied by IHD to the City for road maintenance; this is a potential liability which does not expose IHD to any debt or liability for funds it does not have in a given year. Thus, it is not only contracts for the purchase of systems or goods that triggers Art. VIII §3, but rather the requirement of a fixed sum of money owed in the future, which an entity may or may not have, which renders such agreements unconstitutional. And those are not the facts of this case.

e. The District Court did not rule the "special fund" doctrine applied to the JPA to protect it from unconstitutionality, nor did the City assert any such position.

Again, IHD takes a single line from the District Court's opinion and asserts that the District Court "concluded that the special fund doctrine applies to the facts of this case," and is thus in error because Idaho has rejected the special fund doctrine, except in very specific circumstances identified in constitutional amendments. Neither the District Court nor the City asserts this position nor is it part of the reasoning behind the JPA's constitutionality. Once again, the District Court simply notes two of the cases cited by IHD, Feil and Miller, were cases where expenses were invalidated because neither fell into a special fund exception. (R. p. 162) The District Court did not mention the special fund exception again, did not assert that it applied to the facts of the JPA, did not adopt the reasoning of the special fund doctrine, and did not base any of its ruling on the special fund doctrine. Similarly, the City did not mention nor base its argument on the special fund doctrine. The District Court simply noted that the special fund doctrine later became an exception that was amended into Art. VIII §3, which was noted by the Supreme Court of Idaho in Asson v. City of Burley, 105 Idaho 432, 670 P.2d 839 (1983). It is

once again perplexing how IHD asserts that "the District Court's reliance on Asson was misplaced." (Appellant's Brief, p. 30) The special fund doctrine and its constitutional treatment are not at issue in this case.

f. The City has not, nor is it now asserting the "ordinary and necessary" exception under Art. VIII §3 of the Constitution.

The City has established that Art. VIII §3 of the Constitution does not prohibit the JPA. It has never asserted, nor does it now assert, that Art. VIII §3 does not apply because the JPA addresses "ordinary and necessary expenses authorized by the general laws of the state."

g. IHD misconstrues the public policy of Art. VIII §3 of the Constitution, and misstates the City's desire to maintain its streets.

IHD seems to assert that Art. VIII §3 is violated when a governmental entity loses its authority to determine how future revenues are spent, and that future IHD Boards have lost the ability to prioritize property tax revenues uses, and this loss of the ability to set policy should in some fashion render the JPA unconstitutional. First, Art. VIII §3 has as its base concern a governmental entity that obligates itself financially far into the future, which then subjects it to a liability which it cannot pay. See, GBAD, supra. IHD cites no authority for the concept that a provision is unconstitutional because IHD loses authority to set policy on how the City of Sandpoint streets will be maintained. All of the cases instead recognize that the future indebtedness prohibition in Idaho's Constitution is to ensure that an entity does not become financially distressed by obligating long term future income.

Next, while the JPA does affect the ability of future IHD Boards to decide how its tax revenues should be spent to maintain the streets of the City, this argument made in isolation fails

to recognize that the JPA was entered into as a result of a stipulated settlement to end decades of litigation in which the City indeed sought to supervise the policy of its own street maintenance. IHD would be in the same boat if the City had succeeded in pursuing an election that dissolved it. If, as a matter of policy, a Board could never be bound by the terms of a settlement, governmental entities could never settle a case. Not only is the concept illogical, it is contrary to the law encouraging settlement. See, Lomas, supra.

Contrary to IHD's assertion, none of these policies are "contrary to the intent of the framers of the Idaho Constitution." The City also has tax payers as well as an elected body to be protected, which the JPA endeavored to do; the recitation within the Stipulated Settlement confirmed that the "best interests" of the taxpayers and road users would be to continue the arrangement in which the City maintained its streets. The loss of policy setting by IHD within the City does not implicate Idaho's Constitution.

3.2 The JPA complies with the Joint Power Act and remains enforceable.

a. The JPA provides for an appropriate method of termination– that is, by the Parties' mutual asset.

Idaho's Joint Powers Act ("Act") authorizes the type of JPA entered into between the City and IHD. I.C. §67-2326, et seq. The Act authorizes municipal agencies to share responsibilities by joint agreement. The purpose of the Act is "to make the most efficient use of [public agencies'] powers by enabling them to cooperate to their mutual advantage." I.C. §67-2326. The Act permits an agreement between any agency of the state having the same powers, privileges or authority. I.C. 67-2328. The JPA is to implement the "permanent policy" concerning roads of

the State; a duty imposed on both the City and IHD. There can be no dispute that an agreement to share responsibilities for roads and highways fits squarely within the stated and policy reasons for the Act.

IHD's contention that the JPA is void for want of an effective termination clause is misguided. The District Court rejected this argument when it denied IHD's Motion to Dismiss (RP p. 169-171) I.C. §67-2328 requires, "Any such agreement shall specify the following: (1) Its duration." The plain meaning of the statute does not require duration of a specific number of months or years, nor does it use the word "perpetuity". The JPA satisfies the Act's duration requirement by providing express terms of the JPA's duration as well as the provision for its termination upon certain dissolving actions. The Parties did not leave any room for ambiguity when they mutually agreed on the JPA term to meet the mutual obligation to maintain City streets:

> DURATION: The duration of this [A]greement shall be perpetual or until such time as the District and the City jointly and together agree to amend or terminate the same.

(Complaint, Ex. B, R. p. 37) The JPA further provides:

> DISSOLUTION: This JPA will automatically terminate if the District is dissolved. It will also terminate if the City supports any future petition for dissolution of District.

(Complaint, Ex. B, R. p. 41)

The parties specifically provided for the JPA's duration – in perpetuity until mutual amendment or termination. In fact, Courts have held that a definite term of duration in perpetuity is not the same as an "indefinite" duration. Bell v. Leven, 90 P.3d 1286 (Nev. 2004);

Southern Wine and Spirits of Nevada v. Mountain Valley Spring Company, LLC, 646 F.3d 526, 532 (8th Cir. 2011). In both Bell and Southern Wine, the courts held that the parties contemplated the duration of their relationship – in perpetuity – and that those definite terms should be enforced according to their terms.

IHD argues that because I.C. §67-2328(5) requires a method(s) to be employed "in accomplishing the partial or complete termination of the agreement" this language should be read by the Court to mean a joint powers agreement cannot continue in perpetuity. The statute does not say that. IHD also says there is no method of termination. Again, IHD is wrong: the method is mutual agreement or dissolution.

Other states have found that a contract that "provide[s] for termination or cancellation upon the occurrence of a specified event" is not void as a perpetual contract or terminable at will. Payroll Express Corp. v. Aetna Cas. & Sur. Co., 659 F.2d 285, 291 (2d Cir.1981) (applying New York law); see, Nicholas Labs. Ltd. v. Almay, Inc., 900 F.2d 19, 21 (2d Cir.1990) (applying New York law); First Commodity Traders, Inc. v. Heinold Commodities, Inc., 766 F.2d 1007, 1012 (7th Cir.1985) (applying Illinois law); Southern Hous. Partnerships, Inc. v. Stowers Management Co., 494 So.2d 44, 47–48 (Ala.1986); G.M. Abodeely Ins. Agency, Inc. v. Commerce Ins. Co., 669 N.E.2d 787, 789–90 (Mass. 1996). The specific event which allows termination can include a breach by a party of a term of the contract. See, First Commodity Traders, 766 F.2d at 1012; Payroll Express, 659 F.2d at 292; Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 182 F.R.D. 386, 395 (D.R.I. 1998).

Factually, the parties have already relied upon the custom of using mutual agreement to amend the JPA, despite IHD's assertion that "the City has every incentive to decline" any renegotiation. (See, Appellant's Brief, p. 36) For example, see the mutual agreement of 2005 between IHD and the City which resolved questions related to the vacating of streets. (R. pp. 43-44) Contrary to that process, in this instance, IHD sent a single letter unilaterally breaching the JPA. (R. p. 45) The City was forced to sue to insure road maintenance. Thus, the duration until "mutual" decision has not been established as ineffective in any manner, and the JPA's duration clause should be found sufficient or limited to termination by mutual agreement and/or dissolution.

b. The City and IHD properly exercised their authority under the Joint Powers Act which did not vest ownership with the City and thus did not inappropriately deprive IHD of "jurisdiction."

Idaho's legislature has provided a statutory scheme that allows the state and public agencies "to make the most efficient use of their powers by enabling them to cooperate to their mutual advantage...." I.C. §67-2326. "Public agency" includes both cities and highway districts. I.C. §67-2327. Public agencies may enter into agreements with one another for joint or cooperative action (a Joint Powers Agreement) for the "joint use, ownership and for operation agreements." The agreement may be for any power, privilege, or authority "enjoyed jointly." I.C. §67-2328. IHD enjoyed its power over the City streets pursuant to I.C. §40-801. The City enjoys its power of its streets pursuant to I.C. §40-201.

IHD asserts that the JPA "transferred jurisdiction" over the City streets improperly and in violation of the Joint Powers Act, because it had as its stated purpose a division of "jurisdiction"

over streets and public rights of way within the boundaries of IHD, and that the JPA by statute could only allow IHD and the City of Sandpoint to "jointly exercise their powers to maintain the streets within the City of Sandpoint," failed to "provide for joint exercise of power" and is thus contrary to the statute.

IHD's argument seems to be the result of semantics; the JPA and the Joint Powers Act, as reflected in the Stipulated Settlement in the JPA simply allows the City to exercise "exclusive general supervisory authority over all streets and public rights of way within City limits." (R. p. 37) The use of the word "jurisdiction" by the language of the core documents and the actions of the parties have never been construed to have transferred ownership of the roads and highways in the City. The core documents do not terminate IHD's ownership. In fact the JPA spells out the scope of the Supervisory powers of the City, which by definition is a limitation. (R p. 38) In addition, the 2005 agreement confirms the parties' acknowledgement of IHD ownership. (R p. 43) The Joint Powers Agreement which provided that supervisory authority, and the disbursement of apportionment of taxes to the City, did not absolve IHD of its obligations to City streets; IHD's legal obligation is to maintain all of the roads within its jurisdiction, including the City roads. See, Sandpoint I, supra.

However, the core documents are in fact replete with a repetition of the mutual acknowledgement that the boundaries of IHD have not been altered, the title to the streets and rights-of-way are the Districts and the intentions of the parties was to do the work of the people concerning roads in an orderly and agreeable fashion. And while it is true the word "jurisdiction" is used in various portions of the text, it is always in the context of who will

exercise supervisory authority over streets and has nothing to do with ownership of the streets which has always remained vested with IHD. The parties have lawfully entered into a contract and it is entitled to enforcement. IHD has failed to establish any basis to assert the contract is illegal.

As argued by IHD, Sandpoint I and Sandpoint III affirmed that IHD has ultimate ownership responsibility. Nothing in the Joint Powers Act prohibits the parties from dividing tax funds and exercising supervisory authority, as outlined in the JPA. (R. pp. 37-38) While the heading of the recital in the JPA is "Jurisdiction, Maintenance and Control," the language of the JPA actually provides:

> The City shall exercise exclusive general supervisory authority over all streets and public rights of way within the city limits of the City of Sandpoint including any property subsequently annexed.

(R. p. 37)

The JPA then goes on to list the limitations on the supervisory authority to fourteen (14) discreet areas that got to routine maintenance and control activates. (RP p. 38) IHD's "jurisdiction" argument is simply not supported by the record and is fashioned solely to assert an unsupportable legal and factual proposition.

In fact, in its Motion to Dismiss, IHD recognized that a JPA authorized local government agencies to cooperate and share responsibilities, because it may be inefficient for each agency to maintain the road, and thus "it may be a wise use of taxpayer funds for the two agencies to agree that one agency will perform all maintenance" on one portion of road. (R. pp. 66-67) While the JPA can allow the parties to agree that one agency will have the supervisory requirement to

perform maintenance, this does not mean that IHD delegated away or exceeded its statutory or constitutional authority by entering into this joint agreement. The JPA does not terminate IHD's ownership jurisdiction and the intentions of the parties is evident from the four corners of the core documents and the actions of the parties.

As an example of the semantic arguments made about jurisdiction, IHD offers that since the JPA includes vacation of streets in the Supervisory authority, IHD has divested itself of ownership (in IHD verbiage – "jurisdiction") over the streets. (App. Brief, p. 39) Again, the core documents are ignored. First, the undertaking by the City appears under the heading of "Supervisory Authority" which includes, "1. Acquisitions, vacations and abandonment." (R p. 38) Second, there never was an intention to abandon ownership of the streets absent consent of IHD. This is established by the reference to the August 17, 2005 Resolution by the City specifically covering the issue of vacation of streets. (RP p. 42) The City acknowledged IHD owned the streets and it had become necessary to "...simplify and clarify the process of vacating streets and right-of way with the City limits...". The agreed procedure adopted by the MOU signed the next day was that prior to any public hearing on the vacation of streets, the City would provide IHD thirty (30) day notice to object. Third, the MOU provides, "The IHD shall also sign off as need be on any documents relinquishing title to the vacated way." (R p. 43) Not only is IHD review and opportunity required, IHD must also participate in the documentation of the act. There is no argument that can be fashioned to suggest under the core documents, the intentions of the parties and the actions taken that IHD has surrendered either its ownership or its right to approve any street vacation.

Moreover, nothing in the Joint Powers Act, I.C. §67-2328(a) required the JPA to vest joint decision making or joint exercise of power over every decision related to the maintenance of City roads. IHD cites no case law for the proposition that proposition. The joint exercise of power authorized by the JPA, as indicated by IHD in its original brief in support of the motion to dismiss, indeed allows two agencies to agree that one agency will perform all the maintenance. It makes little sense to assert that IHD reserved the right to micromanage, or jointly decide what that maintenance will be in order to render the JPA in accordance with the statute. The JPA does no more than agree that the City will perform all maintenance on its own roads, which is exactly the purpose of a joint powers agreement.

3.3 The District Court properly awarded declaratory relief to include the necessary performance of the JPA by payment of the delinquent taxes, as well as interest and penalties.

a. The District Court properly ruled that "all property tax funds" included penalty and interest as a matter of law.

IHD's lengthy discussion of the alleged district court's error "in declaring the City's rights under the JPA" (see, Appellant's Brief, pp. 41-49), is actually a simple proposition: Whether IHD's obligation to pay over "all property tax funds" and "all tax revenues" includes penalties and interest as a matter of law. The undisputed facts are not all of the City residents paid their taxes on time. When they did, IHD directed remittance of the late paid taxes, but not the accrued penalties or interest. The District Court properly found those phrases unambiguously included **all** funds collected by IHD in relation to its levy, and its grant of judgment to include these amounts are proper.

The Joint Powers Agreement between the City of Sandpoint and Sandpoint Independent Highway District provided that IHD would levy and apply for ad valorem property taxes under the authority granted in Idaho Code Title 40. (Complaint, Ex. "B," R. p. 39) Specifically, the parties agreed "the District will pay over to the City **all** property tax funds from such District levies on all property located within the City limits." (Complaint, Ex. "B", R. p. 39 emphasis added) The ad valorem property tax authority under Title 40 requires that the County pay over to the Highway District "**all** District tax monies collected by him and payable to the District as soon as they are collected..." and pay over "**all monies** then due to the District, **including all** the District's proportion amount of **delinquent District taxes, interest and costs** on all tax sales and redemptions from them." I.C. §40-805 (emphasis added).

Thus, pursuant to the JPA, the City has pled that it is entitled to the ad valorem tax, which includes penalties and interest collected on properties within the City limits. (¶44(c), R. p. 27) As a result, the City asked that the declaratory relief to which it was entitled include an order that IHD transfer **all** tax revenues, to include penalties and interest. (¶51(b), R. p. 29) It is undisputed that IHD previously paid to the City all delinquent taxes owed, as they were paid. It makes no sense that the accompanying interest and penalties for those delinquent taxes are not similarly paid over to the City.

IHD's assertion that an ambiguity exists would require this Court to ignore the entirety of the terms used in the JPA and I.C. §40-805. IHD's claim of alternate interpretations that taxes, and only taxes, are included would be reasonable only if the word "tax" were used. "All property tax funds" has to have a meaning beyond "property taxes," and "all tax revenues" has to have a

meaning beyond "all taxes"; contracts are interpreted to give effect to all terms used, and courts will not render terms superfluous or meaningless. Parma Seed, Inc. v. Gen. Ins. Co. of America, 94 Idaho 658, 665, 496 P.2d 281 (1972); Star Phoenix Mining Co. v. Hecla Mining Co., 130 Idaho 223, 233, 939 P.2d 542 (1997). The definitions offered by IHD of the term "tax" alone do not apply to the phrases used, nor the tax monies which are required to be paid to IHD to include penalties and interest.

Instead, the District Court's analysis of "**all**" was appropriate. The court found that "all" is defined as "the whole number, quantity, or amount." Webster's Ninth New Collegiate Dictionary, p. 71 (1983). The term "tax" "embraces all governmental impositions on...property..." Black's Law Dictionary (9th ed. 2009). Revenue is defined as "[g]ross income or receipts." Id. A definition of the plural form of "fund" is "available pecuniary resources." Webster's Ninth New Collegiate Dictionary, p. 498 (1983). Thus, "all tax revenues" or "all property tax funds" would encompass the gross amount of money collected for IHD from City residents in relation to the ad valorem tax. (R p. 280-281)

The gross amount of funds collected for the benefit of IHD includes interest and costs of delinquent taxes. Under I.C. §40-805, which directs the county tax collector regarding highway district taxes, the county is to "[p]ay over all moneys then due to the district, including all the district's proportionate amount of the delinquent taxes, interest and costs on all tax sales and redemptions from them." I.C. 40-805. If "all moneys" encompass interest and penalties, then so should too the largely synonymous "all tax revenues" or "all property tax funds" utilized in the Agreement.

Moreover, whether or not IHD has previously paid those amounts to the City is irrelevant to the contractual obligation, and the act of paying or not paying does not created an issue of fact to defeat summary judgment. The only issue on appeal is a question of law for the court to determine whether the definition of the ad valorem property taxes collected by IHD under the statute includes interest and penalties, and whether the express terms of the JPA to pay all tax revenues agreed to the City include penalties and interest. Because this was simply a matter of contract interpretation and statutory construction, both of which are issues of law, no genuine issue of fact for trial exists. See, Dept. of Health, supra; Farm Bureau, supra. The District Court is entitled to apply common sense to the interpretation of the contract. See, Armstrong v. Farmers Ins. Co. of Idaho, 143 Idaho 135, 139, 143 P.3d 737 (2006) ("given a common sense interpretation, there is no ambiguity" in contract).

b. Sufficient evidence that the penalties and interest was owing existed to include that in the declaratory relief.

IHD also argues that there existed insufficient evidence of **the amount** of past due tax, precluding summary judgment. This ignores the nature of the declaratory relief sought here by the City, and the fact that all records which would quantify the amounts were in the possession of IHD.[6]

In a declaratory judgment, courts of record have the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. I.C. §10-1201. This

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[6] The City has no reason to doubt IHD will fully comply with the ruling of this Court and pay what is due without the necessity of additional litigation.

includes the construction of contracts, before or after breach. I.C. §10-1203. Contrary to IHD's claim, a breach of contract is not required for the issuance of a declaratory judgment regarding a contract dispute. ABC Agra LLC v. Critical Access Group, Inc., 156 Idaho 781, 331 P.3d 523 (2014). In a declaratory judgment proceeding, the court has jurisdiction to both construe a contract and to award damages. Sweeney v. American Nat. Bank, 62 Idaho 544, 115 P.2d 109 (1941). The District Court here had sufficient evidence to establish that IHD was required to pay penalties and interest with taxes in accordance with the JPA as a matter of law, and it declared that right to relief in a summary judgment. The only monetary relief was the award of fees. Thus, no additional evidence of an exact quantification was necessary, and no issue of fact existed to preclude that declaratory relief, and no basis exists to reverse it now.

3.4 A permanent injunction has yet to be entered.

IHD's argument about the form of the permanent injunction is emblematic of the scattershot approach to the appeal. It also appears to be an example of no good deed goes unpunished. Early in the case, the parties stipulated to the entry of a preliminary injunction, which has remained in effect. The Court's Judgment dated November 24, 2014 merely recites that a permanent injunction will enter. Before the Court could consider the form of the permanent injunction, IHD moved on December 8, 2014 to alter or amend the judgment for numerous reasons, but also pointing out the order was not a permanent injunction. (R. Supplemental Record, Memorandum in Support of Defendant's Motion to Alter or Amend Judgment, p. 4) The order denying the motion was entered on April 10, 2014. (R. p. 388-390) This appeal was then in play. The District Court has not yet entered a permanent injunction and

such has not been necessary to date as IHD continues to comply with is undertaking per the stipulated Preliminary Injunction. The issue on the form of the injunction is not yet before this court.

3.5 IHD is estopped from taking a position inconsistent with its act of entering into the Joint Powers Agreement.

The City offered estoppel as additional reasons below for the rejecting the arguments of IHD. The District Court did not have to turn to those arguments. They are repeated on appeal as additional and alternative reasons for rejecting the appeal. See, Taylor v. State, 145 Idaho 866, 870, 187 P.3d 1241 (Ct. App. 2008) (an appellate court may affirm a lower court's decision on a legal theory different from the one applied by the lower court). The doctrine of estoppel may be used against a highway district to prevent it from taking a position inconsistent with previous actions, in order to prevent manifest injustice; the Supreme Court approved this very legal principal in Sandpoint I, 126 Idaho at 151. See also, Murtaugh Highway Dist. v. Twin Falls Highway Dist., 65 Idaho 260, 268, 142 P.2d 579 (1943).

a. IHD is judicially estopped from reversing its position on the stipulated settlement which the court approved.

Judicial estoppel precludes a party from advantageously taking one position, then subsequently offering a second position that is incompatible with the first. Hoagland v. Ada County, 154 Idaho 900, 303 P.3d 587 (2013). Judicial estoppel is an equitable doctrine which exists to protect the dignity of judicial process, and is invoked by the court at its discretion. Id. Generally, when a litigant obtains a judgment, advantage, or consideration from one party, he will not thereafter be permitted to repudiate such by means of inconsistent and contrary

allegations or testimony to obtain a recovery or a right against another party arising out of the same transaction or subject matter. Indian Springs, LLC v. Indian Springs Land Investment, LLC, 147 Idaho 737, 748, 215 P.3d 457 (2009). The doctrine is intended to prevent parties from playing "fast and loose" with the legal system. Id.

In Hoagland, a plaintiff had dismissed state law claims including wrongful death, based on representations to the presiding judge that she was preceding entirely on §1983 claims; on appeal, the plaintiff attempted to resurrect wrongful death state claims which she had voluntarily dismissed. The court found that the representation to the court which established the basis for dismissal estopped the plaintiff from pursuing the claim. When a party has taken a position before the court, it may not thereafter pursue an action based on an inconsistent position. Buckskin Properties, Inc. v. Valley County, 154 Idaho 486, 300 P.3d 18-29 (2013). In Buckskin, counsel for Valley County expressed in oral argument that certain resolutions would not be rescinded, and that the County would not enforce the provisions of a capital contribution agreement requiring the payment of compensation for future phases of a project. Based on those representations, the court found the developer's claim for declaratory relief moot. Thereafter, the County began to assert a contrary legislative or contractual scheme to enforce the contributions to the detriment of the opposing party. The court found the County was judicially estopped from changing its position on the legislative scheme.

Just as in Hoagland and Buckskin, IHD here made specific representations to this Court in the filed stipulated settlement, which included by its nature counsel's representation that the agreements were legal, and a proper basis for the Court's Order of Dismissal. I.R.C.P. 11(a)(1).

IHD now seeks to repudiate all of the terms of the stipulation, including the JPA. The court should exercise its discretion to prevent IHD from asserting the invalidity of the JPA, which was the basis for this Court to dismiss the City of Sandpoint's action in Sandpoint II, and rendered moot the election to dissolve that was permitted by Sandpoint III. In the Stipulation on which the dismissal was based, IHD represented that the interests of the taxpayer and road users would best be served by a continuation of the arrangement in which the City maintained the streets within its boundary, that IHD would maintain all streets outside the City but within IHD boundaries, and IHD capped its obligation to the City by disbursing 100% of the tax revenues to the City for that purpose; the JPA was to be executed memorializing these agreements. The parties also stipulated that continued litigation on the dissolution action would be costly and not in the best interests of the public, and the court dismissed based on that Stipulation. These are significant representations IHD should not now be allowed to abandon.

IHD's current claim that the JPA is not valid or enforceable is clearly an inconsistent position to the one taken before this Court that was enunciated solely to halt the dissolution election. To preserve the integrity of the system, IHD should be judicially estopped from pursuing a completely contrary position which it took before this Court.

b. IHD should also be equitably estopped from claiming that the JPA is unenforceable.

Equitable estoppel requires "that the offending party must have gained some advantage or caused a disadvantage to the party seeking estoppel; induced the party seeking estoppel to change its position to its detriment; and it must be unconscionable to allow the offending party to

maintain a position which is inconsistent from a position from which it has already derived a benefit." Sandpoint I, 126 Idaho at 151.

IHD claims specific terms of the JPA render it unenforceable, and claims it is overall unconstitutional. This position is entirely inconsistent with IHD's act of entering into the Stipulation and the JPA. IHD obtained the advantage and benefit of avoiding litigation that would have resulted in an election likely to dissolve it. It agreed to provide a specific apportionment of taxes pursuant to a JPA to avoid that result. It induced the City to forego that dissolution election and agree not to block any additional annexation by IHD. IHD devised the benefit of the JPA for ten (10) years before it unilaterally terminated its obligations. It is now unconscionable to allow IHD to repudiate its prior position. See, Sandpoint I, supra.

3.6 Attorney fees were authorized by statute, and the amount awarded was not an abuse of the District Court's discretion.

An award of fees to a prevailing party in an action involving a political subdivision pursuant to I.C. §12-117 is within the sound discretion of the District Court and will be disturbed only for an abuse of that discretion. Bonner County v. Cunningham, 156 Idaho 291, 323 P.3d 1252 (Ct. App. 2014). The burden is on the party disputing a fee award to establish that the court abused its discretion. Hughes v. Fisher, 142 Idaho 474, 484, 129 P.3d 1223 (2006).

On appeal, IHD basically claims that the City should not have prevailed on the constitutional question, nor should it have been awarded damages on summary judgment, and thus should not have been awarded fees under I.C. §12-117. Although somewhat unclear as to why, IHD also maintains it was error for the court to award fees even if this court were to affirm

the District Court's analysis as to the constitutional issues. (See, Appellant's Brief, p. 52) However, as noted by the District Court in its memorandum decision on IHD's Motion for Reconsideration, IHD did not object to I.C. §12-117 as the basis for the award of fees. (R. Supplemental Record, Memorandum Decision, p. 4) That code provides that attorney fees "shall" be awarded to the prevailing party in civil proceedings between governmental entities; it is undisputed that this action qualifies. See, I.C. §12-117(4).[7] The court thus had a proper statutory authority for the award of fees, and IHD's only complaint can be in the court's exercise of discretion in the amount, and it fails to prove any abuse of that discretion.

When a District Court awards fees it considers a variety of factors under I.R.C.P. 54(e)(3), including novelty and difficulty of the issues, requisite skill and experience of the lawyer, the prevailing charges for "like work," the amount involved and result obtained, and any other factors which the court deems appropriate. IHD's appeal fails to properly review all of the relevant factors, instead focusing on three: 1) the time spent; 2) the skill required performing the legal service; and 3) the prevailing charge for like work. IHD's position understates the magnitude and complexity of the issues it raised in the District Court, which were reflected in the time spent and hourly rate. IHD also fails to establish a lower prevailing rate for "like work" in the area. IHD also does not comment on the City's vulnerable position in providing a vital

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[7] While IHD recites the fact that the District Court originally awarded fees before IHD could timely lodge an objection, the District Court admitted that error, and reconsidered IHD's objection before the final award of fees. (R. Supplemental Record Memorandum Decision, p. 5) No prejudice resulted from the procedural defect, and the "manner" of the award does not alter the fact that the court found that the City prevailed and exercised its discretion as to the amount.

service to its citizens when IHD took its position in this case and then filed its Motion to Dismiss. The necessity of an immediate and successful legal intervention is not accounted for in IHD's appeal of the amount awarded. And significantly, IHD does not acknowledge the need for active participation by the City Attorney whose efforts were not included in the fee request. All of the relevant factors establish that the court properly awarded the fees.

a. The issues IHD presented were complex and the need for immediate and successful resolution was of high priority; the lack of a fully litigated case does not render the amount of time spent unreasonable.

IHD analyzes the hours spent on specific tasks, and concludes it was too much by claiming the issues were not complex, and averaging time spent on briefs to come to a "per page" figure. IHD's claim that the pleadings were "standard" and time spent excessive is simply a conclusion that does not render the court's award an abuse of discretion.

The "bottom line" in an award of fees is the reasonableness of the amount awarded. Johannsen v. Utterbeck, 146 Idaho 423, 433, 196 P.3d 341 (2008). While this matter did not necessitate discovery, in essence, the issues were fully vetted during presentation of the Motion to Dismiss but were then challenged on additional basis in the Summary Judgment. The original Complaint sought declaratory relief regarding matters which had been the subject of extensive previous litigation. IHD's motion to dismiss all claims joined every issue in the case, and necessitated extensive effort to establish the City's right to relief. The Court's extensive order denying the motion to dismiss, tested (and decided) the merits of a complex constitutional and statutory right to possession of tax revenue between the City and IHD. In fact, IHD believed the status of the litigation was concluded sufficiently and was immediately appealable. When

interlocutory appeal was denied, summary judgment had to be presented and several of the earlier rulings by this Court were reargued by IHD.

Thus, contrary to IHD's claim that the amount of fees expended was unreasonable for a case that had not proceeded to trial, the District Court's analysis of the novelty and difficulty of the constitutional questions posed which effected all citizens within the boundaries of IHD, well establish the necessity for and the result of the extensive effort put forth by counsel. This case involved IHD's novel theories that Idaho's constitutional and statutory tax scheme precluded the settlement agreement it had reached after three lawsuits concerning apportionment of public funds between municipalities for the necessary public service of road maintenance. This case required extensive analysis of the 20-year history of serial litigation, legislative history research, in addition to addressing the multiple issues raised. The fact that a total of 118 hours to bring the case to conclusion is neither unreasonable nor excessive in light of these factors; this constitutes just over three weeks of attorney effort.

Similarly, the hours spent on the appealability issue and the response on the interlocutory appeal were necessitated by IHD's belief that review was then appropriate, which the City properly analyzed as incorrect. Because of the need for immediate and speedy resolution and believing review would not be accepted on the status of the Court's rulings, the City then proceeded to summary judgment. Despite IHD's claim that the Summary Judgment motion merely repeated the law on the Motion to Dismiss, IHD's position was to oppose that motion based on a variety of new arguments (along with the previous ones) in an attempt to assert that there remained issues for trial to defeat the motion. It is disingenuous to say the time spent on

the summary judgment was wholly duplicative when IHD opposed it and refused to stipulate based on claims that there existed additional issues to be addressed at trial.

Ultimately, the time spent constituted the reason that the City achieved the results in this case and respectfully that effort was well within reason.

b. The hourly rates were within the discretion of the court to award based on the nature and complexity of issues, and the experience of counsel.

While IHD agrees that it is appropriate to analyze the skill and experience of the attorney in a particular field, as well as the prevailing charge for like work, in reality it discounts the experience of the primary counsel as unimportant, and suggests the court erred in analyzing the length of time in practice by comparing the lesser experience of those attorneys offering affidavits regarding their hourly rates. In reality, IHD fails to create any claim that the court abused its discretion in awarding the fees incurred based on any lack of appropriate skill or experience.[8]

And in challenging the hourly rate charged by the City's counsel, IHD ignores the Court's requirement to review not only the prevailing rate in the area, but rather the prevailing rate for "like work." See, I.R.C.P. §54(e)(3)(D). The pertinent geographic region from which to draw the prevailing rate includes any area from which it is reasonable for the client to have engaged

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[8] While IHD appears to suggest the lack of Ms. Anderson's Idaho license somehow rendered the amount of fees awarded inappropriate, or suggests a lack of skill necessary to address the issues, this ignores the result obtained. IHD also cites no authority for the conclusion that no prevailing rate exists for a Spokane attorney working in an Idaho case; Idaho law does not preclude the practice of law by out of state counsel when aligned with Idaho licensed counsel, and presumably, if the practice is appropriate, there is a prevailing rate for it. See, RPC 5.5(b)(2)(iii).

counsel. Lettunich v. Lettunich, 145 Idaho 746, 751-52, 185 P.3d 258 (2008). In this instance, this action involved two local public entities, and each chose to obtain counsel from outside the area - - Boise and Spokane. This was reasonable based on the nature of the claims and the likelihood of potential conflicts with attorneys from the same locality; cities and counties often seek representation outside of their own boundaries. Thus, the affidavits from practitioners only in Sandpoint and Coeur d'Alene do not necessarily render the rates requested by the City's counsel as "not prevailing."

Indeed, when issues are as unique as those faced by the City, the Court is entitled to take that into account on the prevailing rate for "like work." The rates cited by IHD in Ms. Weeks' affidavit and in the affidavits filed by Mr. Featherston and Mr. Marfice do not analyze fees relative to constitutional and statutory municipal corporate litigation, but primarily quote rates these attorneys charge for "complex" litigation and "non-complex" litigation. It was unknown in this record the specific nature of their practices, but at least some of their practices appeared to consist of different work such as wills and estates, insurance defense or other unrelated types of litigation. IHD failed to establish that these hourly rates, as supported by the original Memorandum of Costs and Fees submitted by the City, are not prevailing for "like work," or that the District Court abused its discretion in so analyzing this.

Moreover, the prevailing hourly rate is but one of the factors contained in I.R.C.P. 54(e), and the Court can simply determine the "bottom line" amount was reasonable based on factors in addition to the hourly rate. An award need not be based on hourly time sheets, "as the amount of time spent is but one of several factors to be considered in awarding fees." Hackett v. Streeter,

109 Idaho 261, 263, 706 P.2d 1372 (Ct. App. 1985). The novelty and difficulty of the question, the requisite skill and experiences of the attorney, and the time limitations imposed by the circumstances of the case all dictate that the Court's overall award here was appropriate, without reduction for the sole factor of hourly rate analysis.

The District Court did not abuse its discretion in analyzing the amount involved and the results obtained under I.R.C.P. 54(e)(3)(G), and IHD's conclusion that it gave undue weight to that factor is not borne out by the record. The court's opinion instead analyzed a number of factors and specifically found the fees reasonable: "Considering the hourly rate charged and the amount of time billed...as well as all the other I.R.C.P. 54(e)(3)(A-L) factors, which this court has considered." (R. Supplemental Records, Memorandum Decision, p. 8) So long as the record indicates all factors were considered, the trial court need not specifically address all the factors in writing. Medical Rec. Serv., LLC v. Jones, 145 Idaho 106, 107, 175 P.3d 795 (Ct. App. 2007).

It is also not accurate that there was no evidence to support the District Court's analysis of the amount involved in this action or results obtained. While there may not have been a specific quantification of the dollar value to the City in tax revenues, the District Court had the lengthy litigation history in the record, and the declaratory action established the results the City obtained - - the tax revenues generated within its borders to maintain its streets. That outcome is substantiated. There is no evidence to support IHD's assertion that the District Court awarded excessive fees as a "punitive" matter based on the outcome. The District Court simply recognized the importance of the outcome to the City as a factor, and it was within its discretion to understand the litigation history to comprehend the importance.

c. Other factors establish the reasonableness of the amount of the award.

The Court is also entitled to consider "any other factor" it deems appropriate when calculating the amount of fees. I.R.C.P. §54(e); Hurtado v. Land O'Lakes, Inc., 153 Idaho 13, 22-23, 278 P.3d 415 (2012). Here, although the Sandpoint City attorney brought this action and participated in the litigation, the City did not seek fees for that time, although the statute would entitle the agency to its fees as well. See, I.C. §12-117; see also In re Dunmire, 100 Idaho 697, 699-700, 604 P.2d 711 (1979) (salaried attorney working for governmental or public agency may be awarded fees). In addition, the high public import of getting the relief the City needed to fund street maintenance for the coming winter rendered this case high priority for its inside and outside counsel, necessitating immediate and sole focus on the pursuit of the necessary relief. The City's success in its pursuit of relief is also an appropriate consideration. These factors also rendered the amount awarded reasonable.

3.7 The appeal will be denied on the merits, but irrespective, no basis exists to order a new trial judge for any remaining proceedings below.

Forum shopping is not favored; unhappy with the rulings made as a matter of law, IHD wants this Court to give it a chance with a new judge. However, the case will substantively be resolved on appeal; either the core documents are legal or not and both sides asked for ruling on that issue as a matter of law. The argument of remand with a different judge is of no moment in this appeal. More fundamental, the argument is legally and factually flawed.

First, IHD rests its desire for a new judge on remand on claims of apparent bias based on the court's rulings. These rulings were within the District Court's discretion, were properly based

on the law and the evidence before it, and provide no evidence of bias or bases for remand. Moreover, this is IHD's second ride on the new judge train. IHD already filed an affidavit to recuse assigned trial Judge Buchanan without cause under I.R.C.P. 40(d)(1), on August 22, 2013 and was granted reassignment to District Court Judge Mitchell. (R. p. 48) To give IHD the opportunity to request yet another new judge would undermine the purpose of Rule 40(d)(1), prejudice the City, and frustrate the desire for judicial economy.

Moreover, the Idaho courts do not routinely assign a new judge on remand, and the circumstances are extremely limited.[9] In Capstar Radio Operating Co. v. Lawrence, 153 Idaho 411, 283 P.3d 728 (2012), the appellate court specified the long and complex history of litigation as a basis for a new remand judge, a factor not present here. The Capstar court also noted that disqualification on the basis of bias rested with the judicial officer. Here, if IHD is claiming actual bias, disqualification is the appropriate remedy, a remedy IHD apparently recognizes as inappropriate.

Here, the district court's rulings speak for themselves, and the "parade" of alleged improprieties will be borne out in this appeal as appropriate rulings, which cannot be characterized as "ridiculous," entitling IHD to a new judge, as in Sky Canyon Properties LLC v. The Golf Club at Black Rock, LLC, 2015 WL 5719996 (Idaho 2015).[10] Here, the district court

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[9] This policy is generally accepted; a new judge on remand should be ordered only "under extreme circumstances." Weinstein, The Limited Power of Federal Courts of Appeal to Order a Case Reassigned to Another District Judge, 120 F.R.D. 267 (1988).

[10] The Sky Canyon court did not in fact actually so "characterize" the court's rulings; a concurring opinion instead uses that term in passing; the Court in actuality gave no reasoning for assigning a new judge on remand.

simply disagreed with the legal positions taken by IHD; if such disagreement constitutes a basis for a new judge, every remand will require the same relief.

4. Attorney's Fees Should be Awarded on Appeal.

The City requests attorney's fees and costs on appeal under I.C. §§12-117(4) which allows an award of attorney fees to the prevailing party in any judicial proceeding between governmental entities. The City prevailed below, and will prevail here, entitling it to fees on appeal.

Further, attorney's fees may be granted under I.C. § 12–121 to the prevailing party and such an award is appropriate when the court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. Total Success Investments, LLC v. Ada Cty. Highway Dist., 148 Idaho 688, 696, 227 P.3d 942 (Ct. App. 2010). Here, IHD raises a host of issues on appeal, none of which is grounded in legal or factual merit. IHD makes unsupported claims and misconstrues the record to continue its attempt at avoiding the fundamental truth in this case – IHD has a contractual obligation it failed to perform. The long history of IHD failing to meet its obligations should not end with IHD being rewarded for unreasonably extending the time and expense of this litigation.

5. Conclusion.

For the foregoing reasons, the record and controlling law, this Court is asked to deny the appeal in its entirety and award the City of Sandpoint its fees and costs on appeal.

DATED this 9th day of December, 2015.

C. MATTHEW ANDERSEN
WINSTON & CASHATT, LAWYERS P.S.

SCOT R. CAMPBELL
Sandpoint City Attorney

Attorneys for Plaintiff/Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2015, I caused a copy of the foregoing Respondent's Brief to be served by Federal Express, and addressed to:

David R. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main Street
Meridian, ID 83680

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814

APPENDIX

BRUCE H. GREENE, P.A.
Attorney At Law
320 North Second Avenue
Sandpoint, Idaho 83864
(208) 263-1255
FAX (208) 265-2451

June 24, 2003

City of Sandpoint
Attn: Mayor Ray Miller
1123 Lake Street
Sandpoint, ID 83864

VIA FACSIMILE ONLY TO 263-3678

Re: Sandpoint Independent Highway District

Dear Mayor:

To avoid any further confusion (hopefully) the settlement offer pending is as follows:

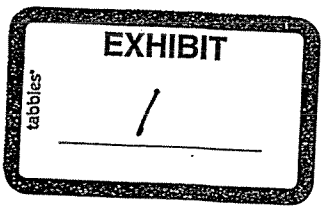
1) SIHD would agree to a stipulated court settlement giving Sandpoint jurisdiction over its' streets, despite the Supreme Court ruling.

2) SIHD would waive the costs award in the Supreme Court decision.

3) SIHD would agree by Joint Powers Agreement to share its' property tax revenues with the City annually. The District would pay over to the City all the property tax funds received from the residents of the District who are also inside the City. The JPA could also cover a number of other things, e.g., plowing, grading, hauling services, etc. which you might need assistance on. The tax revenues would vary annually, but right now would approximate $175,000. I don't have the exact figure before me – but it is in the documents earlier furnished.

4) The City would in turn agree – as would Bonner County – that the dissolution election be vacated.

5) The County would be further agreeing that annexation elections go forward (naturally you would not be able to dictate to the County; you would simply agree as part of the stipulation with the County that such election be vacated and annexations be approved.



Those would be the essential terms of the settlement proposal. As we discussed there would be other benefits from settling as opposed to ongoing litigation and politicking, but those are intangibles that don't need to be in a settlement agreement.

The District awaits your response this Thursday morning. Hopefully these two entities can start cooperating. If the peacemakers are given a chance for a few years we may well look back in surprise as to why we had struggled against each other so long.

The District will meet in executive session after we hear your response.

Yours very truly,

Bruce H. Greene

BRUCE H. GREENE
Counsel for SIHD

BHG/bw
cc: SIHD

TOTAL P.02

ORIGINAL

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Coeur d'Alene, ID 83816
Phone (208) 664-2161
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Attorney for Plaintiff

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

CITY OF SANDPOINT, a municipal corporation of the State of Idaho, Plaintiff, vs. SANDPOINT INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho, Defendant.	Case No. CV-00-00615 STIPULATION FOR SETTLEMENT

Plaintiff City of Sandpoint and defendant Sandpoint Independent Highway District, acting through respective counsel and with the approval of the governing board of each present to the Court the following findings:

1. In this case, the judgment of District Judge James F. Judd granting summary judgment to the City of Sandpoint entered November 28, 2000 awarded to the City of Sandpoint exclusive jurisdiction and control of maintenance of all streets within the city limits of the City of Sandpoint.

2. Since entry of that judgment, the City of Sandpoint, with a fully functioning street department, has maintained the streets.

3. The Sandpoint Independent Highway District has jurisdiction and control certain streets and roads outside of the city limits.

4. The City of Sandpoint and the Sandpoint Independent Highway District have cooperated in the funding of certain projects within the city limits.

5. The Sandpoint Independent Highway District has been providing services to the City of Ponderay and the City of Dover and has sought through the Bonner County Board of Commissioners to annex both cities. The county has deferred action upon the annexations.

6. On June 19, 2003, the Idaho Supreme Court reversed the judgment of Judge Judd remanding this case to the district court. Idaho Supreme Court Docket No. 27441.

7. In a companion case, *Sandpoint Independent Highway District v. Board of Commissioners of Bonner County*, in which the City of Sandpoint is an intervenor, District Judge James F. Judd entered partial summary judgment on December 29, 2000 affirming the order of the Bonner County Commissioners that an election on dissolution of the Sandpoint Independent Highway District should be held. Bonner County Case No. CV-00-00788.

8. Sandpoint Independent Highway District made timely appeal. On June 4, 2003 the Idaho Supreme Court entered an opinion which in part affirmed the order of Judge Judd directing that a dissolution election should be held. Idaho Supreme Court Docket No. 27194.

9. The opinion of the Idaho Supreme Court remanded the case to the Bonner County Board of Commissioners which is now considering setting a date for a dissolution election.

10. The City of Sandpoint and the Sandpoint Independent Highway District have now determined, based upon their respective experiences with street control and maintenance engaged in each since the district court decision was entered and the City of Sandpoint assumed jurisdiction and control, that the interests of the taxpayers within the respective entities and of the road users would best be served by continuation of the present arrangement. Based upon the experience of the past three years, it is agreed that the City of Sandpoint should maintain its own streets and the Sandpoint Independent Highway District should continue in existence with the opportunity to expand to neighboring cities by annexation.

11. The respective parties concur in the belief that continued litigation and the anticipated dissolution election would be costly and would not be in the best interests of the public.

Based upon these findings, the parties stipulate and agree to the following:

1. The City of Sandpoint shall retain jurisdiction and control over all streets now within its city limits and as may subsequently be annexed into the city. Recognition of the city jurisdiction shall be set forth in a joint powers agreement as provided hereafter.

2. The Sandpoint Independent Highway District and the City of Sandpoint shall enter into a joint powers agreement made pursuant to Chapter 23, Title 67, Idaho Code which will provide for division of all ad valorem funds received under Chapter 8, Title 40, Idaho Code. Said joint powers agreement is intended to be a permanent resolution subject to termination only by mutual agreement of both parties. The division of funds shall be made twice yearly. The joint powers agreement would provide that the Sandpoint Independent Highway District pay over to the City of Sandpoint all ad valorem property tax funds received from levies by the District upon all property located within the city limits. The joint powers agreement would cover other matters as are appropriate. The tax revenues from district levies upon property within the city

limits received in the current fiscal year shall be paid by the District to the City commencing with the 2003 levy.

3. The City of Sandpoint, which joined as a petitioner in seeking the dissolution election, would now request the Bonner County Board of Commissioners to vacate the dissolution election and stipulate to dismiss case No. CV-00-00738 with prejudice.

4. The City of Sandpoint will not oppose annexation elections sought by the Sandpoint Independent Highway District.

5. The Sandpoint Independent Highway District would waive costs awarded on appeal by the Idaho Supreme Court in Docket No. 27441.

6. The parties will immediately proceed to enter into a joint powers agreement to carry out the terms of this stipulation for settlement.

7. This case may be dismissed with prejudice, with each party to bear its own costs and attorney's fees.

Dated this 3 day of July, 2003.

Scott W. Reed
Attorney for City of Sandpoint

Bruce H. Greene
Attorney for Sandpoint Independent Highway District

JOINT POWERS AGREEMENT
Between
THE CITY OF SANDPOINT
And the
SANDPOINT INDEPENDENT HIGHWAY DISTRICT

RECITALS

This Joint Powers Agreement is made this 8th day of July, 2003, between the Sandpoint Independent Highway District, P. O. Box 1047, Sandpoint, Idaho 83864 (hereinafter referred to as "DISTRICT"), and the City of Sandpoint, 1123 Lake Street, Sandpoint, Idaho 83864 (hereinafter referred to as "CITY"), who enter this agreement pursuant to the provisions, terms and conditions of Idaho Chapter 23, Title 67, Idaho Code.

DURATION: The duration of this agreement shall be perpetual or until such time as the District and the City jointly and together agree to amend or terminate the same.

PREAMBLE: The parties have entered into a stipulation filed of record in *City of Sandpoint v. Sandpoint Independent Highway District,* Bonner County Case No. CV-00-00615 which provides for execution of this joint powers agreement.

PURPOSE: The purpose of this agreement is to divide the jurisdiction, maintenance and control of streets and public rights of way within the boundaries of the district between the District and the City and provide for sharing of ad valorem tax revenue.

JURISDICTION, MAINTENANCE AND CONTROL: The City shall exercise exclusive general supervisory authority over all the streets and public rights of way within the city limits of the City of Sandpoint including any property subsequently annexed.

EXHIBIT 3

JOINT POWERS AGREEMENT
Between
THE CITY OF SANDPOINT
And the
SANDPOINT INDEPENDENT HIGHWAY DISTRICT

The District shall exercise exclusive general supervisory authority over all streets and public rights of way within the boundaries of the District lying outside of the city limits of the City of Sandpoint.

SUPERVISORY AUTHORITY:

The supervisory authority of the City and of the District, each within the boundaries described above, shall include the following:

1. Acquisitions, vacations and abandonments.
2. Acceptance of streets and rights of way.
3. Construction, creation and opening of streets and rights of ways.
4. Extension, modifications and realignments of same.
5. Controlling access to streets and rights of ways, encroachment permits.
6. Design and use standards.
7. Traffic control, striping and signage.
8. Review of proposed subdivisions as regards to streets and storm drain systems and inspection of construction as the same proceeds.
9. Sidewalks.
10. Parking.
11. Street lights and such utilities as may be located within the public streets and right of way.
12. All ordinary and necessary maintenance of streets and rights of way.
13. Franchise involving street rights of way.
14. Police regulations.

Exercise of the above supervisory authority does not preclude cooperation between the entities for the common benefit of the residents. Cooperation and shared services will be expected.

The City will have the final say over all street matters within its boundaries, and the District over those streets outside the City.

REVENUE DISTRIBUTION: 1. The District at the present time and in the future will levy and apply for ad valorem property taxes under the authority granted in Chapter 13, Title 40, Idaho Code. The District will pay over to the City all property tax funds from such District levies on all property located within the city limits.

On the basis of present tax rates this amount is presently approximately $350,000 per year. District, upon receipt of tax revenues, forward to the City all tax revenues received by the District collected from properties within the City on November 1st, February 1st, May 1st and August 1st respectively. The first required payment herein shall commence with the funds budgeted for 2003, and receivable in January 2004. This shall include transfer of funds in 2003, when such money is available and not already committed by the District.

2. District agrees to additionally provide highway services with or without equipment within the City. Such services may include regular maintenance, assistance on special projects, or other assistance as may be agreed to by the City's Public Works Director or Mayor, and the District's Board of Directors or Foreman. Services to be provided will be on an as needed and as available basis.

JOINT POWERS AGREEMENT
Between
THE CITY OF SANDPOINT
And the
SANDPOINT INDEPENDENT HIGHWAY DISTRICT

COOPERATION: The parties recognize that road maintenance requirements on occasion require more personnel and equipment than the responsible entity may have at that time. The parties agree to share personnel and equipment upon an as needed and available basis for road maintenance projects within the city limits of Sandpoint.

INDEMNIFICATION:

1. City agrees to defend, indemnify and hold harmless the District from all liability or expense on account of claims, suits, and costs growing out of or connected with the City's negligent or wrongful exercise of rights granted herein, if any, provided the District will not be relieved of liability for its own wrongful acts and negligence and that of its employees, agents, and assigns.

2. District agrees to indemnify, defend and hold the City harmless from all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered from City by reason of or on account of damage to City property, or the property of, injury to, or death of any person, when such damage or injury is caused by District's employees, subcontractors, or agents while within the City for maintenance or other District work.

PERSONNEL: The parties agree that District personnel operating within the City are in no way employees or agents of City and are not entitled to worker's compensation or any benefit of employment with the City, and that City personnel are in no way employees or agents of District and are not entitled to worker's compensation or any benefit of employment with the District.

JOINT POWERS AGREEMENT
Between
THE CITY OF SANDPOINT
And the
SANDPOINT INDEPENDENT HIGHWAY DISTRICT

DISSOLUTION: This Agreement will automatically terminate if the District is dissolved. It will also terminate if the City supports any future petition for dissolution of District.

SEVERABILITY CLAUSE: If any portion of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a Court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

IN WITNESS WHEREOF, the District, by and through its commissioners and the City, by and through its Mayor and City Clerk have executed this Agreement to be effective the first date indicated above.

DATED this 8th day of July, 2003.

HIGHWAY DISTRICT
BOARD OF COMMISSIONERS

Chairman

Commissioner

Commissioner

CITY OF SANDPOINT

Raymond P. Miller, Mayor

ATTEST:

Helen M. Newton, City Clerk

EXHIBIT C

No: 05-47
Date: August 17, 2005

RESOLUTION
OF THE CITY COUNCIL
CITY OF SANDPOINT

TITLE: INDEPENDENT HIGHWAY DISTRICT MEMORANDUM OF UNDERSTANDING

WHEREAS: The Independent Highway District has title to the streets and rights-of-way within the city but by mutual agreement the city has control of all streets and rights-of-ways within the city; and,

WHEREAS: It has become necessary to simplify and clarify the process of vacating streets and rights-of-way within the City limits by notifying the Independent Highway District prior to public hearing to allow the District to object.

NOW, THEREFORE, BE IT RESOLVED THAT: The Memorandum of Understanding between the Independent Highway District and the City of Sandpoint, a copy of which is attached hereto and made a part hereof as if fully incorporated herein, be approved and the mayor and City Clerk be authorized to execute same on behalf of the City.

Raymond P. Miller, Mayor

ATTEST:

Maree Peck, City Clerk

City Council Members:

			YES	NO	ABSTAIN	ABSENT
1.	Elliott	Motion	X			
2.	Ogilvie	Second	X			
3.	Boge		X			
4.	Burgstahler					X
5.	Spickelmire		X			
6.	Lamson		X			

EXHIBIT 4

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, entered into between the City of Sandpoint, 1123 Lake Street, Sandpoint, Bonner County, Idaho a municipal corporation of the State of Idaho herein referred to as "CITY" and the Independent Highway District, a Governmental Subdivision of the State of Idaho, P.O. Box 1047, Sandpoint, Idaho, herein referred to as "IHD",

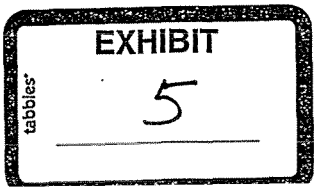
WHEREAS, the IHD has title to the streets and rights-of-way within the city but by mutual agreement the CITY has control of all streets and rights-of-way within the CITY; and

WHEREAS, the boundaries of the CITY remain within the boundaries of the IHD; and

WHEREAS, it is necessary, from time to time, to vacate streets and rights-of-way within the CITY.

NOW THEREFORE, the CITY and the IHD hereby agree as follows:

1. The CITY shall have the right and power to vacate streets and rights-of-way within CITY limits subject to the provisions of this Agreement and Idaho Code.
2. The CITY shall notify IHD in writing prior to any public hearing regarding the vacating of a right-of-way within CITY limits.
3. If no written objection to the request to vacate is received from IHD within thirty (30) days of said notice, the CITY may proceed with such vacation. The IHD shall also sign off as need be on any documents relinquishing title to the vacated way.
4. If written objection is received from IHD stating the reasons for the objection, the CITY shall deny the request to vacate.
5. IHD shall defend any claim related to a IHD objection to vacation request.



6. The CITY shall, at its' sole expense, take all legal steps required by law to vacate streets and rights-of-way within CITY limits including provisions for all required notices and public hearings.

DATED this ____ day of _____, 2005.

Raymond P. Miller Aug. 18, 2005
RAYMOND P. MILLER DATE
MAYOR

ATTEST:

Maree Peck August 18, 2005
MAREE PECK DATE
CITY CLERK

INDEPENDENT HIGHWAY DISTRICT

Max Birdsell 9-14-05
MAX BIRDSELL, CHAIRMAN DATE

Lois Clawson 9-14-05
COMMISSIONER DATE

Wayne McDermott 9-14-05
COMMISSIONER DATE