

9-22-2015

City of Sandpoint v. Independent Highway District Clerk's Record Dckt. 42517

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Supreme Court Docket #42517-2014
Bonner County CV2013-1342

CITY OF SANDPOINT,
Plaintiff / Respondent

vs.

INDEPENDENT HIGHWAY DISTRICT,
Defendant / Appellant

CLERK'S RECORD ON APPEAL

*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Bonner.*

Scot R. Campbell
Attorney at Law
Attorney for Respondent

Susan P. Weeks
Attorney at Law
Attorney for Appellant

SEE AUGMENTATION RECORD

FILED - COPY

SEP 22 2015

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

42517

IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF SANDPOINT,

Plaintiff-Respondent,

vs.

INDEPENDENT HIGHWAY DISTRICT,

Defendant-Appellant.

Appealed from the District Court of the First Judicial
District of the State of Idaho, in and for Bonner County

HONORABLE JOHN T. MITCHELL
District Judge

MR. SCOT R. CAMPBELL
Attorney for Respondent

MS. SUSAN P. WEEKS
Attorney for Appellant

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

CITY OF SANDPOINT,	)	SUPREME COURT NO. 42517-2014
	)	BONNER COUNTY CV2013-1342
Plaintiff-Respondent,)	
vs.)	
	)	CLERK'S RECORD ON APPEAL
INDEPENDENT HIGHWAY DISTRICT,)	
)	
)	
Defendant- Appellant.)	
<hr/>		

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the First Judicial District of the State of Idaho, in and
for the County of Bonner.

HONORABLE JOHN T. MITCHELL
District Judge

MR. SCOT R. CAMPBELL
1123 LAKE STREET
SANDPOINT, ID 83864

MS. SUSAN P. WEEKS
1626 LINCOLN WAY
COEUR D'ALENE, ID 83814

ATTORNEY FOR RESPONDENT

ATTORNEY FOR APPELLANT

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City of Sandpoint vs. Independent Highway District

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8/16/2013	NCOC	JACKSON	New Case Filed - Other Claims Barbara A. Buchanan
	APER	JACKSON	Plaintiff: City of Sandpoint Appearance Scot R. Campbell Barbara A. Buchanan
		JACKSON	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: City of Sandpoint (plaintiff) Receipt number: 0495386 Dated: 8/16/2013 Amount: \$.00 (Cash) For: City of Sandpoint (plaintiff) Barbara A. Buchanan
	COMP	JACKSON	Complaint and Request for Declaratory and Injunctive Relief Barbara A. Buchanan
	SMIS	JACKSON	Summons Issued - Original in file Barbara A. Buchanan
8/20/2013	AFSV	HENDRICKSO	Affidavit Of Service - incomplete contacted Attorney Campbell re: needing an amended affidavit of service, service date was not entered on this document left voice mail 8-23-2013 110pm Barbara A. Buchanan
8/22/2013	MODQ	HENDRICKSO	Motion to Disquality without Cause- Judge Buchanan Barbara A. Buchanan
	APER	HENDRICKSO	Defendant: Independent Highway District Appearance David E Wynkoop John T. Mitchell
8/28/2013	AFFD	HENDRICKSO	Amended Affidavit of Service - Julie Bishop accepted service for Independent Highway Dist 8-19-13 Barbara A. Buchanan
	ORDQ	OPPELT	Disqualification - Judge Buchanan Barbara A. Buchanan
	DISA	OPPELT	Disqualification Of Judge - Automatic - Judge Buchanan Barbara A. Buchanan
	CHJG	OPPELT	Change Assigned Judge District Court Clerks
8/29/2013	ORDR	OPPELT	Order of Reassignment Lansing Haynes
	CHJG	OPPELT	Change Assigned Judge John T. Mitchell
9/9/2013	MOTN	HENDRICKSO	Motion to Dismiss John T. Mitchell
	APER	HENDRICKSO	Defendant: Independent Highway District Appearance Susan P. Weeks John T. Mitchell
9/20/2013	MOTN	HENDRICKSO	Defendant's Motion for Enlargement of Time to File Brief John T. Mitchell
	NOHG	HENDRICKSO	Notice of Hearing re: Defendant's Motion for Enlargement of Time to File Brief John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/23/2013 02:00 PM) Defendant's Motion for Enlargement of Time to File Brief Kootenai County Courthouse John T. Mitchell
	NOHG	HENDRICKSO	Notice of Hearing re: Defendant's Motion to Dismiss John T. Mitchell

City of Sandpoint vs. Independent Highway District

Date	Code	User	Judge
9/26/2013	HRSC	HENDRICKSO	Hearing Scheduled (Motion to Dismiss 11/13/2013 04:00 PM) Defendant's Motion to Dismiss Kootenai County
9/30/2013	APER	HENDRICKSO	Plaintiff: City of Sandpoint Appearance C. Matthew Andersen
	NOTC	HENDRICKSO	Notice of Association - Attorney C. Matthew Andersen for Plaintiff
10/11/2013	BREF	HENDRICKSO	Brief in Support of Motion to Dismiss
10/17/2013	FIOC	OPPELT	File Out of County - Judge Mitchell
10/22/2013	MISC	HENDRICKSO	Plaintiff's No Objection to Defendant's Motion for Enlargement of Time to File Brief
10/23/2013	HRVC	OPPELT	Hearing result for Motion scheduled on 10/23/2013 02:00 PM: Hearing Vacated Defendant's Motion for Enlargement of Time to File Brief Kootenai County Courthouse - Per Judge Mitchell's Chambers
	HRSC	OPPELT	Hearing Scheduled (Scheduling Conference 11/13/2013 04:00 PM) In Kootenai County
		OPPELT	Notice Of Hearing
11/7/2013	RSPN	HENDRICKSO	Plaintiff's Response to Defendant's Motion to Dismiss
	AFFD	HENDRICKSO	Affidavit of Scot R. Campbell
	AFFD	HENDRICKSO	Affidavit of Shannon Syth
11/8/2013	MOTN	HENDRICKSO	Motion to Strike Portions of Plaintiff's Response Brief and Affidavits
	MOTN	HENDRICKSO	Motion to Shorten Time
	NOHG	HENDRICKSO	Notice of Hearing on Defendant's Motion to Strike and Motion to Shorten Time
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 11/13/2013 04:00 PM)
11/12/2013	REPL	HENDRICKSO	Reply Brief in Support of Defendant's Motion to Dismiss
11/13/2013	MISC	HENDRICKSO	Plaintiff's Supplemental Citation to Authority
	RSPN	HENDRICKSO	Plaintiff's Response to Defendant's Motion to Strike Response Brief and Affidavits
	CTLG	OPPELT	Court Log- From Kootenai County
	DCHH	OPPELT	Hearing result for Motion to Dismiss scheduled on 11/13/2013 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Defendant's Motion to Dismiss Kootenai County - Less Than 100 Pages

City of Sandpoint vs. Independent Highway District

Date	Code	User		Judge
11/13/2013	DCHH	OPPELT	Hearing result for Scheduling Conference scheduled on 11/13/2013 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: In Kootenai County - Less Than 100 Pages	John T. Mitchell
	GRNT	OPPELT	Hearing result for Motion scheduled on 11/13/2013 04:00 PM: Motion Granted Motion to Shorten Time and Motion to Strike Portions of Plaintiff's Response Brief and Affidavits	John T. Mitchell
12/3/2013	SCHE	OPPELT	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order	John T. Mitchell
	HRSC	OPPELT	Hearing Scheduled (Jury Trial - 5 Days 03/25/2014 09:00 AM)	John T. Mitchell
12/9/2013	MEMO	HENDRICKSO	Memorandum Decision and Order Denying Defendant's Motion to Dismiss	John T. Mitchell
12/18/2013	STIP	OPPELT	Stipulation for Reciprocal Preliminary Injunction	John T. Mitchell
	ORDR	OPPELT	Reciprocal Preliminary Injunction Order	John T. Mitchell
3/3/2014	CINF	KRAMES	Faxed Reciprocal Preliminary Injunction Order, Stipulation for Reciprocal Preliminary Injunction and Scheduling Order to Judge Mitchell per request	John T. Mitchell
	MOVA	KRAMES	Stipulated Motion To Vacate Trial Date	John T. Mitchell
3/4/2014	ORDR	OPPELT	Order Vacating Trial Date	John T. Mitchell
	CONT	OPPELT	Hearing result for Jury Trial - 5 Days scheduled on 03/25/2014 09:00 AM: Continued	John T. Mitchell
	HRSC	OPPELT	Hearing Scheduled (Jury Trial - 5 Days 10/28/2014 09:00 AM)	John T. Mitchell
5/7/2014	NOHG	HENDRICKSO	Notice of Hearing re: Defenanant's Motion for Leave to File Interlocutory Appeal	John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 05/21/2014 03:30 PM) Kootenai County Defendant's Motion for Leave to File Interlocutory Appeal	John T. Mitchell
5/8/2014	MEMO	HENDRICKSO	Memorandum in Support of Motion for Leave to File Interlocutory Appeal (I.A.R. 12(a))	John T. Mitchell
5/14/2014	MISC	OPPELT	City of Sandpoint's Response to Defendant's Motion for Leave to File Interlocutory Appeal	John T. Mitchell
5/15/2014	FIOC	OPPELT	File Out Of County - Judge Mitchell	John T. Mitchell
5/19/2014	REPL	HENDRICKSO	Reply Memorandum in Support of Motion for Leave to File Interlocutory Appeal	John T. Mitchell

City of Sandpoint vs. Independent Highway District

Date	Code	User	Judge
5/21/2014	DCHH	HENDRICKSO	Hearing result for Motion scheduled on 05/21/2014 03:30 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Kootenai County Defendant's Motion for Leave to File Interlocutory Appeal
5/27/2014	NOHG	KRAMES	Notice Of Hearing re: Plt's Motion for Summary Judgment
	HRSC	KRAMES	Hearing Scheduled (Motion for Summary Judgment 07/22/2014 04:00 PM) Plaintiff's Motion
6/4/2014	MOTN	HENDRICKSO	City of Sandpoint's Motion for Summary Judgment [Oral Argument Requested]
	MEMO	HENDRICKSO	City of Sandpoint's Memorandum in Support of Summary Judgment
6/12/2014	ORDR	HENDRICKSO	Order Granting Rule 12 Interlocutory Appeal Certification
6/23/2014	MOTN	HUMRICH	Motion for Appeal by Permission and Stay of Proceedings - filed with ISC
	MEMO	HUMRICH	Memorandum in Support of Motion for Appeal by Permission - filed with ISC
7/7/2014	CINF	HUMRICH	Clerk Information - Still before ISC; have not made a decision on Motion yet.
7/8/2014	AFFD	HENDRICKSO	Affidavit of Marj Tilley
	AFFD	HENDRICKSO	Second Affidavit of Marj Tilley
	AFFD	HENDRICKSO	Affidavit of Julie Bishop
	MEMO	HENDRICKSO	Memorandum in Response to City of Sanpoint's Motion for Summary Judgment
7/9/2014	MEMO	HUMRICH	City of Sandpoint's Memorandum in Opposition to Motion for Appeal by Permission (filed with ISC)
7/15/2014	REPL	HENDRICKSO	City of Sanpoint's Reply in Support of Summary Judgment
7/22/2014	DCHH	OPPELT	Hearing result for Motion for Summary Judgment scheduled on 07/22/2014 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Plaintiff's Motion - Less Than 100 Pages (To be held in Kootenai County)

City of Sandpoint vs. Independent Highway District

Date	Code	User		Judge
7/22/2014	CMIN	OPPELT	Court Minutes Hearing type: Motion for Summary Judgment Hearing date: 7/22/2014 Time: 4:01 pm Courtroom: Court reporter: Julie Foland Minutes Clerk: Jeanne Clausen Tape Number: Kootenai Co. Susan Weeks Mr. Anderson for the plaintiff	John T. Mitchell
7/29/2014	ORDR	HUMRICH	Order Denying Motion for Appeal by Permission	John T. Mitchell
	SCDF	HUMRICH	Supreme Court Document Filed- Order Denying Motion for Appeal by Permission	John T. Mitchell
7/31/2014	MEMO	OPPELT	Memorandum Decision and Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment	John T. Mitchell
	ORDR	OPPELT	Order Granting Declaratory Relief	John T. Mitchell
	MISC	HENDRICKSO	*****END OF FILE #1*****BEGIN FILE #2*****	John T. Mitchell
8/13/2014	NOTC	HENDRICKSO	Notice of Presentment (without oral argument)	John T. Mitchell
	MOTN	HENDRICKSO	City of Sandpoint's Motion for Award of Attorney's Fees and Costs	John T. Mitchell
	MEMO	HENDRICKSO	City of Sandpoint's Memorandum in Support of Attorney's Fees and Costs	John T. Mitchell
	MEMO	HENDRICKSO	Memorandum of Costs and Affidavit of C. Matthew Andersen in Support of Attorney's Fees and Costs	John T. Mitchell
8/21/2014	ORDR	CMOORE	Order Granting Request for Attorney's Fees and Costs	John T. Mitchell
	JDMT	CMOORE	Declaratory and Monetary Judgment	John T. Mitchell
8/22/2014	ORDR	CMOORE	Amended Order Granting Request for Attorney's Fees and Costs	John T. Mitchell
	JDMT	CMOORE	Amended Declaratory and Monetary Judgment	John T. Mitchell
8/27/2014	MOTN	HENDRICKSO	Motion for Reconsideration	John T. Mitchell
	OBJC	HENDRICKSO	Objection to Memorandum of Costs and Attorney Fees and Motion to Disallow Costs and Attorney Fees	John T. Mitchell
	AFFD	HENDRICKSO	Affidavit of Susan P. Weeks in Opposition to Motion for Attorney Fees	John T. Mitchell
	MEMO	HENDRICKSO	Memorandum in Support of Objection to Memorandum of Costs and Attorney Fees and Motion to Disallow Costs and Attorney Fees	John T. Mitchell
8/28/2014	AFFD	HENDRICKSO	Affidavit of Brent Featherston	John T. Mitchell

City of Sandpoint vs. Independent Highway District

Date	Code	User	Judge
9/4/2014		BRACKETT	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Weeks, Susan P. (attorney for Independent Highway District) Receipt number: 0014399 Dated: 9/4/2014 Amount: \$129.00 (Check) For: Independent Highway District (defendant)
	BNDC	BRACKETT	Bond Posted - Cash (Receipt 14400 Dated 9/4/2014 for 100.00)
	APSC	HUMRICH	Appealed To The Supreme Court
	NOTA	HUMRICH	NOTICE OF APPEAL
9/8/2014	AFFD	HENDRICKSO	Affidavit of Douglas S. Marfice
9/9/2014	NOHG	HENDRICKSO	Notice of Hearing
			re: Plaintiff's Motion for Permanent Injunction and Defendant's Objection to Plaintiff's Motion for Award of Attorney's Fees and Costs
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 10/23/2014 02:30 PM) to be heard in Kootenai County Plaintiff's Motion for Permanent Injunction and Defendant's Objection to Plaintiff's Motion for Award of Attorney's Fees and Costs
9/15/2014	MISC	HUMRICH	Clerk's Records due 11/19/2014 to ISC
9/18/2014	REQU	HENDRICKSO	Request for Additional Record
9/19/2014	REQU	HUMRICH	Request for Additional Record (certified copy mailed to ISC 9/24/2014)
9/23/2014	SCDF	HUMRICH	Supreme Court Document Filed- "ORDER CONDITIONALLY DISMISSING APPEAL"
9/25/2014	CCOA	HUMRICH	Clerk's Certificate Of Appeal
10/7/2014	ORDR	OPPELT	Order Vacating Trial
	HRVC	OPPELT	Hearing result for Jury Trial - 5 Days scheduled on 10/28/2014 09:00 AM: Hearing Vacated
10/8/2014	FIOC	OPPELT	File Out Of County - Judge Mitchell
	RSPN	HENDRICKSO	City of Sandpoint's Reponse to Motion for Reconsideration and Reply to Opposition to Attorney Fees Award
10/17/2014	SCDF	HUMRICH	Supreme Court Document Filed- "Response to Conditional Dismissal and Request Appeal Be Retained"
	CINF	HUMRICH	Appellant requested an extension of time to 10/30/2014 to obtain final judgment

City of Sandpoint vs. Independent Highway District

Date	Code	User		Judge
10/23/2014	DCHH	OPPELT	Hearing result for Motion scheduled on 10/23/2014 02:30 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: to be heard in Kootenai County Plaintiff's Motion for Permanent Injunction and Defendant's Objection to Plaintiff's Motion for Award of Attorney's Fees and Costs - Less Than 100 Pages	John T. Mitchell
10/24/2014	MEMO	OPPELT	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	John T. Mitchell
10/28/2014	CMIN	OPPELT	Court Minutes Hearing type: Motion for Attorneys Fees Hearing date: 10/28/2014 Time: 10:28 am Courtroom: Court reporter: Minutes Clerk: Linda Oppelt Tape Number: Susan Weeks	John T. Mitchell
	NOFH	OPPELT	Notice Of Hearing Re: Defendant's Motion for Presentment of Judgment	John T. Mitchell
	HRSC	OPPELT	Hearing Scheduled (Motion for Presentment of Judgment 11/19/2014 02:00 PM) In Kootenai County	John T. Mitchell
11/4/2014	SCDF	HUMRICH	Supreme Court Document Filed- Order Granting Extension of Time to Obtain a Final Judgment	John T. Mitchell
11/13/2014	JDMT	OPPELT	Second Amended Declaratory and Monetary Judgment [Proposed]	John T. Mitchell
	MISC	HUMRICH	Email dated 11/13/2014 from ISC to Counsels	John T. Mitchell
	CDIS	HENDRICKSO	Civil Disposition entered for: Independent Highway District, Defendant; City of Sandpoint, Plaintiff. Filing date: 11/13/2014	John T. Mitchell
11/18/2014	CINF	HUMRICH	Certified "Second Amended Declaratory and Monetary Judgment [Proposed]" mailed to ISC	John T. Mitchell
11/21/2014	FIRT	HENDRICKSO	File Returned	John T. Mitchell
11/24/2014	JDMT	CMOORE	Final Judgment	John T. Mitchell
12/2/2014	FIOC	OPPELT	File Out Of County - Judge Mitchell	John T. Mitchell
12/8/2014	MEMO	HENDRICKSO	Memorandum in Support of Defendant's Motion to Alter or Amend Judgment	John T. Mitchell
	MEMO	HENDRICKSO	Amended Memorandum in Support of Defendant's Motion top Alter or Amend Judgment	John T. Mitchell
12/16/2014	CINF	HUMRICH	Email Kootenai county for copy of Final Judgment filed 11/24/2014	John T. Mitchell

City of Sandpoint vs. Independent Highway District

Date	Code	User		Judge
12/30/2014	RSPN	HENDRICKSO	City of Sandpoints Response to Defendant's Motion to Alter or Amend Judgment	John T. Mitchell
	MISC	HENDRICKSO	Declaration of C. Matthew Andersen	John T. Mitchell
2/4/2015	NOHG	HENDRICKSO	Notice of Hearing re: Defendant's Motion to Alter or Amend Judgment	John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 03/03/2015 02:30 PM) Defendant's Motion to Alter or Amend Judgment	John T. Mitchell
2/5/2015	NOHG	HENDRICKSO	Notice Of Hearing re: (correcting Changer Facsimile Number)	John T. Mitchell
2/17/2015	MISC	HUMRICH	Reset due dates for clerk's records - due to ISC 4/21/2015	John T. Mitchell
3/26/2015	NOHG	HENDRICKSO	Second Amended Notice of Hearing re: Independent Highway District 's Motion to Alter or Amend Judgment	John T. Mitchell
	HRSC	HENDRICKSO	Hearing Scheduled (Motion 04/08/2015 04:00 PM) Independent Highway District 's Motion to Alter or Amend Judgment	John T. Mitchell
4/2/2015	MEMO	OPPELT	Reply Memorandum in Support of Defendant's Motion to Alter or Amend Judgment	John T. Mitchell
4/8/2015	CTLG	OPPELT	Court Log- From Kootenai County	John T. Mitchell
	DCHH	OPPELT	Hearing result for Motion scheduled on 04/08/2015 04:00 PM: District Court Hearing Held Court Reporter: Julie Foland Number of Transcript Pages for this hearing estimated: Independent Highway District 's Motion to Alter or Amend Judgment - Less Than 100 Pages	John T. Mitchell
	DENY	OPPELT	Hearing result for Motion scheduled on 04/08/2015 04:00 PM: Motion Denied Independent Highway District 's Motion to Alter or Amend Judgment	John T. Mitchell
4/10/2015	ORDR	HENDRICKSO	Order Denying Motion to Alter or Amend Judgment	John T. Mitchell
5/28/2015	FIRT	OPPELT	File Returned	John T. Mitchell
6/17/2015	MOTN	HUMRICH	Motion for Extension of Time by Clerk of District Court or Administrative Agency	John T. Mitchell

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2013 AUG 16 AM 10 57

CLERK DISTRICT COURT

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DEPUTY

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864
Telephone: 208.263.0534
Facsimile: 208.255.1368
scampbell@ci.sandpoint.id.us
Bar No. 4121

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.

INDEPENDENT HIGHWAY DISTRICT, a political
subdivision of the State of Idaho,

Defendant

Case No. CV-2013-01342

COMPLAINT AND REQUEST FOR
DECLARATORY AND INJUNCTIVE RELIEF

Filing Fee A: Exempt

COMES NOW Plaintiff, City of Sandpoint, by and through the undersigned City Attorney,
for a cause of action and claim for relief against the Defendant, Independent Highway District,
and hereby complains and alleges as follows:

I
PARTIES

1. Plaintiff City of Sandpoint ("City") is a municipal corporation duly organized and
existing under and by virtue of the laws of the State of Idaho and is located within Bonner
County, Idaho. City was incorporated in 1901 and has a current population of approximately
7,400 citizens.

COMPLAINT

1
ASSIGNED TO
JUDGE BUCHANAN
013

2. Defendant Independent Highway District ("District") was formed in 1930 as the Sandpoint Independent Highway District and is a highway district duly organized and existing under and by virtue of the laws of the State of Idaho.

**II
JURISDICTION AND VENUE**

3. The conduct which forms the basis for the causes of action set forth herein occurred within Bonner County, Idaho. Accordingly, this Court has subject matter jurisdiction over this matter pursuant to Idaho Code Sections 1-701 and 1-705. In addition, the legal rights of the parties are affected by a Stipulation for Settlement dated July 3, 2003; a Joint Powers Agreement by and between City and District dated July 8, 2003, as amended by a Memorandum of Understanding executed on or about September 14, 2005. A copy of the Stipulation for Settlement is attached hereto as Exhibit "A". A copy of the Joint Powers Agreement is attached hereto as Exhibit "B". A copy of the Memorandum of Understanding is attached hereto as Exhibit "C". Exhibits "B" and "C" are collectively referred to as the "Agreements".

4. Defendant is a highway district located wholly within Bonner County, Idaho. Accordingly, this court has personal jurisdiction over Defendant pursuant to Idaho Code Section 5-514.

5. Declaratory relief is presently necessary and appropriate so that the City may determine and exercise its rights under the Agreements.

III
FACTUAL BACKGROUND

6. The City and District have a long history of disagreement, including three trips to the Idaho Supreme Court.

CITY OF SANDPOINT v SANDPOINT INDEPENDENT HIGHWAY DISTRICT

**Docket Nos. 19618 & 20749
126 Idaho 145, 879 P.2d 1078 (Idaho 1994)**

7. On or about August 1994, the Idaho Supreme Court decided, in a consolidation of two appeals, the respective responsibilities for streets in the City.

8. The Court determined that (1) The District has supervisory authority to maintain the streets within the District absent a showing by the City that it has a functioning street department (emphasis added); and (2) The District has exclusive power to vacate streets within its boundaries where the City does not have a functioning street department (emphasis added).

9. By Memorandum of Understanding effective September 14, 2005 the District granted the City the right and power to vacate streets and rights-of-way within City limits, subject to the provisions of the Memorandum of Understanding and Idaho Code.

SANDPOINT INDEPENDENT HIGHWAY DISTRICT v BOARD OF COUNTY COMMISSIONERS

**Docket No. 27194
138 Idaho 887, 71 P.3d 1034 (Idaho 2003)**

10. On or about April 2000, citizens in Bonner County submitted a petition to the Board of Commissioners for Bonner County requesting that the District be dissolved and that the City Street Department be placed in charge of all streets in the City.

11. Following multiple hearings and public testimony, the County Commissioners determined that dissolution should be determined by the voters.

12. The District appealed the Commissioners' decision to district court.

13. District court upheld the Commissioners' decision, with the exception that upon dissolution of the District the County, rather than the City, should be the succeeding operational unit to the District.

14. The District appealed the district court opinion to the Idaho Supreme Court.

15. On June 4, 2003, the Supreme Court upheld the decision of the Commissioners, holding that dissolution of the District could be determined by the voters. 138 Idaho 887, 71 P.3d 1034 (2003).

16. Sandpoint could not be the succeeding operational unit because Idaho Code 40-1811 requires in Section (1) that *"all surplus moneys of the dissolved highway district remaining in the special fund of the dissolved district shall immediately be delivered to the treasurer of the succeeding operation unit"* and Section (2) states that *"No city whose incorporated limits lie wholly or partially within the boundaries of a dissolved highway district shall be entitled to receive any share of the moneys of the dissolved highway district."*

17. The case was remanded to the district court for further action consistent with the Idaho Supreme Court's opinion.

CITY OF SANDPOINT V SANDPOINT INDEPENDENT HIGHWAY DISTRICT

Docket No. 27441

139 Idaho 65, 72 P.3d 905 (Idaho 2003)

18. During the same time that the residents of the City obtained signatures of support for the dissolution of the District, the City was developing a fully functioning street department.

19. On May 17, 2000, the City passed various resolutions expanding the duties of the Public Works department to include “total maintenance, construction, reconstruction, repair, storm water management, snow removal, sanding and traffic control of the City’s highway and street system.”

20. On May 18, 2000, the City filed suit seeking a declaratory judgment that it has a fully functional street department and therefore has exclusive general supervisory authority for its streets.

21. The Idaho Supreme Court determined that although the City of Sandpoint had a fully functioning street department, the District continued to have jurisdiction over the City streets, unless the District’s jurisdiction over those streets is lawfully terminated.

STIPULATION FOR SETTLEMENT

22. For a period of approximately three years, pending resolution by the Supreme Court of Dockets 27194 and 27441, the City controlled and maintained the streets within the City.

23. During this same period, without annexation into the District, the District controlled and maintained certain streets outside the City of Sandpoint in Ponderay and Dover.

24. As a result of the Supreme Court opinion in Docket 27194, the County Commission was continuing with dissolution of the District.

25. To avoid complete dissolution, the District agreed with the City that the City would continue to operate and maintain its own streets and the District would continue in existence with the opportunity to annex neighboring cities.

26. The Stipulation for Settlement (See Exhibit "A"), was a negotiated compromise by the parties and settlement of all current outstanding claims.

27. The Stipulation for Settlement, approved by the District Court on July 11, 2003, contained the following conditions:

- a. City shall retain jurisdiction and control over current and future City Streets.
- b. Recognition of the City jurisdiction shall be set forth in a Joint Powers Agreement.
- c. Joint Powers Agreement will provide for the division of all ad valorem funds received under Idaho Code 8-40.
- d. The Joint Powers Agreement is a permanent resolution subject to termination only by mutual agreement of both parties.
- e. Division of funds shall be made twice yearly.
- f. District to pay over to the City ALL (emphasis added) ad valorem property tax funds received from levies by the District upon all property located within the City.
- g. The City would not continue to seek dissolution of the District.
- h. The City would not oppose annexation elections sought by the District.
- i. The current lawsuit would be dismissed with prejudice.
- j. The parties will immediately enter into a Joint Powers Agreement to carry out the terms of the Stipulation for Settlement.

JOINT POWERS AGREEMENT

28. On July 8, 2003, City and District entered into a Joint Powers Agreement pursuant to sections 67-2326 through 67-2332, Idaho Code. (See Exhibit "B")

29. Joint powers agreements enable state and public agencies to make the most efficient use of their powers and cooperate to their mutual advantage.

30. The purpose of the Joint Powers Agreement was to divide the jurisdiction, maintenance and control of streets and public rights of way, and compensate the City by transferring all tax revenues collected from properties within the City, for street work performed by in the City.

31. Idaho Code §67-2332 provides that public agencies may contract with each other to "perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform, including, but not limited to joint contracting for services, supplies and capital equipment, provided that such contract shall be authorized by the governing body of each party to the contract."

32. The City has fully functioning Street and Planning Departments enabling the City to fully perform the functions anticipated by the Joint Powers Agreement.

IV COUNT ONE (Breach of Contract)

33. City realleges and incorporates by reference the allegations contained in Paragraphs one through thirty-two, above.

34. A Joint Powers Agreement is a contract between governmental or quasi-governmental entities.

35. The City and District entered into a Joint Powers Agreement at the direction of the Court.

36. The purpose of the Agreement was to resolve issues between the District and City.

37. In exchange for not seeking the complete dissolution of the District, the District negotiated a compromise settlement agreement with the City.

38. The Stipulation for Settlement between the City and the District that was approved by the District Court states: "Said joint powers agreement is intended to be a permanent resolution subject to termination only by mutual agreement of both parties."

39. The Joint Powers Agreement dated July 8, 2003 states: "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."

40. On July 11, 2013, the District notified the City that they were withholding funds and were not going to perform a material term of the agreement. A copy of the notice is attached as Exhibit "D".

41. On July 25, 2013, the District notified the City that they were unilaterally terminating the entire Joint Powers Agreement in violation of the court directive and the terms of the Agreement. A copy of the notice is attached as Exhibit "E".

42. Without prior notice, or any discussions with the City, and with the intent of intentionally harming the City by withholding funds needed by the City to operate its Street

Department, the District received the benefit of its bargain when it entered into the Stipulation for Settlement and subsequent Joint Powers Agreement and does not now intend to fulfill its share of the bargain.

43. As a result of the District's actions, the City may not be able to complete current projects and will not be able to construct future projects determined necessary by the City Street Department.

44. City contends:

- a. The Joint Powers Agreement is a lawful division of governmental powers.
- b. The City is entitled by Idaho Code § 40-801(1)(a) to receive one half of the ad valorem property tax collected by the District in the City.
- c. The City is entitled by contract to receive an additional one half of the ad valorem property tax, including penalties and interest, collected in the City, as a result of having a fully functioning street department and in compensation for performing all the duties agreed to in the Joint Powers Agreement.
- d. The transfer by the District, a governmental entity, of the additional one half of the ad valorem property tax to the City, another governmental entity, is not an indebtedness or liability of the District under Article Eight, Section Three of the Idaho Constitution.
- e. That even if the collection and distribution of the ad valorem tax is considered indebtedness, it falls under the exception as an ordinary and

necessary expense authorized by the general laws of the state to repair and maintain streets for public safety.

V
DECLARATION OF PLAINTIFF'S RIGHTS

45. District's notice of intent not to honor the Joint Power Agreement (See Exhibits "D" and "E") violates Idaho Code §§ 67-2326 through 67-2332 that governs relations between governmental entities.

46. District's actions violate the Supreme Court's recognition of the powers retained by a City that has a fully functional street department as set forth in previous Supreme Court Cases between the parties, as cited above.

47. District's actions violate the terms of the Settlement Agreement wherein the City compromised its claims against the District in favor of a joint resolution as directed by the Court

48. City is entitled to a judicial determination and declaration that:

- a. City is entitled to the benefit of its bargain negotiated between the City and the District;
- b. The Joint Powers Agreement does not violate Article Eight, Section Three of the Idaho Constitution;
- c. The Settlement does not violate Idaho Code §40-801; and
- d. The Joint Powers Agreement is a valid and enforceable contract between the City and the District.

**VI
PRELIMINARY AND PERMANENT INJUNCTION**

49. District's breach of the Joint Power Agreement is in direct violation of Idaho Code §§ 67-2326 through 67-2332.

50. District's breach of the Joint Power Agreement interferes with City's ability to perform its municipal duties pursuant to Idaho Code §50-301.

51. District's violation and breach of the Joint Powers Agreement entitles City to relief in the form of a preliminary and permanent injunction requiring District to:

- a. Cease and desist interference with the City's operation and maintenance of its streets pursuant to the Joint Powers Agreement; and
- b. Immediately transfer to the City all tax revenues, including penalties and interest received by the District and currently being withheld from the City.

**VII
ATTORNEYS FEES AND COSTS**

52. City has been required to expend funds to retain counsel to prosecute this action, and is, therefore, entitled to recover reasonable costs and attorney fees as provided by law and the Idaho Rules of Civil Procedure, including, but not limited to, Idaho Code Sections §12-121, and Idaho Rules of Civil Procedure 54.

**VIII
PRAYER FOR RELIEF**

WHEREFORE, Plaintiff City of Sandpoint prays for judgment against Defendant Independent Highway District as follows:

1. For a declaratory judgment upholding the Stipulation for Settlement entered into by the parties and approved by the Court;
2. For a declaratory judgment that the Joint Powers Agreement is a legal and valid exercise of governmental authority pursuant to Idaho Code §§ 67-2326 through 67-2332;
3. For a declaratory judgment that the Memorandum of Understanding entered into by the parties on September 14, 2005 is a valid exercise of governmental authority;
4. For an order enjoining the District from interference with the City's operation and maintenance of its streets pursuant to the Joint Powers Agreement;
5. For an order requiring the District to immediately transfer to the City all ad valorem taxes collected by the District and currently being withheld by the District;
6. For a restraining order against the District requiring the District to comply with the Agreements while the matter is under consideration by the Court;
7. For costs of suit, including attorney fees; and
8. For such other relief as the Court deems appropriate and proper.

DATED this 15th day of August, 2013

CITY OF SANDPOINT

By Scot R. Campbell
Scot R. Campbell
Attorney for the City of Sandpoint

VERIFICATION

Marsha Ogilvie, Mayor of the City of Sandpoint being first duly sworn upon her oath deposes and states:

She is the Mayor for the City of Sandpoint, the Plaintiff in the above entitled matter;

She has read and understands the contents of the forgoing complaint;

The statements and allegations contained therein are true and correct to the best of her personal knowledge, information and belief.

DATED the 15th day of August, 2013.

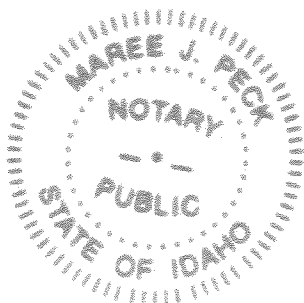
Marsha Ogilvie
Marsha Ogilvie, Mayor

ACKNOWLEDGEMENT

STATE OF IDAHO)
) ss
County of Bonner)

ON THIS 15th day of August, 2013, before me, a Notary Public in and for the State of Idaho, appeared Marsha Ogilvie and acknowledged to me that she is the Mayor of the City of Sandpoint and that the foregoing complaint is true and correct to the best of her knowledge, information and belief.

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



Maree J. Peck
Notary Public for Idaho
Residing at: Sagle
My Commission Expires: 1-22-16

COMPLAINT

ORIGINAL

Scott W. Reed, ISB#818
Attorney at Law
P. O. Box A
Coeur d'Alene, ID 83816
Phone (208) 664-2161
FAX (208) 765-5117
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.

STIPULATION FOR SETTLEMENT

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.

STIPULATION FOR SETTLEMENT

2

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.

STIPULATION FOR SETTLEMENT

3

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

STIPULATION FOR SETTLEMENT

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-00-007ss with prejudice.

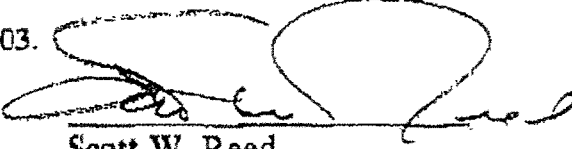
4. The City of Sandpoint will not oppose annexation elections sought by the Sandpoint Independent Highway District.

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

STIPULATION FOR SETTLEMENT

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.

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.

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

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.

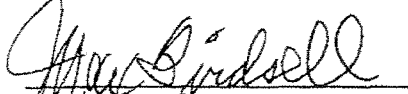
SEVERABILITY
CLAUSE:

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

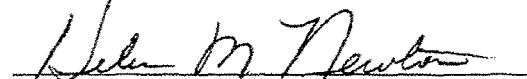

Commissioner

Commissioner

CITY OF SANDPOINT


Raymond P. Miller, Mayor

ATTEST:


Helen M. Newton, City Clerk

No: 05-47
Date: August 17, 2005

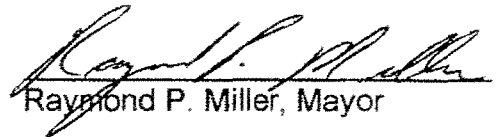
RESOLUTION
OF THE CITY COUNCIL
CITY OF SANDPOINT

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			

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 BIRDSSELL, CHAIRMAN DATE

Jim Carson 9-14-05
COMMISSIONER DATE

Wayne McDermott 9-14-05
COMMISSIONER DATE

SHERER & WYNKOOP, LLP

Stephen T. Sherer
David E. Wynkoop
Attorneys at Law

730 N. Main Street
P.O. Box 31
Meridian, Idaho 83680-2604

Phone 208-887-4800
Fax 208-887-4865

July 11, 2013

City of Sandpoint
c/o Scot R. Campbell
Sandpoint City Attorney
1123 Lake St.
Sandpoint, Idaho 83864-0871

*Via First Class Mail and
Via e-mail to scampbell@ci.sandpoint.id.us*

*Re: Notice of Termination of Revenue Sharing Agreement
and Offer of Settlement – IRE 408*

Dear Mr. Campbell:

I write as attorney for the Independent Highway District (“IHD”). IHD has asked my office to review the legality of the agreement between IHD and the City of Sandpoint (“City”); which agreement provides that IHD will transfer to the City all IHD levy proceeds collected from City properties.

Our office has opined to IHD that the agreement violates Idaho law. The agreement runs afoul of Article Eight, Section Three of the Idaho Constitution, as well as Idaho Code §40-801 and several other important legal principles.

This provides formal notice that IHD will no longer make these illegal payments to the City, effective immediately.

Offer of Settlement – Rule 408 of the Idaho Rules of Evidence.

The IHD Commissioners hope to amicably and finally resolve this matter by also settling several additional issues which remain outstanding between the City and IHD. IHD has authorized me to make the following settlement offer to resolve these issues in return for the City’s agreement that the provisions of Idaho Code §40-801 will control future property tax revenue sharing.

City of Sandpoint
c/o Scot R. Campbell
Sandpoint City Attorney

-2-

July 11, 2013

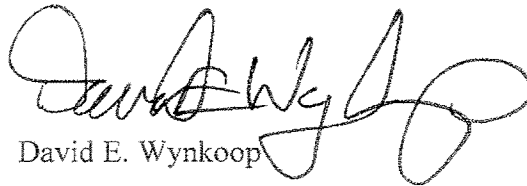
The Idaho Supreme Court has twice held that title to City streets is vested in IHD. As part of a settlement, IHD is willing to convey to the City title to all local streets located within the Sandpoint City limits. Absent a new settlement agreement, the Supreme Court rulings direct that IHD hold title to these streets.

Also, as part of the settlement, IHD will forego any claim to recoup from the City those amounts previously illegally paid to the City in violation of Idaho law. It is my understanding that this amount is several million dollars.

Please respond at your earliest convenience whether the City is agreeable to IHD's proposed settlement agreement. The IHD Commissioners are willing to meet with the City to discuss and finalize the proposed settlement agreement.

Sincerely,

SHERER & WYNKOOP, LLP



David E. Wynkoop

DEW/jlm

Cc: Independent Highway District

SHERER & WYNKOOP, LLP

Stephen T. Sherer
David E. Wynkoop
Attorneys at Law

730 N. Main Street
P.O. Box 31
Meridian, Idaho 83680-2604

Phone 208-887-4800
Fax 208-887-4865

July 25, 2013

City of Sandpoint
c/o Scot R. Campbell
Sandpoint City Attorney
1123 Lake St.
Sandpoint, Idaho 83864-0871

*Via First Class Mail and
Via e-mail to scampbell@ci.sandpoint.id.us*

Re: Notice of Termination of Joint Powers Agreement

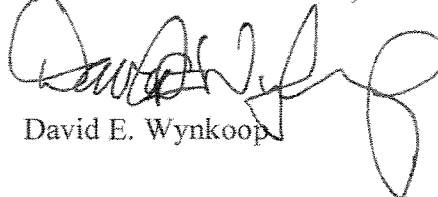
Dear Mr. Campbell:

This is a follow-up to my letter of July 11, 2013. Subsequent to that letter, you notified me of a Joint Powers Agreement entered into between IHD and the City on July 8, 2003. Please consider this notification that the IHD Commissioners have elected to terminate the Joint Powers Agreement effective immediately. The Agreement violates Article Eight, Section Three of the Idaho Constitution, as well as Idaho Code §40-801. Additionally, it appears that the Agreement was not validly entered into in that it has no realistic termination clause in violation of the Joint Powers Act. *See Idaho Code §67-2328.*

IHD hereby renews the offer of settlement conveyed by my letter of July 11, 2013. Once you have had a chance to review the offer with your client, please advise whether it is accepted by the City.

Sincerely,

SHERER & WYNKOOP, LLP



David E. Wynkoop

DEW/jlm

Cc: Independent Highway District

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

CITY OF SANDPOINT,)
Plaintiff,)
vs.)
INDEPENDENT HIGHWAY DISTRICT,)
Defendant.)

CASE NO. CV 2013-1342

ORDER OF REASSIGNMENT

The Honorable Barbara Buchanan having been disqualified pursuant to Idaho Rule 40(d)(1) in the above matter now,

IT IS HEREBY ORDERED that the above matter is assigned to the Honorable John T. Mitchell, District Judge, for the disposition of any pending and further proceeding.

IT IS FURTHER ORDERED that the following alternate judges are hereby assigned to preside in this case: Rich Christensen, Lansing L. Haynes, John P. Luster, Benjamin R. Simpson, Fred M. Gibler, Charles W. Hosack, George R. Reinhardt, III, Steve Verby, Jeff Brudie, Carl Kerrick, John Stegner, Michael Griffin.

DATED this 29 day of Aug, 2013.

Lansing L. Haynes
LANSING L. HAYNES
Administrative District Judge

CERTIFICATE OF MAILING

I hereby certify that on the 30 day of Aug 2013, a true and correct copy of the foregoing was sent via facsimile, U.S. Mail, or interoffice mail to the following:

Scott K. Campbell
Faxed 253-1368

Dana Wynkoop
Faxed 208-887-4865

CLERK OF THE DISTRICT COURT

By [Signature]
Deputy Clerk

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2013 SEP 9 PM 2 05
CLERK DISTRICT COURT
DEPUTY

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
1626 LINCOLN WAY
COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
of the State of Idaho,)
)
Plaintiff,)
)
vs.)
)
INDEPENDENT HIGHWAY DISTRICT, a)
political subdivision of the State of Idaho,)
)
Defendant.)
)

CASE NO. CV 2013-01342
MOTION TO DISMISS

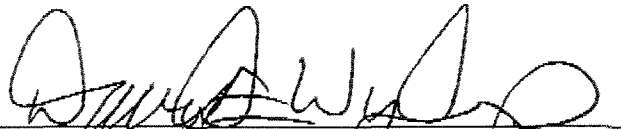
COMES NOW Independent Highway District ("District") by and through its attorneys David E. Wynkoop of SHERER & WYNKOOP, LLP and Susan P. Weeks of JAMES, VERNON & WEEKS, P.A. and hereby moves this Court for an order dismissing Plaintiffs' Complaint, pursuant to Rule 12(b)(6) of the *Idaho Rules of Civil Procedure*. This motion is brought for the reasons that:

1. Plaintiff fails to state a cause of action upon which relief can be granted; and
2. The contract Plaintiff seeks to enforce is void and illegal under the Idaho Constitution and various Idaho statutes.

Briefing will be supplied to the court in accordance with I.R.C.P. 7. Oral argument is requested.

DATED this 9th day of September, 2013.

SHERER & WYNKOOP, LLP



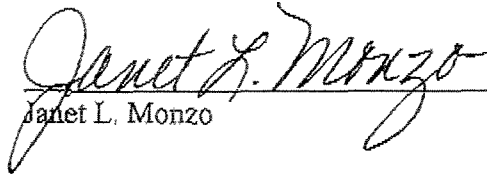
David E. Wynkoop, of the firm,
Attorneys for Independent Highway District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September, 2013, I served a true and correct copy of the foregoing MOTION TO DISMISS upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368



Janet L. Monzo

David E. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main St.
P.O. Box 31
Meridian, ID 83680
Telephone: (208) 887-4800
Facsimile (208) 887-4865
ISB No. 2429

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.
2013 SEP 20 PM 1 58
CLERK DISTRICT COURT
DEPUTY

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
ISB No. 4255

Attorneys for Defendant Independent Highway District

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

CASE NO. CV-2013-01342

DEFENDANT'S MOTION FOR
ENLARGEMENT OF TIME TO FILE
BRIEF

COMES NOW Defendant, Independent Highway District, by and through its attorneys of record, David E. Wynkoop of Sherer & Wynkoop, LLP and Susan P. Weeks of James, Vernon & Weeks, P.A. and hereby moves this Court, pursuant to Idaho Rules of Civil Procedure 6(b), for an enlargement of time to October 14, 2013, in which to file its memorandum in support of its motion to dismiss. This motion is made by and for the reason that counsel's case load is significant at this time and the issues raised in the motion to dismiss are complex and require extensive research and

analysis. Further, the motion to dismiss is scheduled for hearing on November 13, 2013, and the enlargement of time would not prejudice Plaintiff's ability to respond to the motion to dismiss.

Oral argument is requested.

DATED this 20th day of September, 2013.

JAMES, VERNON & WEEKS, P.A

Susan P. Weeks
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2013, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Scot R. Campbell Sandpoint City Attorney 1123 Lake Street Sandpoint, ID 83864	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Telecopy (FAX) (208) 255-1368
Hon. John T. Mitchell (chamber courtesy copy) P.O. Box 9000 Coeur d'Alene, ID 83816	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Telecopy (FAX) (208) 664-1188

Christine Elmore

David E. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main St.
P.O. Box 31
Meridian, ID 83680
Telephone: (208) 887-4800
Facsimile (208) 887-4865
ISB No. 2429

Susan P. Weeks
James, Vernon & Weeks, P.A.
1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
ISB No. 4255

Attorneys for Defendant Independent Highway District

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2013 SEP 20 PM 2 31

CLERK DISTRICT COURT

DERUTY

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

CASE NO. CV-2013-01342

NOTICE OF HEARING RE:
DEFENDANT'S MOTION FOR
ENLARGEMENT OF TIME TO FILE
BRIEF

Date: October 23, 2013

Time: 2:00 p.m.

Place: Kootenai County Courthouse

PLEASE TAKE NOTICE that on October 23, 2013, at the hour of 2:00 p.m., or as soon thereafter as the matter may be heard, in the Kootenai County Courthouse, Defendant Independent Highway District shall present for hearing its Motion for Enlargement of Time to File Brief before the Honorable John T. Mitchell. Defendant does not object to Plaintiff's NOTICE OF HEARING RE: DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME TO FILE BRIEF: 1

counsel attending the hearing telephonically upon approval by the Court should Plaintiff's counsel so choose.

DATED this 20th day of September, 2013.

JAMES, VERNON & WEEKS, P.A

Susan P Weeks
Susan P. Weeks

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2013, I caused to be served a true and correct copy of the foregoing instrument by the method indicated below, and addressed to the following:

Scot R. Campbell Sandpoint City Attorney 1123 Lake Street Sandpoint, ID 83864	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Telecopy (FAX) (208) 255-1368
Hon. John T. Mitchell (chamber courtesy copy) P.O. Box 9000 Coeur d'Alene, ID 83816	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Telecopy (FAX) (208) 664-1188

Christine Elrose

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

CLERK OF DISTRICT COURT
FIRST JUDICIAL DIST.

2013 OCT 11 A 11: 56

CLERK OF DISTRICT COURT

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, P.A.
1626 Lincoln Way
Coeur d'Alene, Idaho 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
of the State of Idaho,)
)
Plaintiff,)
)
vs.)
)
INDEPENDENT HIGHWAY DISTRICT, a)
political subdivision of the State of Idaho,)
)
Defendant.)
_____)

CASE NO. CV 2013-01342

BRIEF IN SUPPORT OF
MOTION TO DISMISS

Introduction

This lawsuit follows two prior lawsuits filed by the City against the Independent Highway District ("IHD"). Both suits went to the Idaho Supreme Court and resulted in decisions

in favor of IHD and against the City in which the Supreme Court ruled that IHD has exclusive jurisdiction over City streets.¹

IHD levies a property tax pursuant to Idaho Code §40-801 on all properties within its geographical boundaries, including properties located within the City. Pursuant to I.C. §40-801, the City is entitled to one half of the property tax proceeds collected by IHD from City properties, and IHD is entitled to the other half.

In 2003 the City and IHD entered into an agreement (“Agreement”) purporting to alter the distribution mandated in I.C. §40-801. Based upon the Agreement, IHD turned over to the City 100% of the IHD property tax revenue collected by IHD from City properties. The Agreement purports to create a perpetual indebtedness and liability of IHD in favor of the City whereby IHD shall turn over to the City all revenues collected from City properties, one-half of which the statute requires remain with IHD. IHD provided notice of termination of the Agreement based upon IHD’s belief that the Agreement violates Idaho’s Constitution and statutes. The City then filed this lawsuit seeking to enforce the illegal Agreement.

IHD respectfully submits that the City’s lawsuit should be dismissed pursuant to I.R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted. The Agreement at issue violates Idaho’s Constitution, several Idaho statutes, and public policy, and is unenforceable for lack of consideration. Thus, the Agreement is illegal, void and unenforceable as a matter of law.

Background

Beginning in the early 1930’s IHD maintained Sandpoint City streets. The City initiated judicial action in the early 1990’s to attempt to gain control over City streets, resulting in an Idaho Supreme Court decision of *City of Sandpoint v. Sandpoint Independent Highway District*,

¹ See *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 126 Idaho 145, 879 P.2d 1078 (1994); *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003)

126 Idaho 145, 879 P.2d 1078 (1994). The City claimed superior jurisdiction over City streets by virtue of the Local Planning Act of 1975. The Supreme Court disagreed, citing Idaho Code §40-1310 and §40-1323, and held that IHD is “vested with exclusive general supervision and jurisdiction” over Sandpoint streets because the City did not have a functioning street department. *City of Sandpoint*, 126 Idaho at 145, 879 P.2d at 1083.

In 2000, the City passed various resolutions establishing a City street department. The City then initiated a second lawsuit once again claiming jurisdiction over City streets. The City sought to enjoin IHD from exercising any supervisory authority over City streets and to enjoin IHD from making any levy upon the real property within the City. In *City of Sandpoint v. Sandpoint Independent Highway District*, 139 Idaho 65, 72 P.3d 905 (2003) (“*Sandpoint I*”), the Idaho Supreme Court again held that IHD had exclusive general supervisory authority over the City streets, again citing as authority Idaho Code §§40-1310 and 40-1323. The Court held that “the city cannot obtain jurisdiction over city streets that are within the boundaries of the Highway District unless the Highway District’s jurisdiction over those streets is first lawfully terminated under the appropriate statutory provisions.” *Sandpoint II*, 139 Idaho at 70, 72 P.3d at 910.

Agreement

Following issuance of the decision in *Sandpoint II*, the City and IHD entered into the illegal Agreement in 2003. A petition to dissolve IHD had been filed and litigation ensued. The City intervened in the litigation to support the dissolution of IHD. As part of a settlement of that litigation, the City and IHD entered into the Agreement which provided IHD would perpetually turn over to the City all property taxes IHD collected from City properties, thus creating for IHD a permanent liability and indebtedness in favor of the City. The Agreement states that “[t]he

duration of this agreement shall be perpetual or until such time as the District [IHD] and the City jointly and together agree to amend or terminate the same.”

IHD provided the City with notice of termination of the Agreement on July 25, 2013. IHD terminated the Agreement because the Agreement violates Idaho’s Constitution, statutes, and public policy.

IHD respectfully submits that the City’s lawsuit should be dismissed pursuant to I.R.C.P. 12(b)(6) for the reason that the Agreement is illegal on its face. The Agreement violates Article VIII, §3 of the Idaho Constitution, Idaho Code §§40-801 and 40-1333, *et seq*; the Joint Powers Act, and public policy.

Idaho Constitution, Article VIII, §3

Any agreement entered into by an Idaho public agency must be consistent with the Idaho Constitution. Article VIII, §3, which provides “[n]o ... (political) subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year the income and revenue provided for it in such year, without the assent of two thirds (2/3) of the qualified electors... Any indebtedness or liability incurred contrary to this provision shall be void.” (Emphasis added). In the present case, the Agreement was entered into without a vote of two-thirds of the qualified IHD electors. Since the 2003 Agreement created an indebtedness or liability without a vote of the electors, it is void and unenforceable.

The Idaho Supreme Court has repeatedly interpreted Article VIII, §3 to preclude multi-year obligations such as the illegal Agreement at issue in this case. The Idaho Supreme Court first addressed this issue 100 years ago in the case of *Charles Feil v. City of Coeur d’Alene*, 23 Idaho 32, 129 P. 643 (1912). In that case, the city entered into a twenty year contract to purchase

a water system from a contractor for the sum of \$180,000. The city pledged to make annual payments to the contractor from the revenues generated by the water system.

The trial court held the agreement to be legal, but the Idaho Supreme Court reversed, holding that the agreement constituted an “indebtedness or liability” extending beyond the city’s budget year in violation of Article VIII §3 of the Idaho Constitution. The Court reviewed the history of Article VIII, §3 and noted that its language is more restrictive than virtually any other state’s constitution. The Court rejected the city’s argument that because numerous other states had upheld similar agreements that the Idaho Court should do so.

The Idaho Supreme Court noted that “[o]ur constitution specifically prohibits anticipating the income or revenue for more than the current year.” (emphasis added) *Feil*, 23 Idaho at 45. “[T]he framers of our constitution employed more sweeping and prohibitive language in framing sec. 3 of art. 8, and pronounced a more positive prohibition against excessive indebtedness than is to be found in any other constitution to which our attention has been directed.” *Feil*, 23 Idaho at 49. “The constitution not only prohibits incurring any indebtedness, but it also prohibits incurring any liability.” *Feil*, 23 Idaho at 49. The Court further noted that the intent of the framers was to prevent the pledging of future income including “all sources and kinds of income or revenue” (*Ibid*) and that no public agency “shall incur any indebtedness or liability in any manner, or for any purpose” beyond the budget year. *Feil*, 23 Idaho at 50.

The Court then discussed the breadth of the term “liability”, noting several definitions, including “...the state of one who is bound in law and justice to do something which may be enforced by action” and “the state of being bound or obliged in law or justice to do, pay or make good something; legal responsibility.” (*Ibid.*) This language certainly applies to the case at bar

where the City has brought an action to enforce a clause of the Agreement that requires IHD to make payments to it in perpetuity.

The Court discussed the reasons why a governing body should not be allowed to financially obligate future governing bodies.

Suppose, now, after purchasing this property, another city council hereafter to be elected should decline to comply with the promises, agreements and covenants of this ordinance. If the ordinance is legal and valid, would not the courts intervene to compel the city authorities to comply with the provisions and terms of this ordinance and to take such steps as might be necessary to raise the required revenue to meet these obligations...

Feil, 23 Idaho at 53.

The city in *Feil* argued that the agreement should be declared valid since it obligated only the future revenues to be received from the water system to be financed and did not obligate the general revenues of the city. The Court rejected the city's position, responding that "...the receipts from this source will at once become an *income*, under the provisions of sec. 3, art. 8, of the constitution, which it is forbidden to pledge or hypothecate for more than the current year..." (emphasis added) *Feil*, 23 Idaho at 55; and "[a]fter it owns that property, the receipts from water rents would clearly be an *income* or *revenue* within the purview and meaning of the constitution, but in advance of the purchase it undertakes to appropriate and hypothecate that *income* for a period of twenty years so that it may not be an *income* after the purchase is made." (*Ibid.*)

The Court went on to state that the constitution provides the exclusive method for incurring long term obligations; specifically, a vote of two-thirds of the electors of the taxing district. Absent such a vote, no obligation may be incurred beyond the current budget year.

Based upon the holding in *Feil*, it is clear the Agreement at issue in this case violates the Idaho Constitution. The illegal Agreement purports to obligate future IHD revenues thus

creating a perpetual liability and indebtedness illegally binding future Boards of Commissioners. Specifically, all future years IHD revenue generated by IHD's property tax levy on City properties must be paid over to the City. Future IHD Boards face a permanent indebtedness and liability created by the 2003 IHD Board without the required voter approval. This is not permitted by the Idaho Constitution.

Another test of Article VIII, §3 occurred in the case of *Grant Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843 (1930). The City of Buhl attempted to purchase an electricity generating system. The city pledged the future revenues from the sale of power to pay off the purchase price of the system. Citing *Feil*, the Idaho Supreme Court reaffirmed that Article VIII, §3 of the Idaho Constitution prohibited Idaho public agencies from incurring multi-year obligations. The Court declined the city's invitation to overrule *Feil*, but rather reaffirmed the reasoning of *Feil*.

It is anticipated that the City of Sandpoint will claim that the illegal Agreement is saved by the "ordinary and necessary" exception to Article VIII, §3. The Idaho Supreme Court has twice recently ruled on the "ordinary and necessary" exception to Article VIII, §3. In *City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006) the Court first reaffirmed the holding in *Feil*, prohibiting multi-year obligations by Idaho's public agencies. In response to the city's argument that the ordinary and necessary exception saved the agreement, the Court held that the ordinary and necessary exception clause did not apply. Rather, the ordinary and necessary exception was limited only to expenditures made during the budget year and only if the necessity is truly urgent.

Here, we return to the test stated in *Dunbar* and hold that in order for an expenditure to qualify as "necessary" under the proviso clause of Article VIII, §3 there must exist a necessity for making the expenditure at or during such year. (emphasis added)

Frazier 143 Idaho at 5.

The *Frazier* Court went on to discuss that there must be an “immediate or emergency” basis for such an expenditure to qualify as an exception to the prohibitions contained in Article VIII, §3. Because the obligation did not meet the “necessary” criteria within the current budget year in which the obligation was incurred, the Court held that the agreement incurring the multi-year obligation was illegal. The Court emphasized that such a long-term obligation was only valid if first approved by a two-thirds vote of the electors. Future years’ needs were held not to fall into the ordinary and necessary exception in the year in which the liability or indebtedness was created.

The most recent Article VIII, §3 case relevant to the facts in the present case is *City of Idaho Falls v. Fuhriman*, 149 Idaho 574, 237 P.3d 1200 (2010). In this case, the city entered into a 17-year agreement that obligated the city to future purchases of electricity. The Court held that the agreement violated Article VIII, §3 and did not fall within the “ordinary and necessary” exception. The Court noted that the city could incur short-term obligations within the budget year, but that the city could not incur an obligation extending beyond the current budget year.

The city argued in *Fuhriman* that its taxpayers would benefit from the certainty of a long term contract for the purchase of electricity. The Supreme Court responded that the city may not incur a long-term liability for a short term need. The Court reiterated that the Idaho Constitution “imposes upon the political subdivisions of the state a pay as you go system of finance.” 149 Idaho at 579, citing *Frazier*.

In this case, the illegal Agreement purports to transfer all IHD levy proceeds from City properties to the City. This liability is permanent and not limited to a fixed number of years such as the *Feil*, *Frazier* and *Fuhriman* cases, but rather into perpetuity. The obligation by a past IHD Board of Commissioners creates an indebtedness or liability for all future IHD Boards of

Commissioners. Further, there is no effective termination provision, since the Agreement cannot be terminated without the consent of the City. It is highly unlikely that the City would ever agree to terminate the Agreement. Thus, there is a significant obligation into perpetuity.

For instance, assuming that revenues collected from City properties pursuant to the IHD levy amount to \$350,000 per year as estimated in the Agreement (a copy of which is attached to Plaintiff's Complaint), then the 2003 Agreement would create over a 20 year period an indebtedness and liability against IHD and in favor of the City in the amount of \$7 million dollars based upon the assessed values in 2003. This is a huge liability for a small agency like IHD.

None of the current IHD Commissioners signed the Agreement. Yet, current and future IHD Commissioners must cut checks, four times a year, to the City for funds that statutorily belong to IHD. This deprives current and future IHD Commissioners of the ability to exercise the judgment they were elected to exercise in how best to spend the IHD revenue they are entrusted with by law.

Any agreement which violates Article VIII, §3 of the Idaho Constitution is "void" under the express language of this Constitutional provision. *See e.g. Deer Creek Highway Dist. v. Doumecq Highway Dist.*, 37 Idaho 601, 218, P. 371 (1923) and *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914) (affirming that agreements entered into violation of Article VIII, §3 are void.) In conclusion, the Agreement violates the express language of Article VIII, §3, the policy behind Article VIII, §3, and the Idaho Supreme Court cases interpreting Article VIII, §3 and is therefore void.

Idaho Code §40-801

The source of the funds to pay the City the monetary obligation contained in the Agreement in this case is IID's property tax revenues. This source of IID revenue is found at Idaho Code §40-801(1)(a) which provides that:

Authority and procedure for levies. (1) The commissioners of a county highway system, the commissioners of a county-wide highway district, and the commissioners of highway districts are empowered, for the purpose of construction and maintenance of highways and bridges under their respective jurisdictions, to make the following highway *ad valorem* tax levies as applied to the market value for assessment purposes within their districts:

(a) Two-tenths per cent (0.2%) of market value for assessment purposes for construction and maintenance of highways and bridges; provided that if the levy is made upon property within the limits of any incorporated city, fifty per cent (50%) of the funds shall be apportioned to that incorporated city. [emphasis added]

This statute empowers highway districts and counties to levy a property tax to raise revenues for road construction and maintenance. (Cities also have independent authority under Title 50, Idaho Code, to levy property taxes for road building and maintenance by their city street departments. *See* specifically Idaho Code §50-235 and §50-236.) It is IID's property tax revenues that are at issue in this litigation, not City tax revenues.

Idaho Code §40-801(1)(a) provides that if a city maintains city streets, then 50% of the revenue from city properties shall be retained by the highway district and the other 50% shall be distributed to the city for construction and maintenance of city streets. It is important to understand that the property tax revenue collected pursuant to this statute is IID's revenue, and it has a statutory obligation to distribute a portion to a city as set forth in the statute. However, the remaining portion is revenue to the highway district, and any distribution must comply with the Idaho constitution and the statute.

This statutory 50/50 tax distribution ratio is mandatory. The statutory language states “shall” not “may”. Local governmental agencies do not have discretion to violate the express terms of this statute by agreeing to some other tax distribution ratio because such an agreement would violate the Article 8, Section III of the constitution. The statute does not authorize a 75/25 split or a 100/0 split. This tax distribution ratio has been in effect since at least 1963. *See City of Rexburg v. Madison County*, 115 Idaho 88, 764 P.2d 838 (1988). The rationale for imposing the highway tax on city properties is that city residents use the streets maintained by counties and highway districts and so should help finance the maintenance of the roads on which they drive.

By entering into an Agreement purporting to provide for a tax distribution ratio other than the mandated 50/50 split, IHD and the City violated Idaho Code §40-801 and the Idaho constitution. An agreement entered into in violation of a statute is illegal and unenforceable. “[A] contract [that] cannot be performed without violating applicable law is illegal and void.” *City of Meridian v. Petra, Inc.*, 154 Idaho 425, 299 P.3d 232, 252 (2013). “The general rule is that a contract prohibited by law is illegal and hence unenforceable.” *J. Baynard Miller, M.D. v. Frederick R. Haller, M.D., et al.*, 129 Idaho 345, 351, 924 P.2d 607, 613.

Joint Powers Act

The Agreement in this case involves an agreement that purports to be a Joint Powers Agreement. The Joint Powers Act, Idaho Code §67-2326, *et seq* (“JPA”), authorizes local government agencies, in limited circumstances, to cooperate and share responsibilities. For example, if two road agencies share a common boundary, it may be inefficient for each agency to maintain, plow and chip seal one side of a road. Accordingly, it may be a wise use of taxpayer funds for the two agencies to agree that one agency will perform all maintenance on one shared

mile of road in return for the other agency performing all maintenance on another shared mile of road.

However, there are several important restrictions to the use of the JPA. The first is that an agency cannot delegate away or exceed its statutory or constitutional authority when entering into a joint agreement. Nor can the JPA be used in a manner to cause a violation of statutory or constitutional provisions. No such agreement can extend “beyond the limitation of such powers, privileges or authority” of the agencies involved. I.C. §67-2328. The JPA cannot be used as a bootstrap to make legal an agreement which is otherwise illegal.

Second, the JPA requires that all agreements entered into under the JPA have a termination clause. I.C. §67-2328 mandates that:

(c) Any such agreement shall specify the following:

(5) The permissible method or methods to be employed in accomplishing the partial or complete **termination of the agreement** and for disposing of property upon such partial or complete termination. [emphasis added]

The Agreement the City seeks to enforce provides that “[t]he 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.” (emphasis added). Under the language of the Agreement, no method is provided to terminate the Agreement. Rather, the Agreement places a prohibition on the termination of the Agreement absent mutual agreement. There is no way for IHD to terminate the Agreement and the substantial liability imposed on IHD thereby, unless the City agrees. There is no logical reason for the City to terminate an agreement under which it receives financial benefits far in excess of what the statutes authorize. Thus, there is no effective method to terminate the Agreement provided in the termination clause in the Agreement. Without an

effective termination clause, the Agreement purported to be entered into under the authority of the JPA violates the JPA.

Without a proper method provided in the Agreement for termination, the language of the joint power Agreement is inconsistent with Article VIII, §3 of the Idaho Constitution. Elected IHD officials are forever bound by decisions made by their predecessors obligating the expenditure of all future revenue collected from city properties. In such a case, it is apparent that subsequent elected IHD Commissioners cannot fulfill the role to which they were elected. This is inconsistent with Idaho statutes and the Idaho Constitution.

This rationale is particularly compelling in this case. As noted in the letter the City attached to its Complaint as an exhibit, IHD has already paid over to the City several millions of dollars in revenues under the Agreement. If the Agreement is enforceable with no practical termination clause, future IHD Commissioners will be obligated to pay over to the City additional millions of dollars of revenue from the property tax receipts of a relatively small agency with a relatively small budget. As a result, current and future IHD Commissioners would not have the revenues to fund the priorities they believe to be most important to the taxpayers and voters they were elected to serve. This financial liability greatly diminishes their ability as elected officials to act in the public interest. As discussed above, this situation without voter approval is the very reason that Article VIII and the JPA do not permit such an agreement.

Idaho Courts Disfavor Perpetual Agreements

Idaho courts hold perpetuity clauses such as the one in the Agreement to be illegal in violation of public policy. In *Barton v. State*, 104 Idaho 338, 659 P.2d 92 (1983), the Idaho Supreme Court declined to read a contract as containing a perpetuity clause that bound the State Transportation Department in perpetuity. "In our view such a term [perpetuity clause] would

violate public policy. “ 104 Idaho 338, 340, 659 P.2d 92, 94. See also *Shultz v. Atkins*, 97 Idaho 770, 554 P.2d 948 (1976), *Boise City v. Sinsel*, 72 Idaho, 329, 241 P.2d 173 (1952) and *Keyeser v. City of Boise*, 30 Idaho 440, 165 P. 1121 (1917). The public policy against contracts purporting to be binding into perpetuity is particularly compelling when our Idaho Constitution and case law specifically prohibit multi-year contracts by public agencies.

Idaho Code §40-1333

Idaho Code §40-1333 provides:

Cities, with city highway systems, shall be responsible for the construction, reconstruction and maintenance of highways in their respective city systems, except as provided in section 40-607, Idaho Code.² Cities may make agreements with a county, highway district or the state for their highway work, or a portion of it, but they shall compensate the county, district or state fairly for any work performed. (emphasis added)

The Idaho legislature has established a clear policy that a city must use its own revenues to maintain city streets and may not use highway district revenues to do so, except as provided in I.C. §40-801. A city cannot expect highway district revenues to fund the maintenance of city streets. If a highway district constructs or maintains a city street, the city must repay the highway district for all expenditures made within the city by the highway district.

The City seems to suggest IHD is receiving a benefit by virtue of the City maintaining City streets. This is not true since the City has a statutory duty to maintain City streets. IHD receives nothing from the City in return for the IHD revenue paid over to the City.

Lack of Consideration

It has long been held as a matter of contract law that a contract must be supported by legal consideration in order to be enforceable. The City has provided no new consideration in

² Idaho Code §40-607 applies only to cities under 5,000 population. The City in paragraph 1 of its complaint stated that Sandpoint City's population is 7,400, therefore I.C. §40-607 does not apply to these facts.

each budget year in return for IHD providing 100% of its *ad valorem* levy proceeds to the City. Thus, the Agreement is unenforceable. The City alleges in the Complaint that the consideration for IHD's perpetual liability is the City's agreement to maintain City streets. This argument lacks merit as the City already has a statutory duty to maintain its streets. *See* Idaho Code §40-1333. A contract which contains no consideration is illusory and therefore unenforceable. *See e.g. Martinez v. ICRMP*, 134 Idaho 247, 999 P.2d 902 (2000), wherein the Court reaffirmed this common law principal but then found an exception for insurance contracts because they were contracts of adhesion.

Pursuant to Idaho Code §§40-801(1)(a) and 40-1333, the City maintains its City streets and is entitled to receive a 50% distribution of the tax revenues collected by IHD from City properties. Contrary to these statutes, the language of the illegal Agreement purports to require IHD to turn over to the City 100% of the revenue IHD receives from City properties. Each newly elected IHD Board is obligated to provide significant IHD funds to the City based upon an illegal Agreement to which the current and future Commissioners were not a party. The legal problem is that the City provides no new consideration to IHD during the current budget year or during that Commissioner's term of office. Under Article VIII, §3, no obligation can legally be made beyond the budget year by public agencies. Any past consideration which may have been provided to IHD by the City cannot be used as consideration for the obligation to pay to the City IHD revenues outside the year the agreement was reached.

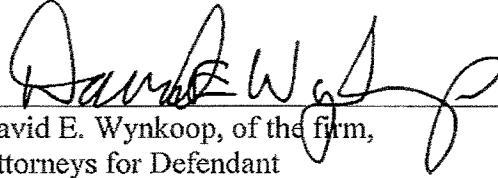
CONCLUSION

The Agreement the City seeks to enforce violates the Idaho constitution, numerous Idaho statutes, and public policy, and accordingly is void, illegal and unenforceable. Therefore, the

City's Complaint fails to state a cause of action upon which relief can be granted. The City's cause of action should be dismissed pursuant to I.R.C.P. 12(b)(6).

DATED this 11th day of October, 2013.

SHERER & WYNKOOP, LLP

A handwritten signature in black ink, appearing to read "David E. Wynkoop", is written over a horizontal line.

David E. Wynkoop, of the firm,
Attorneys for Defendant

CERTIFICATE OF SERVICE

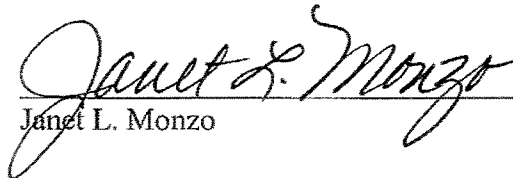
I HEREBY CERTIFY that on this 17th day of October, 2013, I served a true and correct copy of the foregoing BRIEF IN SUPPORT OF MOTION TO DISMISS upon the following, by the method indicated below:

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Sandpoint City Attorney
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Janet L. Monzo

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.
2013 NOV 7 PM 2 57
CLE [Signature]
CITY

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16 Attorneys for City of Sandpoint

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

19 CITY OF SANDPOINT, a municipal
20 corporation of the State of Idaho,
21
22 Plaintiff,
23 vs.
24 INDEPENDENT HIGHWAY DISTRICT, a
25 political subdivision of the State of Idaho,
26 Defendant.

Case No. CV-13-01342

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

27 1. INTRODUCTION

28 This action was brought to enforce a lawful executed Joint Powers Agreement ("JPA") (See
29 Complaint, Ex. B) entered into between the City of Sandpoint ("City") and the Independent Highway
30 District ("District"), signed on July 8, 2003. The motivation for the JPA was simple and undisputed: the

1 City was unhappy with the District's quality of service to the City taxpayers, and had petitioned for a
2 taxpayers' election to dissolve the District. The District had sued the Bonner County Commissioners to
3 stop the dissolution election, but it was unsuccessful. (See, Complaint, ¶¶ 20-25; ¶ 37; and Sandpoint
4 Independent Highway District v. Board of County Commissioners of Bonner County and the City of
5 Sandpoint, Intervenor, 138 Idaho 887, 71 P.3d 1034 (2003).) The JPA was a compromise of the very
6 issues raised in this case. The substance and motivation for the JPA was set out in a filed stipulation that
7 was approved by this Court. (See, Stipulation for Settlement, Complaint, Ex. A) Based on the
8 Stipulation for Settlement, this Court entered a final Order of Dismissal. (Copy attached to this brief.)
9

10 It is undisputed that the JPA was an idea advocated by the District. (Aff. of S. Campbell, Ex. 1)
11 The efficacy of the JPA was endorsed by the District, and it specifically agreed the JPA was in the best
12 interests of the taxpayers. (Complaint, Ex. A; ¶10) The JPA requires joint mutual assent if it is to be
13 terminated or amended. (Complaint, Ex. B, "DURATION", p. 1) It is undisputed that the District has
14 unilaterally stated the JPA has been terminated. (Complaint, Ex. E; Defendant's Memorandum, p. 2)
15 The District has now breached its obligation to make disbursements. (Aff. of S. Syth, Ex. 2) This action
16 was commenced for a declaration of rights so the City can demand that the District comply with the JPA
17 obligations.
18

19 The District has filed an I.R.C.P. 12(b)(6) Motion to Dismiss that should be denied because:

- 20 1. The JPA is lawful, constitutional and enforceable between two public entities.
- 21 2. The JPA was the product of willful negotiation to compromise pending litigation for
22 significant consideration, and after the District represented to the Court the JPA
23 would be in the best interests of the taxpayers of Bonner County.
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1 The District since 2003 has disbursed each year to the City a varying sum that ranges from
2 \$241,000 to \$338,000. (Aff. of S. Syth, ¶6-8; Ex. 2) That money is used exclusively for the operation,
3 maintenance and snow removal of the streets in the City. (Aff. of S. Syth, ¶9) How the parties arrived at
4 the agreement to divide the revenue paid to the District each year is not a secret.
5

6 **2.1 History of the Dispute.**

7 The dispute brought forth in this case has had a long judicial history that played out before the
8 Supreme Court in three separate matters. The first matter was ruled on in 1994 (identified by the
9 District as Sandpoint I): City of Sandpoint v. Sandpoint Independent Highway District, 126 Idaho 145,
10 879 P.2d 1078 (1994). That action addressed who had ultimate authority over the street maintenance
11 and their day-to-day operations within the City limits. The Supreme Court concluded that because the
12 City did not have a functioning street department, the District retained general supervisory authority to
13 maintain the streets. Sandpoint I at pp. 150-151.
14

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

6
7 While largely ignored by the District, there is a third key decision in these related actions, which
8 lead directly to the JPA. On June 4, 2003, the Supreme Court entered its opinion in Sandpoint
9 Independent Highway District v. Board of County Commissioners of Bonner County and Bonner
10 County and City of Sandpoint, 138 Idaho 887, 71 P.3d 1034 (2003). The action was to enjoin the
11 County from conducting the very election to dissolve the District that was called for in Sandpoint II.
12 The City was an Intervenor in that case, as well as one of the petitioners to dissolve the District that had
13 been filed in April 2000. The question on appeal was whether the County Commissioners properly
14 determined it was in the best interest for the entire District to be dissolved and then schedule an election
15 for a vote on the dissolution. The Supreme Court concurred that the Commissioners' findings were
16 correct; dissolution would be in the best interest of the public. The Court sent the matter back, allowing
17 an election.
18

19 With the almost simultaneous remands of Sandpoint II and Sandpoint III confronting the parties,
20 cooler heads prevailed; the City and the District negotiated a compromise that resolved both companion
21 cases. The District proposed a settlement that included entry into a Joint Powers Agreement (Aff. of
22 Campbell, Ex. 1) The settlement was entered of record on July 3, 2003 as a Stipulation for Settlement.
23 (Complaint, Ex. A) During the three years of appeal of Sandpoint II and Sandpoint III, the parties had
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1 agreed to an arrangement that divided the labor; the City maintained the streets within its boundaries,
2 while the District maintained all other streets outside the City but within the District boundaries. This
3 arrangement was memorialized in the Stipulation for Settlement, which also provided that the City and
4 the District would enter into the JPA for future work and funding disbursements. The District and the
5 City represented on the record that they agreed to the following verities that cannot now be disputed by
6 the District:
7

- 8 1. "[T]hat the interests of the taxpayers within the respective entities and of the road
9 users would best be served by continuation of the present arrangements."
- 10 2. "Based on experience, the City should maintain its own streets and the District
11 should expand its service area by annexation."
- 12 3. "That continued litigation and the anticipated dissolution election would be costly
13 and would not be in the best interests of the public."
14

15 (Complaint, Ex. A) The terms of the settlement called for a joint statement of road jurisdiction, entry
16 into the JPA, that the City would join to vacate the dissolution election, and would not object to future
17 annexations into the District. Id.

18 The Court approved Stipulation provides:

19 2. The Sandpoint Independent Highway District and the City of
20 Sandpoint shall enter into a joint powers agreement made pursuant to Chapter 23,
21 Title 67, Idaho Code which will provide for division of all ad valorem funds
22 received under Chapter 8, Title 40, Idaho Code. Said joint powers agreement is
23 intended to be a **permanent resolution subject to termination only by mutual
24 agreement of both parties. The division of funds** shall be made twice yearly.
25 The joint powers agreement would provide that the Sandpoint Independent
26 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.

1 The tax revenues from district levies upon property within the city limits received
2 in the current fiscal year shall be paid by the District to the City commencing with
3 the 2003 levy. (Emphasis added.)

4 This Court approved the Stipulation by Order dated July 11, 2003. (See, Attached A to this
5 brief, signed by this Court and subject to Judicial Notice, ER 201.) Sandpoint II was dismissed with
6 prejudice by this Court on June 4, 2004 (CV-00-788). The parties thereafter complied with the
7 Stipulation and entered into the JPA. As a consideration for entering into the JPA, the City agreed to
8 assist in withdrawing the petition to dissolve the District and agreed not to challenge future annexations
9 to the District. The election did not occur. Future annexations have occurred over the past ten years and
10 include such communities as Dover and Ponderay.

11 **2.2 Current Litigation – Sandpoint IV.**

12 On July 11, 2013, exactly ten (10) years after this Court approved the stipulation, the District
13 notified the City that it was unilaterally withholding funds and refused to perform its obligations under
14 the JPA. (Complaint, Ex. D) On July 25, 2013, the District notified the City that it unilaterally
15 "elected" to terminate the JPA. (Complaint, Ex. E) The City filed its Complaint in this action on
16 August 16, 2013, (Sandpoint IV) seeking declaratory and injunctive relief requiring the District to
17 comply with the terms of the JPA. The District is now seeking to dismiss the Sandpoint IV under
18 I.R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted.

19 **3. MOTION TO DISMISS AND SUMMARY JUDGMENT STANDARD**

20 In ruling on a motion to dismiss, the court must view the facts and reasonable inferences in the
21 light most favorable to the plaintiff. Miles v. Idaho Power Co., 116 Idaho 635, 637, 778 P.2d 757
22 (1989). For a complaint to be dismissed under I.R.C.P. 12(b)(6), it must appear beyond doubt that the
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1 plaintiff can prove no set of facts in support of its claim which would entitle it to relief. Ernst v.
2 Hemenway & Moser Co., 120 Idaho 941, 946, 821 P.2d 996 (Ct. App. 1991). In determining whether a
3 complaint does or does not state a cause of action, every reasonable construction will be made to sustain
4 it. Curtis v. Siebrand Bros. Circus & Carnival Co., 68 Idaho 285, 303, 194 P.2d 281 (1948). Moreover,
5 if matters outside the pleading are presented to and not excluded by the court, a motion to dismiss shall
6 be treated as one for summary judgment and "disposed of as provided in Rule 56". I.R.C.P. 12(b).
7 Thus, if a trial court considers factual allegations outside the pleadings on a motion to dismiss for failure
8 to state a claim, it errs if it fails to convert the motion to one for summary judgment. Hellickson v.
9 Jenkins, 118 Idaho 273, 276, 796 P.2d 150 (Ct. App. 1990).

11 In Response to the motion, the City has filed the Affidavits of Scot R. Campbell and Shannon
12 Syth. Both set forth operative facts relevant to the issues raised in the motion. First, as shown by the
13 attachment to Mr. Campbell's affidavit, the use of a JPA at issue was advocated by the District. Second,
14 the amounts disbursed by the District each year are not at a set amount; they vary annually, include
15 delinquent payments from prior tax years and thus cannot as a matter of fact and law constitute a debt as
16 asserted by the District. In addition, the City is relying upon the attachments to the Complaint as
17 evidence of the parties' intent to be bound by the JPA, and the reliance that the City has invested in the
18 JPA. These documents establish the fact that the JPA is in the best interests of the taxpayers of the City
19 and of the District, that there was valuable consideration for the JPA and there is more than ample
20 mutual advantage to both the City and the District by utilizing the JPA to serve the taxpayer. If any of
21 these material facts are disputed, then the pending motion must be denied, discovery should ensue as
22 permitted by I.R.C.P. 56(f), and the matter proceed to trial. Otherwise, the law outlined herein
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1 establishes that Plaintiff has sufficient basis to support its claim as a matter of law, and Defendant's
2 Motion to Dismiss for failure to state a claim must be denied.

3 **4. ARGUMENT AND POINTS OF AUTHORITY**

4 The District's motion is based on assertions that the JPA to which it agreed to ten (10) years ago
5 is legally void. To reach its wrong conclusions, the District has misapplied constitutional and statutory
6 provisions, ignored the stated valid duration and consideration provisions in the JPA, as well as ignoring
7 the fact that it is judicially and equitably estopped from asserting the invalidity of the JPA.
8

9 **4.1 The Joint Powers Agreement is legal, and the parties are entitled to provide**
10 **for apportionment of taxes pursuant to that JPA.**

11 Idaho's Legislature has provided a statutory scheme that allows the state and public agencies "to
12 make the most efficient use of their powers by enabling them to cooperate to their mutual advantage..."
13 I.C. §67-2326. "Public agency" includes both cities and highway districts. I.C. §67-2327. Public
14 agencies may enter into agreements with one another for joint or cooperative action (a "joint powers
15 agreement" or "JPA") for the "joint use, ownership and/or operation agreements." The agreements may
16 be for any power, privilege or authority "enjoyed jointly." I.C. §67-2328. The District enjoys its power
17 over the City streets pursuant to I.C. §40-801. The City enjoys its power over its streets pursuant to
18 I.C. §40-201. The improvement of highways is "permanent policy" of the State of Idaho. An agreement
19 to care for the highways of the City is without question legal. I.C. §67-2328(b).
20

21 Idaho's Legislature has also provided a statutory scheme relating to the levy of taxes by highway
22 districts. Highway districts are authorized, "for the purpose of construction and maintenance of
23 highways and bridges under their respective jurisdictions," to make a highway ad valorem tax levy of up
24 to two-tenths percent (0.2%) of market value for assessment purposes. I.C. §40-801(1)(a). The levy
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1 amount may be increased by vote of the taxpayers to increase its revenues. I.C. §40-819. The statutory
2 scheme does not proscribe the highway district from allocating the remaining revenues to the city by
3 agreement or otherwise. Nor does the statutory scheme in any way limit or proscribe the use of a joint
4 powers agreement to divide funds for the mutual benefit of the very taxpayer who foots the bill for the
5 local roads consistent with the State's permanent policy.
6

7 Without attacking the purpose of the JPA, the District fashions an argument to say the
8 mechanism of the JPA is illegal. The District is wrong. The District interprets I.C. §40-801 et. seq. to
9 mean "if a city maintains city streets, then 50% of the revenue from city properties shall be retained by
10 the highway district and the other 50% shall be distributed to the city for construction and maintenance
11 of city streets." Defendant's Memorandum, p. 10. This is a misstatement. The statute does *not* make
12 city maintenance of city streets a condition precedent for the 50% distribution requirement to take effect.
13 Further, the statute does not command that the highway district "retain" the remaining tax revenues from
14 properties collected on properties located in the city. A court may not insert terms into statutes which
15 are not there. Barnes v. Hinton, 103 Idaho 619, 620, 651 P.2d 553 (1982). More importantly, the statute
16 does not state the District is absolved from expending funds to maintain roads in the cities lying within
17 its District. To the contrary, such would be gross malfeasance and a violation of the District's sole
18 purpose of, "construction and maintenance of highways and bridges under their respective jurisdictions".
19 I.C. §40-801.
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21

22 The District cites City of Rexburg v. Madison Cnty., 115 Idaho 88, 764 P.2d 838 (1988),
23 apparently to support the idea that the statute does not permit anything but a 50/50 tax distribution ratio.
24 The District misreads the case, as the case dealt with an inadvertent decimal point error, resulting in the
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1 City of Rexburg receiving only 5%, rather than the statutory 50% revenue, of county road taxes.
2 115 Idaho at 88-89. The court in City of Rexburg did not address whether a disbursement **larger** than
3 50% would have violated the statute; it merely stated that the county had a statutory duty to at least
4 allocate the 50%. 115 Idaho at 89-90.

5
6 In reality, there is no law that states the 50% allocation of tax revenues required by I.C. §40-
7 801(a) are the sole funds available for a City to maintain its roads. The issue in this case is not an
8 ephemeral academic argument. The practical reality is that the District needed to avoid an election that
9 would have dissolved it. The City needed funds to maintain its streets and the District was not doing its
10 job. To avoid the election, the District devised a court approved settlement to set out how it would meet
11 its statutory duty to maintain City roads. The District agreed to divide its total revenue from the
12 taxpayers by disbursing to the City the funds paid City taxpayers, but not a dime more. This is
13 significant because the District's legal obligation is to maintain all of the roads within its jurisdiction,
14 including the City's roads. See, Sandpoint I, supra. The 50% disbursement to the City required by IC
15 §40-801 does not absolve the District of its obligations to City streets. Rhetorically it can be asked, is
16 the District arguing it has no financial obligation to the City because of the mandatory disbursement
17 required by I.C. §40-801(a)? Taking the District's argument to a logical conclusion; if the City did not
18 spend its apportioned funds on roads, or the amount was inadequate, then it would be the City's tough
19 luck as the District would have no further financial responsibility to maintain City roads. The District's
20 argument is circular and not supported by the law. There is certainly no law to suggest that the District
21 and City are prohibited from capping what will be divided from District revenue to the District, or
22 memorializing the cap on the division in a joint powers agreement. The JPA does not violate IC §40-
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1 801 by apportioning funds greater than 50% to the City, it merely establishes the respective
2 responsibilities of the parties to fix the roads and write the check.

3 **4.2 The Joint Powers Agreement did not create an "indebtedness."**

4 This case does not involve a debt. This case is about how the District has agreed to "divide" the
5 funds it statutorily has available annually to meet its statutory duty to maintain the streets in its
6 boundaries. Thus the District's constitutional argument about Article VIII §3 is based on a false
7 premise. Very simply, the District has the power to levy a tax. I.C. §40-801(a). If that levy is made
8 upon property within the limits of any incorporated city, 50% of the funds are apportioned to that
9 incorporated city. The District has no control over those funds. *Id.* As to the balance of the revenue
10 raised from the total District wide taxes, the District agreed it would divide from its funds any money
11 received from the City taxpayer and disburse it to the City, but no more. The levy is a burden on all the
12 taxpayers in the District. The levy amount can freely change as circumstances change. The amount can
13 be up, or it can go down. (Aff. of S. Syth, ¶6) This case is not about a fixed amount the District must
14 pay annually in perpetuity. This case is about dividing an annual pot of money and who is going to
15 write the check from that pot of money to fix the roads in Sandpoint, Idaho. The parties agreed ten (10)
16 years ago in a Court approved agreement how the revenue would be **divided** to maintain the streets of
17 Sandpoint. That is not a debt.

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19
20 The District's argument that this case is about indebtedness is pure sophistry. The JPA does not
21 create an ongoing indebtedness or liability for the District. The periodic disbursements to the City are
22 based solely upon revenues raised by law to maintain highways. The amount divided to the City is not
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1 contingent upon receiving appropriations from the legislative process as contemplated by the Idaho
2 Constitution when referencing indebtedness.¹

3 The fact the disbursement is not a debt is easily seen when comparing the JPA disbursement to a
4 municipal bond. A bond is for a fixed term. It is for a fixed amount. It has a fixed interest rate. It has a
5 fixed date for interest payments. It has provisions for security that will pay the precise amount
6 bargained for even if there is a short fall in tax revenue. That is a debt.
7

8 Here, the District has the statutory duty to maintain the roads within its jurisdiction. The District
9 argues this is a "liability" it has incurred. Defendant's Memorandum, p. 5. Maintaining the roads of
10 the City of Sandpoint is not a "debt" or "liability", it is an obligation set out as the sole purpose of the
11 District. I.C. §40-801. How the District spends its revenue to meet the statutory duty is its business and
12 the legislature has left it to the District to do such. The District has already agreed how it will fulfill that
13 duty in the best interests of the City taxpayers. It signed a JPA with the City.
14

15 Article VIII §3 of the Idaho Constitution prohibits municipal governments, including cities and
16 other subdivisions of the state, from incurring indebtedness or liability exceeding that year's revenues
17 without a two-thirds approval by the voters. The purpose of the section is "to prevent local government
18 entities from incurring debts without approval from the voters and a clear plan to retire those debts."
19 City of Boise v. Frazier, 143 Idaho 1, 3, 137 P.3d 388 (2006); Taxpayers for Improving Pub. Safety v.
20 Schwarzenegger, 172 Cal. App. 4th 749, 761, 91 Cal. Rptr. 3d 370, 377 (2009). Idaho's limitation on
21 indebtedness was modeled after California's constitution. Frazier, 143 Idaho at 3. California courts
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23
24 ¹ If District contends that the JPA creates an ongoing indebtedness by virtue of regular division of its revenue given to the
25 City, it must similarly contend that I.C. §40-801, which requires a 50% remittance to the City, is an unconstitutional "debt".
26 The District 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.

1 have declared that the provision is intended "to prohibit the accumulation of public debt without the
2 consent of the taxpayers, and require governmental agencies to carry on their operations on a cash
3 basis." In re S. Humboldt Cmty. Healthcare Dist., 254 B.R. 758, 760 (Bankr. N.D. Cal. 2000).

4 The Idaho Supreme Court declared long ago that a municipality does not violate the
5 constitutional prohibition on indebtedness when it pays expenses out of the revenue for that year. Ball
6 v. Bannock County, 5 Idaho 602, 51 P. 454, 455 (1897). Here, the District's disbursement to the City
7 pursuant to the JPA are limited to a portion of that year's revenues, as no disbursement will ever require
8 funds beyond what District has already collected. This is in accord with the concept that "[a] sum
9 payable upon a contingency is not a debt, nor does it become a debt until the contingency happens." In
10 re Quantification Settlement Agreement Cases, 201 Cal. App. 4th 758, 807, reh'g denied (Jan. 4, 2012),
11 review denied (Mar. 14, 2012), cert. denied, 133 S. Ct. 312 (U.S. 2012) (quoting Doland v.
12 Clark, 143 Cal. 176, 181, 76 P. 958 (1904)). In In re Quantification Settlement Agreement Cases, the
13 court determined that "the state's commitment in the Joint Powers Agreement to pay the excess
14 mitigation costs does not violate Section 1, Article XVI of the California Constitution because the state's
15 commitment is contingent on there being excess mitigation costs, and a contingent obligation does not
16 qualify as a 'debt' or 'liability' within the meaning of" California's constitutional limit on debt.
17 201 Cal.App. 4th at 807.

18 The District cites to Frazier; Feil v. City of Coeur d'Alene, 23 Idaho 32, 129 P. 643 (1912);
19 Miller v. City of Buhl, 48 Idaho 668, 284 P. 843 (1930); and City of Idaho Falls v. Fuhrman, 149 Idaho
20 574, 237 P.3d 1200 (2010), to demonstrate the constitutional prohibition on indebtedness. However,
21 these examples are inapplicable to this case, as they all deal with municipal **purchases** of systems or
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1 goods from private parties that necessarily require the municipality to incur liabilities beyond the current
2 year and for which the municipality would be liable from its general revenues. In Feil, the City of Coeur
3 d'Alene incurred indebtedness by purchasing a water system and issuing bonds payable over 20 years,
4 paid for by revenues from the water system. 149 P. at 649-50. Buhl dealt with a contract for the
5 purchase of an electrical generating system, paid for by the receipts from the sale of power and light.
6 284 P. at 843. Fuhriman involved a power purchase JPA, by which the City of Idaho Falls would
7 purchase power and energy from BPA over a 17-year period and would, upon certain events, require
8 Idaho Falls to post cash or a letter of credit to secure its payment obligations. 149 Idaho at 576. And
9 Frazier dealt with an JPA for the expansion of an airport's parking facilities. 143 Idaho at 2. None of
10 these cases involve a situation analogous to the facts at hand.
11

12 In contrast, this case deals only with contingent periodic disbursements from the District to fulfill
13 its statutory duty to maintain City roads. Construction and maintenance of roads by statute is the only
14 reason the District has the power to levy taxes. By its terms, the JPA simply requires District to
15 "forward to the City all tax revenues received by the District collected from properties within the
16 [c]ity..." (Complaint, Ex. B) A debt is "an 'unconditional promise to pay a fixed sum at some specified
17 time, and is quite different from a contract to be performed in the future, depending upon a condition
18 precedent, which may never be performed, and which cannot ripen into a debt until performed." 15
19 McQuillin Mun. Corp. §41:17 (3d ed.). "If an obligation is payable out of a special fund only, and the
20 municipality is not otherwise liable, it is generally held that there is no indebtedness." 15 McQuillin
21 Mun. Corp. §41:30 (3d ed.) (citing U.S. v. City of Charleston, 149 F. Supp. 866 (S.D.W.Va. 1957); Law
22 Offices of Cary L. Lapidus v. City of Wasco, 114 Cal.App. 4th 1361, 8 Cal. Rptr. 3d 680 (1st Dist.), rev.
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1 den., (2004)). Specifically, moneys to be paid out of the existence of a future contingent fund, and not
2 from general city funds, are not considered debt, and not prohibited by the Constitution. Id. at 1368.
3 See also, Homebuilders Assoc. v. Kansas City, 431 S.W.2d 111(Mo. 1968) (contract for reimbursement
4 from revenues derived from water main extension were not unconstitutional debts); 15 McQuillin Mun.
5 Corp. §41:22 (2013) (merely incurring contingent future liability does not create an indebtedness, a
6 contract to pay a fixed price annually, where contingent on the supply furnished, does not create an
7 indebtedness).
8

9 In this case, the District's disbursement to the City is akin to a special or contingent fund, as the
10 District is not otherwise liable to pay City any fixed amount at any point; the District's disbursement
11 amount is entirely conditioned by its collection of taxes on properties within the city. As shown by the
12 Affidavit of Ms. Syth, in fact the amount varies each year. As in Lapidus, the District's promise to
13 disburse tax revenues to the City does not "place a charge upon the general funds of the City, nor create
14 a situation in which future taxpayers might be strapped with obligations incurred by a prior
15 administration without the ability to meet those obligations or the necessary voter approval." Id.
16 (citations omitted). The JPA is no more than an agreed division of funds from tax levies; if no funds are
17 collected, no obligation exists. Taxes levied on property within a city are generally not part of its
18 indebtedness. 15 McQuillin Mun. Corp. §41:17. The JPA is simply what the stipulation states it is; an
19 agreement on the division of revenue. That is not a debt.
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22 **4.3 The JPA provides for an appropriate method of termination— that is, by the Parties'**
23 **mutual asset.**

24 Idaho's Joint Powers Act ("Act") authorizes the type of JPA entered into between the City and
25 the District. I.C. §67-2326, et seq. The Act authorizes municipal agencies to share responsibilities by
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1 joint agreement. The purpose of the Act is "to make the most efficient use of [public agencies'] powers
2 by enabling them to cooperate to their mutual advantage." I.C. §67-2326. The JPA is to implement the
3 "permanent policy" of the State. The District's contention that the JPA is void for want of an effective
4 termination clause is misguided. I.C. § 67-2328 requires, "Any such agreement shall specify the
5 following: (1) Its duration." The plain meaning of the statute does not require duration of a specific
6 number of months or years. The JPA satisfies the Act's duration requirement by providing express terms
7 of the JPA's duration, and an additional vehicle for its termination upon certain dissolving acts. The
8 Parties did not leave any room for ambiguity when they mutually agreed on the JPA term to meet the
9 mutual obligation to maintain City streets:
10

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

14 (Complaint, Ex. B) The JPA further provides:

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

18 (Complaint, Ex. B)

19 The District's cites cases involving agreements lacking any term of duration. This is not the case
20 here, where the parties specifically provided for the JPA's duration – in perpetuity or by mutual
21 amendment or termination. In fact, Courts have held that a definite term of duration in perpetuity is not
22 the same as an "indefinite" duration. Bell v. Leven, 120 Nev. 388, 391, 90 P.3d 1286 (2004); Southern
23 Wine and Spirits of Nevada v. Mountain Valley Spring Company, LLC, 646 F.3d 526, 532 (8th Cir.
24 2011). In both Bell and Southern Wine, the courts held that the parties contemplated the duration of
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1 their relationship – in perpetuity – and that those definite terms should be enforced according to their
2 terms.

3 The District argues that because I.C. §67-2328(5) requires a method(s) to be employed “in
4 accomplishing the partial or complete termination of the agreement” this language should be read by the
5 Court to mean a joint powers agreement cannot continue in perpetuity. The statute does not say that.
6 The District also says there is no method of termination. Again, the District is wrong: the method is
7 mutual agreement. The District builds its argument that “the JPA is an illegal in perpetuity agreement”
8 by citing to Barton v. State, 104 Idaho 338, 659 P.2d 92 (1983), and several other cases for the
9 proposition that “Idaho courts hold perpetuity clauses such as the one in the JPA to be illegal in violation
10 of public policy.” (Brief in Supp. of Motion to Dismiss at 13) These cases are not apposite to the facts
11 of this case, as they deal exclusively with state permits to private parties “to erect or maintain a
12 permanent obstruction in a public street, or convey the street or rights to the street to a private person...”
13 Barton, 104 Idaho at 340. Barton is particularly distinguishable, as the court there was asked to **infer** an
14 intent for the state to be perpetually bound by a purported JPA. Id. The court declined to imply such a
15 term. Id. “Absent clear manifestation to be perpetually bound, [the court] will not infer such intent.
16 Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual
17 is disfavored.” Id. Here, the JPA expresses in no uncertain terms that its duration is to be perpetual, or
18 until mutually amended or terminated. Nothing about the term is ambiguous or violative of public
19 policy. Contra, the JPA advances the permanent public policy of improving highways. I.C. §40-201.
20 The Parties manifested a clear understanding that the JPA would exist permanently absent mutual
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1 agreement to terminate, dissolution of District, or attempt by the City to dissolve the District. This
2 Court must give effect to the Parties' intent and allow the duration clause to stand.

3 Other states addressing the issue have also ruled contrary to the District's argument. For
4 example: A contract that "provide[s] for termination or cancellation upon the occurrence of a specified
5 event" is not void as a perpetual contract or terminable at will. Payroll Express Corp. v. Aetna Cas. &
6 Sur. Co., 659 F.2d 285, 291 (2d Cir.1981) (applying New York law); see Nicholas Labs. Ltd. v. Almay,
7 Inc., 900 F.2d 19, 21 (2d Cir.1990) (applying New York law); First Commodity Traders, Inc. v. Heinold
8 Commodities, Inc., 766 F.2d 1007, 1012 (7th Cir.1985) (applying Illinois law); Southern Hous.
9 Partnerships, Inc. v. Stowers Management Co., 494 So.2d 44, 47-48 (Ala.1986); G.M. Abodeely Ins.
10 Agency, Inc. v. Commerce Ins. Co., 41 Mass.App.Ct. 274, 669 N.E.2d 787, 789-90 (1996). The specific
11 event which allows termination can include a breach by a party of a term of the contract. See, First
12 Commodity Traders, 766 F.2d at 1012; Payroll Express, 659 F.2d at 292. Ross-Simons of Warwick,
13 Inc. v. Baccarat, Inc. 182 F.R.D. 386, 395 (D.R.I.,1998)

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15
16 Arguendo, the District's position were correct, the remedy should be to give effect to the
17 remainder of the JPA. The JPA has a severability clause, which would keep enforceable the distribution
18 scheme and the remainder of the JPA even if the duration clause is limited to mutual termination.
19 (Complaint, Ex. B) This would be consistent with the intentions of the parties stated in the Stipulation
20 that, "[S]aid joint powers agreement is intended to be a permanent resolution subject to termination only
21 by mutual agreement of both parties". (Complaint, Ex. A, p. 4, ¶2) Factually, the parties have already
22 relied upon the custom of using mutual agreement to amend the JPA. For example, see the mutual
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1 agreement of 2005 between the District and the City which resolved questions related to the vacating of
2 streets. (Complaint, Ex. C)

3 The JPA's duration clause should be found sufficient or limited to termination by mutual
4 agreement.

5
6 **4.4 The JPA is supported by adequate consideration; the Parties intended for the**
7 **original terms of the JPA to provide sufficient mutual consideration for the duration**
8 **of the JPA.**

9 As its last "shot gunned" justification for not honoring its obligation, the District contends that
10 the City must provide new consideration "for each budget year" in return for the District's compliance
11 with the JPA. This is, under any other circumstances, a mugging. It is basic common sense that a party
12 cannot enter into a settlement, the terms of which call for a statutorily-authorized joint powers
13 agreement to effect a statutory policy, and then demand ten (10) years after the fact additional
14 consideration for each subsequent year.

15 The JPA is the result of the Parties' Stipulation for Settlement ("Settlement"), entered into July 3,
16 2003. (Complaint, Ex. A) By its terms, the Settlement grants the City jurisdiction over city streets,
17 requires the formation of a the JPA, compels the City to vacate its petition for a dissolution election,
18 requires dismissal of the civil case with prejudice, requires the City to not oppose future annexation
19 elections sought by the District, and stipulates that the District waives costs awarded on appeal by the
20 Idaho Supreme Court in Docket No. 27441. (Complaint, Ex. A)

21
22 The JPA itself recited mutual consideration. (Complaint, Ex. B) The Stipulation was entered in
23 Sandpoint II, and referred to Sandpoint III as a "companion case"; the Stipulation ended all continued
24 litigation. The City agreed to cap its maintenance needs from the District to the amount paid by its
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1 taxpayers. The City has refrained from objecting to the expansion of the District, which is significant.
2 If the JPA obligation were to be voided, then the City taxpayers would be faced with the obligation to
3 fund roads in a much wider geographical area, but with a lesser tax base. In other words, the City would
4 get less service for its tax dollar today than it would have received if annexations had been successfully
5 resisted in years past. The argument of no consideration is not only misplaced, it is just plain not fair.
6

7 "[T]he settlement of a bona fide dispute or controversy is the consideration for a compromise or
8 settlement, rather than any question as to the amount actually due or owing from one to another. It is the
9 settlement of the bona fide controversy, differences, or claims of the parties which forms the
10 consideration for the new contract terminating the parties' former transactions." Moran v. Copeman,
11 55 Idaho 785, 47 P.2d 920, 922 (1935). The North Carolina Court of Appeals summarized this point
12 well: "The real consideration is not found in the parties sacrifice of rights, but in the bare fact that they
13 have settled the dispute." Knight Pub. Co., Inc. v. Chase Manhattan Bank, N.A., 131 N.C. App. 257,
14 262, 506 S.E.2d 728, 731 (1998).
15

16 This Court approved the Settlement. The Idaho Court of Appeals recently held that a settlement,
17 the terms of which are incorporated into a court order, does not need additional consideration to be
18 effective. Davidson v. Soelberg, 154 Idaho 227, 296 P.3d 433, 438 (Ct. App. 2013). The same rationale
19 should apply here, where the Parties provided mutual consideration in the Settlement, a part of which
20 was the exercise of their rights under I.C. §67-2326, et seq.
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22 Additionally, mutual benefit and consideration are inherent in the nature of a joint powers
23 agreement. As noted above, the purpose of the Act is "to make the most efficient use of [public
24 agencies'] powers by enabling them to cooperate to their mutual advantage." I.C. §67-2326. The Act
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1 specifically authorizes public agencies to agree to "joint or cooperative action." I.C. §67-2328(b). The
2 JPA, by its terms, its incorporation into the Settlement, and the underlying policy of joint powers JPAs,
3 is supported by adequate consideration.

4 **4.5 The District is estopped from taking a position inconsistent with its act of entering**
5 **into the Joint Powers Agreement.**

6 The District is taking a position contrary to which it agreed when it entered into the JPA, and
7 consented to this Court's Order. It was the Court's dismissal based on the stipulation that permitted the
8 JPA. As a matter of equity, the District is either judicially estopped from reversing its position taken in
9 open court, or is equitably estopped from harming the City by reversing its position. The doctrine of
10 estoppel may be used against a highway district to prevent it from taking a position inconsistent with
11 previous actions, in order to prevent manifest injustice; the Supreme Court approved this very legal
12 principal in Sandpoint I, 126 Idaho at 151. See also, Murtaugh Highway Dist. v. Twin Falls Highway
13 Dist., 65 Idaho 260, 268, 142 P.2d 579 (1943).

14 **4.5.1 The District is judicially estopped from reversing its position on the**
15 **stipulated settlement which the court approved.**

16 Judicial estoppel precludes a party from advantageously taking one position, then subsequently
17 offering a second position that is incompatible with the first. Hoagland v. Ada County, 154 Idaho 900,
18 303 P.3d 587, 599 (2013). Judicial estoppel is an equitable doctrine which exists to protect the dignity
19 of judicial process, and is invoked by the court at its discretion. Id. Generally, when a litigant obtains a
20 judgment, advantage, or consideration from one party, he will not thereafter be permitted to repudiate
21 such by means of inconsistent and contrary allegations or testimony to obtain a recovery or a right
22 against another party arising out of the same transaction or subject matter. Indian Springs, LLC v.
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1 Indian Springs Land Investment, LLC, 147 Idaho 737, 748, 215 P.3d 457 (2009). The doctrine is
2 intended to prevent parties from playing "fast and loose" with the legal system. Id.

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

16 Just as in Hoagland and Buckskin, the District here made specific representations to this Court in
17 the filed stipulated settlement, which included by its nature counsel's representation that the agreements
18 were legal, and a proper basis for the Court's Order of Dismissal. I.R.C.P. 11(a)(1) The District now
19 seeks to repudiate all of the terms of the stipulation, including the JPA. The court should exercise its
20 discretion to prevent the District from asserting the invalidity of the JPA, which was the basis for this
21 Court to dismiss the City of Sandpoint's action in Sandpoint II, and rendered moot the election to
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1 dissolve that was permitted by Sandpoint III. In the Stipulation on which the dismissal was based, the
2 District represented that the interests of the taxpayer and road users would best be served by a
3 continuation of the arrangement in which the City maintained the streets within its boundary, that the
4 District would maintain all streets outside the City but within the District boundaries, and the District
5 capped its obligation to the City by disbursing 100% of the tax revenues to the City for that purpose; the
6 JPA was to be executed memorializing these agreements. The parties also stipulated that continued
7 litigation on the dissolution action would be costly and not in the best interests of the public, and the
8 court dismissed based on that Stipulation. These are significant representations the District should not
9 now be allowed to abandon.

11 Now, the District has begun to withhold funds, claiming that the JPA is not valid or enforceable.
12 This is clearly an inconsistent position to the one taken before this Court that was enunciated solely to
13 halt the dissolution election. To preserve the integrity of the system, the District should be judicially
14 estopped from pursuing a completely contrary position which it took before this Court. Otherwise, this
15 Court is basically been used as a tool for deceptive conduct by the District in agreeing to a contract in
16 order to avoid continued litigation, and representing as much to the court, and now disclaiming any
17 enforceability of such contract when the risk of dissolution or litigation appears to be past.

19 **4.5.2 The District should also be equitably estopped from claiming that the JPA is**
20 **unenforceable.**

21 Equitable estoppel requires “that the offending party must have gained some advantage or caused
22 a disadvantage to the party seeking estoppel; induced the party seeking estoppel to change its position to
23 its detriment; and it must be unconscionable to allow the offending party to maintain a position which is
24 inconsistent from a position from which it has already derived a benefit.” Sandpoint I, 126 Idaho at 151.
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1 In its motion, the District claims, "Th[e] statutory 50/50 distribution ratio is mandatory...Local
2 governmental agencies do not have discretion to violate the express terms of this statute by agreeing to
3 some other tax distribution ratio..." Brief in Supp. of Motion to Dismiss at 11. The District also claims
4 specific terms of the JPA render it unenforceable, and claims it is overall unconstitutional. This position
5 is entirely inconsistent with District's act of entering into the Stipulation and the JPA. The District
6 obtained the advantage and benefit of avoiding litigation that would have resulted in an election likely to
7 dissolve the District. It agreed to provide a specific apportionment of taxes pursuant to a JPA to avoid
8 that result. It induced the City to forego that dissolution election and agree not to block any additional
9 annexation by the District. The District devised the benefit of the JPA for ten (10) yeas and it is now
10 unconscionable to allow it to repudiate its prior position. See, Sandpoint I, supra.
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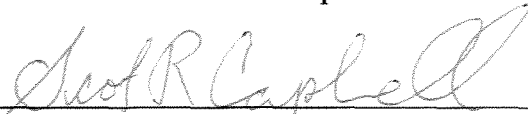
13 **5. CONCLUSION**

14 For the foregoing reasons, District's motion to dismiss for failure to state a claim should be
15 denied. The Court is asked to enter an order in a form to be submitted to chambers.

16 DATED this 7th day of November, 2013.

17 

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21 

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STATE OF IDAHO
County of Bonner
FILED 07/11/03
AT 4:00 O'Clock P.M.
CLERK, DISTRICT COURT
Jm

**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

**ORDER APPROVING
STIPULATION FOR SETTLEMENT
AND DISMISSING CASE**

The Idaho Supreme Court having entered Remittitur to this Court on
June 26, 2003 and the parties having thereafter filed with this Court a
Stipulation for Settlement, now therefore,

IT IS HEREBY ORDERED that the Stipulation for Settlement filed
herein be, and it is hereby, approved.

**ORDER APPROVING STIPULATION
FOR SETTLEMENT**

IT IS FURTHER ORDERED that this case be, and it is hereby, dismissed with prejudice with each party to bear its own costs and attorney's fees.

Dated this 11 day of July, 2003.

/s/ JOHN T. MITCHELL

DISTRICT JUDGE

CLERK'S CERTIFICATE OF MAILING

I hereby certify that on this 11 day of July, 2003, I served by mail or facsimile true copies of the above document upon the following:

BRUCE GREENE
ATTORNEY AT LAW
320 N. 2ND AVENUE
SANDPOINT, IDAHO 83864

SCOTT W. REED
ATTORNEY AT LAW
P. O. BOX A
COEUR D'ALENE, IDAHO 83816

Joan Hollings
Deputy Clerk

ORDER APPROVING STIPULATION
FOR SETTLEMENT

STATE OF IDAHO *Bonner*
COUNTY OF *BONNER*
FILED: *11/7/13*

AT *5:00* O'CLOCK P.M.
CLERK, DISTRICT COURT
John Hansen
DEPUTY

for Gretchen Handrucks

1 SCOT R. CAMPBELL, ISB 4121
2 SANDPOINT CITY ATTORNEY
3 1123 Lake Street
4 Sandpoint, Idaho 83864
5 Telephone: (208) 263-0534
6 Facsimile: (208) 255-1368
7 scampbell@ci.sandpoint.id.us

8 C. MATTHEW ANDERSEN, ISB No. 3581
9 WINSTON & CASHATT, LAWYERS, a
10 Professional Service Corporation
11 250 Northwest Boulevard, Suite 206
12 Coeur d'Alene, Idaho 83814
13 Telephone: (208) 667-2103
14 Facsimile: (208) 765-2121
15 cma@winstoncashatt.com

16 Attorneys for City of Sandpoint

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

19 CITY OF SANDPOINT, a municipal
20 corporation of the State of Idaho,
21
22 Plaintiff,

Case No. CV-13-01342

AFFIDAVIT OF SCOT R. CAMPBELL

23 vs.

24 INDEPENDENT HIGHWAY DISTRICT, a
25 political subdivision of the State of Idaho,
26
27 Defendant.

28 STATE OF IDAHO)
29 :ss
30 County of Bonner)

31 I, SCOT R. CAMPBELL, being first duly sworn on oath, say:

32 1. I am the City Attorney for the City of Sandpoint, Idaho.

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

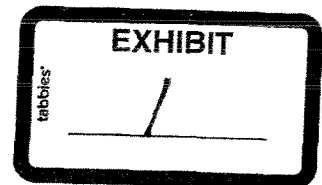
VIA FACSIMILE ONLY TO 263-3678

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.



10120 BRUCE H. GREENE, P.A. 205 255 2401 P.02

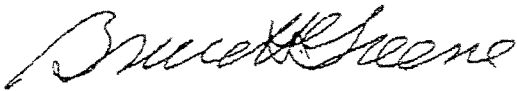
City of Sandpoint
Attn: Mayor Ray Miller
June 24, 2003
Page 2

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
Counsel for SIHD

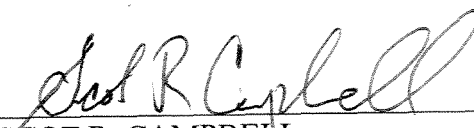
BHG/bw
cc: SIHD

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I hereby certify that I caused a true and complete copy of the foregoing to be mailed, postage prepaid; hand delivered; sent via ~~facsimile~~ on November 7th, 2013, to:
email

David R. Wynkoop
Sherer & Wynkoop, LLP *dwynkooplaw@gmail.com*
730 N. Main Street
P.O. Box 31
Meridian, ID 83680

Susan P. Weeks
James, Vernon & Weeks, P.A. *sweeks@jvwlaw.net*
1626 Lincoln Way
Coeur d'Alene, ID 83814



SCOT R. CAMPBELL

STATE OF IDAHO *Bonner*
 COUNTY OF BONNER
 FILED: 11/7/13
 AT 3:00 O'CLOCK P.M.
 CLERK, DISTRICT COURT
[Signature]
 DEPUTY
[Signature]

1 SCOT R. CAMPBELL, ISB 4121
 SANDPOINT CITY ATTORNEY
 2 1123 Lake Street
 Sandpoint, Idaho 83864
 3 Telephone: (208) 263-0534
 4 Facsimile: (208) 255-1368
scampbell@ci.sandpoint.id.us

5
 6 C. MATTHEW ANDERSEN, ISB No. 3581
 WINSTON & CASHATT, LAWYERS, a
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 7 250 Northwest Boulevard, Suite 206
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 Telephone: (208) 667-2103
 9 Facsimile: (208) 765-2121
cma@winstoncashatt.com

10
 11 Attorneys for City of Sandpoint

12
 13
 14 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
 OF IDAHO, IN AND FOR THE COUNTY OF BONNER

15
 16 CITY OF SANDPOINT, a municipal
 corporation of the State of Idaho,
 17
 Plaintiff,
 18
 vs.
 19
 20 INDEPENDENT HIGHWAY DISTRICT, a
 political subdivision of the State of Idaho,
 21
 Defendant.

Case No. CV-13-01342
 AFFIDAVIT OF SHANNON SYTH

22
 23 STATE OF IDAHO)
 :ss
 24 County of Bonner)

25 I, SHANNON SYTH, being first duly sworn on oath, say:
 26

1 1. I am the Treasurer and Finance Director for the City of Sandpoint. I have served in this
2 position since March 2002.

3 2. As part of my responsibilities I am the custodian of the financial records of the City of
4 Sandpoint.

5 3. As part of my responsibilities I am charged with the verification of amounts paid
6 annually by the taxpayers of Sandpoint for assessments related to the operation, maintenance and snow
7 removal for the City's streets.

8 4. The City of Sandpoint lies within the boundaries of the Independent Highway District.
9 The boundary covers a wider area than the City.

10 5. The Independent Highway District is responsible for setting the annual budget for
11 maintenance, operations and snow removal within its boundaries, which is directly related to tax rates.

12 6. The total tax paid in a given year fluctuates due to the changing budgets set by the
13 Independent Highway District. The City of Sandpoint receives funds for the operation, including snow
14 removal, and maintenance of its streets principally from two sources. First, like all other cities in the
15 state, the County is required by law to forward to the City of Sandpoint 50% of the funds collected from
16 the taxpayers of the City. The balances of the collected funds are paid to the Independent Highway
17 District. Second, to meet its statutory duty for road maintenance within its boundaries, since the last
18 quarter of 2003, the District has disbursed to the City the remaining portion of revenue allocated to it
19 from City taxpayers. By the terms of the negotiated settlement, the sum paid is a cap on the amount the
20 District contributes to the operation, maintenance and snow removal of the city streets.

21 7. I maintain the City of Sandpoint's records of the total amounts disbursed each year to the
22 City of Sandpoint for the operation, maintenance and snow removal for its streets.

23 8. Attached as Exhibit 2 is a true and correct summary of the total amounts disbursed each
24 year since 2003 property tax collections from the Independent Highway District to the City. The
25 amount disbursed varies each year due to the vagaries affecting the tax collecting from the taxpayers in
26 the City. In addition, when there is a delinquent payment made, there is a disbursement for that

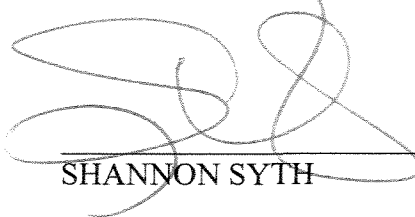
1 amount. Exhibit 2 reports for each fiscal year from 2003 to the present by quarter the total prior year's
2 disbursement from the Independent Highway District. In addition, it reports any prior year delinquent
3 taxes that have been collected and disbursed. Further, the exhibit reports only major items of
4 expenditure from the City Street Department's budget made for that fiscal year in reliance on the funds
5 received. The total Street Department budget is not shown on this report.

6 9. All funds disbursed to the City for operations, maintenance and snow removal go into a
7 restricted account for the Street Department. The funds are used only for the specific purpose of
8 operation, maintenance and snow removal.

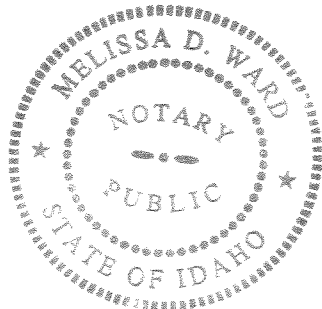
9 10. Over the years, the City has expended the funds for such items specifically listed in
10 Exhibit 1 directly related to operations, maintenance and snow removal.


11 11. In reliance on the disbursement made by the Independent Highway District, the City has
12 expended funds and incurred obligations for services, equipment, maintenance, personnel, created a
13 management structure and dedicates oversight at great expenditure of time and money all to operate,
14 maintain and remove snow in the best interests of the City.

15 12. The City of Sandpoint anticipates that the imminent start of snow season will bring with
16 it dangerous road conditions caused by accumulated ice and snow. Removal could be impeded if the
17 Independent Highway District continues to withhold tax funds.

18
19
20
21 
SHANNON SYTH

22 SUBSCRIBED AND SWORN to before me this 7th day of November, 2013.




Notary Public in and for the State of Idaho
Residing at Bonner County, ID
My appointment expires: 12/28/2015

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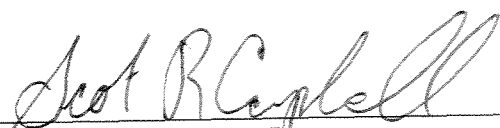
I hereby certify that I caused a true and complete copy of the foregoing to be mailed, postage prepaid; hand delivered; sent via ~~facsimile~~ ^{email} on November 7, 2013, to:

David R. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main Street
P.O. Box 31
Meridian, ID 83680

dwynkooplaw@gmail.com

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

sweeks@jrwlaw.net



SCOT R. CAMPBELL

EXHIBIT 2

Fiscal Year October 1 through the following September 30th
 Qtr = quarters in which property taxes were collected by the County

City of Sandpoint
 Finance Department
 SIHD Revenue Receipt History

FY2013

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003					-	162,943	Asphalt Overlay
2004					-	31,266	Snow Removal
2005					-	13,985	N Sandpoint pathway
2006					-	75,462	Boyer Infrastructure
2007					-	1,000	Main Street
2008		1.20			1.20	4,348	Selkirk Loop int grnt match
2009	714.09	865.82			1,579.91	5,794	Schweitzer cutoff
2010	389.38	223.44			612.82	64,384	Skidsteer/2013 GMC
2011	2,462.07	1,041.70			3,503.77		
2012	193,152.99	9,750.82			202,903.81		
Total	196,718.53	11,882.98	-	-	208,601.51	359,182	

FUNDS WITHHELD
 BY IHD

FY2012

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
Adjustment				427.90	427.90	202,428	Asphalt Overlay
2003					0.00	37,917	Snow Removal
2004					0.00	16,334	Boyer to Division
2005					0.00	46,652	Selkirk loop int Ctr match
2006					0.00	350,564	Washington St
2007				6.50	6.50	1,612	Schweitzer cutoff
2008	1,085.53	117.37	812.18	88.88	2103.96		
2009	387.27	481.87	1,378.05	344.62	2591.81		
2010	3,358.48	1,401.73	1,637.26	382.19	6779.66		
2011	176,897.00	14,204.76	131,278.77	4,424.23	326804.76		
2012							
Total	181,728.28	16,205.73	135,106.26	5,674.32	338,714.59	655,507.00	

FY2011

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003					-	134,745	Asphalt Overlay
2004					-	40,305	Snow Removal
2005					-	9,367	Boyer to Division
2006			0.35		0.35	26,377	Seal coat
2007	341.93	464.50	348.04		1,154.47	467,119	Washington St
2008	397.63	573.64	1,902.01	264.51	3,137.79	4,767	Schweitzer cutoff
2009	2,372.24	1,397.58	992.41	355.34	5,117.57		
2010	172,845.57	12,542.26	130,442.67	3,291.21	319,121.71		
2011					-		
2012					-		
Total	175,957.37	14,977.98	133,685.48	3,911.06	328,531.89	682,680	

Fiscal Year October 1 through the following September 30th
 Qtr = quarters in which property taxes were collected by the County

FY2010

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb,March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	4.24				4.24	137,366	Asphalt Overlay
2004					-	15,863	Snow Removal
2005			31.13		31.13	232,064	Pine st Rebuild
2006	283.78	160.19	71.57		515.54	4,352	Schweitzer cutoff
2007	998.41	613.52	1,264.28	431.42	3,307.63		
2008	3,759.28	1,413.40	1,201.41	812.23	7,186.32		
2009	167,602.57	15,957.84	126,049.58	7,435.68	317,045.67		
2010					-		
2011					-		
2012							
Total	172,648.28	18,144.95	128,617.97	8,679.33	328,090.53	389,645	

FY2009

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb,March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	55.27	-	4.83	-	60.10	268,552	Asphalt Overlay
2004	42.74	2.09	-	0.57	45.40	102,489	Snow Removal
2005	710.78	59.11	538.57	1.19	1,309.65	8,000	Schweitzer cutoff
2006	481.25	142.60	810.46	214.14	1,648.45		
2007	4,606.13	1,029.52	835.22	386.62	6,857.49		
2008	165,351.61	10,331.88	121,636.59	3,352.66	300,672.74		
2009					-		
2010					-		
2011					-		
2012					-		
Total	171,247.78	11,565.20	123,825.67	3,955.18	310,593.83	379,041	

FY2008

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb,March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	0.38	1.40	1.22		3.00	336,505.00	Asphalt Overlay
2004	286.36	82.90	28.81	11.72	409.79	2,230	Schweitzer cutoff
2005	329.23	472.66	538.23	245.65	1,585.77		
2006	599.50	1,163.82	921.50	406.48	3,091.30		
2007	136,182.53	7,149.08	140,705.66	5,394.57	289,431.84		
2008					-		
2009					-		
2010					-		
2011					-		
2012					-		
Total	137,398.00	8,869.86	142,195.42	6,058.42	294,521.70	338,734.63	

FY2007

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	192.03	452.43	-	1.79	646.25	202,729	Asphalt Overlay
2004	256.21	264.99	1,043.18	133.32	1,697.70	18,030	Dover bike path
2005	2,885.21	1,332.69	782.39	17,982.25	22,982.54	42,415	Snow Removal
2006	142,962.05	7,081.22	105,336.81	3,176.12	258,556.20	71,250	Ella Boyer Sealcoat
2007					-	6,178	Schweitzer cutoff
2008					-		
2009					-		
2010					-		
2011					-		
2012					-		
Total	146,295.50	9,131.33	107,162.38	21,293.48	283,882.69	340,602	

FY2006

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	221.40	254.68	527.07	76.32	1,079.47	109,535	Asphalt Overlay
2004	1,911.82	894.50	1,362.18	1,333.02	5,501.52	31,337	Ella Ave - Lake to Superior
2005	119,707.28	9,779.76	100,877.23	4,818.56	235,182.83	12,448	Snow Removal
2006					-	8,000	Sandcreek Ped Brdwlk
2007					-	6,198	Division St Bikepath
2008					-	85,238	Rotary snow blower/dump trk
2009					-	19,750	Ford F600
2010					-	4,085	Schweitzer cutoff
2011					-		
2012					-		
Total	121,840.50	10,928.94	102,766.48	6,227.90	241,763.82	276,591	

FY2005

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	(718.49)	108.45	670.70	2,020.14	2,080.80	12,500	Asphalt Overlay
2004	114,899.31	9,557.74	81,253.13	3,153.06	208,863.24	36,700	Sandcreek Ped Bdwlk
2005					-	18,584	Snow Removal
2006					-	2,800	Lincoln Ave
2007					-	12,500	CMAQ Flusher/deicer
2008					-	133,293	loader/snowblower
2009					-	10,000	Schweitzer cutoff
2010					-		
2011					-		
2012					-		
Total	114,180.82	9,666.19	81,923.83	5,173.20	210,944.04	226,377	

Fiscal Year October 1 through the following September 30th
 Qtr = quarters in which property taxes were collected by the County

City of Sandpoint
 Finance Department
 SIHD Revenue Receipt History

FY2004

Property Tax Year	1ST QTR Oct,Nov, Dec	2ND QTR Jan,Feb, March	3RD QTR April, May, Jun	4TH QTR July, Aug, Sept	FISCAL YEAR TOTALS	EXPENDITURES AMOUNT	EXPENDITURE PROJECTS
2003	107,053.37	8,742.96	80,763.22	4,045.51	200,605.06	100,730	Cedar St Overlay
2004						18,600	Asphalt Overlay
2005						31,283	Snow Removal
2006						14,000	Boyer ped bik path
2007						35,490	Sandcreek Bridge
2008						6,000	1/2 Lakeview sidewalk
2009							
2010							
2011							
2012							
Total	107,053.37	8,742.96	80,763.22	4,045.51	200,605.06	206,103	
GRAND TOTAL						2,746,249.66	

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2013 NOV 8 PM 1 52

CLERK DISTRICT COURT
DEPUTY

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
1626 LINCOLN WAY
COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
of the State of Idaho,)
)
Plaintiff,)
)
vs.)
)
INDEPENDENT HIGHWAY DISTRICT, a)
political subdivision of the State of Idaho,)
)
Defendant.)
_____)

CASE NO. CV 2013-01342
MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S
RESPONSE BRIEF AND
AFFIDAVITS

COMES NOW Independent Highway District ("District") by and through its attorneys
David E. Wynkoop of SHERER & WYNKOOP, LLP and Susan P. Weeks of JAMES, VERNON
& WEEKS, P.A. and hereby moves this Court for an order striking the Affidavit of Scot
Campbell, the Affidavit of Shannon Syth and those portions of Plaintiffs' Response Brief which

seek to introduce new evidence not contained in its Complaint, including but not limited to the references to affidavits and the exhibits attached to the affidavits.

A Motion to Dismiss based upon IRCP Rule 12(b) is based upon the allegations contained in Plaintiff's Complaint. *See Hellickson v Jenkins*, 118 Idaho 273, 796 P.2d 150 (Ct.App. 1990).

Rule 12(b) provides:

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

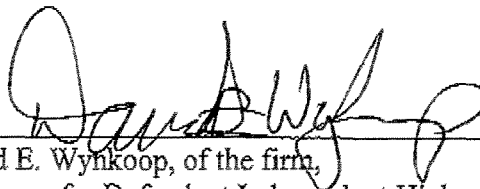
It is premature for this motion to be converted to a summary judgment motion since the parties have not yet conducted discovery to gather the facts. The parties may save the time and expense of discovery if the Court grants the Motion to Dismiss in part or in whole.

Accordingly, any matters outside the allegations contained in Plaintiffs' Complaint should be stricken and not considered by the Court.

Oral argument is requested.

DATED this 8th day of November, 2013.

SHERER & WYNKOOP, LLP



David E. Wynkoop, of the firm,
Attorneys for Defendant Independent Highway District

CERTIFICATE OF SERVICE

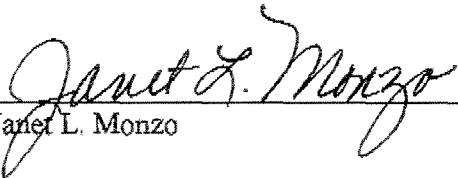
I HEREBY CERTIFY that on this 8th day of November, 2013, I served a true and correct copy of the foregoing MOTION TO STRIKE PORTIONS OF PLAINTIFF'S RESPONSE BRIEF AND AFFIDAVITS upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Anderson
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121



Janet L. Monzo

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
 730 N. MAIN ST.
 P.O. BOX 31
 MERIDIAN, IDAHO 83680
 208-887-4800
 FAX 208-887-4865
 I.S.B. 2429

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.
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 Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
 of the State of Idaho,)
)
 Plaintiff,)
)
 vs.)
)
 INDEPENDENT HIGHWAY DISTRICT, a)
 political subdivision of the State of Idaho,)
)
 Defendant.)
)

CASE NO. CV 2013-01342
 REPLY BRIEF IN SUPPORT OF
 DEFENDANT'S MOTION TO
 DISMISS

Introduction

In its response to this motion, the City maintains that the Joint Powers Agreement (JPA) that is the subject of this litigation was a lawful agreement. The City premises this argument on two concepts. The first is a sweeping statement that joint power agreements generally are a lawful, constitutional and enforceable agreement between public agencies. The City recognizes

the starting point of the analysis is that the JPA must be a lawful agreement between two public entities. However, in the arguments the City raises, it ignores the substantive arguments raised in the District's motion to dismiss that focus on this key issue.

The second argument is estoppel. The City contends that both judicial estoppel and equitable estoppel preclude IHD from questioning the legality of the JPA. However, neither of these doctrines prevents a party from questioning the constitutionality or legality of an agreement.

Procedural Irregularities

In its response to IHD's motion to dismiss, the City focuses on the correct standards to be utilized by the Court in considering a motion to dismiss. The City then states under 12(b)(6), if matters outside the pleadings are presented, the Court is to treat the motion to dismiss as a motion for summary judgment. IHD has moved to strike affidavits submitted by the City with its response. IHD presented no matters outside the pleadings in its motion to dismiss. The City is unable to convert the District's motion to dismiss to one for summary judgment by supplying rebuttal affidavits. *See Nampa Charter School, Inc. v. DeLaPaz*, 140 Idaho 23, 89 P.3d 863 (2004). Therefore, the City's affidavits should be stricken and this Court should determine the matter based solely upon the City's pleadings.

Further, the City's arguments that there are material questions of fact that dictate the matter proceed forward as a summary judgment are not persuasive. IHD raises issues of whether the contract is illegal and unconstitutional. These issues do not require additional discovery for determination. They require only an examination of the pleadings. There is no judicial utility in extending this case to allow for discovery if the fundamental issues can be determined in a motion to dismiss.

Jurisdiction over Separate Highway Systems

Each entity involved in this litigation has a highway system. The City's jurisdiction is defined in I.C. § 40-104, which provides: "'City system' means all public highways within the corporate limits of a city, with a functioning street department, except those highways which are under federal control, a part of the state highway system, part of a highway district system or an extension of a rural major collector route as specified in section 40-607, Idaho Code." IHD's jurisdiction is defined in I.C. § 40-109, which provides in relevant part: "'Highway district system' means all public highways within each highway district, **except** ... those included within city highway systems of incorporated cities with a functioning street department..." Idaho Code § 40-201 provides that "[t]here 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 jurisdiction of a highway district is set forth in I.C. § 40-1310 and I.C. § 40-1311, and is limited to those highways within the highway district system. It does not include the city system. The jurisdiction of a city is set forth in I.C. § 40-1333, which provides that cities with city highway systems shall be responsible for the construction, reconstruction and maintenance of highways in their respective city systems. This same code section allows cities to make agreements with highway district for their highway work, or a portion of it, but also requires cities to compensate the highway district fairly for any work performed.

Idaho Code § 50-1301(2) defines a functioning street department as a city department that is responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system, and that the existence of such department qualifies it to receive funds from the highway distribution account to local units of government

pursuant to I.C. § 40-709. Idaho Code § 50-1330 also recognizes that highway district jurisdiction does not extend to city systems when the city has a functioning street department. Although residents of a city within the boundaries of a highway district are considered to be members of the highway district, Idaho Code § 40-1323 gives the city council the same powers and duties as highway district commissioners.¹

After analyzing these exact statutes in *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 72 P.3d 905, 139 Idaho 65 (Idaho 2003) (*Sandpoint I*), our Supreme Court concluded “the above statutes, insofar as is relevant to this case, provide that a city with a functioning street department has jurisdiction over all public highways within its corporate limits, except those highways that are part of a highway district system, and a highway district has jurisdiction over all public highways within the highway district, except those included within a city highway system of an incorporated city with a functioning street department.”

After *Sandpoint I*, the City created a functioning street department. Paragraph 18 of Complaint. However, in *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 139 Idaho 65, 72 P.3d 905 (2003) (*Sandpoint II*), the Supreme Court noted that the above statutes were intended to establish jurisdiction for cities with functioning street departments at the time the highway district was formed. The Supreme Court held for a city that created a functioning street department after the fact, the highway district did not lose control over the streets until the highway district’s jurisdiction was lawfully terminated.

Thereafter, a petition to dissolve IHD was considered by the commissioners of Bonner County. This led to litigation between IHD and the Bonner County Commissioners and the ensuing Supreme Court case of *Sandpoint Independent Highway Dist. v. Board of County*

¹ This jurisdiction is no different than a county or school district where residents of the city are also residents of the county or school district.

Com'rs of Bonner County, 71 P.3d 1034, 138 Idaho 887 (2003)(*Sandpoint III*), in which the City was an intervenor. In this suit, the Supreme Court held that the county commissioners' decision to hold an election for dissolution was supported by substantial and competent evidence, and that the City would not obtain any of the money or assets as a successor entity if the district was dissolved. Following these last two decisions by the Supreme Court, the City and IHD entered into the JPA that is the subject of this suit.

Joint Powers Agreement

Given the holdings of the Idaho Supreme Court in *Sandpoint II* and the companion case of *Sandpoint III*, until the City is deannexed or IHD is dissolved, IHD has jurisdiction over the streets in Sandpoint. Why the City claims that the jurisdiction is pursuant to I.C. § 40-801 is unclear. The jurisdiction exists pursuant to the statutes discussed above.

The fundamental precept of a JPA is that when two (or more) agencies have the same power, privilege or authority, they may exercise them jointly, but never beyond the limitation of such powers, privileges or authority, including statutory and constitutional limitations. I.C. § 67-2328. In other words, a joint powers agreement is a contract between two or more public agencies to exercise, jointly, all power(s) common to each of them, for the purpose of accomplishing specific goals they may have in common. The City maintains that IHD has a statutory obligation pursuant to I.C. § 40-801 to maintain the City's roads, and therefore the payment by IHD to the City of IHD's tax revenue to discharge this duty is an appropriate exercise of a joint power to meet a common goal. In truth, IHD has jurisdiction of the city streets because they are within their jurisdiction, not because they collect ad valorem taxes on them. Thus, a JPA for the maintenance of the streets would be appropriate as long as it does not run afoul of any other statutory or constitutional provision.

I.C. § 67-2328(b) provides that entities may enter into agreements with one another for joint or cooperative action which includes, but is not limited to, joint use, ownership and/or operation agreements as long as the JPA does not violate any statute or the constitution. IHD does not dispute a JPA for the joint exercise of powers is appropriate. However, the clause of the JPA that is at issue in this case does not encompass either of these aspects. It does not limit its terms to joint or cooperative action. The payment provision violates the Idaho Constitution and Idaho statutes.

Statutory jurisdiction of an agency may not be altered by a JPA. I.C. § 67-2328(a). When the jurisdiction portion of the agreement is examined, it attempts to impermissibly alter IHD's jurisdiction. The supervisory authority portion is in accordance with the statute.

The "revenue distribution" clause provides that IHD will levy taxes in accordance with Chapter 13, Title 40. This statement is not a joint or cooperative action, but merely a reiteration of IHD's statutory powers. The remaining portion of this clause, which is the focus of this litigation, provides: "The District will pay over to the City all property tax funds from such District levies on all property located within the city limits." As discussed later in its brief, this portion of the JPA violates the Idaho constitution.

In its opening brief, IHD provided the statutory scheme found at I.C. § 40-801 to inform the Court regarding collection of tax revenue for highway districts. The money that is not apportioned to the City under this statute is paid to IHD as part of its general fund.

The City presents two arguments to the court on why it claims IHD's payment of a portion of its general tax revenue is constitutionally acceptable. The first is that I.C. § 40-801 does not proscribe a highway district from entering into an agreement to pay its general tax

revenue funds to another entity. The second is that it is IHD's duty to pay this portion of its general tax revenues to the City because IHD has a statutory duty to maintain the City's streets.

Turning to the first argument, I.C. § 40-801 is clear. The 50% of tax revenues collected on city properties and apportioned to the highway district are part of the highway district's general tax revenue fund. The statute does not allocate to the City any percentage greater than 50% of the levy collected on city properties. The City argues that the statute does not limit the District's expenditure of its general tax revenue funds. While that statement is true, once the funds become general revenue funds of the District, then it must expend them within the statutory and constitutional limits imposed upon it.

The City is a creditor of IHD under the payment clause of the JPA. IHD is required to make an annual payment to the City for street maintenance services the City is going to perform for IHD. It is no different than if IHD had contracted in perpetuity with Interstate Concrete and Asphalt for Interstate to repair the roads in IHD's jurisdiction. Under the city's reasoning, the contract could extend one hundred, two hundred or even 300 years. An absurd result indeed.

The City next advances the argument that I.C. § 40-801 places IHD under a statutory duty to maintain the roads lying within its district, and therefore the payment of this money is the discharge of IHD's statutory duty. There is no such statutory obligation under this particular code section. The power and duties of IHD to maintain the City's streets are established in its general jurisdictional statutes discussed previously. I.C. § 40-1310. However, in discharging this duty, IHD may not violate the Idaho constitution.

Idaho Code § 40-801 provides in relevant part that the commissioners of a county highway system, the commissioners of a county-wide highway district, and the commissioners of highway districts are empowered, for the purpose of construction and maintenance of highways

and bridges under their respective jurisdictions, to make ad valorem tax levies. This statute then apportions some of the money collected from this tax levy to incorporated cities lying within the highway district's boundaries.² The remaining apportionment is placed in the coffers of the highway district as its tax revenue for road construction and maintenance. Once it is placed in IHD's general fund, any expenditure must be in accordance with Idaho statutes and the Idaho Constitution.

IHD cannot alter the statutory apportionment of tax revenue set forth in I.C. § 40-801. The funds apportioned to IHD by the county from revenues collected from levies against city properties is part of IHD's general tax revenue. IHD is unable to change the characterization of that tax revenue by means of a JPA.

The City argues the JPA is nothing more than an agreement to pay funds to the City to discharge IHD's statutory obligation to maintain the City's streets. In other words, the City is providing street maintenance services to IHD. Yet the City seems unable to grasp if that is the purpose of the payment, then the City stands in the position of a creditor who is owed payment for services performed for IHD. The fact that the City is a municipal entity that has a common goal of street maintenance does not change this fundamental fact.³

Idaho Constitution, Article 8, Section 3

A. Introduction

It is the Idaho Supreme Court that interprets the Idaho Constitution...not the courts of California, Washington, or any other state. In its brief, the City has virtually ignored the Idaho

² The City points out that in its opening brief, IHD indicated that the money paid to the City was for road construction and maintenance. The City takes the position this statement was wrong. I.C. § 48-801 is clear that the levy must be limited to this purpose. However, it is not as clear that the city to which a portion of the taxes are paid must use the money for road construction and maintenance. However, this ambiguity does not change the substance of the argument presented by IHD.

³ Moreover, it is current and future IHD commissioners who are elected to best prioritize the use of IHD tax revenues. The JPA unlawfully diminishes or even destroys IHD's discretion on how to allocate its scarce tax revenues.

Supreme Court decisions interpreting Article 8, Section 3. Instead, the City has cited to and quoted from court decisions from California and other states. Apparently, the City has been unable to find Idaho authority to contradict the analysis of Article 8, Section 3 contained in IHD's initial brief. Based upon Idaho case law, the JPA clearly creates an illegal liability or indebtedness in violation of Article 8, Section 3.

B. The requirement that IHD pay the City is a liability or an indebtedness

The provision that JPA requires IHD to make payment to the City annually for services rendered to benefit streets within IHD's jurisdiction violates the Idaho constitution. The City doggedly clings to its argument that IHD has a statutory duty to maintain its streets, and therefore the payment is in lieu of work IHD is required to perform. This argument fails to address the creditor issue.

In addressing the constitutional challenge, the City abandons the farce that this agreement is a JPA, and claims it is a "revenue sharing agreement." However, there is no source of revenue that the City is sharing with IHD. Instead, there is a multi-year obligation for IHD to pay the City from its general fund in perpetuity for contract services the City has agreed to perform. The City advances the untenable argument that the payment IHD is required to make under the JPA can't be viewed as a debt because I.C. §40-801 apportions some of the tax levy revenue collected pursuant to this statute to the City. However, that fact has no import to whether the JPA payment is a liability or debt to IHD. The tax levy is the source of revenue to IHD, as well as the City. The mere fact that it serves as the source of revenue to two governmental entities is inconsequential in determining the constitutional issue.

The City tries to claim there is a difference between a "disbursement" and a "debt". The City's unsupported argument that a disbursement is not a debt is incomprehensible. A

disbursement is the payment of funds. It begs the question of whether the disbursement was to settle a debt. This distinction does nothing to assist the City in persuading this Court that the payment obligation in the JPA is not a debt. Similarly, the argument that payment fluctuation occurs in this debt has no bearing on whether it is an indebtedness or liability. Were IHD to enter into a 10 year adjustable rate mortgage, the payment would fluctuate. A debt is an amount owed, whether it is fixed or fluctuates. That is exactly what the JPA encompasses – an obligation owed every year, even though the amount might fluctuate.

The City argues that even if the JPA creates a debt, it is only an annual expense and will never exceed IHD's revenues because it is paid annually from IHD's revenues. This argument ignores the fact that the indebtedness is a recurring liability which exceeded the revenue in the year the liability was created .

The initial IHD brief analyzed the definitions of "indebtedness" and "liability" as stated by the Idaho Supreme Court. In the City's response brief, the City chooses not to address or even acknowledge these definitions. Rather, the City cites numerous California opinions which define indebtedness much more narrowly than the Idaho Supreme Court definitions. Surely the City is aware that the Idaho Supreme Court is the ultimate authority when it comes to interpreting the Idaho Constitution. The definitions provided by California courts or other state courts have no binding or even persuasive effect when they contradict the Idaho Supreme Court.

Our Supreme Court has specifically and repeatedly rejected the decisions of other states interpreting similar provisions to Article 8, Section 3. IHD submits that Idaho case law should be examined for the definitions of "liability" and "indebtedness," not case law from other states.

Feil v. City of Coeur d'Alene, 23 Idaho 32, 129 P. 643 (1912) dealt with the definitions of "liability" and "indebtedness" at some length in the context of Article 8, Section 3. See pp. 4-6

of Brief in Support of Motion to Dismiss. Other Idaho cases have also dealt with these definitions. See e.g. *Boise Development Company, Ltd. v. Boise City*, 26 Idaho 347, 143 P. 531 (1914), wherein the Idaho Supreme Court held that a commitment by the City of Boise to improve river frontage violated Article 8, Section 3, of the Idaho Constitution. The Supreme Court thoroughly discussed the breadth of Idaho's prohibitions contained in Article 8, Section 3 and stated:

The courts to whose decisions we have above referred have indulged in various subtleties and refinements of reasoning to show that no *debt* or *indebtedness* is incurred where a municipality buys certain property and specifically provides that no liability shall be incurred on the part of the city, but that the property shall be paid for out of a *special fund* to be raised from the income and revenue from such property. The reasoning, however, of those cases utterly fails when applied to our constitution, for the reason that none of those cases deals with the word 'liability,' which is used in our constitution, and which is a much more sweeping and comprehensive term than the word 'indebtedness'; nor are the words 'in any manner or for any purpose' given any special attention by the courts in the foregoing cases. The framers of our constitution were not content to say that no city shall incur any indebtedness 'in any manner or for any purpose,' but they rather preferred to say that no city shall incur any *indebtedness* or *liability* in any manner, or for any purpose. It must be clear to the ordinary mind on reading this language that the framers of the constitution meant to cover all kinds and character of debts and obligations for which a city may become bound, and to preclude circuitous and evasive methods of incurring debts and obligations to be met by the city or its inhabitants.

Boise Development Company, Ltd. at 361, 143 P. at 535, quoting from the *Feil* case.

The Court then rejected arguments based upon the case law from other states that had more limited definitions of "indebtedness" and "liability", and the Supreme Court concluded:

We are of the opinion, therefore, that under the authority of *Feil v. City of Coeur d'Alene*, the contract upon which this action is based by its terms plainly incurs a liability, if not a debt, upon the city of Boise, that the obligations of said contract do constitute a new debt upon the city, and we therefore hold that said contract is void.

Id at 366, 143 P. at 537.

Thus, from *Feil* and *Boise* it is clear that the Idaho Supreme Court looks to Idaho case *stare decisis* to define the terms “liability” and “indebtedness” as contained in Article 8, Section 3 of the Idaho Constitution. How other states may define those terms for purposes of their unique constitutions has no persuasive value in Idaho. The City’s reliance on out of state cases to define the terms “indebtedness” and “liability” for purposes of Article 8, Section 3 is misplaced. This Court should carefully consider how Idaho judicial decisions have very broadly defined those terms.

]The City does not argue the JPA meets the ordinary and necessary expense exception. Rather, the City argues only that the JPA does not create an “indebtedness” or “liability” of IHD. The City tries to distinguish the long line of precedent cited by IHD that an ongoing multiple year debt is prohibited by indicating that the cases discussing multiple year debts arose in the context of purchases. This fact is a distinction without a difference. In *City of Boise v. Frazier*, 143 Idaho 1, 3, 137 P.3d 388, 390 (2006), the Supreme Court recognized, “[b]roadly speaking, Article VIII, § 3 imposes two requirements to be met by local governments before incurring indebtedness. The first requirement is a public election securing two-thirds of the vote...”

In *City of Idaho Falls v. Fuhriman*, 149 Idaho 574, 578-579, 237 P.3d 1200, 1204-1205 (2010), the City of Idaho Falls tried to distinguish the contract debt it incurred in a power purchase agreement for a period of 17 years from other cases finding a violation. Idaho Falls urged the Supreme Court to limit the “necessity-requires-urgency” interpretation of the constitutional requirement to cases involving large capital projects, such as the expansion of an airport parking garage, and not to apply the analysis to cases of extraordinary indebtedness or liabilities that arise in the ordinary administration of local government affairs, such as repairs,

maintenance, city employees' salaries, etc. The court declined to adopt an exception for expenses where the "character" of that debt could be fairly classified as "the type of debt that arises under the ordinary administration of local government affairs".

This rejected exception is exactly the argument the City presents to this Court. It wishes to characterize the debt as a liability that arises from the ordinary administration of IHD's statutory obligation to maintain roads. Even if the City were correct about the characterization of the debt, it would still run afoul of the constitutional prohibition. Under the City's reasoning, IHD could incur a debt of twenty million over twenty years so long as IHD had revenue of one million per year. This reasoning is wholly inconsistent with Idaho Supreme Court cases. The debt is a multiple year obligation.

C. The Special Fund Doctrine does not save the JPA from its unconstitutional infirmities.

The City argues that the JPA does not create an illegal "indebtedness" or "liability" since each year's property tax revenues will be used to pay IHD's obligation to the City. The City cites several non-Idaho cases in support of its argument. Indeed, it is apparently true that some states allow the concept of a special fund to enable government agencies to fund capital improvements over time without violating the constitutions of those states.

The *Feil* and *Buhl* cases are both good examples of the special fund argument. In both cases, the cities hoped to finance long-term water and electricity projects and use the proceeds received from customers to pay for the improvements such that the city's general fund would not be impacted. The cities argued that because their general funds would not be adversely impacted there would be no "liability" or "indebtedness" created and thus no violation of Article 8, Section 3. The Idaho Supreme Court flatly rejected these arguments and refused to recognize the special

fund doctrine as an exception. Similarly in *Frazier*, the parking garage construction was going to be paid for by parking revenues. And in *Fuhriman* the long-term electricity contract was going to be paid for through payments made by customers who received electricity, i.e. out of utility revenues alone. Notwithstanding this special fund argument, the Court held that the agreements violated the plain language of Article 8, Section 3. The Court declined to overrule *Feil* and find that the “special fund” arguments removed the taint of a constitutional violation.

The Supreme Court flatly rejected the special fund doctrine which is “accepted by a great majority of cases, and holds that a municipality does not contract indebtedness or incur liability within the constitutional limitation by undertaking an obligation which is to be paid out of a special fund consisting entirely of revenue or income from the property purchased or constructed.” *Asson v. City of Burley*, 105 Idaho 432, 439, 670 P.2d 839, 846 (1983). The Supreme Court noted that, absent a specific statutory or constitutional exception, the special fund doctrine does not exempt long-term arrangements by governmental agencies from the prohibitions contained in Article 8, Section 3.

The City’s argument that the JPA is immune from the prohibitions of Article 8, Section 3 because the tax revenues involved are special funds is totally without merit.

Estoppel

A. Estoppel does not save a Constitutionally Invalid Agreement

The City repeatedly argues in its brief that IHD should be estopped from asserting that the JPA is invalid under the Idaho Constitution and Idaho statutes. The Idaho Supreme Court definitively rejected the City’s argument in *Deer Creek Highway District v. Doumecq Highway District*, 37 Idaho 601, 218 P. 371 (1923). First, the Court held that a contract between highway districts for construction of a bridge across the Salmon River was void. Since the contract could not be performed within the budget year, it violated Article 8, Section 3 of the Idaho

Constitution. The Supreme Court went on to note that any indebtedness incurred in violation of the Constitution was void. The Court then took up the estoppel argument, and held that estoppel could not be used to save an agreement which violated the Idaho Constitution. The Court held that “[a]n estoppel can never be invoked in aid of a contract which is expressly prohibited by a constitutional or statutory provision.” 37 Idaho 601, 609, citing *School District v. Twin Falls County*, 30 Idaho 400, 164 P. 1174. The Court went on to add that both of the public agencies who entered into the contract were chargeable with the knowledge of the limitations imposed upon the other by Article 8, Section 3 of the Constitution. Accord *Village of Heyburn v. Security Savings & Trust Co.* 55 Idaho 732, 49 P.2d 258 (1935), and *O.T. Jones v. Big Lost River Irrigation District*, 93 Idaho 227, 459 P.2d 1009 (1969). Idaho Courts are clear that estoppel cannot be used to validate an otherwise illegal agreement, whether equitable estoppel or judicial estoppel.

The City cites three cases in support of its estoppel arguments. The City first cites *City of Sandpoint v. Sandpoint Independent Highway District*, 129 Idaho 145, 879 P.2d 1078 (1994) “*Sandpoint I*”. This case is inapposite to the issue before this Court. In *Sandpoint I*, the trial court applied estoppel and the Supreme Court reversed, holding that estoppel was not applicable. Further, there was no allegation of a constitutional or statutory violation as there is in the case now before this court.

The City also cites *Murtaugh Highway Dist. v. Twin Falls Highway Dist.* 65 Idaho 260, 142 P.2d 579 (1943) for the proposition that estoppel may be applied against a highway district. However, the *Murtaugh* case, like *Sandpoint I*, did not involve an illegal agreement or an allegation of violation of statutory or constitutional provisions. Also, although the court stated estoppel was available, it is unclear from the case that estoppel was actually applied. Thus,

Sandpoint I and *Murtaugh* have no applicability to salvage the JPA, which is illegal based upon Idaho statutes and constitution.

The City next cites *Hoaglund v. Ada County*, 154 Idaho 900, 303 P.3d 587 (2013) in support of its estoppel argument. *Hoaglund* involved an attempt to resurrect a wrongful death claim which Hoaglund had previously voluntarily dismissed. Hoaglund told the Court one thing, and then contradicted herself in order to revive her wrongful death action. The Court refused to allow this misrepresentation. There was no allegation of an unlawful action based upon a statute or the constitution.

Hoaglund has no application to these facts. In the present case the City and IHD entered into the JPA in the apparent belief that it was lawful. It has now come to the attention of IHD (and probably the City) that the JPA violates the apportionment statute and the Idaho constitution. The Idaho Supreme Court decisions cited in this brief clearly do not allow the doctrine of estoppel to validate otherwise unlawful actions. Estoppel has no application to the present case.

The City also argues that judicial estoppels should apply and cites *Buckskin Properties v. Valley County*, 154 Idaho 486, 300 P.3d 18 (2013) to support its position. This case involved a developer who agreed to contribute road impact mitigation fees to Valley County as a condition of development. A Development Agreement was entered into pursuant to which the developer paid fees and received development approval. After the fees were paid and the lots were approved by the County, the developer sued for return of the fees he had voluntarily paid.

The Court held that the developer voluntarily paid the fees, received the benefit of the development agreement he entered into, and so could not now contend that he entered into the agreement involuntarily. In *Buckskin*, the County adopted a resolution which made moot some

of the developer's claims. In oral argument before the trial court, the County stated to the trial court that the County had no intention of rescinding the ordinance. On appeal, the Supreme Court affirmed the trial court's ruling that the resolution rendered moot several of the developer's claims. The Court held that the developer's claims were moot because the County no longer engaged in the conduct the developer was seeking to restrain.

It was in response to the developer's hypothetical that the County might change its position and come back after the developer for illegal impact fees that the Supreme Court discussed judicial estoppel. In *dicta*, the Supreme Court responded to the developer's hypothetical concern that judicial estoppel would protect the developer from future "sharp dealing or revision of Resolution 11-6 by the County", *Buckskin Properties* at 500.

Buckskin has no applicability to the case at bar. In *Buckskin*, the County's attorney made a very specific factual representation to the trial court that the County would not rescind the resolution. The Supreme Court responded with *dicta* to the developer's concern of future county action contrary to the attorney's representation that the County would be precluded from acting contradictory to the County's factual representations to the trial court. There was no argument that the County's Resolution was entered into in violation of the Idaho Constitution or in violation of Idaho statutes.

The situation now before this Court is very different from facts in *Buckskin*. Here there was no specific factual representation made to the trial court. The only representation was that the parties resolved a former suit by entering into a JPA, which was true. More significantly in the present case, the JPA clearly violates the Idaho Constitution and Idaho statutes.

The *Buckskin* case was cited and discussed at length by the City in its response. *Buckskin's* discussion of judicial estoppel cites to and is based upon *Loomis v. Church*, 76 Idaho

87, 277 P.2d 561 (1954). It is interesting that the City does not cite or reference the *Loomis* case. This omission is probably because *Loomis* does not support the City's judicial estoppel argument. *Loomis* is apparently the first Idaho case to recognize judicial estoppel. Accordingly, it is important to examine *Loomis* to determine when judicial estoppel may be applied versus when the application of judicial estoppel is not warranted.

Loomis was a passenger in a car driven by Church. Loomis was injured when the vehicle she was riding in collided with a Garret Freightlines truck. Loomis first sued Garret Freightlines and in that case she made sworn statements that Garrett Freightlines was solely responsible for the accident and that Church was free from fault. Loomis obtained a settlement from Garret Freightlines.

Loomis then sued Church and alleged directly opposite facts. In her lawsuit against Church, Loomis asserted that Church was not only at fault, but acted with reckless disregard by not stopping at a stop sign before crossing State Highway 26, even though Loomis had asked Church to stop and Church verbally refused.

In other words, Loomis' specific factual allegations in her second lawsuit against Church were directly contrary to the specific factual allegations Loomis previously swore to in her lawsuit against Garret Freightlines. The Supreme Court was concerned that these directly contradictory factual allegations resulted in a fraud on the courts. The Supreme Court first stated the parameters of judicial estoppel as:

It is quite generally held that where a litigant, by means of such sworn statements, obtains a judgment, advantage or consideration from one party, he will not thereafter, by repudiating such allegations and by means of inconsistent and contrary allegations or testimony, be permitted to obtain a recovery or a right against another party, arising out of the same transaction or subject matter.

76 Idaho 87, 93, 277 P.2d 5621, 565 (citations [all from other states] omitted).

Idaho's foundation case for judicial estoppel clearly references misrepresentations of fact. The doctrine has no applicability to a mutual mistake in law at the time a contract was formed, as exist in the present case. The case before the court contains no allegations of inconsistent sworn factual allegations arising to the level of a fraud upon this Court.

Finally, the City cites *Indian Springs, LLC v. Indian Springs Land Investment, LLC*, 147 Idaho 737, 215 P.3d 457 (2009) in support of its judicial estoppel argument. *Indian Springs* also involves inconsistent sworn factual statements presented to the Court. In a mortgage foreclosure proceeding, the holder of the mortgage alleged a principal balance of the note of \$188,000 at one point, but then alleged in subsequent bankruptcy proceedings that the principal balance was \$270,637.50. It is these contradictory factual allegations that trigger the discussion and application of judicial estoppel.

Moreover, the Court stated that "Because judicial estoppel is an equitable doctrine existing to protect the dignity of the judicial process, it is invoked by the court at its discretion." 147 Idaho 737, 748, 215 P.3d 457, 469. The Court went on to note that "...the party asserting judicial estoppel must show that the sworn statement at issue was used to obtain a judgment, advantage or consideration from another party." *Indian Springs* at 749, 215 P.3d at 469. (Emphasis added.) Because the party claiming judicial estoppel failed to show that the other party made factual mis-statements to the court with the intent to gain an advantage, the Supreme Court dismissed the judicial estoppel argument. Based upon controlling Idaho law, judicial estoppel has no application to this case. First, the Supreme Court has repeatedly stated that no type of estoppel cannot be used to enforce an agreement which violates Article 8, Section 3. Second, judicial estoppel applies only to inconsistent sworn factual statements. Here, there is no allegation of inconsistent sworn factual statements. Rather, there is a mutual mistake of law

where the City and IHD mistakenly believed they could enter into a long-term agreement to pay the City for street services, which the City now characterizes as a revenue sharing agreement. Third, as emphasized by the *Indian Springs* case relied on by the City, the doctrine of judicial estoppel is invoked only at the discretion of the court to prevent an attack on the integrity of the judicial system where a litigant is playing fast and loose with the truth of the factual representations made to the court. In the case at bar, there are no inconsistent sworn factual statements that put the integrity of the Court at risk. Rather, the City and IHD, in 2003, entered into a settlement agreement that turns out not to be authorized by statute and violates the Idaho Constitution.

Even if the Court believed it has the discretion to invoke judicial estoppel, it should not do so in this case. Any equitable remedies should be invoked only to support and uphold the Constitution and statutes; not to allow an agreement to stand which violates the Constitution and statutes and the policies behind those provisions.

Conclusion

The JPA that is the subject of this litigation was the product of negotiations between the parties and a fair attempt to resolve those issues. However, the terms agreed to amounted to an agreement to pay the city in perpetuity for services the City rendered for IHD. As such, this clause violated Article 8, Section 3 of the Idaho Constitution and the payment clause may not be upheld. Additionally, as noted in IHD's initial brief, the JPA violates several statutes and public policies of the State of Idaho.

DATED this 12th day of November, 2013.

SHERER & WYNKOOP, LLP

A handwritten signature in black ink, appearing to read "David E. Wynkoop". The signature is fluid and cursive, with a large loop at the end.

David E. Wynkoop, of the firm,
Attorneys for Defendant

JAMES, VERNON & WEEKS, P.A.

A handwritten signature in black ink, appearing to read "Susan P. Weeks". The signature is cursive and elegant, with a large loop at the end.

Susan P. Weeks, of the firm,
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of November, 2013, I served a true and correct copy of the foregoing BRIEF IN SUPORT OF MOTION TO DISMISS upon the following, by the method indicated below:

C. Matthew Anderson
Winston & Cashatt
250 Northwest Blvd., Ste 206
Coeur d'Alene, ID 83814

XX via facsimile to 208-765-2121
XX via electronic correspondence

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368
XX via electronic correspondence

Courtesy Copy to:
Hon. John T. Mitchell
P.O. Box 9000
Coeur d'Alene, ID 83816

XX via facsimile to 208-466-1188

Susan P. Weeks

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2013 NOV 13 PM 1 22

CLERK DISTRICT COURT
DEPUTY

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4 Sandpoint, Idaho 83864
5 Telephone: (208) 263-0534
6 Facsimile: (208) 255-1368
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8 C. MATTHEW ANDERSEN, ISB No. 3581
9 WINSTON & CASHATT, LAWYERS,
10 a Professional Service Corporation
11 250 Northwest Boulevard, Suite 206
12 Coeur d'Alene, Idaho 83814
13 Telephone: (208) 667-2103
14 Facsimile: (208) 765-2121
15 cma@winstoncashatt.com

16 Attorneys for City of Sandpoint

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

19 CITY OF SANDPOINT, a municipal
20 corporation of the State of Idaho,

21 Plaintiff,

22 vs.

23 INDEPENDENT HIGHWAY DISTRICT, a
24 political subdivision of the State of Idaho,

25 Defendant.

Case No. CV-13-01342

PLAINTIFF'S SUPPLEMENTAL CITATION
TO AUTHORITY


26 The City wishes to correct its reference at page 3 of its Response Memorandum when it refers to the District as a "political subdivision". That is not correct. The District is a taxing district without governing authority and as such is entirely different than county, city, town or village. See Strickenfaden v. Greencreek Highway District, 42 Idaho 738, 747-755, 248 P. 456 (1926); Shoshone

PLAINTIFF'S SUPPLEMENTAL CITATION
TO AUTHORITY
PAGE 1

1 Highway District of Lincoln County, 22 Idaho 109, 119-120, 125 P. 219 (1912); and Oregon Short Line
 2 R. Co. v. Kimama Highway District, 287 F. 734, 739-740 (1923).

3 Further, in support of the proposition that the District's statutory duty to maintain the streets of
 4 the City does not violate of Article 8, Sec. 3 since it is authorized and mandated under I.C. §40-801,
 5 see; Coeur d'Alene Lakeshore Owners and Taxpayers v. Kootenai County, 104 Idaho 590, 594 (Idaho
 6 1983).

8 DATED this 13th day of November, 2013.



C. MATTHEW ANDERSEN, ISB No. 3581
 WINSTON & CASHATT, LAWYERS,
 a Professional Service Corporation

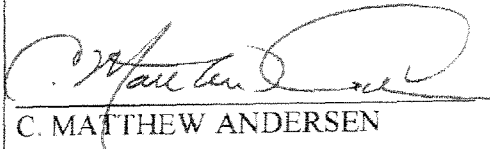
SCOT R. CAMPBELL, ISB No. 4121
 SANDPOINT CITY ATTORNEY

Attorneys for City of Sandpoint

1 I hereby certify that I caused a true and
 2 complete copy of the foregoing to be mailed,
 3 postage prepaid; hand delivered; sent
 4 via facsimile on November 13th, 2013, to:

4 David R. Wynkoop
 5 Sherer & Wynkoop, LLP
 6 730 N. Main Street
 7 P.O. Box 31
 8 Meridian, ID 83680

7 Susan P. Weeks
 8 James, Vernon & Weeks, P.A.
 9 1626 Lincoln Way
 10 Coeur d'Alene, ID 83814

11 
 12 C. MATTHEW ANDERSEN

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STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT

2513 NOV 13 AM 9 36

CLEAR

DEPUTY



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16 Attorneys for City of Sandpoint

17
18 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
19 OF IDAHO, IN AND FOR THE COUNTY OF BONNER

20 CITY OF SANDPOINT, a municipal
21 corporation of the State of Idaho,

22 Plaintiff,

23 vs.

24 INDEPENDENT HIGHWAY DISTRICT, a
25 political subdivision of the State of Idaho,

26 Defendant.

Case No. CV-13-01342

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO STRIKE
RESPONSE BRIEF AND AFFIDAVITS

1. **REQUEST FOR RELIEF**

Plaintiff City of Sandpoint ("the City") requests that this Court deny Defendant Independent Highway District's ("the District") Motion to Strike the Affidavits of Scot Campbell and Shannon Syth.

1 **2. FACTS**

2 The City's Complaint against the District seeks to enforce the terms of the Parties' mutually
 3 agreed upon and judicially-approved settlement that incorporated the Joint Powers Agreement ("JPA").
 4 The District brought a Motion to Dismiss City's Complaint for failure to state a claim. The District's
 5 motion to dismiss is based upon several false predicates about the legality of the agreement, the intent of
 6 the agreement and the impact of the agreement. Further, the motion to dismiss misstates the fact of and
 7 the scope of the District's continuing obligation to provide for the maintenance of the City Streets of
 8 Sandpoint; all of which was capped by the parties' JPA. The false predicates of the District's briefing
 9 require a supplementation of the record so the Court has the opportunity to review the motion in proper
 10 context. It is the City's right to do such.

11
 12 In opposition to the motion, the City filed two affidavits: one from Scot R. Campbell, City
 13 Attorney for the City of Sandpoint, and one from Shannon Syth, City Treasurer for the City of
 14 Sandpoint. The District now seeks to strike these affidavits on the sole basis that it is "premature to
 15 convert" the Motion to Dismiss to a Motion for Summary Judgment. It is not certain what relief the
 16 District requests. The District does not attack either the admissibility or the veracity of the contents of
 17 the affidavits. By quoting to I.R.C.P. 12(b)'s obligation to permit a party a reasonable opportunity to
 18 present matters made pertinent, coupled with the statement that discovery has not yet commenced,
 19 appears to be that the District is making an I.R.C.P. 56(f) request for additional time to conduct
 20 discovery. If that is the request, then the City asks what additional discovery it wishes to conduct before
 21 the motion is submitted. If the request is just that the Court should not consider the affidavits, then the
 22 request is not well founded as it would negate the cited provision of I.R.C.P. 12(b) which clearly permits
 23 the City to offer any pertinent material.
 24
 25
 26

1 3. ARGUMENT AND POINTS OF AUTHORITY

2 As stated in Plaintiff's Response, if matters outside the pleadings are presented to and not
 3 excluded by the court, a motion to dismiss shall be treated as one for summary judgment and "disposed
 4 of as provided in Rule 56." I.R.C.P. 12(b). Thus, if a trial court considers factual allegations outside the
 5 pleadings on a motion to dismiss for failure to state a claim, it errs if it fails to convert the motion to one
 6 for summary judgment. Hellickson v. Jenkins, 118 Idaho 273, 276, 796 P.2d 150 (Ct. App. 1990).
 7 Although the trial court has wide discretion to consider or reject matters outside the pleadings, there is
 8 no principled reason why the Court should not consider the affidavits offered in this case.

9
 10 A trial is a search for the truth. The District's suggestion that it is "premature" for the Court to
 11 consider the truth in ruling on the motion is not a reasonable interpretation of the rules. First, the
 12 premature argument would negate the very obligation of the Court to consider information made
 13 pertinent by the District's motion. Certainly the intent of the JPA and the steps taken in reliance on the
 14 JPA are highly pertinent to the City's response. Second, there is no law for the proposition that
 15 supporting affidavits are "premature" in considering a motion to dismiss. Indeed, the very rule
 16 contemplates that a responding party can put forth supporting affidavits and the court should consider
 17 them; then the standard of review is one on summary judgment.
 18

19 The affidavits, as well as attachments to the Complaint, are evidence of the Parties' intent to be
 20 bound by the JPA, and the reliance that the City has invested in the JPA. The documents establish that
 21 the JPA was mutually agreed to as being in the best interests of the taxpayers of the City and the
 22 District; that there was reliance; that there was valuable consideration for the JPA; and that there is more
 23 than ample mutual advantage to both the City and the District by utilizing the JPA to serve the taxpayers
 24 paying into the District.
 25
 26

1 Respectfully, the District has no basis to dispute the operative facts set forth in the City's
 2 briefing. But if it did, then it is the District's burden at this time to dispute them. If it is going to dispute
 3 the facts then it must accept that its Motion to Dismiss must be denied, discovery should ensue as
 4 permitted by I.R.C.P. 56(f) and the matter must proceed to trial. It is suspected that the District does not
 5 and cannot dispute the facts as stated in the Response, the facts as pled, as supplemented and as applied
 6 by the law. If there is no dispute, the City has a sufficient basis to support its claims as a matter of law.
 7
 8 The prospect of having the motion denied is the only reason the motion to strike has been filed.

9
 10 **4. CONCLUSION**

11 For the foregoing reasons, District's Motion to Strike should be denied.

12 DATED this 13th day of November, 2013.

13 

14 C. MATTHEW ANDERSEN, ISB No. 3581
 15 WINSTON & CASHATT, LAWYERS,
 a Professional Service Corporation


16 SCOT R. CAMPBELL, ISB No. 4121
 17 SANDPOINT CITY ATTORNEY

18 Attorneys for City of Sandpoint

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FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF BONNER
215 S. FIRST AVENUE
SANDPOINT, IDAHO 83864

CITY OF SANDPOINT, a municipal corporation of the State of Idaho,

Plaintiff,

VS.

INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho,

Defendant,

)
)
) **Case No: CV-2013-0001342**
)
) **SCHEDULING ORDER, NOTICE**
) **OF TRIAL SETTING AND INITIAL**
) **PRETRIAL ORDER**
)
)
)
)
)
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Pursuant to I.R.C.P. 16, IT IS HEREBY ORDERED:

1. A **Jury Trial Scheduled** for a **5 day trial** will commence at the Bonner Courthouse at **9:00 a.m. on Tuesday, March 25, 2014**. If possible, cases set for the same day will be tried on a **"to follow"** basis.

2. The Court, at its discretion, will set the priority for each of the civil matters set for trial on the above date. Any party may request a priority setting by filing a Request for Priority Setting, copy to the Court in chambers. The Court will attempt to give priority to cases where such Request for Priority Setting is filed, in the order in which they are filed. Prior participation in mediation is a factor in granting priority. **Notice is hereby given that all civil trial settings are subject to being preempted by the court's criminal calendar.**

In order to assist with the trial of this matter IT IS HEREBY FURTHER ORDERED:

1. a. **PRETRIAL EVENTS:** Before noticing a deposition, hearing or other pretrial event, a lawyer shall consult and work with opposing counsel to accommodate the needs and reasonable requests of all witnesses and participating lawyers.

b. **MOTION PRACTICE:** Before setting a motion for a hearing, a lawyer shall make a reasonable

effort to resolve the issue without involving the Court. A lawyer who has no valid objection to an opponent's proposed motion must promptly make this position known to opposing counsel and the Court. After a hearing, a lawyer charged with preparing the proposed order shall draft it promptly, striving to fairly and accurately articulate the Court's ruling. Before submitting the proposed order to the Court, the lawyer shall provide a copy to opposing counsel who shall promptly voice any objections. If the lawyers cannot resolve all objections, the drafting lawyer shall promptly submit the proposed order to the Court, stating any unresolved objections.

c. **PRETRIAL MOTIONS (other than Summary Judgment):** The last day for filing pretrial motions (other than Summary Judgment, except for *motions in limine* concerning witnesses and exhibits designated under paragraphs 6 and 7 respectively of this Pretrial Order) shall be **twenty-one (21) days prior to Trial**. Motions *in limine* concerning designated witnesses and exhibits shall be submitted in writing **at least seven (7) days prior to Trial**. Motions *in limine* concerning any designated exhibit shall attach copies of the exhibit in issue. Motions *in limine* regarding designated witnesses shall attach copies of the discovery requests claimed to require the earlier disclosure and a representation by counsel regarding the absence of a prior response from the party to whom the discovery was directed. The fact that a party has submitted discovery to another party and has not filed motions to compel in advance of trial does not, in and of itself, waive an objection by that party as to the timeliness of disclosure of witnesses and exhibits by the other party as required by this order.

d. **MOTIONS FOR SUMMARY JUDGMENT:** Motions for summary judgment shall be timely filed so as to be heard not later than **ninety-one (91) days (thirteen weeks) before Trial**. (**NOTICE: DUE TO COURT CALENDAR CONGESTION YOU SHOULD CONTACT THE COURT CLERK AT LEAST THREE MONTHS BEFORE THE DATE YOU ARE REQUESTING, FOR A HEARING DATE/TIME FOR SUMMARY JUDGMENT MOTIONS**). There shall be served and filed with each motion for summary judgment a separate concise statement, together with references to the record, of each of the material facts as to which the moving party contends there are no genuine issues of dispute. Any party opposing the motion shall, **not later than fourteen (14) days prior to the date of the hearing**, serve and file a separate concise statement, together with references to the record, setting forth all material facts as to which it is contended there exist genuine issues necessitating litigation. In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy, except and to the extent that such facts are asserted to be actually in good faith controverted by a statement filed in opposition to the motion.

e. **SCHEDULING HEARINGS ON MOTIONS:** All hearing dates and times must be arranged by contacting the Court's Clerk. When making that request, an estimate of the amount of time needed must be given. A Notice of Hearing shall be filed and served in compliance with I.R.C.P. 7(b)(3)(A). Once a hearing date and time has been obtained from the Court's Clerk, no party may add additional hearings to that time set for hearing without obtaining the prior approval of the Court's Clerk.

f. **MOTION OR STIPULATION TO CONTINUE:** Continuances are discretionary with the Court and will be granted only under extraordinary circumstances, not within the control of the parties and not foreseeable. A hearing or trial may be continued only by the Court. Continuances will be granted sparingly and only in those circumstances where the obstacles to proceeding with the case cannot be resolved by any means other than granting a continuance. Continuances will not be granted solely because all parties agree to a continuance. In exercising its discretion to grant or deny a continuance, the Court may consider the following factors:

- Availability of alternative court dates.
- Age of the case and the nature of any previous continuances or delays attributable to either party.
- The proximity of the scheduled event.
- The availability of an *earlier* date for the event.
- Whether the continuance may be avoided by substitution of other counsel.
- The prejudice or inconvenience caused to the party not requesting the continuance.
- The diligence of counsel in attempting to avoid the continuance and in bringing it to the attention of the court and opposing counsel promptly.

The request for a continuance shall be in a motion signed by counsel and filed immediately upon discovering the need for a continuance. The motion should be supported by an affidavit stating: 1) when the need for a continuance arose, 2) the grounds for requesting the continuance, 3) the request for a continuance has been discussed with the client and the client does not object, 4) measures taken to avoid the necessity of a continuance, and 5) when, at the earliest, the parties can be ready to proceed. The affidavit should be accompanied by all documentation supporting the request.

2. **BRIEFS AND MEMORANDA:** In addition to any original brief or memorandum filed with the Clerk of the Court, a chambers' copy shall be provided to the Court. To the extent counsel rely on legal authorities not contained in the **Idaho Reports**, a copy of each case or authority cited shall be attached to the Court's copy of the brief or memorandum.

3. **DISCOVERY DISPUTES:** Unless otherwise ordered, the Court will not entertain any discovery motion, except those brought by a person appearing *pro se* and those brought pursuant to I.R.C.P. 26(c) by a person who is not a party, unless counsel for the moving party files with the Court, at the time of filing the motion, a certification that the lawyer making the motion has in good faith conferred or attempted to confer with the opposing lawyer to reach agreement without court action, pursuant to I.R.C.P. 37(a)(2). The motion shall not refer the Court to other documents in the file. For example, if the sufficiency of an answer to an interrogatory is in issue, the motion shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

4. **EXPERT WITNESSES:** No later than **one hundred eighty-two (182) days (26 weeks) before trial**, plaintiff(s) shall disclose all experts to be called at trial. No later than **one hundred forty-seven (147) days (21 weeks) before trial**, defendant(s) shall disclose all experts to be called at trial. Such disclosure shall consist of **at least** the information required to be disclosed pursuant to I.R.C.P. 26(b)(4)(A)(i). Notice of Compliance of all disclosures shall be filed with the Clerk of Court. Absent good cause, an expert may not testify to matters not included in the disclosure. A party may comply with the disclosure by referencing expert witness depositions, without restating the deposition testimony in the disclosure report.

5. **DISCLOSURE OF WITNESSES:** No later than **fourteen (14) days (two weeks) before trial**, each party shall prepare and exchange between the parties and file with the Clerk a list of witnesses with current addresses and telephone numbers, setting forth a brief statement identifying the general subject matter about which the witness may be asked to testify (exclusive of impeachment witnesses). Each party shall provide opposing parties with a list of the party's witnesses and shall provide the Court with two copies of each list of witnesses.

6. **EXHIBITS AND EXHIBIT LISTS:** No later than **fourteen (14) days (two weeks) before trial**, exhibit lists and copies of exhibits shall be exchanged between parties and the exhibit list filed with the Clerk. Using the form available at the following website: <http://www.kcgov.us/departments/districtcourt/forms.asp> (or available by calling the Court's clerk), each party shall prepare a list of exhibits it expects to offer. Exhibits should be listed in the order that the party anticipates they will be offered. Each party shall affix labels to their exhibits before trial. After the labels are marked and attached to the original exhibit, copies should be made. Plaintiff's exhibits shall be marked in numerical sequence. Defendant's exhibits shall be marked in alphabetical sequence. The civil action number of the case and the date of the trial shall also be placed on each exhibit label. The original exhibits and a Judge's copy of the exhibits should be filed with the Clerk at the time of trial. Two copies of the exhibit list are to be filed with the Clerk. It is expected that each party will have a copy of all exhibits to be used at trial.

7. **JURY INSTRUCTIONS (if JURY trial):** No later than **seven (7) days before trial**, jury instructions shall be prepared and exchanged between the parties and filed with the Clerk (with copies delivered to chambers). Each Judge may have prepared stock jury instructions from the Idaho Jury Instructions. Copies of the Court's stock instructions may be obtained from the Court, and are available on the Kootenai County website: <http://www.kcgov.us/departments/districtcourt/forms.asp>. The parties shall meet in good faith to agree on a statement of claims instruction which shall be submitted to the Court with the other proposed instructions. Absent agreement, each party shall submit their own statement of claims instruction. All instructions shall be prepared in accordance with I.R.C.P. 51(a).

8. **TRIAL BRIEFS:** No later than **seven (7) days before trial**, trial briefs shall be prepared and exchanged between the parties and filed with the Clerk (with copies to chambers)

9. PROPOSED FINDINGS AND CONCLUSIONS (if COURT Trial): No later than seven (7) days prior to a court trial, each party shall file with the opposing parties and the Court (with copies to chambers) proposed Findings of Fact and Conclusions of Law supporting their position. An electronic version of the proposed findings and conclusions should be provided to the Court's clerk as a Word document, this may be accomplished by e-mail.

10. TRIAL PRACTICE: At least a week before trial the lawyers shall meet and confer to discuss any stipulations that can be made at the beginning of trial and to identify exhibits which can be admitted by stipulation. Following this meeting, the parties shall immediately alert the Court to any matters that need to be taken up before the time scheduled for trial to begin.

11. TRIAL DAY: Call the Judge's Court Clerk or Law Clerk for the start and finish times of trial dates that follow the first day of trial.

12. MODIFICATION: This Pretrial Order may be modified by stipulation of the parties upon entry of an order by the Court approving such stipulation. Any party may, upon motion and for good cause shown, seek leave of the Court modifying the terms of this order, upon such terms and conditions as the Court deems fit. Any party may request a pretrial conference pursuant to I.R.C.P. 16(d) or mediation pursuant to I.R.C.P. 16(k).

13. REQUEST TO VACATE TRIAL SETTING: Paragraph 1.f above applies in its entirety. Any vacation or continuance of the trial day shall not change or alter the time frames for the deadlines set forth herein, but the dates for such deadlines will change to the new dates as are established by the date of the new trial setting. Any party may, upon motion and for good cause shown, request different discovery and disclosure dates upon vacation or continuance of the trial date.

14. ALTERNATIVE DISPUTE RESOLUTION: It is expected that all lawyers will educate their clients early in the legal process about the various methods of resolving their dispute without trial (alternative dispute resolution/ADR), including mediation, arbitration, settlement conference and neutral case evaluation. The parties are expected to engage in ADR as soon as possible. The Court will facilitate ADR if requested. The parties are ordered to report jointly to the Court in writing at least sixty-three (63) days (9 weeks) prior to trial, setting forth when ADR occurred and the results of ADR. If no ADR has taken place, the joint report must state the reason the parties failed to use ADR.

15. SANCTIONS FOR NONCOMPLIANCE: Failure to timely comply in all respects with the provisions of this order shall subject non-complying parties to sanctions pursuant to I.R.C.P. 16(i), which may include:

- (A) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence;
- (B) An order striking pleadings or parts thereof, or staying further proceedings until the order is obeyed,

or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(C) In lieu of any of the foregoing orders or in addition thereto, an order treating as contempt of court the failure to comply;

(D) In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing such party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

IT IS FURTHER ORDERED that no party may rely upon any deadline set forth in this pretrial order as a reason for failing to timely respond to discovery or to timely supplement discovery responses pursuant to I.R.C.P. 26(f).


Notice is hereby given, pursuant to Idaho Rule of Civil Procedure 40(d)(1)(G), that an alternate judge may be assigned to preside in this case. The following is a list of potential alternate judges: Hon. John P. Luster, Hon. Fred Gibler, Hon. John T. Mitchell, Hon. Steve Verby, Hon. Lansing L. Haynes, Hon. Benjamin R. Simpson, Hon. Charles W. Hosack or Hon. George R. Reinhardt, III.

Unless a party has previously exercised their right to disqualification without cause under Rule 40(d)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than ten (10) days after service of this notice.

IT IS FURTHER ORDERED that any party who brings in an additional party shall serve a copy of this "Scheduling Order, Notice of Trial Setting" upon that added party at the time the pleading adding the party is served on the added party, and proof of such service shall then be filed with the Court by the party adding an additional party

DATED this 3rd day of December, 2013.

BY ORDER OF


John T. Mitchell
District Judge

CERTIFICATE OF MAILING

I hereby certify that true copies of this Scheduling Order, Notice of Trial Setting and Initial Pretrial Order were served as follows on the 3 day of December, 2013.

Plaintiff's Counsel:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, ID 83864

Mailed X Faxed _____

C. Matthew Andersen
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, ID 83814

Mailed X Faxed _____

Defendant's Counsel:

David E. Wynkoop
SHERER & WYNKOOP, LLP
P.O. Box 31
Boise, ID 83680

Mailed X Faxed _____

By Linda Oppelt
Linda Oppelt, Deputy Clerk

because the Idaho Supreme Court held the district court erred in exceeding the permissible scope of a cross-claim. *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 126 Idaho 145, 148, 879 P.2d 1078, 1081 (1994). The Idaho Supreme Court found that Highway District had general authority to maintain the streets absent a showing by the City that it has a functioning street department. 126 Idaho 145, 150-51, 879 P.2d 1078, 1083-84.

In 2000 the City established a street department of its own and brought suit again, which resulted in two decisions from the Idaho Supreme Court in 2003. The City sought a declaratory judgment that, because of its functioning street department, the City had exclusive general supervisory authority over street maintenance, construction, snow removal, etc. within the City. *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 139 Idaho 65, 66-67, 72 P.3d 905, 905-07 (June 19, 2003). The City also sought to enjoin the IHD from exercising supervisory authority over the City's streets, and from levying any real property within the City. 139 Idaho 65, 67, 72 P.3d 905, 907. On summary judgment, the district court held the City had a functioning street department and therefore had control over the public streets within the City. *Id.* This decision was certified as a partial summary judgment and appealed. *Id.*

Interpreting the relevant statutes, the Idaho Supreme Court reversed, holding: "There is no indication that the legislature intended that a city included within an existing highway district could exclude its streets from the highway district simply by creating a city street department capable of assuming the maintenance, construction, repair, snow removal, sanding and traffic control of city streets." 139 Idaho 65, 70, 72 P.3d 905, 910. The Idaho Supreme Court held the City was required to follow statutes that provided

procedures for lawful termination of a Highway District's authority within a city's boundaries. *Id.*

In the counterpart decision issued earlier that month, the Idaho Supreme Court held that the City could not be the succeeding operational unit to a dissolved highway district. *Sandpoint Independent Highway Dist. v. Board of County Commissioners*, 138 Idaho 887, 892, 71 P.3d 1034, 1039 (June 4, 2003). The Idaho Supreme Court reached this conclusion by a plain reading of the statutes that address the dissolution funds and property of a highway district. *Id.* The Idaho Supreme Court held that, because the statute prohibited surplus funds of a dissolved district to go to a city and no statute prescribed where the money would go if not to the successor, the City, therefore, could not be the successor to a dissolved highway district. *Id.*¹

The contract at issue was the result of a settlement entered into July 3, 2003, after these last two Idaho Supreme Court decisions but before the Board of County Commissioners set a date for a dissolution election. Complaint, Exhibit A, p. 3. The Stipulation for Settlement is attached as Exhibit A to the Complaint. The parties entered into it upon general agreement that further litigation was not in the best interest of the public. *Id.*, p. 4. This contract entitled, "Joint Powers Agreement between the City of Sandpoint and the Sandpoint Independent Highway District", was dated July 8, 2003, and is attached to the verified complaint. Complaint, Exhibit B, p. 1.

The Joint Powers Agreement was intended to be a permanent resolution as it stated, under the heading "Duration": "The duration of this agreement shall be

¹ The Court was also asked to interpret Idaho Code § 40-1805 to determine what "district" meant for the commissioners' determination that dissolving the highway district "would be to the best interest of the district." See *Sandpoint Independent Highway Dist. v. Board of County Commissioners*, 138 Idaho 887, 890 (2003). The Court held that the "best interests of the district" meant "consideration of geographical area and the interests of the people living in the district." *Id.* at 891.

perpetual or until such time as the District and the City jointly and together agree to amend or terminate the same”. *Id.* The City would assume responsibility for all of the streets within its limits. *Id.* The IHD promised to pay the City all ad valorem property tax funds from levies of properties within the City limits. *Id.*, p. 3. In return, the City, which had jointly petitioned for the IHD’s dissolution election, would request the Bonner County Board of Commissioners to vacate the dissolution election and dismiss the action with prejudice. *Id.*, p. 5. The parties stipulated that the Joint Powers Agreement could only be terminated by mutual agreement of both parties. *Id.*, pp. 1, 4.

In this case, the City has brought an action alleging IHD has breached the agreement by unilaterally terminating it and withholding funds that the City alleges it needs to operate its street department. Complaint, p. 8. The City alleges that on July 11, 2013, the IHD notified the City that they were withholding funds and were not going to perform a material term of the agreement. *Id.*, ¶ 40.

On September 9, 2013, IHD filed its Motion to Dismiss, and on October 11, 2013, IHD filed its “Brief in Support of Motion to Dismiss.” On November 7, 2013, City filed its “Plaintiff’s Response to Defendant’s Motion to Dismiss.” On November 12, 2013, IHD filed its “Reply Brief in Support of Defendant’s Motion to Dismiss.” Oral argument was held on November 13, 2013. IHD’s Motion to Strike was granted. IHD’s Motion to Dismiss was taken under advisement at the end of that hearing.

II. STANDARD OF REVIEW.

An I.R.C.P. 12(b)(6) motion to dismiss for “failure to state a claim upon which relief can be granted” must be considered against the I.R.C.P. 8(a) requirement that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” I.R.C.P. 12(b)(6); 8(a)(1); *Harper v. Harper*, 122 Idaho 535, 536, 835

P.2d 1346, 1347 (Ct.App. 1992). In motions to dismiss, the Court is to look only at the pleadings and view all inferences in favor of the non-moving party. *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002) (regarding 12(b)(6) motions); *Osborn v. United States*, 918 F.2d 724, 729 n. 6 (8th Cir. 1990) (regarding 12(b)(1) motions raising facial challenges to jurisdiction); *Serv. Emp. Intern. V. Idaho Department of Health and Welfare*, 106 Idaho 756, 758, 683 P.2d 404, 406 (1984 (regarding 12(b) challenges generally). “The nonmoving party is entitled to have all inferences from the record viewed in his favor and only then may the question be asked whether a claim for relief has been stated.” *Idaho Branch Inc. of Associated General Contractors of America, Inc. v. Nampa Highway Dist. No. 1*, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993); see also *Independent School Dist. of Boise City v. Harris Family Ltd. Partnership*, 150 Idaho 583, 587, 249 P.3d 382, 386 (2011). Complaints should not be dismissed under I.R.C.P. 12(b) unless the non-moving party can prove no set of facts which would entitle him to relief. *Dumas v. Ropp*, 98 Idaho 61, 62, 558 P.2d 632, 633 (1977). And any doubts must be resolved in favor of the survival of the complaint. *Gardner v. Hollifield*, 96 Idaho 609, 610-11, 533 P.2d 730, 731-32 (1975). An I.R.C.P. 12(b)(6) motion to dismiss may be granted “when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief.” *Harper*, 122 Idaho at 536, 835 P.2d at 1347 (Ct. App. 1992) (internal quotations omitted).

III. ANALYSIS.

A. Introduction.

IHD makes five arguments as to why the agreement entered into was unlawful. First, IHD argues the Joint Powers Agreement constitutes an indebtedness that IHD

has incurred in violation of Article VIII, Section 3 of the Idaho Constitution. Second, IHD argues I.C. §40-801 requires an equal division of ad valorem property taxes between the City and IHD, and in the Joint Power Agreement IHD promised to pay the City *all* ad valorem property tax funds from levies of properties within the City limits; therefore, since the agreement does not provide an equal division it is in violation of that statute and an unlawful agreement. Third, IHD argues the agreement is unlawful under the Joint Powers Act because there is no termination provision. Fourth, IHD argues the agreement is unlawful because it was intended to last in perpetuity and Idaho courts disfavor such contract provisions. Finally, IHD argues the contract is void because there was no consideration.

Based on these arguments, IHD asks the Court to dismiss this case on the grounds that the contract was illegal and therefore the City has asserted no claim upon which relief can be granted.

Of concern to the Court is the fact that the parties have obviously considered this to be a binding agreement for the past ten years. Apparently, IHD recently received legal advice indicating there are legal arguments to be made as to the legitimacy of that agreement. Obviously, the City relies on these revenues being paid from IHD to the City each year. Rather than IHD bringing a declaratory action against the City where the IHD would continue to pay the City under the contract until those legal arguments are decided by a court, IHD instead chose to simply not pay the under the agreement, leaving the City in the lurch financially and forcing the City to sue IHD.

B. Positions of the Parties and Analysis by the Court.

1. Indebtedness in Violation of the Idaho Constitution.

IHD argues this agreement constitutes an indebtedness and violates Article VIII, Section 3 of the Idaho Constitution. Brief in Support of Motion to Dismiss, p. 4. That

section prohibits a political subdivision from incurring any indebtedness or liability that exceeds what the subdivision can satisfy in a year without the assent of two-thirds of the qualified electors. IHD argues the agreement constitutes an obligation, or liability, on the part of IHD, where if the levy amount were \$350,000 and the agreement lasted twenty years, it would create a \$7 million dollar liability. *Id.*, p. 9.

The City argues, "This case does not involve a debt." Plaintiff's Response to Defendant's Motion to Dismiss, p. 12. The City claims, "This case is about how the District has agreed to 'divide' the funds it statutorily has available annually to meet its statutory duty to maintain the streets in its boundaries." *Id.* The City notes I.C. § 40-801(a) gives the IHD the power to levy a tax, and if that levy is made upon property within an incorporated city, then 50% of the funds are apportioned to that incorporated city. *Id.* The City argues that it obviously is not unconstitutional up to that point, as that is what the statute requires and the statute has never been held to be unconstitutional. *Id.*, pp. 12-13. Simply because IHD contractually agreed in the Joint Powers Agreement to go over the 50% and give all funds taxed to the City does not make the agreement unconstitutional. The City argues the disbursement from IHD to the City each year is not a debt, the IHD receives revenues from the taxpayers and has contractually agreed to pay all those revenues to the City. *Id.*, p. 13. The City notes the Idaho Supreme Court held a municipality does not violate the constitutional prohibition on indebtedness when it pays expenses out of revenue for that year, citing *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454, 455 (1897). *Id.*, p. 14. The City argues, "Here, the District's disbursements 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 the District has already collected." *Id.* The City correctly notes the cases cited by IHD

(*City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006); *Feil v. City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643 (1912); and *City of Idaho Falls v. Fuhrman*, 149 Idaho 574, 237 P.3d 1200 (2010)) all deal with municipal purchases of systems or goods from private parties that necessarily require the municipality to incur liabilities beyond the current year and for which the municipality would be liable from its general revenues, where “In contrast, this case deals only with contingent periodic disbursements from the District to fulfill its statutory duty to maintain City roads.” *Id.*, pp. 14-15.

IHD’s reply argument, in its entirety is as follows:

It is the Idaho Supreme Court that interprets the Idaho Constitution...not the courts of California, Washington, or any other state. In its brief, the City has virtually ignored the Idaho Supreme Court decisions interpreting Article 8, Section 3. Instead, the city has cited to and quoted from court decisions from California and other states. Apparently, the City has been unable to find Idaho authority to contradict the analysis of Article 8, Section 3 contained in IHD’s initial brief. Based upon Idaho case law, the JPA clearly creates an illegal liability or indebtedness in violation of Article 8, Section 3.

Reply Brief in Support of Defendant’s Motion to Dismiss, p. 9. The Court finds this argument by IHD to the points made by the City, to be disingenuous, and unpersuasive. The IHD completely ignores the fact that *Frazier*, *Feil*, and *Fuhrman* are all cases involving municipal **purchases** of systems or goods from private parties that required the municipality to incur liabilities beyond the current year and for which the municipality would be liable from its general revenues, **and those are simply not the facts in this case**. The present case concerns contingent periodic disbursements from the District, half of which are to fulfill its statutory duty to maintain City roads, the other half are to fulfill its contractual duty to pay the City under the Joint Powers Agreement.

The Court must deny IHD’s motion to dismiss on this basis because the case law cited by IHD simply does not apply to this case. The Idaho Constitution limits the manner in which a county or municipality may incur indebtedness:

No...subdivision...shall incur any...liability...exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose....

Constitution of the State of Idaho, Article 8, Section 3. “[A] city may anticipate both the income and revenue provided for it for such year, and incur debts or liabilities against the city which can be met and discharged out of the aggregate income and revenue for that year.” *Charles Feil v. City of Coeur d’Alene*, 23 Idaho 32, ___, 129 P.643, 650 (1912); *see also City of Idaho Falls v. Fuhrman*, 149 Idaho 574, 580, 237 P.3d 1200, 1206 (2010) (holding that the liability incurred by a power sales agreement exceeded the income in the year that it was incurred, and that it was the type of expenditure that needed the assent of two-thirds of the voting electorate); *City of Boise v. Frazier*, 143 Idaho 1, 7, 137 P.3d 388, 394 (2005) (holding that this constitutional provision prohibited the city from entering into a lease agreement for the expansion of airport parking facilities absent a public vote that authorized the expense); *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843, 845 (1930) (prohibiting a city from incurring a debt to purchase an electric-generating system); *Feil v. City of Coeur d’Alene*, 23 Idaho 32, ___, 129 P.643, 652 (1912) (holding that a bond funding \$180,000 to fund a waterworks system would create a liability against the city and was therefore invalid under this constitutional provision without a vote). *Feil* and *Miller* were cases where expenses were invalidated because neither fell into a special fund exception (i.e., bonds paid by revenue from the services of the plant that was financed by the bond), but this later became an exception that was amended into Article 8, § 3. *See Asson v. City of Burley*, 105 Idaho 432, 439, 670 P.2d 839, 846 (1983). A contract that violates this section is void and cannot be enforced. *See Deer Creek Highway Dist. v. Doumecq Highway Dist.*, 37 Idaho 601, ___, 218 P. 371, 372 (1923). IHD argues the Joint Powers

Agreement is illegal because it falls under a “liability” and that, because a twenty-year view of this agreement would demonstrate that the Highway District has indebted itself upwards of \$7 million, it has taken on more indebtedness than it can pay. This is simply not true when looking at the plain meaning of the statute.

“[T]he statutory rules of construction apply to the interpretation of constitutional provisions.” *Sweeney v. Otter*, 119 Idaho 135, 138, 804 P.2d 308, 311 (1990) (citing *Lewis v. Woodall*, 72 Idaho 16, 18, 236 P.2d 91, 93 (1951)). “Liability” means “the state of being bound or obligated in law or justice to do, pay, or make good something.” *Feil v. City of Coeur d’Alene*, 23 Idaho 32, ___ 129 P. 643, 649 (1912) (relying on this definition and other comparable definitions of “liability”). Because IHD has obligated itself to pay a percentage of the annual revenue it collected on ad valorem taxes, it did incur a liability. However, the liability does not exceed the income received a year. The IHD has apportioned a portion, or a percentage of the revenue collected; the portion that the City receives only reflects the percentage of the revenue that is generated from the property located within the city. So long as the IHD’s boundaries equal or exceed the City’s boundaries, the IHD will always receive more revenue than what it has apportioned the City each year because it will receive levies from property in the City limits as well as levies from property outside the City limits. Because the IHD has not incurred a liability that exceeds its revenue, the Court must deny IHD’s motion to dismiss upon this basis.

2. Legality of Contract Under Idaho Code § 40-801.

IHD argues I.C. §40-801 governs distribution of ad valorem taxes levied within city limits. Brief in Support of Motion to Dismiss, pp. 10-11. Under that statute, half of the funds for property within the limits of an incorporated city are apportioned to the city. IHD argues that by entering into an agreement which provides for anything other than

an even split of levies between IHD and the City, violates the division of the levy as mandated by I.C. §40-801. IHD argues the Joint Powers Agreement is illegal and thus void and unenforceable, citing *City of Meridian v. Petra, Inc.*, 154 Idaho 425, ___ 299 P.3d 232, 252 (2013); *Miller v. Haller*, 129 Idaho 345, 351, 924 P.2d 607, 613 (1996) (“The general rule is that a contract prohibited by law is illegal and hence unenforceable.”). *Id.* p. 11. IHD argues, “The statutory 50/50 tax distribution ratio is mandatory”, because the statute uses the word “shall” not “may”. *Id.* IHD argues, “The statute does not authorize a 75/25 split or a 100/0 split.” *Id.* For this proposition, IHD cites *Rexburg v. Madison County*, 115 Idaho 88, 764 P.2d 838 (1988). *Id.*

The City correctly points out *City of Rexburg* does not support IHD’s argument that I.C. §40-801 does not permit anything other than a 50/50 tax distribution ratio as that case dealt with an inadvertent decimal point error, where the City of Rexburg received only 5% rather than the statutory 50% revenue. Plaintiff’s Response to Defendant’s Motion to Dismiss, pp. 10-11. This Court finds the Idaho Supreme Court in *City of Rexburg* did not address whether a disbursement greater than 50% would have violated the statute; it simply held the county in that case had duty to allocate at least the 50% under that statute. 115 Idaho 88, 89-90, 764 P.2d 838, 839-90.

Idaho Code §40-801(1)(a) reads:

40-801. Authority and procedure for levies. (1) The commissioners of a county highway system, the commissioners of a county-wide highway district, and the commissioners of highway districts are empowered, for the purpose of construction and maintenance of highways and bridges under their respective jurisdictions, to make the following highway ad valorem tax levies as applied to the market value for assessment purposes within their districts:

(a) Two-tenths per cent (0.2%) of market value for assessment purposes for construction and maintenance of highways and bridges; provided that if the levy is made upon property within the limits of any incorporated city,

fifty per cent (50%) of the funds shall be apportioned to that incorporated city.

The Idaho Supreme Court in *City of Rexburg* made it clear that Madison County had a “statutory duty” (and specifically not a duty “based in common law, contract, or any other theory of law”) to pay the City of Rexburg the amounts due under I.C. §40-801. 115 Idaho 88, 89-90, 764 P.2d 838, 839-90. *City of Rexburg* makes it clear that the county has a statutory duty to pay the city the amount due under I.C. §40-801. *Id.* The word “shall” in I.C. §40-801 applies to IHD’s statutory duty to pay City 50% of revenues raised by taxes on property owners within the City of Sandpoint. *City of Rexburg* makes it clear this statutory duty of paying revenues is mandatory under the statute, and must be in the statutory amount of 50% of revenues, and in that case the mispayment of .5% was a breach of that statutory duty. This Court can find nothing in *City of Rexburg* or in I.C. §40-801 that prohibits a county from contractually agreeing to pay more than the statutory amount. This Court finds IHD’s argument “IHD cannot alter the statutory apportionment of tax revenue set forth in I.C. §40-801” to be completely without merit. Reply Brief in Support of Defendant’s Motion to Dismiss, p. 8. There is nothing in I.C. §40-801 which prohibits the highway district from allocating the remaining revenues (those above the statutorily mandated 50%) to a city by agreement.

IHD’s argument that the statutory language “fifty per cent (50%) of the funds shall be apportioned” means that the defendant cannot legally apportion more than fifty percent to the City, is a strained interpretation which this Court simply cannot make. “Judicial interpretation of a statute begins with an examination of the statute’s literal words.” *State, Dept. of Transp. v. HJ Grathol*, 153 Idaho 87, 91, 278 P.3d 957, 961 (2012); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Statutes are interpreted by their plain and express meaning. *HJ Grathol*, 153 Idaho at 91, 278 P.3d

at 961. A rational and obvious meaning of a statute is always preferred to any curious, narrow, hidden sense. *Walker v. Hensley Trucking*, 107 Idaho 572, 691 P.2d 1187 (1984). A court will resort to judicial construction “only if the statute is ambiguous, incomplete, absurd, or arguably in conflict with other laws.” *Arel v. T & L Enterprises, Inc.*, 146 Idaho 29, 32, 189 P.3d 1149, 1152 (2008).

A plain reading of Idaho Code § 40-801 is that a highway district owes a city 50% of ad valorem statutes within city limits. The statute does not designate what is to be done with the other fifty percent. Thus, interpreting the 50% amount as a minimum amount is much more logical than to interpret such as a limit.

IHD’s argument that this 50% amount is a limit ignores the powers given to highway commissioners. “[S]tatutes that are *in pari materia* (of the same matter or subject), are to be construed together as one system to effect legislative intent.” *City of Sandpoint v. Sandpoint Independent Highway District*, 126 Idaho 145, 150 (1994).

Idaho Code § 40-1310 outlines the powers of the highway district commissioners, among which includes the following:

The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within their highway system, whether directly or by their own agents and employees or by contract... The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.

I.C. §40-1310(1). A plain reading of this statute illustrates that the commissioners have the power to contract for services and to conduct its own business. Therefore, the

commissioners have discretion of what to do with its funds, including the discretion to give a city the other fifty percent above what it is required so that the city may maintain the roads. To read the fifty-percent apportionment to be a limit upon which the commissioners may not exceed would put ITD's reading of I.C. §40-801 in conflict with the powers set forth in I.C. §40-1310(1). To hold otherwise would limit the Commissioners' discretion of how to spend the other 50 percent of the taxes collected. Interpreting the fifty-percent apportionment as a minimum creates no such conflict. Thus, this Court's interpretation is I.C. §40-1310(1) mandates IHD to pay a minimum fifty percent of ad valorem city taxes to the city and IHD has the discretion on how to use the other half of its funds. IHD chose ten years ago, with the advice of counsel, to contractually agree the remaining fifty percent goes to the City as well, and that is not prohibited under § 40-801, and thus, the agreement is not illegal. IHD's motion to dismiss on this ground must be denied.

3. Legality under the Joint Powers Act.

IHD argues that the agreement is unlawful under the Joint Powers Act (JPA), I.C. §67-2326 *et seq.* Brief in Support of Motion to Dismiss, pp. 11-13. IHD argues JPA mandates an agency cannot delegate away or exceed its statutory or constitutional authority when entering into a joint agreement. I.C. § 67-2328. *Id.*, p. 12. Additionally, IHD argues there must be a termination clause and there is no termination because the contract states that it will be "perpetual." *Id.* IHD also argues that the provision stating that the agreement may terminate by "mutual agreement" is not a termination provision; rather, the IHD argues that it functions as a prohibition of termination unless there can be a mutual agreement. *Id.* The defendant argues that because the City receives

benefits in excess of what the statute authorizes, the City will never have an incentive to terminate the agreement. *Id.*, p. 13.

City argues:

The District's contention that the JPA is void for want of an effective termination clause is misguided. 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. The JPA satisfies the Act's duration requirement by providing express terms of the JPA's duration, and an additional vehicle for its termination upon certain dissolving acts. 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) 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.

Plaintiff's Response to Defendant's Motion to Dismiss, p. 17.

A joint powers agreement must specify the following:

- (1) Its duration.
- (2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.
- (3) Its purpose or purposes.
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore.
- (5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
- (6) Any other necessary and proper matters.

I.C. § 67-2328(c). This Court agrees with the City that the statutory mandate of I.C. § 67-2738 has been satisfied, the agreement's "duration" is "perpetual." The duration is not unknown, it is perpetual. The fact that IHD ten years later regrets entering into that agreement is of no import. This Court also agrees that there is a method of termination, and that is "mutual agreement." There is no Idaho appellate

court precedent on Idaho Code § 67-2328 which interprets “duration” and “method of termination.” The language must be given its plain meaning. Given the plain meaning of “duration” and “method of termination”, those requirements have been met.

The Joint Powers Act allows for state or public agencies to exercise their powers jointly provided each has power over the common subject matter. I.C. § 67-2328(a). IHD is correct that neither entity may exceed its authority and that a joint power agreement must address some specific provisions. *Id.* The Court’s decision above that IHD has not violated the Idaho Constitution in entering into this agreement thus effects this Joint Powers argument raised by IHD. Had the Court bought IHD’s argument that IHD had indebted itself in violation of the Idaho Constitution, then the agreement would also be unlawful under the Joint Powers Act. However, as this Court holds there is no violation of the Idaho Constitution and IHD acted in a constitutionally permissible way, then this secondary argument by IHD must be rejected as well.

Additionally, for the same reasons discussed in the next section, the argument that perpetual contracts are in violation of public policy are, best case for IHD at this juncture, not a basis for granting a motion to dismiss because a court must consider factual circumstances, which would require an examination of evidence outside the pleading. In any event, IHD’s motion to dismiss on this ground must be denied.

4. Invalidity Because of Perpetuity.

IHD argues Idaho courts disfavor perpetual agreements. Brief in Support of Motion to Dismiss, pp. 13-14. IHD cites *Barton v. State*, 104 Idaho 338, 659 P.2d 92 (1983). *Id.*, p. 13. IHD notes in that case the Idaho Supreme Court declined to read a contract as containing a perpetuity clause which would have bound the State of Idaho Transportation Department. 104 Idaho 338, 340, 659 P.2d 92, 94.

City is correct that *Barton* is "... particularly distinguishable, as the court there was asked to infer an **intent** for the state to be perpetually bound by a purported JPA." Plaintiff's Response to Defendant's Motion to Dismiss, p. 18. (bold in original). What the Idaho Supreme Court actually wrote is, "Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored." 104 Idaho 338, 340, 659 P.2d 92, 94, citations omitted. In the present case, IHD and City specifically agreed the duration was "perpetual." There is nothing about that term which is ambiguous. Thus, the implication under *Barton* is where the parties expressly agree the duration of the agreement is "perpetual", the Court should not look upon that agreement with disfavor. In *Barton*, the Idaho Department of Transportation entered into an agreement with a landowner where the State would provide access to the owner's business properties and purchase her land at \$1,000. 104 Idaho 338, 339, 659 P.2d 92, 93. In return, the landowner agreed to forebear from legal action and to encourage other landowners who were dealing with the Department of Transportation to be reasonable in their dealings. *Id.* The contract did not address how long this arrangement would continue, and in 1977, the Department of Transportation closed the access points. *Id.* The Idaho Supreme Court refused to imply that the contract was perpetual absent clear indication that the parties intended to be perpetually bound: "Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored." 104 Idaho 338, 340, 659 P.2d 92, 94. Again, the Idaho Supreme Court's statement only disfavors interpreting a contract to be perpetual when the contract is *silent* as to duration. When there is express language that a contract is intended to be perpetual, this holding suggests that the Idaho Supreme Court would uphold such an express provision.

In any event, the Court must deny the motion to dismiss on this basis because even if the contract is against public policy (which the Court does not find), the Court must determine a reasonable time for performance, and this determination requires factual findings that are outside of the pleadings. *Barton*, 104 Idaho 338, 341, 659 P.2d 92, 95. A court determines “reasonable time” by examining “the subject matter of the contract, the relationship of the parties and the circumstances surrounding the transaction.” *Id.* In addition to a reasonable time of performance, a party must also give reasonable notice of its intent to terminate the contract. *Id.* In *Barton*, the Court held that twenty-two years of performance under the contract between the Idaho Department of Transportation and the landowner was reasonable. *Id.*

5. Idaho Code §40-1333.

IHD argues I.C. § 40-1333 requires cities which have city highway systems, shall be responsible for the maintenance of highways in their system, except as provided in I.C. § 40-607; and cities may make agreements with a highway district to do the city work, but the city shall compensate the district for any work performed. Brief in Support of Motion to Dismiss, p. 14. IHD argues: “The Idaho legislature has established a clear policy that a city must use its own revenues to maintain city streets and may not use highway district revenues to do so, except as provided in I.C. §40-801.” *Id.* The IHD then claims “If a highway district constructs or maintains a city street, the city must repay the highway district for all expenditures made within the city by the highway district.” *Id.* While that is an accurate summary of I.C. §40-1333, it has nothing to do with the facts of this case, because IHD has not counterclaimed against the City to recompense IHD for maintenance work IHD has performed for the City. In its briefing,

the City did not respond to IHD's argument under I.C. § 40-1333. The Court finds IHD's argument under I.C. § 40-1333 to have no merit.

6. Sufficient Consideration.

Finally, IHD argues that there was no consideration for IHD providing 100% of its *ad valorem* property taxes. Brief in Support of Motion to Dismiss, pp. 14-15. This Court finds this argument by IHD is especially inapt. As pointed out by the City, the Joint Powers Agreement itself recited mutual consideration, as it ended all the protracted litigation. Plaintiff's Response to Defendant's Motion to Dismiss, pp. 20-21; citing Complaint, Exhibit A. The City correctly notes:

The JPA is the result of the Parties' Stipulation for Settlement ("Settlement"), entered into July 3, 2003. (Complaint, Ex. A) By its terms, the Settlement grants the City jurisdiction over city streets, requires the formation of a the JPA, compels the City to vacate its petition for a dissolution election, requires dismissal of the civil case with prejudice, requires the City to not oppose future annexation elections sought by the District, and stipulates that the District waives its costs awarded on appeal by the Idaho Supreme Court in Docket No. 27441. (Complaint, Ex. A)

Plaintiff's Response to Defendant's Motion to Dismiss, p. 20. The City also correctly notes:

This Court approved the Settlement. The Idaho Court of Appeals recently held that a settlement, the terms of which are incorporated into a court order, does not need additional consideration to be effective. *Davidson v. Soelberg*, 154 Idaho 227, 296 P.3d 433, 438 (Ct.App. 2013). The same rationale should apply here, where the Parties provided mutual consideration in the settlement, a part of which was the exercise of their rights under I.C. §67-2326, et seq.

Id., p. 21. IHD did not respond to the City's arguments in its Reply Brief in Support of Defendant's Motion to Dismiss.

A contract that contains no consideration is illusory and therefore unenforceable. There is consideration in the present case because the IHD has agreed to pay money and the City has agreed to forbear its legal efforts to dissolve the IHD. An agreement

must have consideration, a benefit of the bargain, in order to be enforceable. *Weisel v. Beaver Springs Owners Ass'n, Inc*, 152 Idaho 519, 526, 272 P.3d 491, 498 (2012).

Here, consideration is not an issue. According to the agreement, the City benefited because it received the responsibility to maintain its own streets in addition to funds to do so. The Highway District benefitted because the City ceased its pursuit to legally dissolve the Highway District within Bonner County. There was consideration and therefore the motion to dismiss must be denied under this argument.

7. Estoppel.

The City correctly notes:

The District is taking a position contrary to which it agreed when it entered into the JPA, and consented to this Court's Order. It was the Court's dismissal based on the stipulation that permitted the JPA.

Plaintiff's Response to Defendant's Motion to Dismiss, p. 22. The City then argues, "As a matter of equity, the District is either judicially estopped from reversing its position taken in open court, or is equitably estopped from harming the City by reversing its position. *Id.* IHD argues "Estoppel does not save a Constitutionally Invalid Agreement." Reply Brief in Support of Defendant's Motion to Dismiss, pp.14-20. Because this Court does not find the Joint Powers Agreement to be Constitutionally invalid, there is no need to discuss the judicial estoppel or equitable estoppel arguments.

IV. CONCLUSION AND ORDER.

The complaint here has been sufficiently pleaded. For that reason alone, IHD's motion to dismiss under I.R.C.P. 12(b)(6) for "failure to state a claim upon which relief can be granted" must be denied. Claims grounded in a breach of contract are sufficiently pleaded if they allege the formation of a contract, the obligations under the contract, the right of the plaintiff pursuant to the contract, and the breach by the defendant. See *State ex rel. Robins v. Clinger*, 72 Idaho 222 (1951). In this case, City

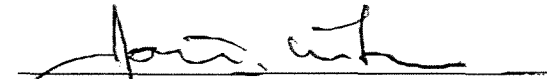
has alleged an agreement between it and IHD, has alleged City's agreed-upon right to share in the ad valorem taxes collected by IHD, and has alleged IHD's breach in withholding those funds. Because City has alleged all of the elements of a breach of contract claim, IHD's motion to dismiss must be denied.

Additionally, when an illegal contract is alleged, the Court might have an affirmative duty to examine the legality of the contract when it appears in the pleading through a verified complaint. It is generally not appropriate for a court to consider affirmative defenses in considering a motion to dismiss at the pleading stage of litigation. See *Gardner v. Hollifield*, 96 Idaho 609, 611 (1975). There are exceptions, however. One exception is when an affirmative defense appears on the face of the complaint itself. *Gardner v. Hollifield*, 96 Idaho 609, 611 (1975). Another exception, raised in contract-related defenses, is whether the alleged agreement is illegal. "The illegality of a contract can be raised at any stage in litigation. In fact, the court has the duty to raise the issue of illegality *sua sponte*." *Farrell v. Whiteman*, 146 Idaho 604, 608 (2009)(citing *Trees v. Kersey*, 138 Idaho 3, 6 (2002)). Illegal contracts constitute questions of law for the court. *Trees v. Kersey*, 138 Idaho 3, 6 (2002). Here, the verified complaint has attached a copy of the contract, so the contract itself is part of the proceedings and the illegality would be evident from the face of the contract. Additionally, the defendant has questioned the contract's legality. Based on the affirmative duty of a court to evaluate the illegality of the contract, based on the contract that is part of the verified complaint, and based on the defendant's challenge of the contract's legality, this Court may proceed to make a determination of the legality of the contract in the record in deciding whether to dismiss the complaint.

As this Court's decision above shows, this Court has analyzed the merits of whether the contract is illegal as made in the arguments by IHD. Because the agreement is attached to the Complaint and is part of these proceedings, the Court can make determinations regarding the legality of the contract, and has done so. Based on the above reasons, the Court must deny the motion to dismiss on all the arguments presented by IHD.

IT IS HEREBY ORDERED the defendant IHD's Motion to Dismiss is DENIED in all aspects.

Entered this 9th day of December, 2013.



 John T. Mitchell, District Judge

Certificate of Service


I certify that on the 11th day of December, 2013, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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 Susan Weeks

Fax #
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 208 664-1684

Lawyer
 C. Matthew Andersen
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 Jeannine Clausen, Deputy Clerk

STATE OF IDAHO
COUNTY OF BONNER) SS
FILED: *Bonner*

2013 DEC 18 PM 2:00

CLERK DISTRICT COURT

DEPUTY

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16 Attorneys for City of Sandpoint

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

19 CITY OF SANDPOINT, a municipal
20 corporation of the State of Idaho,

Plaintiff,

21 vs.

22 INDEPENDENT HIGHWAY DISTRICT, a
23 political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

STIPULATION FOR RECIPROCAL
PRELIMINARY INJUNCTION

24 Plaintiff, City of Sandpoint ("Sandpoint"), filed its Complaint For Breach of Contract and for
25 Permanent Injunction and Other Equitable Relief on August 16, 2013. The Independent Highway
26 District ("District") filed a Motion to Dismiss on September 9, 2013. On December 9, 2013, the Court
issued its Memorandum Decision and Order denying the District's Motion to Dismiss ("Decision")

1 The parties hereby stipulate to entry of a reciprocal preliminary injunction pending final
 2 resolution of the matter. To effectuate the entry of the reciprocal preliminary injunction, the parties
 3 further stipulate as follows:

4 1. This Court has jurisdiction of the subject matter of this case and jurisdiction of all parties
 5 hereto.

6 2. Venue lies properly with this Court.

7 3. Entry of a reciprocal preliminary injunction pending final resolution of the case is in the
 8 best interests of citizens represented by the parties pending final resolution of this action.
 9

10 4. No security is required. Rule 65(c), I.R.C.P.

11 5. The parties agree that the reciprocal preliminary injunction is binding in form and scope
 12 pursuant to Rule 65(d), I.R.C.P.


13 6. The parties by agreeing and stipulating to entry of a preliminary injunction make no
 14 admissions as to the truth of Plaintiff's allegations or to Defendant's defenses. Each party reserves its
 15 rights to, and defenses to, any claim made in this matter.
 16

17 7. The parties stipulate to entry of an injunction that requires conduct in accordance with the
 18 terms of the Joint Powers Agreement dated July 8, 2003 until further order of the Court. IHD shall
 19 disburse any sums withheld from Sandpoint and continue the contractual disbursements unless absolved
 20 from such by the Court. Any distribution made during the pendency of this case shall not be deemed
 21 "voluntary" by IHD to Sandpoint. Sandpoint's right to assert entitlement to all distributions made to it is
 22 reserved for further action of the Court.
 23
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8. Counsel for both parties stipulated that they accept service for their respective party clients and such service is effective on each party.

DATED this 18th day of December, 2013.


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WINSTON & CASHATT, LAWYERS,
a Professional Service Corporation

SCOT R. CAMPBELL, ISB No. 4121
SANDPOINT CITY ATTORNEY

Attorneys for City of Sandpoint


SUSAN P. WEEKS, ISB No. 4255
JAMES, VERNON & WEEKS, PA

DAVID W. WYNKOOP
SHERER & WYNKOOP, LLP

Attorneys for Independent Highway District

STATE OF IDAHO)
COUNTY OF KOOTENAI) SS
FILED: Bonner

2013 DEC 18 PM 2:00

CLERK DISTRICT COURT

DEPUTY

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

CITY OF SANDPOINT, a municipal corporation)
of the State of Idaho,)

Plaintiff,)

vs.)

INDEPENDENT HIGHWAY DISTRICT, a)
political subdivision of the State of Idaho,)

Defendant.)

CASE NO. CV 2013-01342

RECIPROCAL PRELIMINARY
INJUNCTION ORDER

The Court having considered the stipulation of City of Sandpoint ("City") and Independent Highway District ("IHD") for entry of a preliminary injunction, and being advised in the premises, finds that:

1. This Court has jurisdiction of the subject matter of this case and jurisdiction of all parties hereto.
2. Venue lies properly with this Court.
3. Entry of a reciprocal preliminary injunction is in the best interests of all citizens represented by the parties pending final resolution of this action.
4. Security is not required. Rule 65(c), I.R.C.P.
5. The parties stipulate that the preliminary injunction is binding in form and scope pursuant to Rule 65(d), I.R.C.P.

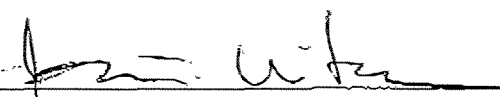


6. The parties by agreeing and stipulating to entry of a preliminary injunction make no admissions as to the truth of Plaintiff's allegations or to Defendant's defenses. Each party reserves its rights to, and defenses to, any claim made in this matter.


7. The parties are enjoined to conduct themselves in accordance with the terms of the Joint Powers Agreement dated July 8, 2003 until further order of the Court. IHD shall disburse any sums withheld from Sandpoint and continue the contractual disbursements unless absolved from such by the Court. Any distribution made during the pendency of this case shall not be deemed "voluntary" by IHD to Sandpoint. Sandpoint's right to assert entitlement to all distributions made to it is reserved for further action of the Court.

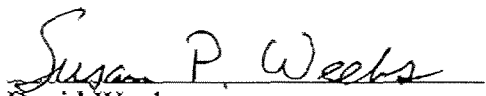
8. Counsel for both parties stipulated that they accept service for their respective party clients and such service is effective on each party.

Dated this 18th day of December, 2013.


JOHN T. MITCHELL
District Judge

APPROVED:


C. Matthew Andersen
Scot Campbell
Attorneys for Plaintiff


David Wynkoop
Susan P. Weeks
Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18 day of December, 2013, I served a true and correct copy of the foregoing upon the following, by facsimile as indicated below:

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(208) 887-4865

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James, Vernon & Weeks, P.A.
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Linda Cooper
CLERK OF THE COURT

FILED
 2014 MAR 3 PM 2 30
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12 Attorneys for City of Sandpoint
 13
 14

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

16 CITY OF SANDPOINT, a municipal
 17 corporation of the State of Idaho,

Plaintiff,

Case No. CV-13-01342

18 vs.

STIPULATED MOTION TO VACATE
 TRIAL DATE

19
 20 INDEPENDENT HIGHWAY DISTRICT, a
 21 political subdivision of the State of Idaho,

Defendant.

22
 23 Plaintiff, City of Sandpoint and Defendant, Independent Highway District, by and through their
 24 undersigned counsel hereby stipulate to entry of an order vacating the trial date presently set on
 25 March 25, 2014. The request is made for the reason that the parties originally contemplated an
 26

1 interlocutory appeal of this matter with the court's consent and certification pursuant to I.R.C.P. 54(b).
 2 However, following research into the matter, the parties realized a Rule 54(b) certificate was not the
 3 proper procedure for an interlocutory appeal. The parties will continue to confer to determine the proper
 4 steps to take to effectuate an appeal of the Court's order.

5
 6 DATED this 3rd day of March, 2014.

7
 8 *C. Matthew Andersen*

9
 10 C. MATTHEW ANDERSEN, ISB No. 3581
 11 WINSTON & CASHATT, LAWYERS,
 12 a Professional Service Corporation

13 SCOT R. CAMPBELL, ISB No. 4121
 14 SANDPOINT CITY ATTORNEY
 15 Attorneys for City of Sandpoint

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 17 *Susan P. Weeks*

18 SUSAN P. WEEKS, ISB No. 4255
 19 JAMES, VERNON & WEEKS, PA

20 DAVID W. WYNKOOP
 21 SHERER & WYNKOOP, LLP

22 Attorneys for Independent Highway District

NO
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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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342
ORDER VACATING TRIAL DATE

THIS MATTER came before the Court on the parties' Stipulated Motion to Vacate Trial Date. The court having considered the stipulated motion and the pleadings filed in this matter and being fully advised, finds good cause to grant the motion.

IT IS HEREBY ORDERED that the trial date presently set on March 25, 2014 in the above action is vacated and reset to begin October 28, 2014 at 9:00 am.

DONE IN OPEN COURT this 3rd day of March, 2014.


HONORABLE JOHN T. MITCHELL

184

1 Presented by:

2 *C. Matthew Andersen*
3

4 C. MATTHEW ANDERSEN, ISB No. 3581
5 WINSTON & CASHATT
6 Attorneys for Plaintiff

7 *Susan P. Weeks*
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ORDER ON MOTION TO VACATE TRIAL
DATE - PAGE 2

1 I hereby certify that I caused a true and
2 complete copy of the foregoing to be mailed,
3 postage prepaid; hand delivered; sent
4 via facsimile on March 4, 2014, to:

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18 (208) 664-1684 (fax)

Linda Conner

19 CLERK OF THE COURT

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 4 AM 11 47

CLERK DISTRICT COURT
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Attorneys 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.	
INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho,	Defendant.

Case No. CV-13-01342

CITY OF SANDPOINT'S MOTION FOR
SUMMARY JUDGMENT

Oral Argument Requested

The City of Sandpoint (the "City") requests pursuant to I.R.C.P. 56, 57, 65 and I.C. §10-1201 et seq. that the Court enter declaratory judgment establishing that the Joint Powers Agreement and the


CITY OF SANDPOINT'S MOTION FOR
SUMMARY JUDGMENT
PAGE 1

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 667-2103

1 Memorandum of Understanding entered into by the parties were legal, valid, and enforceable, and for an
 2 Order requiring the Independent Highway District ("IHD") to comply with all obligations therein in the
 3 form of a permanent injunction. Further, the City of Sandpoint requests an award of costs and attorney
 4 fees incurred in this action as allowed by law, I.C. §12-121 and I.R.C.P. 54.

5
 6 This Motion is supported by the Memorandum in Support filed herewith, the Affidavits of Scot
 7 Campbell and Shannon Syth filed on November 7, 2013 and the Court's Memorandum Decision and
 8 Order entered December 9, 2013.

9 DATED this 4th day of June, 2014.

10
 11 
 12 _____
 13 C. MATTHEW ANDERSEN, ISB No. 3581
 14 WINSTON & CASHATT, LAWYERS

15 SCOT R. CAMPBELL, ISB No. 4121
 16 SANDPOINT CITY ATTORNEY

17 Attorneys for City of Sandpoint

1 I hereby certify that I caused a true and
2 complete copy of the foregoing to be mailed,
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4 via facsimile on June 4, 2014, to:

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7 Susan P. Weeks
8 James, Vernon & Weeks, P.A.
9 1626 Lincoln Way
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12 C. MATTHEW ANDERSEN

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CITY OF SANDPOINT'S MOTION FOR
SUMMARY JUDGMENT
PAGE 3

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STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

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Attorneys 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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

CITY OF SANDPOINT'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT

1. Relief Requested.

The City of Sandpoint (the "City") requests that the Court enter declaratory judgment establishing that the Joint Powers Agreement and the Memorandum of Understanding entered into by

CITY OF SANDPOINT'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT -- 1

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 667-2103

1 the parties were legal, valid, and enforceable, and for an Order requiring the Independent Highway
2 District ("IHD") to comply with all obligations therein in the form of a permanent injunction. Further,
3 the City of Sandpoint requests an award of costs and attorney fees incurred in this action.

4 **2. Undisputed Facts.**

5 The undisputed facts are established in the body of the verified Complaint filed on August 16,
6 2013, and as outlined in the City's Response to Defendant's Motion to Dismiss filed on November 7,
7 2013, along with the previously filed affidavits of Scot R. Campbell and Shannon Syth and exhibits
8 thereto. As those pleadings provide, the City and IHD entered into a Joint Powers Agreement ("JPA")
9 and Memorandum of Understanding (which settled litigation between the parties, all of which is public
10 record), requiring the IHD to disburse ad volorem tax funds raised within the City to the City for the
11 operation, maintenance and snow removal of the streets within the City limits. The JPA was entered
12 into in compromise of pending litigation and to terminate a petition to abolish the IHD.
13

14 IHD inexplicably ceased disbursing the funds and challenged the validity of the ten year old
15 agreement it had executed. The City was forced to sue to obtain the withheld amounts. Without
16 disputing the underlying facts, IHD moved to dismiss the Complaint pursuant to IC 12(b)(6). IHD's
17 argument is based on its view of the controlling law. This Court entered a detailed Memorandum
18 Decision and Order Denying Defendant's Motion to Dismiss on December 9, 2013. That order
19 affirmatively established the law of this case and by its ruling; the court has determined the Joint Powers
20 Agreement was legally enforceable.
21

22 The parties have stipulated to entry of a Preliminary Injunction which was entered on
23 December 18, 2013. (Without the Preliminary Injunction IHD would have continued to withhold
24
25

1 funds.) IHD wishes to appeal the court's order on the motion, but procedurally there is not a final
 2 appealable Judgment. IHD has requested certification of an interlocutory appeal of the Court's denial of
 3 its motion to dismiss, which has been granted. However, the matter has not been stayed and IHD will
 4 not consent to such a stay. Given the posture of the case and pending scheduling deadlines, it is
 5 appropriate for the City to request summary judgment because there is no genuine issue of material fact
 6 which would necessitate a trial.
 7

8 **3. Points of Authority and Argument.**

9 To expedite argument on this matter, the City incorporates the authority and argument made in
 10 its Response to IHD's Motion to Dismiss, as well as the Court's reasoning set out in its Memorandum
 11 Decision and Order. IHD's challenges to the agreement were based on the legal claims that Idaho's
 12 statutory scheme prohibited the parties from having the authority to enter into the JPA, that the JPA
 13 created an illegal future "debt" prohibited by statute and constitution, that the JPA's express terms
 14 improperly lacked termination terms as required by statute, and that the JPA lacked consideration, all of
 15 which rendered it illegal and unenforceable. Each of these claims rests solely on the legal interpretation
 16 of the statutes, the Constitution, and the express unambiguous terms of the agreement. As a result, there
 17 are no issues of fact which are disputed to create any genuine issue for trial; if the JPA was legal, it is
 18 enforceable, and the City is entitled to all of its declaratory relief and fees and costs. IRCP 56;
 19 I.C. §12-121; IRCP 54.
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1 4. Conclusion.

2 For the foregoing reasons, the City of Sandpoint requests the Court grant its final judgment
3 declaring the validity of the JPA and ordering its enforcement in the form of a permanent injunction.

4 DATED this 4th day of June, 2014.

6 

7 C. MATTHEW ANDERSEN, ISB No. 3581
8 WINSTON & CASHATT, LAWYERS

9 SCOT R. CAMPBELL, ISB No. 4121
10 SANDPOINT CITY ATTORNEY

11 Attorneys for City of Sandpoint

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23 C. MATTHEW ANDERSEN

24
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26 CITY OF SANDPOINT'S MEMORANDUM IN
SUPPORT OF SUMMARY JUDGMENT -- 4

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STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 12 PM 2 19

CLERK DISTRICT COURT

DEPUTY

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Attorneys for Defendant Independent Highway District

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

CASE NO. CV-2013-01342

ORDER GRANTING RULE 12
INTERLOCUTORY APPEAL
CERTIFICATION

For the reasons enunciated on the record in this matter at the hearing held May 21, 2014,
Defendant's motion for Leave to File an Interlocutory Appeal pursuant to I.A.R. 12 of the
Court's December 9, 2013, Memorandum Decision and Order Denying Defendant's Motion to
Dismiss is hereby granted.

BROADCAST REPORT

TIME : 06/13/2014 12:16
 NAME : BONNER COUNTY CLERKS
 FAX : 2082551447
 TEL :
 SER. # : BROA2J348579

PAGE(S)

02

DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
06/13	12:05	12087652121	39	02	OK	
06/13	12:06	2551368	34	02	OK	ECM
06/13	12:09	12086641684	29	02	OK	ECM
06/13	12:15	12088874865	35	02	OK	ECM

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COUNTY OF APPEALS

2014 JUN 23 AM 8:07

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STATE OF IDAHO
County of Bonner
June 23, 2014
At 2:55 PM
Dmt

Attorneys for Appellant Independent Highway District

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 Docket No. 42236

Bonner County Case No. CV-2013-01342

MOTION FOR APPEAL BY
PERMISSION AND STAY OF
PROCEEDINGS

FILED - ORIGINAL
JUN 23 2014
Supreme Court Court of Appeals

Defendant moves the Court pursuant to I.A.R. 12(c) for an order granting an appeal by permission of the district court's order denying Defendant's Motion to Dismiss. The question presented by the Defendant's Motion to Dismiss is a controlling question of law as to which there is substantial grounds for difference of opinion and in which an immediate appeal from the order will materially advance the orderly resolution of this litigation. For this reason and others outlined in the attached memorandum, Defendant requests this Court grant permission for appeal

MOTION FOR APPEAL BY PERMISSION AND STAY OF PROCEEDINGS: 1

and grant a stay of the proceedings before the district court pending the outcome of the issue raised by this motion.

Copies of the Order denying Defendant's Motion to Dismiss and the Order granting Defendants Interlocutory Appeal Certification are attached as required by I.A.R. 12(c)(1). Further, this motion is based upon the attached memorandum in support of this motion.

WHEREFORE, for all of the above reasons, Defendant requests this court grant this Motion to Appeal by Permission and stay the underlying action until this issue is resolved.

DATED this 20th day of June, 2014.

JAMES, VERNON & WEEKS, P.A

By Susan P. Weeks
Susan P. Weeks
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:

C. Matthew Anderson
Winston & Cashatt
250 Northwest Blvd., Ste 206
Coeur d'Alene, ID 83814

XX via facsimile to 208-765-2121

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

Christine Elmore

STATE OF IDAHO)
County of BONNER)

FILED 12/09/13

AT 2:10 O'Clock P M
CLERK OF DISTRICT COURT

Deputy

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.

INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho,

Defendant.

Case No. **BON CV 2013 1342**

MEMORANDUM DECISION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the Motion to Dismiss filed by defendant Independent Highway District (IHD) on September 9, 2013.

On August 15, 2013, plaintiff City of Sandpoint (City) filed this lawsuit alleging a breach of contract claim against IHD for an alleged failure to perform an obligation under a 2003 contractual agreement between the two entities. The 2003 contractual agreement was a "Joint Powers Agreement," which had settled about a decade of litigation between the two parties.

The original dispute that eventually led to the settlement agreement began in the 1990s, when City and IHD in a different lawsuit brought to the district court the question of which entity was responsible for street maintenance within common boundaries. Although the district court declared the parties' respective responsibilities, the district court's decision was appealed and the district court's holding was vacated on appeal

because the Idaho Supreme Court held the district court erred in exceeding the permissible scope of a cross-claim. *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 126 Idaho 145, 148, 879 P.2d 1078, 1081 (1994). The Idaho Supreme Court found that Highway District had general authority to maintain the streets absent a showing by the City that it has a functioning street department. 126 Idaho 145, 150-51, 879 P.2d 1078, 1083-84.

In 2000 the City established a street department of its own and brought suit again, which resulted in two decisions from the Idaho Supreme Court in 2003. The City sought a declaratory judgment that, because of its functioning street department, the City had exclusive general supervisory authority over street maintenance, construction, snow removal, etc. within the City. *City of Sandpoint v. Sandpoint Independent Highway Dist.*, 139 Idaho 65, 66-67, 72 P.3d 905, 905-07 (June 19, 2003). The City also sought to enjoin the IHD from exercising supervisory authority over the City's streets, and from levying any real property within the City. 139 Idaho 65, 67, 72 P.3d 905, 907. On summary judgment, the district court held the City had a functioning street department and therefore had control over the public streets within the City. *Id.* This decision was certified as a partial summary judgment and appealed. *Id.* Interpreting the relevant statutes, the Idaho Supreme Court reversed, holding: "There is no indication that the legislature intended that a city included within an existing highway district could exclude its streets from the highway district simply by creating a city street department capable of assuming the maintenance, construction, repair, snow removal, sanding and traffic control of city streets." 139 Idaho 65, 70, 72 P.3d 905, 910. The Idaho Supreme Court held the City was required to follow statutes that provided

procedures for lawful termination of a Highway District's authority within a city's boundaries. *Id.*

In the counterpart decision issued earlier that month, the Idaho Supreme Court held that the City could not be the succeeding operational unit to a dissolved highway district. *Sandpoint Independent Highway Dist. v. Board of County Commissioners*, 138 Idaho 887, 892, 71 P.3d 1034, 1039 (June 4, 2003). The Idaho Supreme Court reached this conclusion by a plain reading of the statutes that address the dissolution funds and property of a highway district. *Id.* The Idaho Supreme Court held that, because the statute prohibited surplus funds of a dissolved district to go to a city and no statute prescribed where the money would go if not to the successor, the City, therefore, could not be the successor to a dissolved highway district. *Id.*¹

The contract at issue was the result of a settlement entered into July 3, 2003, after these last two Idaho Supreme Court decisions but before the Board of County Commissioners set a date for a dissolution election. Complaint, Exhibit A, p. 3. The Stipulation for Settlement is attached as Exhibit A to the Complaint. The parties entered into it upon general agreement that further litigation was not in the best interest of the public. *Id.*, p. 4. This contract entitled, "Joint Powers Agreement between the City of Sandpoint and the Sandpoint Independent Highway District", was dated July 8, 2003, and is attached to the verified complaint. Complaint, Exhibit B, p. 1.

The Joint Powers Agreement was intended to be a permanent resolution as it stated, under the heading "Duration": "The duration of this agreement shall be

¹ The Court was also asked to interpret Idaho Code § 40-1805 to determine what "district" meant for the commissioners' determination that dissolving the highway district "would be to the best interest of the district." See *Sandpoint Independent Highway Dist. v. Board of County Commissioners*, 138 Idaho 887, 890 (2003). The Court held that the "best interests of the district" meant "consideration of geographical area and the interests of the people living in the district." *Id.* at 891.

perpetual or until such time as the District and the City jointly and together agree to amend or terminate the same". *Id.* The City would assume responsibility for all of the streets within its limits. *Id.* The IHD promised to pay the City all ad valorem property tax funds from levies of properties within the City limits. *Id.*, p. 3. In return, the City, which had jointly petitioned for the IHD's dissolution election, would request the Bonner County Board of Commissioners to vacate the dissolution election and dismiss the action with prejudice. *Id.*, p. 5. The parties stipulated that the Joint Powers Agreement could only be terminated by mutual agreement of both parties. *Id.*, pp. 1, 4.

In this case, the City has brought an action alleging IHD has breached the agreement by unilaterally terminating it and withholding funds that the City alleges it needs to operate its street department. Complaint, p. 8. The City alleges that on July 11, 2013, the IHD notified the City that they were withholding funds and were not going to perform a material term of the agreement. *Id.*, ¶ 40.

On September 9, 2013, IHD filed its Motion to Dismiss, and on October 11, 2013, IHD filed its "Brief in Support of Motion to Dismiss." On November 7, 2013, City filed its "Plaintiff's Response to Defendant's Motion to Dismiss." On November 12, 2013, IHD filed its "Reply Brief in Support of Defendant's Motion to Dismiss." Oral argument was held on November 13, 2013. IHD's Motion to Strike was granted. IHD's Motion to Dismiss was taken under advisement at the end of that hearing.

II. STANDARD OF REVIEW.

An I.R.C.P. 12(b)(6) motion to dismiss for "failure to state a claim upon which relief can be granted" must be considered against the I.R.C.P. 8(a) requirement that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." I.R.C.P. 12(b)(6); 8(a)(1); *Harper v. Harper*, 122 Idaho 535, 536, 835

P.2d 1346, 1347 (Ct.App. 1992). In motions to dismiss, the Court is to look only at the pleadings and view all inferences in favor of the non-moving party. *Young v. City of Ketchum*, 137 Idaho 102, 104, 44 P.3d 1157, 1159 (2002) (regarding 12(b)(6) motions); *Osborn v. United States*, 918 F.2d 724, 729 n. 6 (8th Cir. 1990) (regarding 12(b)(1) motions raising facial challenges to jurisdiction); *Serv. Emp. Intern. V. Idaho Department of Health and Welfare*, 106 Idaho 756, 758, 683 P.2d 404, 406 (1984 (regarding 12(b) challenges generally). "The nonmoving party is entitled to have all inferences from the record viewed in his favor and only then may the question be asked whether a claim for relief has been stated." *Idaho Branch Inc. of Associated General Contractors of America, Inc. v. Nampa Highway Dist. No. 1*, 123 Idaho 237, 240, 846 P.2d 239, 242 (Ct. App. 1993); see also *Independent School Dist. of Boise City v. Harris Family Ltd. Partnership*, 150 Idaho 583, 587, 249 P.3d 382, 386 (2011). Complaints should not be dismissed under I.R.C.P. 12(b) unless the non-moving party can prove no set of facts which would entitle him to relief. *Dumas v. Ropp*, 98 Idaho 61, 62, 558 P.2d 632, 633 (1977). And any doubts must be resolved in favor of the survival of the complaint. *Gardner v. Hollifield*, 96 Idaho 609, 610-11, 533 P.2d 730, 731-32 (1975). An I.R.C.P. 12(b)(6) motion to dismiss may be granted "when it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim which would entitle the plaintiff to relief." *Harper*, 122 Idaho at 536, 835 P.2d at 1347 (Ct. App. 1992) (internal quotations omitted).

III. ANALYSIS.

A. Introduction.

IHD makes five arguments as to why the agreement entered into was unlawful. First, IHD argues the Joint Powers Agreement constitutes an indebtedness that IHD

has incurred in violation of Article VIII, Section 3 of the Idaho Constitution. Second, IHD argues I.C. §40-801 requires an equal division of ad valorem property taxes between the City and IHD, and in the Joint Power Agreement IHD promised to pay the City *all* ad valorem property tax funds from levies of properties within the City limits; therefore, since the agreement does not provide an equal division it is in violation of that statute and an unlawful agreement. Third, IHD argues the agreement is unlawful under the Joint Powers Act because there is no termination provision. Fourth, IHD argues the agreement is unlawful because it was intended to last in perpetuity and Idaho courts disfavor such contract provisions. Finally, IHD argues the contract is void because there was no consideration.

Based on these arguments, IHD asks the Court to dismiss this case on the grounds that the contract was illegal and therefore the City has asserted no claim upon which relief can be granted.

Of concern to the Court is the fact that the parties have obviously considered this to be a binding agreement for the past ten years. Apparently, IHD recently received legal advice indicating there are legal arguments to be made as to the legitimacy of that agreement. Obviously, the City relies on these revenues being paid from IHD to the City each year. Rather than IHD bringing a declaratory action against the City where the IHD would continue to pay the City under the contract until those legal arguments are decided by a court, IHD instead chose to simply not pay the under the agreement, leaving the City in the lurch financially and forcing the City to sue IHD.

B. Positions of the Parties and Analysis by the Court.

1. Indebtedness in Violation of the Idaho Constitution.

IHD argues this agreement constitutes an indebtedness and violates Article VIII, Section 3 of the Idaho Constitution. Brief in Support of Motion to Dismiss, p. 4. That

section prohibits a political subdivision from incurring any indebtedness or liability that exceeds what the subdivision can satisfy in a year without the assent of two-thirds of the qualified electors. IHD argues the agreement constitutes an obligation, or liability, on the part of IHD, where if the levy amount were \$350,000 and the agreement lasted twenty years, it would create a \$7 million dollar liability. *Id.*, p. 9.

The City argues, "This case does not involve a debt." Plaintiff's Response to Defendant's Motion to Dismiss, p. 12. The City claims, "This case is about how the District has agreed to 'divide' the funds it statutorily has available annually to meet its statutory duty to maintain the streets in its boundaries." *Id.* The City notes I.C. § 40-801(a) gives the IHD the power to levy a tax, and if that levy is made upon property within an incorporated city, then 50% of the funds are apportioned to that incorporated city. *Id.* The City argues that it obviously is not unconstitutional up to that point, as that is what the statute requires and the statute has never been held to be unconstitutional. *Id.*, pp. 12-13. Simply because IHD contractually agreed in the Joint Powers Agreement to go over the 50% and give all funds taxed to the City does not make the agreement unconstitutional. The City argues the disbursement from IHD to the City each year is not a debt, the IHD receives revenues from the taxpayers and has contractually agreed to pay all those revenues to the City. *Id.*, p. 13. The City notes the Idaho Supreme Court held a municipality does not violate the constitutional prohibition on indebtedness when it pays expenses out of revenue for that year, citing *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454, 455 (1897). *Id.*, p. 14. The City argues, "Here, the District's disbursements 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 the District has already collected." *Id.* The City correctly notes the cases cited by IHD

(*City of Boise v. Frazier*, 143 Idaho 1, 137 P.3d 388 (2006); *Feil v. City of Coeur d'Alene*, 23 Idaho 32, 129 P. 643 (1912); and *City of Idaho Falls v. Fuhrman*, 149 Idaho 574, 237 P.3d 1200 (2010)) all deal with municipal purchases of systems or goods from private parties that necessarily require the municipality to incur liabilities beyond the current year and for which the municipality would be liable from its general revenues, where "In contrast, this case deals only with contingent periodic disbursements from the District to fulfill its statutory duty to maintain City roads." *Id.*, pp. 14-15.

IHD's reply argument, in its entirety is as follows:

It is the Idaho Supreme Court that interprets the Idaho Constitution...not the courts of California, Washington, or any other state. In its brief, the City has virtually ignored the Idaho Supreme Court decisions interpreting Article 8, Section 3. Instead, the city has cited to and quoted from court decisions from California and other states. Apparently, the City has been unable to find Idaho authority to contradict the analysis of Article 8, Section 3 contained in IHD's initial brief. Based upon Idaho case law, the JPA clearly creates an illegal liability or indebtedness in violation of Article 8, Section 3.

Reply Brief in Support of Defendant's Motion to Dismiss, p. 9. The Court finds this argument by IHD to the points made by the City, to be disingenuous, and unpersuasive. The IHD completely ignores the fact that *Frazier*, *Feil*, and *Fuhrman* are all cases involving municipal purchases of systems or goods from private parties that required the municipality to incur liabilities beyond the current year and for which the municipality would be liable from its general revenues, and those are simply not the facts in this case. The present case concerns contingent periodic disbursements from the District, half of which are to fulfill its statutory duty to maintain City roads, the other half are to fulfill its contractual duty to pay the City under the Joint Powers Agreement.

The Court must deny IHD's motion to dismiss on this basis because the case law cited by IHD simply does not apply to this case. The Idaho Constitution limits the manner in which a county or municipality may incur indebtedness:

No...subdivision...shall incur any...liability...exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose....

Constitution of the State of Idaho, Article 8, Section 3. "[A] city may anticipate both the income and revenue provided for it for such year, and incur debts or liabilities against the city which can be met and discharged out of the aggregate income and revenue for that year." *Charles Feil v. City of Coeur d'Alene*, 23 Idaho 32, ___, 129 P.643, 650 (1912); see also *City of Idaho Falls v. Fuhrman*, 149 Idaho 574, 580, 237 P.3d 1200, 1206 (2010) (holding that the liability incurred by a power sales agreement exceeded the income in the year that it was incurred, and that it was the type of expenditure that needed the assent of two-thirds of the voting electorate); *City of Boise v. Frazier*, 143 Idaho 1, 7, 137 P.3d 388, 394 (2005) (holding that this constitutional provision prohibited the city from entering into a lease agreement for the expansion of airport parking facilities absent a public vote that authorized the expense); *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843, 845 (1930) (prohibiting a city from incurring a debt to purchase an electric-generating system); *Feil v. City of Coeur d'Alene*, 23 Idaho 32, ___, 129 P.643, 652 (1912) (holding that a bond funding \$180,000 to fund a waterworks system would create a liability against the city and was therefore invalid under this constitutional provision without a vote). *Feil* and *Miller* were cases where expenses were invalidated because neither fell into a special fund exception (i.e., bonds paid by revenue from the services of the plant that was financed by the bond), but this later became an exception that was amended into Article 8, § 3. See *Asson v. City of Burley*, 105 Idaho 432, 439, 670 P.2d 839, 846 (1983). A contract that violates this section is void and cannot be enforced. See *Deer Creek Highway Dist. v. Doumeccq Highway Dist.*, 37 Idaho 601, ___, 218 P. 371, 372 (1923). IHD argues the Joint Powers

Agreement is illegal because it falls under a "liability" and that, because a twenty-year view of this agreement would demonstrate that the Highway District has indebted itself upwards of \$7 million, it has taken on more indebtedness than it can pay. This is simply not true when looking at the plain meaning of the statute.

"[T]he statutory rules of construction apply to the interpretation of constitutional provisions." *Sweeney v. Otter*, 119 Idaho 135, 138, 804 P.2d 308, 311 (1990) (citing *Lewis v. Woodall*, 72 Idaho 16, 18, 236 P.2d 91, 93 (1951)). "Liability" means "the state of being bound or obligated in law or justice to do, pay, or make good something." *Feil v. City of Coeur d'Alene*, 23 Idaho 32, ___ 129 P. 643, 649 (1912) (relying on this definition and other comparable definitions of "liability"). Because IHD has obligated itself to pay a percentage of the annual revenue it collected on ad valorem taxes, it did incur a liability. However, the liability does not exceed the income received a year. The IHD has apportioned a portion, or a percentage of the revenue collected; the portion that the City receives only reflects the percentage of the revenue that is generated from the property located within the city. So long as the IHD's boundaries equal or exceed the City's boundaries, the IHD will always receive more revenue than what it has apportioned the City each year because it will receive levies from property in the City limits as well as levies from property outside the City limits. Because the IHD has not incurred a liability that exceeds its revenue, the Court must deny IHD's motion to dismiss upon this basis.

2. Legality of Contract Under Idaho Code § 40-801.

IHD argues I.C. §40-801 governs distribution of ad valorem taxes levied within city limits. Brief in Support of Motion to Dismiss, pp. 10-11. Under that statute, half of the funds for property within the limits of an incorporated city are apportioned to the city. IHD argues that by entering into an agreement which provides for anything other than

an even split of levies between IHD and the City, violates the division of the levy as mandated by I.C. §40-801. IHD argues the Joint Powers Agreement is illegal and thus void and unenforceable, citing *City of Meridian v. Petra, Inc.*, 154 Idaho 425, ___ 299 P.3d 232, 252 (2013); *Miller v. Haller*, 129 Idaho 345, 351, 924 P.2d 607, 613 (1996) ("The general rule is that a contract prohibited by law is illegal and hence unenforceable."). *Id.* p. 11. IHD argues, "The statutory 50/50 tax distribution ratio is mandatory", because the statute uses the word "shall" not "may". *Id.* IHD argues, "The statute does not authorize a 75/25 split or a 100/0 split." *Id.* For this proposition, IHD cites *Rexburg v. Madison County*, 115 Idaho 88, 764 P.2d 838 (1988). *Id.*

The City correctly points out *City of Rexburg* does not support IHD's argument that I.C. §40-801 does not permit anything other than a 50/50 tax distribution ratio as that case dealt with an inadvertent decimal point error, where the City of Rexburg received only 5% rather than the statutory 50% revenue. Plaintiff's Response to Defendant's Motion to Dismiss, pp. 10-11. This Court finds the Idaho Supreme Court in *City of Rexburg* did not address whether a disbursement greater than 50% would have violated the statute; it simply held the county in that case had duty to allocate at least the 50% under that statute. 115 Idaho 88, 89-90, 764 P.2d 838, 839-90.

Idaho Code §40-801(1)(a) reads:

40-801. Authority and procedure for levies. (1) The commissioners of a county highway system, the commissioners of a county-wide highway district, and the commissioners of highway districts are empowered, for the purpose of construction and maintenance of highways and bridges under their respective jurisdictions, to make the following highway ad valorem tax levies as applied to the market value for assessment purposes within their districts:

(a) Two-tenths per cent (0.2%) of market value for assessment purposes for construction and maintenance of highways and bridges; provided that if the levy is made upon property within the limits of any incorporated city,

fifty per cent (50%) of the funds shall be apportioned to that incorporated city.

The Idaho Supreme Court in *City of Rexburg* made it clear that Madison County had a "statutory duty" (and specifically not a duty "based in common law, contract, or any other theory of law") to pay the City of Rexburg the amounts due under I.C. §40-801. 115 Idaho 88, 89-90, 764 P.2d 838, 839-90. *City of Rexburg* makes it clear that the county has a statutory duty to pay the city the amount due under I.C. §40-801. *Id.* The word "shall" in I.C. §40-801 applies to IHD's statutory duty to pay City 50% of revenues raised by taxes on property owners within the City of Sandpoint. *City of Rexburg* makes it clear this statutory duty of paying revenues is mandatory under the statute, and must be in the statutory amount of 50% of revenues, and in that case the mispayment of .5% was a breach of that statutory duty. This Court can find nothing in *City of Rexburg* or in I.C. §40-801 that prohibits a county from contractually agreeing to pay more than the statutory amount. This Court finds IHD's argument "IHD cannot alter the statutory apportionment of tax revenue set forth in I.C. §40-801" to be completely without merit. Reply Brief in Support of Defendant's Motion to Dismiss, p. 8. There is nothing in I.C. §40-801 which prohibits the highway district from allocating the remaining revenues (those above the statutorily mandated 50%) to a city by agreement.

IHD's argument that the statutory language "fifty per cent (50%) of the funds shall be apportioned" means that the defendant cannot legally apportion more than fifty percent to the City, is a strained interpretation which this Court simply cannot make. "Judicial interpretation of a statute begins with an examination of the statute's literal words." *State, Dept. of Transp. v. HJ Grathol*, 153 Idaho 87, 91, 278 P.3d 957, 961 (2012); *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Statutes are interpreted by their plain and express meaning. *HJ Grathol*, 153 Idaho at 91, 278 P.3d

at 961. A rational and obvious meaning of a statute is always preferred to any curious, narrow, hidden sense. *Walker v. Hensley Trucking*, 107 Idaho 572, 691 P.2d 1187 (1984). A court will resort to judicial construction "only if the statute is ambiguous, incomplete, absurd, or arguably in conflict with other laws." *Are! v. T & L Enterprises, Inc.*, 146 Idaho 29, 32, 189 P.3d 1149, 1152 (2008).

A plain reading of Idaho Code § 40-801 is that a highway district owes a city 50% of ad valorem statutes within city limits. The statute does not designate what is to be done with the other fifty percent. Thus, interpreting the 50% amount as a minimum amount is much more logical than to interpret such as a limit.

IHD's argument that this 50% amount is a limit ignores the powers given to highway commissioners. "[S]tatutes that are *in pari materia* (of the same matter or subject), are to be construed together as one system to effect legislative intent." *City of Sandpoint v. Sandpoint Independent Highway District*, 126 Idaho 145, 150 (1994). Idaho Code § 40-1310 outlines the powers of the highway district commissioners, among which includes the following:

The commissioners of a highway district have exclusive general supervision and jurisdiction over all highways and public rights-of-way within their highway system, with full power to construct, maintain, repair, acquire, purchase and improve all highways within their highway system, whether directly or by their own agents and employees or by contract... The highway district shall have power to manage and conduct the business and affairs of the district; establish and post speed and other regulatory signs; make and execute all necessary contracts; have an office and employ and appoint agents, attorneys, officers and employees as may be required, and prescribe their duties and fix their compensation. Highway district commissioners and their agents and employees have the right to enter upon any lands to make a survey, and may locate the necessary works on the line of any highways on any land which may be deemed best for the location.

I.C. §40-1310(1). A plain reading of this statute illustrates that the commissioners have the power to contract for services and to conduct its own business. Therefore, the

commissioners have discretion of what to do with its funds, including the discretion to give a city the other fifty percent above what it is required so that the city may maintain the roads. To read the fifty-percent apportionment to be a limit upon which the commissioners may not exceed would put ITD's reading of I.C. §40-801 in conflict with the powers set forth in I.C. §40-1310(1). To hold otherwise would limit the Commissioners' discretion of how to spend the other 50 percent of the taxes collected. Interpreting the fifty-percent apportionment as a minimum creates no such conflict. Thus, this Court's interpretation is I.C. §40-1310(1) mandates IHD to pay a minimum fifty percent of ad valorem city taxes to the city and IHD has the discretion on how to use the other half of its funds. IHD chose ten years ago, with the advice of counsel, to contractually agree the remaining fifty percent goes to the City as well, and that is not prohibited under § 40-801, and thus, the agreement is not illegal. IHD's motion to dismiss on this ground must be denied.

3. Legality under the Joint Powers Act.

IHD argues that the agreement is unlawful under the Joint Powers Act (JPA), I.C. §67-2326 *et seq.* Brief in Support of Motion to Dismiss, pp. 11-13. IHD argues JPA mandates an agency cannot delegate away or exceed its statutory or constitutional authority when entering into a joint agreement. I.C. § 67-2328. *Id.*, p. 12. Additionally, IHD argues there must be a termination clause and there is no termination because the contract states that it will be "perpetual." *Id.* IHD also argues that the provision stating that the agreement may terminate by "mutual agreement" is not a termination provision; rather, the IHD argues that it functions as a prohibition of termination unless there can be a mutual agreement. *Id.* The defendant argues that because the City receives

benefits in excess of what the statute authorizes, the City will never have an incentive to terminate the agreement. *Id.*, p. 13.

City argues:

The District's contention that the JPA is void for want of an effective termination clause is misguided. 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. The JPA satisfies the Act's duration requirement by providing express terms of the JPA's duration, and an additional vehicle for its termination upon certain dissolving acts. 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) 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.

Plaintiff's Response to Defendant's Motion to Dismiss, p. 17.

A joint powers agreement must specify the following:

- (1) Its duration.
- (2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.
- (3) Its purpose or purposes.
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefore.
- (5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.
- (6) Any other necessary and proper matters.

I.C. § 67-2328(c). This Court agrees with the City that the statutory mandate of I.C. § 67-2738 has been satisfied, the agreement's "duration" is "perpetual." The duration is not unknown, it is perpetual. The fact that IHD ten years later regrets entering into that agreement is of no import. This Court also agrees that there is a method of termination, and that is "mutual agreement." There is no Idaho appellate

court precedent on Idaho Code § 67-2328 which interprets "duration" and "method of termination." The language must be given its plain meaning. Given the plain meaning of "duration" and "method of termination", those requirements have been met.

The Joint Powers Act allows for state or public agencies to exercise their powers jointly provided each has power over the common subject matter. I.C. § 67-2328(a). IHD is correct that neither entity may exceed its authority and that a joint power agreement must address some specific provisions. *Id.* The Court's decision above that IHD has not violated the Idaho Constitution in entering into this agreement thus effects this Joint Powers argument raised by IHD. Had the Court bought IHD's argument that IHD had indebted itself in violation of the Idaho Constitution, then the agreement would also be unlawful under the Joint Powers Act. However, as this Court holds there is no violation of the Idaho Constitution and IHD acted in a constitutionally permissible way, then this secondary argument by IHD must be rejected as well.

Additionally, for the same reasons discussed in the next section, the argument that perpetual contracts are in violation of public policy are, best case for IHD at this juncture, not a basis for granting a motion to dismiss because a court must consider factual circumstances, which would require an examination of evidence outside the pleading. In any event, IHD's motion to dismiss on this ground must be denied.

4. Invalidity Because of Perpetuity.

IHD argues Idaho courts disfavor perpetual agreements. Brief in Support of Motion to Dismiss, pp. 13-14. IHD cites *Barton v. State*, 104 Idaho 338, 659 P.2d 92 (1983). *Id.*, p. 13. IHD notes in that case the Idaho Supreme Court declined to read a contract as containing a perpetuity clause which would have bound the State of Idaho Transportation Department. 104 Idaho 338, 340, 659 P.2d 92, 94.

City is correct that *Barton* is "... particularly distinguishable, as the court there was asked to infer an intent for the state to be perpetually bound by a purported JPA." Plaintiff's Response to Defendant's Motion to Dismiss, p. 18. (bold in original). What the Idaho Supreme Court actually wrote is, "Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored." 104 Idaho 338, 340, 659 P.2d 92, 94, citations omitted. In the present case, IHD and City specifically agreed the duration was "perpetual." There is nothing about that term which is ambiguous. Thus, the implication under *Barton* is where the parties expressly agree the duration of the agreement is "perpetual", the Court should not look upon that agreement with disfavor. In *Barton*, the Idaho Department of Transportation entered into an agreement with a landowner where the State would provide access to the owner's business properties and purchase her land at \$1,000. 104 Idaho 338, 339, 659 P.2d 92, 93. In return, the landowner agreed to forebear from legal action and to encourage other landowners who were dealing with the Department of Transportation to be reasonable in their dealings. *Id.* The contract did not address how long this arrangement would continue, and in 1977, the Department of Transportation closed the access points. *Id.* The Idaho Supreme Court refused to imply that the contract was perpetual absent clear indication that the parties intended to be perpetually bound: "Where a contract is not expressly made perpetual by its terms, construction of such contract as perpetual is disfavored." 104 Idaho 338, 340, 659 P.2d 92, 94. Again, the Idaho Supreme Court's statement only disfavors interpreting a contract to be perpetual when the contract is *silent* as to duration. When there is express language that a contract is intended to be perpetual, this holding suggests that the Idaho Supreme Court would uphold such an express provision.

In any event, the Court must deny the motion to dismiss on this basis because even if the contract is against public policy (which the Court does not find), the Court must determine a reasonable time for performance, and this determination requires factual findings that are outside of the pleadings. *Barton*, 104 Idaho 338, 341, 659 P.2d 92, 95. A court determines "reasonable time" by examining "the subject matter of the contract, the relationship of the parties and the circumstances surrounding the transaction." *Id.* In addition to a reasonable time of performance, a party must also give reasonable notice of its intent to terminate the contract. *Id.* In *Barton*, the Court held that twenty-two years of performance under the contract between the Idaho Department of Transportation and the landowner was reasonable. *Id.*

5. Idaho Code §40-1333.

IHD argues I.C. § 40-1333 requires cities which have city highway systems, shall be responsible for the maintenance of highways in their system, except as provided in I.C. § 40-607; and cities may make agreements with a highway district to do the city work, but the city shall compensate the district for any work performed. Brief in Support of Motion to Dismiss, p. 14. IHD argues: "The Idaho legislature has established a clear policy that a city must use its own revenues to maintain city streets and may not use highway district revenues to do so, except as provided in I.C. §40-801." *Id.* The IHD then claims "If a highway district constructs or maintains a city street, the city must repay the highway district for all expenditures made within the city by the highway district." *Id.* While that is an accurate summary of I.C. §40-1333, it has nothing to do with the facts of this case, because IHD has not counterclaimed against the City to recompense IHD for maintenance work IHD has performed for the City. In its briefing,

the City did not respond to IHD's argument under I.C. § 40-1333. The Court finds IHD's argument under I.C. § 40-1333 to have no merit.

6. Sufficient Consideration.

Finally, IHD argues that there was no consideration for IHD providing 100% of its *ad valorem* property taxes. Brief in Support of Motion to Dismiss, pp. 14-15. This Court finds this argument by IHD is especially inapt. As pointed out by the City, the Joint Powers Agreement itself recited mutual consideration, as it ended all the protracted litigation. Plaintiff's Response to Defendant's Motion to Dismiss, pp. 20-21; citing Complaint, Exhibit A. The City correctly notes:

The JPA is the result of the Parties' Stipulation for Settlement ("Settlement"), entered into July 3, 2003. (Complaint, Ex. A) By its terms, the Settlement grants the City jurisdiction over city streets, requires the formation of a the JPA, compels the City to vacate its petition for a dissolution election, requires dismissal of the civil case with prejudice, requires the City to not oppose future annexation elections sought by the District, and stipulates that the District waives its costs awarded on appeal by the Idaho Supreme Court in Docket No. 27441. (Complaint, Ex. A)

Plaintiff's Response to Defendant's Motion to Dismiss, p. 20. The City also correctly notes:

This Court approved the Settlement. The Idaho Court of Appeals recently held that a settlement, the terms of which are incorporated into a court order, does not need additional consideration to be effective. *Davidson v. Soelberg*, 154 Idaho 227, 296 P.3d 433, 438 (Ct.App. 2013). The same rationale should apply here, where the Parties provided mutual consideration in the settlement, a part of which was the exercise of their rights under I.C. §67-2326, et seq.

Id., p. 21. IHD did not respond to the City's arguments in its Reply Brief in Support of Defendant's Motion to Dismiss.

A contract that contains no consideration is illusory and therefore unenforceable. There is consideration in the present case because the IHD has agreed to pay money and the City has agreed to forbear its legal efforts to dissolve the IHD. An agreement

must have consideration, a benefit of the bargain, in order to be enforceable. *Weisel v. Beaver Springs Owners Ass'n, Inc.*, 152 Idaho 519, 526, 272 P.3d 491, 498 (2012). Here, consideration is not an issue. According to the agreement, the City benefitted because it received the responsibility to maintain its own streets in addition to funds to do so. The Highway District benefitted because the City ceased its pursuit to legally dissolve the Highway District within Bonner County. There was consideration and therefore the motion to dismiss must be denied under this argument.

7. Estoppel.

The City correctly notes:

The District is taking a position contrary to which it agreed when it entered into the JPA, and consented to this Court's Order. It was the Court's dismissal based on the stipulation that permitted the JPA.

Plaintiff's Response to Defendant's Motion to Dismiss, p. 22. The City then argues, "As a matter of equity, the District is either judicially estopped from reversing its position taken in open court, or is equitably estopped from harming the City by reversing its position. *Id.* IHD argues "Estoppel does not save a Constitutionally Invalid Agreement." Reply Brief in Support of Defendant's Motion to Dismiss, pp.14-20. Because this Court does not find the Joint Powers Agreement to be Constitutionally invalid, there is no need to discuss the judicial estoppel or equitable estoppel arguments.

IV. CONCLUSION AND ORDER.

The complaint here has been sufficiently pleaded. For that reason alone, IHD's motion to dismiss under I.R.C.P. 12(b)(6) for "failure to state a claim upon which relief can be granted" must be denied. Claims grounded in a breach of contract are sufficiently pleaded if they allege the formation of a contract, the obligations under the contract, the right of the plaintiff pursuant to the contract, and the breach by the defendant. See *State ex rel. Robins v. Clinger*, 72 Idaho 222 (1951). In this case, City


has alleged an agreement between it and IHD, has alleged City's agreed-upon right to share in the ad valorem taxes collected by IHD, and has alleged IHD's breach in withholding those funds. Because City has alleged all of the elements of a breach of contract claim, IHD's motion to dismiss must be denied.

Additionally, when an illegal contract is alleged, the Court might have an affirmative duty to examine the legality of the contract when it appears in the pleading through a verified complaint. It is generally not appropriate for a court to consider affirmative defenses in considering a motion to dismiss at the pleading stage of litigation. See *Gardner v. Hollifield*, 96 Idaho 609, 611 (1975). There are exceptions, however. One exception is when an affirmative defense appears on the face of the complaint itself. *Gardner v. Hollifield*, 96 Idaho 609, 611 (1975). Another exception, raised in contract-related defenses, is whether the alleged agreement is illegal. "The illegality of a contract can be raised at any stage in litigation. In fact, the court has the duty to raise the issue of illegality *sua sponte*." *Farrell v. Whiteman*, 146 Idaho 604, 608 (2009)(citing *Trees v. Kersey*, 138 Idaho 3, 6 (2002)). Illegal contracts constitute questions of law for the court. *Trees v. Kersey*, 138 Idaho 3, 6 (2002). Here, the verified complaint has attached a copy of the contract, so the contract itself is part of the proceedings and the illegality would be evident from the face of the contract. Additionally, the defendant has questioned the contract's legality. Based on the affirmative duty of a court to evaluate the illegality of the contract, based on the contract that is part of the verified complaint, and based on the defendant's challenge of the contract's legality, this Court may proceed to make a determination of the legality of the contract in the record in deciding whether to dismiss the complaint.

As this Court's decision above shows, this Court has analyzed the merits of whether the contract is illegal as made in the arguments by IHD. Because the agreement is attached to the Complaint and is part of these proceedings, the Court can make determinations regarding the legality of the contract, and has done so. Based on the above reasons, the Court must deny the motion to dismiss on all the arguments presented by IHD.

IT IS HEREBY ORDERED the defendant IHD's Motion to Dismiss is DENIED in all aspects.

Entered this 9th day of December, 2013.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 11th day of December, 2013, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUN 12 PM 2 19

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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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

CASE NO. CV-2013-01342

ORDER GRANTING RULE 12
INTERLOCUTORY APPEAL
CERTIFICATION


For the reasons enunciated on the record in this matter at the hearing held May 21, 2014,
Defendant's motion for Leave to File an Interlocutory Appeal pursuant to I.A.R. 12 of the
Court's December 9, 2013, Memorandum Decision and Order Denying Defendant's Motion to
Dismiss is hereby granted.

ORDER GRANTING RULE 12 INTERLOCUTORY APPEAL CERTIFICATION: 1

Jun. 12, 2014 2:03 PM Mitchell, Haynes, Friedlander, Peter

No. 3569 P. 2/203/03

DATED this 16th day of June, 2014.


JOHN T. MITCHELL
District Judge

CLERK'S CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 13 day of June, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:

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ORDER GRANTING RULE 12 INTERLOCUTORY APPEAL CERTIFICATION: 2

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IN THE SUPREME COURT
OF THE STATE OF IDAHO

CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

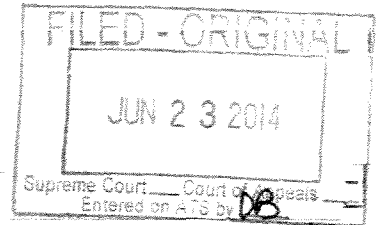
INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Supreme Court Docket No. 42236

Bonner County Case No. CV-2013-01342

MEMORANDUM IN SUPPORT OF
MOTION FOR APPEAL BY
PERMISSION



I. PROCEDURAL POSTURE

Plaintiff City of Sandpoint ("City") filed an action for declaratory relief on August 15, 2013 against Independent Highway District ("District") alleging a failure by the District to perform its obligation to turn over ad valorem taxes pursuant to a contract. This contract, dated July 8, 2003, was entitled, "Joint Powers Agreement between the City of Sandpoint and the

MEMORANDUM IN SUPPORT OF MOTION FOR APPEAL BY PERMISSION: 1

Sandpoint Highway District” (“Joint Powers Agreement”). Under the heading “Duration,” it stated: “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.”

On September 9, 2013, the District filed a Motion to Dismiss for failure to state a claim upon which relief could be granted, which was heard on November 13, 2013. The District advanced five different arguments for why the contract was unconstitutional and unlawful. The district court entered its Order Re: Motion to Dismiss, a copy of which is attached to the Motion for Appeal by Permission. The district court rejected each of the District’s arguments as a matter of law and denied the District’s Motion to Dismiss.

Trial was scheduled to commence on March 25, 2014. On March 3, 2014, a stipulation prepared by the City, after discussion and input from the District, was filed with the district court. The stipulation requested the district court vacate the trial date because there were no remaining disputed material facts for trial, and the issues remaining were of law. On May 7, 2014, the District made timely application to the district court to appeal by permission by filing its Motion for Leave to File Interlocutory Appeal. On June 13, 2014, the district court granted the District’s motion. The Order from which the District seeks permission to appeal is the order denying its Motion to Dismiss.

II. THE STANDARD FOR APPEAL UNDER I.A.R. 12

In *Aardema v. U.S. Dairy Systems, Inc.*, 147 Idaho 785, 215 P.3d 505 (2009) the Idaho Supreme Court recited the rules for consideration of an application for appeal by permission.

Permission may be granted by the Supreme Court to appeal from an interlocutory order or decree of a district court in a civil or criminal action, or from an interlocutory order of an administrative agency, which is not otherwise appealable under these rules, but which involves a controlling question of law as to which there is substantial grounds for difference of opinion and in which an

immediate appeal from the order or decree may materially advance the orderly resolution of the litigation. I.A.R. 12. “[T]he intent of I.A.R. 12[is] to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved.” *Budell v. Todd*, 105 Idaho 2, 4, 665 P.2d 701, 703 (1983) (*per curiam*). A permissive appeal pursuant to I.A.R. 12 is “an unusual posture.” *Winn v. Frasher*, 116 Idaho 500, 501, 777 P.2d 722, 723 (1989). Due to “the unusual posture of the case, we are constrained to rule narrowly and address only the precise question that was framed by the motion and answered by the trial court.” *Id.* “Such appeal, [after acceptance by this Court,] shall proceed in the same manner as an appeal as a matter of right, unless otherwise ordered by [this Court].” I.A.R. 12(d).

* * *

Rule 12 appeals are only accepted in the most exceptional cases with the intent to resolve “substantial legal issues of great public interest or legal questions of first impression[.]” *Budell*, 105 Idaho at 4, 665 P.2d at 703.

This Court, citing the “confusion” about the application of the economic loss rule to the plaintiff’s tort action, accepted the appeal by permission. *Aardema v. U.S. Dairy Systems, Inc.*, 147 Idaho 785, 789-790, 215 P.3d 505, 509-510 (2009).

The Idaho Supreme Court has also granted motions for permission to appeal in cases involving the retroactive application of a statute of limitations to claims of sexual abuse of minors, *Doe v. Boy Scouts of America*, 148 Idaho 427, 224 P.3d 494 (2009); liability of a corporation for the tort of injury to a child under Idaho Code § 6-1701(4), *Steed v. Grand Teton Council of the Boy Scouts of America, Inc.*, 144 Idaho 848, 172 P.3d 1123 (2007); whether a beneficiary of a trust may sue a lawyer for malpractice or breach of fiduciary duty, *Taylor v. Maile*, 142 Idaho 253, 127 P.3d 156 (2005); enforcement of a forum selection clause in a contract for the transportation of a passenger on the high seas, a question of federal law, *Fisk v. Royal Caribbean Cruises, Ltd.*, 141 Idaho 290, 108 P.3d 990 (2005); denial of a motion to

change venue to the defendant's county of residence in a fraud case, *Hayes v. Kingston*, 140 Idaho 551, 96 P.3d 652 (2004); the constitutionality of the amendments to the field burning statutes, *Moon v. North Idaho Farmers Association*, 140 Idaho 536, 96 P.3d 637 (2004); defendants' motions to suppress in criminal cases, *State v. Becknell*, 140 Idaho 201, 203, 91 P.3d 1105, 1107 (2004) (the issues were significant and of practical importance in the administration of the criminal justice system); whether comparative fault was available as a defense in a dram shop case, *Idaho Department of Labor v. Sunset Mart, Inc.*, 140 Idaho 207, 91 P.3d 1111 (2004); the application of general provisions of SRBA orders to test basins, *A & B Irr. Dist. v. Idaho Conservation League*, 131 Idaho 411, 958 P.2d 568 (1997); questions of insurance coverage, *North Pacific Insurance Co. v. Mai*, 130 Idaho 251, 939 P.2d 570 (1997); denial of the State's motion in limine as to evidence establishing the defense of necessity, *State v. Howley*, 128 Idaho 874, 920 P.2d 391 (1996); denial of motion to dismiss for lack of subject matter jurisdiction in case involving the Industrial Commission, *Walters v. Industrial Commission*, 127 Idaho 933, 908 P.2d 1240 (1996); whether the administrative suspension of a driver's license and prosecution of a DUI charge put the defendant in double jeopardy, *State v. Talavera*, 127 Idaho 700, 905 P.2d 633 (1995); the constitutionality of the 1994 amendments to the SRBA, *In re SRBA Case No. 39576*, 128 Idaho 246, 912 P.2d 614 (1994); apportionment of benefits under a prior version of Idaho Code § 72-332, *Dohl v. PSF Ind, Inc.*, 127 Idaho 232, 899 P.2d 3445 (1995); whether a commercial tenant who is required to return the property in good condition at the end of the lease and who obtains fire insurance is an additional insured under the landlord's fire insurance policy, *Bannock Building Co. v. Sahlberg*, 126 Idaho 545, 887 P.2d 1052 (1984); a denial by the Industrial Commission of a motion for clarification of an award, *Kindred v. Amalgamated Sugar Co.*, 118 Idaho 147, 795 P.2d 309 (1990); the application of the "fireman's rule," *Winn v.*

MEMORANDUM IN SUPPORT OF MOTION FOR APPEAL BY PERMISSION: 4

Frasher, 116 Idaho 500, 777 P.2d 722 (1989); denial of a motion to quash summons, *Crawford v. Pacific Car & Foundry Co.*, 112 Idaho 820, 736 P.2d 872 (1987); lien and subrogation rights under the third party provisions of the worker's compensation act, *Barringer v. State*, 111 Idaho 794, 727 P.2d 1122 (1986); denial of a motion in limine on the use of a blood alcohol test of the deceased in a wrongful death action against the city, *Stattner v. City of Caldwell*, 111 Idaho 714, 727 P.2d 1142 (1986); venue of an action against a public official, *Priest Lake Coalition, Inc. v. State ex rel. Evans*, 111 Idaho 354, 723 P.2d 898 (1986); whether the legislature's declaration of an emergency is subject to judicial review, *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986); order denying a motion to dismiss for lack of personal jurisdiction, *Evans v. Galloway*, 108 Idaho 711, 701 P.2d 659 (1985); application of the statute of limitations to a claim against a surety for the defalcations of a former treasurer and tax collector, *Lincoln County v. Fidelity and Deposit Co. of Maryland*, 102 Idaho 489, 632 P.2d 567 (1980); denial of an insurer's motion for summary judgment on a coverage question under a blanket endorsement, *Wright v. Johnson*, 101 Idaho 208, 610 P.2d 567 (1980); and a review of a summary judgment to the State in a highway sign case, *Gavica v. Hansen*, 101 Idaho 58, 608 P.2d 861 (1980).

With respect to a motion to dismiss specifically, in *In re Text Messaging Antitrust Litigation*, 630 F.3d 622 (7th Cir. 2010), the 7th Circuit held that a denial of a Rule 12(b)(6) motion to dismiss was an order suitable for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). In *Budell v. Todd*, 105 Idaho 2, 665 P.2d 701, (1983), this Court indicated that I.A.R. 12 was the equivalent rule to 28 U.S.C. § 1292(b), stating:

I.A.R. 12 was adopted by the Court in 1977 and implemented a procedure similar to an appeal from an interlocutory order from a federal district court to a court of appeals under 28 U.S.C. § 1292(b) and Rule 5 of the Federal Rules of Appellate Procedure for the United States Courts of Appeals. Under the Idaho rule a party to an action in a district court or a proceeding in an

administrative agency may seek permission to appeal from an interlocutory order which is not otherwise appealable as a matter of right under I.A.R. 11. The basic criteria for consideration of such an appeal by certification from an interlocutory order under Rule 12 is that the order "involves a controlling question of law as to which there is substantial grounds for difference of opinion," and that an immediate appeal from the order "may materially advance the orderly resolution of the litigation" The rule requires a party to first make application to the district court or administrative agency for its advisory ruling, and thereafter the party files a motion with the Supreme Court requesting it to accept the appeal from the interlocutory order. The defendant in this case properly followed the procedures set forth in the rule and did obtain an order of the district court recommending the appeal by certification.

In *Budell*, this Court denied a Rule 12 motion for appeal of the district court's order denying a motion for summary judgment seeking an order that a prior judgment in favor of the defendant in a small claims case barred a subsequent personal injury action. The Supreme Court, per curiam, noted that just because a reversal would obviate a trial did not by itself justify a Rule 12 appeal where there was no argument by the defendant that an appeal would materially advance the orderly resolution of the litigation. The Court stated:

It was the intent of I.A.R. 12 to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved. The Court also considers such factors as the impact of an immediate appeal upon the parties, the effect of the delay of the proceedings in the district court pending the appeal, the likelihood or possibility of a second appeal after judgment is finally entered by the district court, and the case workload of the appellate courts. No single factor is controlling in the Court's decision of acceptance or rejection of an appeal by certification, but the court intends by Rule 12 to create an appeal in the exceptional case and does not intend by the rule to broaden the appeals which may be taken as a matter of right under I.A.R. 11.

105 Idaho at 4, 665 P.2d at 703.

No clear thread emerges from the cases in which this Court has granted motions for Rule 12 appeals. Some cases easily satisfy the criteria of controlling questions of law, substantial groups for difference of opinion, and orderly advancement of litigation; such as the constitutionality of statutes, subject matter and personal jurisdiction, or the application of the Double Jeopardy clause. Other cases have high profiles, such as those involving salacious allegations against the Boy Scouts. Other cases less apparently pass muster under the *Buddell* test; such as, cases involving venue, insurance coverage, motions to suppress, availability of affirmative defenses or evidentiary issues. Most of the time this Court simply recites that a motion for appeal by permission was granted.

So, in the absence of a bright line rule and with a multi-factor test that this Court exercises on a case-by-case basis, the job of the applicant is to marshal arguments to satisfy each of the requirements of the rule to persuade this Court to accept the appeal.

III. THE ISSUES RAISED BY the MOTION TO DISMISS

Under I.A.R. 12(b), the first criterion to grant a motion for permission to appeal from an interlocutory order is that the interlocutory order must involve a controlling question of law as to which there is substantial grounds for difference of opinion. The second criterion in order to grant a motion to appeal is that an immediate appeal from the order may materially advance the orderly resolution of the litigation. Both criteria must be present before this Court will grant permission to appeal from the interlocutory order denying the District's motion to dismiss. Further, "the intent of I.A.R. 12 [is] to provide an immediate appeal from an interlocutory order if substantial legal issues of great public interest or legal questions of first impression are involved. *Aardema v. U.S. Dairy Systems, Inc, supra.*

Controlling question of law as to which there is substantial grounds for difference of opinion. The district court recognized in its opinion that the District made five arguments as to why the agreement entered into was unlawful. Memorandum Decision and Order Denying Defendant's Motion to Dismiss, page 5. The district court decided as a matter of law that all of the District's arguments failed. The decision was not based upon any disputed issues of fact. It was based upon an interpretation of a provision of the Idaho Constitution (Article VIII, Section 3), the application of Idaho statutes, as well as an application as a matter of law of contract principals. Therefore, the District submits that the court's decision was based upon controlling questions of law. The City seemingly agreed to this view when it sought a stipulated continuance of the trial.

The next issue for this Court to examine is whether there exists substantial grounds for differences of opinion regarding the law as applied by this Court. The briefing submitted in support of the motion to dismiss presented substantial grounds under the law for which there was a difference of opinion based upon existing law. The district court disagreed with District's constitutional and statutory analysis and agreed with the City's position. However, the District's position was supported by existing constitutional interpretations by this Court. The district court recognized the same when it granted leave to file the interlocutory appeal.

Further, as previously noted, it is appropriate to grant permissive appeal where substantial legal issues of great public interest are involved. The present case involves such an issue. The duration of the contract requiring a turn over of ad valorem goes in perpetuity. This Court has held that contracts requiring performance of a series of acts in perpetuity may be against public policy. *Barton v. State*, 104 Idaho 338, 340, 659 P.2d 92, 94; *Shultz v. Atkins*, 97 Idaho 770, 775, 554 P.2d 948, 953 (1976).

This case also involves a matter of great public interest. The City has advanced that maintenance of the streets within the City is of great importance to its citizenry. On the other hand, as pointed out by the District below, the use of ad valorem funds in perpetuity is of great public interest to its taxpayers, not all of whom reside within the City. Thus, this case specific concern is also met by the present case.

The final arbiter of the differences of opinion regarding the application of the law will necessarily be this Court. A permissive appeal of the district court's interlocutory order on the motion to dismiss is appropriate in this case.

Orderly advancement of the litigation. If the District is right about the application of law in this matter, the case ends upon appeal. Whatever decision this Court makes will shape the outcome of the case on remand. The appeal of the interlocutory order will reduce the cost of litigation between the parties, both of which are funded by taxpayer revenues. Further, the parties have stipulated to a joint preliminary injunction that continues the operations of the entities as was occurring under the disputed contract, so the public is not disadvantaged in any manner by the appeal. An appeal, especially of the constitutional issue, may materially advance the orderly resolution of the litigation.

IV. CONCLUSION

The Defendants' Motion for Appeal by Permission under I.A.R. 12(c) meets each prong of the test set for under the rule, and the holding of *Aardema v. U.S. Dairy Systems, Inc., supra*.

It is therefore respectfully requested that this Court grant the Motion for Appeal by Permission.

DATED this 20th day of June, 2014.

JAMES, VERNON & WEEKS, P.A.

BY: Susan P. Weeks
SUSAN P. WEEKS
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:

C. Matthew Anderson
Winston & Cashatt
250 Northwest Blvd., Ste 206
Coeur d'Alene, ID 83814

XX via facsimile to 208-765-2121

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

Christine Elmore

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUL 8 PM 3 17

CLERK DISTRICT COURT

DEPUTY

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SHERER & WYNKOOP, LLP
730 N. MAIN ST.
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MERIDIAN, IDAHO 83680
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208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
of the State of Idaho,)
)
) Plaintiff,)
)
vs.)
)
INDEPENDENT HIGHWAY DISTRICT, a)
political subdivision of the State of Idaho,)
)
) Defendant.)
_____)

CASE NO. CV 2013-01342

AFFIDAVIT OF
MARJ TILLEY

STATE OF IDAHO)
) ss.
County of Ada)

MARJ TILLEY being first duly sworn deposes and states:

- 1. I make the following statements of my own personal knowledge;

2. I am an elected Commissioner of the Independent Highway District ("IHD") and have served in that capacity for approximately ten years;

3. I presently serve as Chairman of the Independent Highway District Board of Commissioners and have served in that capacity for approximately eight years;

4. I have never understood how a prior Board of Commissioners could create an obligation into perpetuity for all future Boards of Commissioners to pay to the City of Sandpoint all IHD property taxes collected from Sandpoint City properties;

5. The IHD Board of Commissioners has made numerous attempts to contact City of Sandpoint officials to renegotiate the Joint Powers Agreement which purported to create an obligation to pay over all such property taxes into perpetuity;

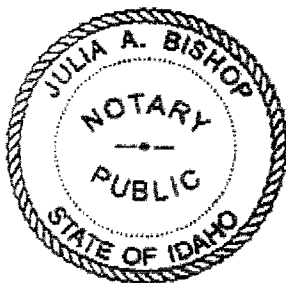
6. The IHD Board of Commissioners instructed its former attorney on numerous occasions to approach City of Sandpoint officials to negotiate a termination or amendment to the Joint Powers Agreement so as to modify the obligation in perpetuity to disburse all such IHD property tax revenues to the City of Sandpoint;

7. The attempts to negotiate a termination or modification to the Joint Powers Agreement were unsuccessful.

DATED this 3rd day of July, 2014.

Marj Tilley
Marj Tilley

SUBSCRIBED AND SWORN TO before me this 3rd day of July, 2014.



Julia A. Bishop
Notary Public for Idaho
Residing at: Wape, Idaho
My Commission Expires: June 16, 2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2014, I served a true and correct copy of the foregoing AFFIDAVIT OF MARJ TILLEY upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Anderson
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121

Christine Elmore

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 208-887-4800
 FAX 208-887-4865
 I.S.B. 2429

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.

2014 JUL 8 PM 3 17

CLERK DISTRICT COURT

DEPUTY

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
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 208-667-0683
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Attorneys for Defendant
 Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
 of the State of Idaho,)

Plaintiff,)

vs.)

INDEPENDENT HIGHWAY DISTRICT, a)
 political subdivision of the State of Idaho,)

Defendant.)

CASE NO. CV 2013-01342

SECOND AFFIDAVIT OF
 MARJ TILLEY

STATE OF IDAHO)
) ss.
 County of Ada)

MARJ TILLEY being first duly sworn deposes and states:

I. I make the following statements of my own personal knowledge;

2. I am an elected Commissioner of the Independent Highway District ("IHD") and have served in that capacity for approximately ten years;

3. I presently serve as Chairman of the Independent Highway District Board of Commissioners and have served in that capacity for approximately eight years;

4. I am familiar with the ad valorem taxes paid to the City of Sandpoint pursuant to the Joint Powers Agreement that is the subject of this lawsuit. IHD has never paid any penalties or interest collected on late payment of ad valorem taxes to the City of Sandpoint.

DATED this day of July, 2014.

July 7, 2014

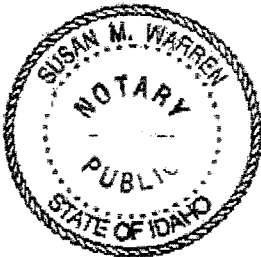
Marj Tilley

Marj Tilley

SUBSCRIBED AND SWORN TO before me this *7th* day of July, 2014.

Susan M. Warren

Notary Public for Idaho
Residing at: *Bonner Co*, Idaho
My Commission Expires: *6/8/10*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2014, I served a true and correct copy of the foregoing AFFIDAVIT OF MARJ TILLEY upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

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Hon. John T. Mitchell
Chamber Copy

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Christine Elmore

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STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DIST.
 2014 JUL 8 PM 3 17
 CLERK DISTRICT COURT
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SUSAN P. WEEKS
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Attorneys for Defendant
 Independent Highway District

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

CITY OF SANDPOINT, a municipal corporation)
 of the State of Idaho,)
)
 Plaintiff,)
)
 vs.)
)
 INDEPENDENT HIGHWAY DISTRICT, a)
 political subdivision of the State of Idaho,)
)
 Defendant.)
 _____)

CASE NO. CV 2013-01342
 AFFIDAVIT OF
 JULIE BISHOP

STATE OF IDAHO)
) ss.
 County of Ada)

JULIE BISHOP being first duly sworn deposes and states:

1. I make the following statements of my own personal knowledge;
2. I am the Clerk of the Independent Highway District ("IHD");
3. As part of my job responsibilities I am also the records custodian for IHD;

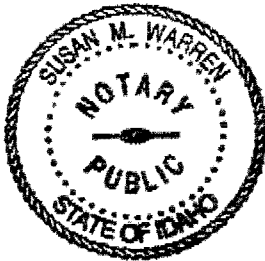
JULIE BISHOP
 AFFIDAVIT OF MARY TILLEY - 1

4. I located the document attached to this Affidavit as Exhibit A in the official files of IHD.

DATED this 3RD day of July, 2014.

Julie Bishop
Julie Bishop

SUBSCRIBED AND SWORN TO before me this 3rd day of July, 2014.



Susan M. Warren
Notary Public for Idaho
Residing at: Bonner Co. Idaho
My Commission Expires: 6/8/16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2014, I served a true and correct copy of the foregoing AFFIDAVIT OF JULIE BISHOP of the following, by the method indicated below:

Scot R. Campbell
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1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Anderson
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121

Christina Elmore

FROM :

FROM: NO. 120812351364

DATE: 13 2012 02:15:00 192

Scott Campbell

From: Scott Campbell
Sent: Tuesday, June 12, 2012 4:44 PM
To: brucehgreene@frontier.com
Cc: Maesha Oglivie; Kody Van Dyk
Subject: Independent Highway District payments to Sandpoint

Bruce,

This email is in response to the meeting you had with the City where you conveyed Independent Highway Districts (IHD) desire to relinquish City of Sandpoint (City) streets (to Bonner County) and discontinue payments of ad valorem taxes to the City. As I recall the IHD position, you feel that the obligation for IHD to continue payments into the future is illegal because it is a debt of IHD and binds future IHD Boards. If this is not your position, please let me know, however, I will address this issue.

On July 3, 2003 IHD and the City entered into a Stipulation for Settlement in which each party determined it was in their best interest to compromise whatever claims they may have had against each other and settle a lawsuit that had been going on for about 3 years.

In the settlement, the parties agreed to enter into a Joint Powers Agreement (Agreement) requiring the following:

1. Sandpoint retains jurisdiction and control over its streets;
2. IHD would pay over to the City all ad valorem property tax funds received from levies by IHD on properties within City limits;
3. City would request that Bonner County vacate the dissolution election (with prejudice);
4. City would not oppose IHD annexation elections; and
5. IHD would waive costs previously awarded.

Pursuant to the Stipulation for Settlement, which was accepted and confirmed by the Court, on July 8, 2003 the parties entered into a Joint Powers Agreement.

In the Joint Powers Agreement, the parties agreed (among other terms) to the following:

1. The duration of the agreement is perpetual or until both parties agree to terminate it;
2. IHD agreed to levy and apply for ad valorem property taxes; and
3. "The District will pay over to the City all property tax funds from such District levies on all property located within the city limits."

I disagree with the position of IHD that the payments to the City are a debt of the District and that the District can discontinue payments to the City.

Article VIII Section 3 of the Idaho Constitution places a restriction on Cities that they are generally barred from incurring debts or liabilities, in excess of the income and revenue provided for debts and liabilities in such year, unless they first conduct an election and secure voter approval of the proposed expenditure (unless the expenditure is an "ordinary and necessary expense").

Rather than have IHD operate and maintain City streets, the City's Public Works Department oversees that function. In exchange, IHD passes through to the City that portion of the ad valorem taxes that are collected within the boundaries of the City.

Page 5

FAX NO. 1208125513643

Jun 13 2012 09:13:07M 114

In no way is IID incurring a debt or liability as a result of complying with the judicially approved settlement between the parties.

In addition, as bolded in #3 above, IID cannot unilaterally alter or terminate the agreement. Both parties gave up something to settle the lawsuit. The receipt by the City of its share of the ad valorem taxes is the benefit of the bargain Sandpoint receives for taking back the maintenance and operation of its streets, dropping the lawsuit and stopping the dissolution election.

I hope this makes the position of the City clear with regard to IID's desire to stop payments of the City's share ad valorem taxes to the City.

Scot Campbell
Sandpoint City Attorney

David E. Wynkoop
Sherer & Wynkoop, LLP
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P.O. Box 31
Meridian, ID 83680
Telephone: (208) 887-4800
Facsimile (208) 887-4865
ISB No. 2429

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUL 8 PM 12 47

CLERK OF DISTRICT COURT

DEPUTY

Susan P. Weeks
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1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
ISB No. 4255

Attorneys for Defendant Independent Highway District

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

CASE NO. CV-2013-01342

MEMORANDUM IN RESPONSE TO CITY
OF SANDPOINT'S MOTION FOR
SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff City of Sandpoint ("City") filed a Complaint and Request for Declaratory and Injunctive Relief against Independent Highway District ("IHD"). In its Complaint, the City contends that the District's letter to the City (Exhibits D and E to the Complaint) violated Idaho Code §§ 67-2326 through 67-2332 (¶ 45); that IHD's actions violated the Supreme Court's

MEMORANDUM IN RESPONSE TO CITY OF SANDPOINT'S MOTION FOR SUMMARY JUDGMENT: I

recognition of the powers retained by a City with a fully functional street department (§46); and IHD's actions violated the terms of the Settlement Agreement (§ 47). The City requested a declaratory judgment that the City was entitled to the benefit of the bargain negotiated between the City and District; a declaration that the Joint Powers Agreement did not violate Article Eight, Section Three of the Idaho Constitution; the settlement did not violate I.C. § 40-801; and the Joint Powers Agreement was a valid and enforceable contract between the City and District (§ 48). The City requested preliminary and permanent injunction requiring the district to cease and desist from interfering with the City's operation and maintenance of its streets under the Joint Powers Agreement; and immediately transferring to the City all tax revenues, including penalties and interest received by the District withheld from the City (§ 51). In its prayer for relief, the City requested: (1) a declaratory judgment upholding the Stipulation for Settlement entered into by the parties and approved by the Court; (2) a declaratory judgment that the Joint Powers Agreement is a legal and valid exercise of governmental authority under Idaho Code §§ 67-2326 through 67-2332; (3) for a declaratory judgment that the Memorandum of Understanding entered into by the parties on September 14, 2005, was a valid exercise of governmental authority; (4) for an order enjoining the District from interfering with the City's operation and maintenance of its streets under the Joint Powers Agreement; (5) for an order requiring the District to immediately transfer to the City all ad valorem taxes collected by the District; (6) for a restraining order against the District requiring the District to comply with the Agreement while the matter was under consideration by the Court; and (7) for costs of suit, including attorney fees. The City has now moved for summary judgment.

MEMORANDUM IN RESPONSE TO CITY OF SANDPOINT'S MOTION FOR SUMMARY JUDGMENT: 2

Although not relative to the decisions to be made by this Court on summary judgment, in its summary judgment argument, the City indicated that it was forced to move for summary judgment because IHD would not stipulate to a stay pending the Supreme Court's review of the interlocutory appeal. Actually, the City argued against the grant by this Court of an interlocutory appeal because of the delay a stay would create. IHD noted that a stay was not mandatory with an interlocutory appeal. Based on concerns expressed by the City in opposition to the interlocutory appeal, this Court did not consider a stay. In its interlocutory appeal request to the Idaho Supreme Court, IHD requested a stay.

II. STANDARD FOR GRANT OF SUMMARY JUDGMENT

The district court applies the same standard in ruling on a motion for summary judgment as does an appellate court sitting in review of a district court decision. *State v. Rubbermaid Inc.*, 129 Idaho 353, 355-56, 924 P.2d 615, 617-18 (1996).

In *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007), our Supreme Court reviewed the standard of review for summary judgment when no jury trial was requested and held:

On appeal from the grant of a motion for summary judgment, this Court's standard of review is the same as the standard used by the district court originally ruling on the motion. *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001). Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. I.R.C.P. 56(c).

The burden of proving the absence of material facts is upon the moving party. *Thomson v. City of Lewiston*, 137 Idaho 473, 476, 50 P.3d 488, 491 (2002); see also *Petricевич v. Salmon River Canal Co.*, 92 Idaho 865, 452 P.2d 362 (1969). The adverse party, however, "may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." I.R.C.P. 56(e). The moving party is therefore entitled to a judgment when the

MEMORANDUM IN RESPONSE TO CITY OF SANDPOINT'S MOTION FOR SUMMARY JUDGMENT: 3

nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *See Thomson*, 137 Idaho at 476, 50 P.3d at 491, *Badell*, 115 Idaho at 102, 765 P.2d at 127.

When an action, as here, will be tried before the court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences. *Intermountain Forest Management*, 136 Idaho at 235, 31 P.3d at 923. Resolution of the possible conflict between the inferences is within the responsibilities of the fact finder. *Cameron v. Neal*, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997). This Court exercises free review over the entire record that was before the district judge to determine whether either side was entitled to judgment as a matter of law and reviews the inferences drawn by the district judge to determine whether the record reasonably supports those inferences. *Intermountain Forest Management*, 136 Idaho at 236, 31 P.3d at 924.

II. ARGUMENT

A. Material Question of Disputed Fact Exists on the City's Breach of Contract Claim

The City's motion for summary judgment is supported by a short memorandum which incorporates its arguments from the motion to dismiss. The City indicates the undisputed facts upon which it relies, and seeks a summary judgment. However, there are material disputed issues of fact related to the breach of contract claim.

In its verified complaint, the City claimed it was due penalties and interest collected in relation to the ad valorem taxes owed under the Joint Powers Agreement. None of the agreements attached to the City's complaint indicate the City will receive anything other than ad valorem taxes collected from residents of the City. The second affidavit of Marj Tilley indicates IHD has never paid penalties and interest over to the City. This material issue of fact prevents summary judgment in favor of the City on the breach of contract claim.

In its verified Complaint, the City also claims that consideration for the Joint Powers Agreement comprised an agreement that the City would not seek the complete dissolution of the

MEMORANDUM IN RESPONSE TO CITY OF SANDPOINT'S MOTION FOR SUMMARY JUDGMENT: 4

District. The facts alleged in the verified complaint clearly establish dissolution was one for the county commissioners to place before the electors, and the county commissioners had taken steps in that direction. No statute allows a city to play any role in determining whether the highway district would be dissolved. Construing the facts in favor of IID on summary judgment, there is a question of fact whether there was valuable consideration to support the joint powers agreement.

Although not a material disputed fact, the City also argued in the motion to dismiss that it had no idea that IHD had concerns about the JPA and wished to discuss those concerns. Submitted by affidavit herein is correspondence from showing IHD tried to discuss the issue with the City to no avail.

B. Declaration Upholding the Stipulation for Settlement Entered into by the Parties and Approved by the Court

The City requested a declaration by this Court upholding the Stipulation for Settlement entered by the Court. The face of this document indicates it was prepared by the City's attorney, Scott W. Reed. The stipulation provided that the entities would enter into a joint powers agreement made under Chapter 23, Title 67, Idaho Code, which would provide for division of all ad valorem funds received under Chapter 8, Title 40, Idaho Code. The stipulation indicated that the joint powers agreement would provide that IHD would, into perpetuity, turn over all ad valorem property tax funds received from levies by the District upon all property within city limits.

The City's declaratory judgment request regarding this item directly relates to the validity of the Joint Powers Agreement. The discussion of the validity of the Joint Powers

Agreement previously raised by IHD in its Motion to Dismiss is relative to this declaration, and is discussed below.

C. Declaratory judgment that the Joint Powers Agreement is a legal and valid exercise of governmental authority under Idaho Code §§ 67-2326 through 67-2332

The City requested this Court declare the Joint Powers Agreement (“JPA”) legal and valid under I.C. §§67-2326 through 67-2332. In the motion to dismiss, IHD thoroughly addressed its position outlining why the JPA was not valid and enforceable. Those arguments are again incorporated into this brief.

A summary of the arguments from the motion to dismiss is outlined without fully restating the motion to dismiss argument. The agreement is perpetual by its express language, and the City recognizes in its complaint it is perpetual. The language that a termination may occur by mutual agreement is illusory. The termination clause is not viable.

A perpetual agreement violates Article 8, section 3, of the Idaho constitution. IHD has an obligation that stretches into infinity in favor of the City. The “special fund doctrine” does not cure this illegality. A perpetual agreement also violates the Joint Powers Act. As argued at length in the motion to dismiss, the JPA is illegal and void.

Another issue not raised in the motion to dismiss is a portion of the JPA that allows the City to vacate highway district streets. Only highway districts have the power and authority to abandon or vacate a highway district road. I.C. § 40-203. The highway district cannot delegate that power to a city. See generally *Blaha v. Ada County Board of Commissioners*, 134 Idaho 770, 9 P.3d 1236 (2000). This provision of the Joint Powers Agreement is invalid and unenforceable.

MEMORANDUM IN RESPONSE TO CITY OF SANDPOINT'S MOTION FOR SUMMARY JUDGMENT: 6

D. Declaratory judgment that the Memorandum of Understanding entered into by the parties on September 14, 2005, was a valid exercise of governmental authority

The City requested this Court declare the Memorandum of Understanding entered into by the parties on September 14, 2005, was a valid exercise of governmental authority. This agreement, like the JPA, also concerned the abandonment and vacation of IHD streets by the City. As noted above, only highway districts have the power and authority to conduct a hearing to abandon or vacate a highway district road. I.C. § 40-203. This Memorandum of Understanding is invalid and unenforceable.

E. Request for an Order Enjoining the District from Interfering with the City's Operation and Maintenance of its streets under the Joint Powers Agreement.

The City also requested this Court enter an order enjoining the District from interfering with the City's operation and maintenance of its streets under the Joint Powers Agreement. Outside the City's claim that IHD withheld money, no facts are presented that IHD has interfered with the City's operation and maintenance of the streets within the boundaries of the City. Thus, the City is not entitled to such a broad and sweeping injunction order.

F. Request for an order requiring the District to immediately transfer to the City all ad valorem taxes collected by the District.

This request is moot as the parties entered into a stipulated preliminary injunction whereby the City was transferred money by IHD, without prejudice to IHD's defenses to such transfer.

G. For a restraining order against the District requiring the District to comply with the Agreement while the matter was under consideration by the Court;

Again, this prayer for relief is moot as the parties entered into a stipulated preliminary injunction whereby IHD transferred the ad valorem taxes to the City without prejudice to its defenses.

H. For costs of suit, including attorney fees.

The City requests attorney fees under I.C. § 12-121. The City has advanced no argument or authority showing that IHD's defense was frivolous. Further, given that a material issue of fact prevents entry of judgment in favor of the City, there are no grounds for an award of attorney fees under I.C. § 12-121.

DATED this 8th day of July, 2014.

JAMES, VERNON & WEEKS, P.A.

BY:



SUSAN P. WEEKS

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of July, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:

C. Matthew Anderson
Winston & Cashatt
250 Northwest Blvd., Ste 206
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XX via facsimile to 208-765-2121

Scott R. Campbell
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Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

Chamber Copy to:
Hon. John T. Mitchell
P.O. Box 9000
Coeur d'Alene, ID 83816

XX via facsimile to 208-446-1132

Christine Chouse

SCOT R. CAMPBELL, ISB No. 4121
SANDPOINT CITY ATTORNEY
1123 Lake Street
Sandpoint, Idaho 83864
Telephone: (208) 263-0534
Facsimile: (208) 255-1368
scampbell@ci.sandpoint.id.us

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2014 JUL -3 AM 10: 21

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 JUL 9 AM 10 00

CLERK DISTRICT COURT
DMH
DEPUTY

C. MATTHEW ANDERSEN, ISB No. 3581
WINSTON & CASHATT, LAWYERS,
a Professional Service Corporation
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cma@winstoncashatt.com

Attorneys for Plaintiff

IN THE SUPREME COURT
OF THE STATE OF IDAHO

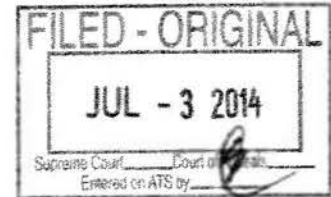
CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT,
a political subdivision of the State of
Idaho,

Defendant.



Supreme Court Docket No. 42236-2014

Bonner County Case No. CV-2013-01342

CITY OF SANDPOINT'S MEMORANDUM IN
OPPOSITION TO MOTION FOR APPEAL
BY PERMISSION

1. Introduction.

Defendant Independent Highway District ("IHD") seeks to appeal by permission pursuant to I.A.R. 12(c). The request is based on the denial of an I.R.C.P. 12(b)(6) motion to dismiss the underlying action. Both the IHD and the City of Sandpoint ("City") are desirous of a prompt resolution of the dispute which arises out of a ten (10) year old Joint Power Agreement entered

into as a condition of settlement of previous pending litigation. Unfortunately for the parties, IHD's request is premature as it suffers from three procedural speed bumps that will impede rather than hasten resolution of the dispute. First, the order appealed from is not a final adjudication of the issues IHD seeks to appeal. Second, IHD has represented to the trial court there are disputed facts concerning the issue IHD wishes to appeal, which would require a trial on the merits should this Court ultimately affirm the trial court's ruling. Third, IHD has not identified a precise legal issue, with a citation to authority, demonstrating the necessary substantial difference of opinion as to the controlling law.

To remedy the deficiencies confronting a piecemeal appeal as presented in this motion, the City has filed a motion for summary judgment that is set for argument on July 22, 2014. This motion, if granted, will result in an order adjudicating the issues with sufficient finality as to permit certification pursuant to I.R.C.P. 54(b). The City does not believe there are any material facts in dispute that will preclude summary judgment; however, if IHD is correct that there are disputed facts, they will be flushed out and the matter will proceed to trial and avoid the prospect of piecemeal appeals.

The City and IHD have cooperated to attempt to arrive at a solution to expedite review; the procedural disagreement is what has impeded a stipulation to seek review. Judge Mitchell has entered an order permitting this motion for appeal, but has not stayed any of the proceedings below, including the City's dispositive motion. The City believes the prudent course is to permit the summary judgment to proceed and then address an interlocutory appeal if appropriate.

2. Nature and Summary of Dispute.

This action was brought to enforce a lawful executed Joint Powers Agreement ("JPA") entered into between the City and the IHD, signed on July 8, 2003, which apportioned some of

the ad valorem property tax collected by the IHD to the City for road maintenance within the City's boundaries. The motivation for the JPA was simple and undisputed: the City was unhappy with IHD's quality of service to the City taxpayers, and had petitioned for a taxpayers' election to dissolve the IHD. IHD had sued the Bonner County Commissioners to stop the dissolution election, but it was unsuccessful. Sandpoint Independent Highway District v. Board of County Commissioners of Bonner County and the City of Sandpoint, Intervenor, 138 Idaho 887, 71 P.3d 1034 (2003) (Sandpoint III). The JPA was a compromise of the very issues raised in this case. The substance and motivation for the JPA were set out in a filed stipulation that was approved by the Court. Based on the Stipulation for Settlement, the Court entered a final Order of Dismissal.

The JPA was the last step (until now) in a dispute with a long judicial history that played out before the Supreme Court in three separate matters. The first matter was City of Sandpoint v. Sandpoint Independent Highway District, 126 Idaho 145, 879 P.2d 1078 (1994) (Sandpoint I). 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.

The second matter was City of Sandpoint v. Sandpoint Independent Highway District, 139 Idaho 65, 72 P.3d 905 (2003) (Sandpoint II). In response to the ruling in Sandpoint I, the City did organize a functioning street department by ordinance and commenced a declaratory judgment asking whether it had executive general supervisory authority over the City's public streets. The District Court ruled in favor of the City, but certified the question to the Supreme Court, which ruled 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.

This gave rise to the attempt to block the dissolution election in Sandpoint III, referenced above. On June 4, 2003, the Supreme Court concurred that dissolution would be in the best interest of the public, and sent the matter back, allowing the dissolution election to proceed.

At that point, the Stipulation for Settlement was executed with the parties agreeing that the City would maintain its streets; the City and IHD subsequently executed the JPA, but in 2013, IHD ceased disbursing the funds to the City as required by the express terms of the JPA.

3. Summary of Procedure Below and Order Denying Motion to Dismiss.

3.1 The City initiates suit to enforce agreement.

The City of Sandpoint filed a Complaint and Request for Declaratory and Injunctive Relief on August 16, 2013, claiming breach of contract based on IHD's withholding of funds due under the Joint Powers Agreement. The City sought a transfer of the funds which were then due, as well as a Declaration of Rights that the Stipulation for Settlement in the previous litigation be upheld, that the Joint Powers Agreement and the Memorandum of Understanding be declared legal and valid, that the IHD be enjoined from interfering with the City's operation and maintenance of its streets, and restrained from non-compliance with the Agreements.

3.2 IHD files a Motion to Dismiss under I.R.C.P. 12(b)(6).

Instead of answering, IHD filed a motion to dismiss the Complaint on September 9, 2013, asserting that the City's Complaint failed to state a cause of action upon which relief could be granted, and that the contract the City sought to enforce was "void and illegal under the Idaho Constitution and various Idaho statutes." More specifically, in its Memorandum in Support of Motion to Dismiss, the IHD claimed that the JPA created a "debt" which was void under Article VIII §3 of the Constitution; that the JPA violated the required tax apportionment in

I.C. §40-801 and the required funding to the IHD under I.C. §40-1333; that the JPA lacked an appropriate termination provision and was illegally perpetual; and that it lacked consideration.

The trial court issued its Memorandum Decision and Order Denying Defendant's Motion to Dismiss on December 4, 2013. That Order analyzed each of the arguments, cases and statutes propounded by the IHD and concluded the Complaint had been sufficiently pleaded. Because an "illegal contract" had been alleged, the court also noted its obligation to analyze the actual merits of the claims, and made the determination that the contract was legal and enforceable, thereby denying IHD's motion "on all the arguments presented."

3.3 Post Order actions.

After the court's order, and with the winter season at hand, the parties proceeded to stipulate to a reciprocal preliminary injunction which required the IHD to disburse the sums withheld and continue those contractual disbursements until absolved from doing so by the court order; such distributions were not deemed voluntary, and the parties' rights to pursue their respective claims and defenses were reserved, thus eliminating any prejudice to the parties as the matter proceeded.

Thereafter, the parties negotiated for the best manner to proceed, recognizing IHD wished appellate review of the issues decided by the trial court. On March 3, 2014, the trial court granted the parties' Stipulated Motion to Vacate the Trial Date (which had been set for March 25, 2014), but reset it to October 28, 2014. On May 7, 2014, IHD filed a Motion for Leave to File An Interlocutory Appeal pursuant to I.A.R. 12(a).

In its reply brief in support of its motion, IHD asserted that it "believes there are questions of fact that would preclude summary judgment," although claiming at the same time that immediate appeal would "serve to avoid unnecessary motion practice, discovery, trial and

would otherwise substantially shorten the litigation." (See, IHD's Reply Memorandum in Support of Motion for Leave to File Interlocutory Appeal, pp. 4, 5)

At the motion hearing, the trial court granted the motion for appeal but confirmed that the Scheduling Order remained in place with a dispositive motion deadline of ninety (90) days before trial. The City thus filed its motion for summary judgment on June 4, 2014, based on the complete lack of any undisputed facts relating to the JPA, the Stipulated Settlement, or the Memorandum of Understanding. These documents all speak for themselves, and the dispute between the parties is based on the express terms of these documents and a litigation history that is similarly documented. The City's motion for summary judgment specifies that its claims, and IHD's defenses, rest solely on the legal interpretation of Idaho statutes, the Constitution, and the express unambiguous terms of the agreements. That motion is set for hearing on July 22, 2014.

4. Argument.

The only ruling the trial court has made in this case is to deny IHD's motion to dismiss. While the trial court's opinion certainly analyzed the law on the merits of the parties' claims and defenses, the ultimate ruling was simply that the City's Complaint stated a cause of action and is not in sufficient posture for an appeal.

Next, in its motion to this Court, IHD argues that the City has taken the position that there are no material issues of fact for trial. (See, IHD Memo in Support of Motion for Appeal, pp. 2, 8) However, IHD has not so conceded. Instead, IHD continues to allude to the existence of such facts for trial (although not identifying such facts). This position required the trial court to leave its Scheduling Order with a trial date in place, and forced the City to move for summary judgment. If IHD believes there are issues of fact that must be tried, this appeal would then not have the purpose of materially advancing the orderly resolution of this litigation. In fact, in

Burdell v. Todd, 105 Idaho 2, 4, 665 P.2d 701 (1983), cited by IHD, the trial court considered, along with other factors, that an immediate appeal of a denial of summary judgment, if reversed, would obviate the need for a trial. Unlike Burdell, IHD maintains that a trial will be necessary, irrespective of a ruling by this Court on appeal. If IHD is correct that there remain issues of fact, the normal course of litigation dictates that it is better to try those issues before in order to avoid duplicative appeals. If issues of fact exist, they should be either identified and/or disputed, by a final order of the trial court, before any further appeal.

Finally, the City does not believe there is a substantial difference of opinion in controlling law sufficient to establish a basis for an immediate appeal of an order denying a motion to dismiss under I.A.R. 12(b). Of the five bases for the motion to dismiss, the only basis relied upon for this motion is the IHD assertion the Joint Powers Agreement, that has been in effect for ten years, has a deficient termination clause. No law has been cited to the Court which articulates a substantial difference in view of the controlling law, other than the fact the trial court disagreed with the IHD's position on the law. That basis is insufficient to require interlocutory appeal. See, Clark v. U.S., 481 F.Supp. 1086 (S.D.N.Y. 1979) (a claim that one precedent controls over another does not mean there is a substantial difference of opinion to support interlocutory appeal). IHD has failed to demonstrate any existing conflict in the law necessary to this appeal.

5. **Conclusion.**

For the foregoing reasons, the City of Sandpoint objects to interlocutory appeal of IHD's motion to dismiss, and requests the motion be denied.

DATED this 2nd day of July, 2014.

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FIRST JUDICIAL DIST.

2014 JUL 15 PM 3 37

CLERK DISTRICT COURT



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CITY OF SANDPOINT, a municipal corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

CITY OF SANDPOINT'S REPLY IN SUPPORT OF SUMMARY JUDGMENT

1. **Introduction.**

The City of Sandpoint ("City") moved for summary judgment on its claim for Declaratory and Injunctive Relief to establish that the Joint Powers Agreement ("JPA") executed with the Independent

1 Highway District ("IHD") was valid and enforceable as a matter of law. In response, IHD continues to
2 argue the legal issues regarding the terms of the JPA, such as whether its "perpetual" term renders it
3 illegal, whether sufficient consideration existed, and whether the relief requested is recoverable.
4 However, IHD raises no genuine issues of fact on these issues, and the matters raised remain issues of
5 law properly resolved on summary judgment.
6

7 **2. Evidence submitted by IHD.**

8 IHD submits three affidavits in response to the City's summary judgment, none of which create
9 any genuine issues of fact for trial. In fact, the first affidavit of Marj Telley and the affidavit of Julie
10 Bishop only provide testimony that the parties had contact regarding the JPA prior to the suit, which
11 IHD admits is not a material disputed fact. (IHD's Memorandum in Response, p. 5) Ms. Tilley also
12 testifies in her first declaration that she "has never understood" how the JPA could be created "in
13 perpetuity", which similarly can create no issue of fact for trial on the validity of the JPA. The only
14 remaining evidence which IHD presents to defeat summary judgment is the second affidavit of Marj
15 Tilley, in which she testifies that the IHD has not previously paid penalties or interest collected on late
16 payment of ad valorem taxes to the City of Sandpoint; however, whether a specific relief requested is
17 recoverable is an issue of law, and whether or not such amounts have been previously paid is irrelevant
18 to the court's determination of the legal propriety of the relief.
19

20 **3. Law.**

21 A genuine issue of material fact necessary to defeat summary judgment is one upon which the
22 outcome of the action depends. Johnson v. North Idaho College, 153 Idaho 58, 278 P.3d 928, 937
23 (2012). When alleged factual issues are not material to the decision, summary judgment is properly
24 granted. Jordan v. Pierce, 91 Idaho 687, 429 P.2d 419, 415 (1967). Arguing the application of law does
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1 not establish any basis to oppose summary judgment. See, *Chandler v. Hayden*, 147 Idaho 765, 215 P.3d
2 485, 488 (2009) (summary judgment is proper when the only questions are questions of law). Thus, a
3 party opposing summary judgment cannot do so on the basis of their opinion as to the interpretation of
4 questions of law. Here, there exists express agreements with no dispute as to their terms, and as a result,
5 their interpretation are issues of law for the court. IHD has presented nothing to preclude enforcement
6 of the JPA as a matter of law, and instead simply argues how the court should interpret the law, or that
7 certain remedies requested by the City are not legally available. This does not create any necessity for
8 trial on issues of disputed fact, and summary judgment remains appropriate.

10 **3.1 The existence of a request for penalties and interest as part of the ad valorem tax**
11 **does not defeat the City's right to summary judgment.**

12 The Joint Powers Agreement between the City of Sandpoint and Sandpoint Independent
13 Highway District provided that IHD would levy and apply for ad valorem property taxes under the
14 authority granted in Idaho Code Title 40. (Complaint, Ex. "B") Specifically, the parties agreed "the
15 District will pay over to the City **all** property tax funds from such District levies on all property located
16 within the City limits." (Complaint, Ex. "B", p. 3 Emphasis added) The ad valorem property tax
17 authority under Title 40 requires that the County pay over to the Highway District "**all** District tax
18 monies collected by him and payable to the District as soon as they are collected..." and pay over "**all**
19 **monies** then due to the District, **including all** the District's proportion amount of **delinquent District**
20 **taxes, interest and costs** on all tax sales and redemptions from them." I.C. §40-805 (emphasis added).

22 Thus, the amount collected by the District pursuant to statute includes interests and penalties on
23 delinquent taxes, and the JPA provides that the District would pay over **all** property tax funds under the
24 authority granted to levy ad valorem property taxes. Pursuant to the JPA, the City has pled that it is
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1 entitled to the ad valorem tax, which includes penalties and interest collected on properties within the
2 City limits. (Complaint, ¶44(c)) As a result, it further asks that the injunctive relief to which it is
3 entitled includes an order that IHD transfer tax revenues, which again by definition include the penalties
4 and interest. (Complaint, ¶51(b)) It is undisputed that IHD previously paid to the City all delinquent
5 taxes owed, as they were paid. It makes no sense that the accompanying interest and penalties for those
6 delinquent taxes are not similarly paid over to the City.
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8 Moreover, whether or not IHD has previously paid those amounts to the City is irrelevant to the
9 City's entitlement, and creates no issue of fact to defeat summary judgment. Instead, there remains an
10 issue of law for the court to determine whether the definition of the ad valorem property taxes collected
11 by the IHD under the statute includes interest and penalties, and whether the express terms of the JPA to
12 pay all tax revenues agreed to the City include penalties and interest. No genuine issue of fact for trial
13 exists, and instead this is simply a matter of contract interpretation and statutory construction, both of
14 which are issues of law. See, Idaho Department of Health & Welfare v. McCormick, 153 Idaho 468,
15 470, 283 P.3d 785 (2012) (interpretation of a statute is a question of law); Farm Bureau Mut. Ins. Co. of
16 Idaho v. Eisenman, 2012 WL 4094808 (Idaho 2012) (an unambiguous contract must be construed as a
17 matter of law).
18

19 **3.2 IHD's claim that withdrawal of the dissolution action could not constitute**
20 **consideration is incorrect, and there existed additional adequate consideration;**
21 **irrespective of that, the argument is based solely an interpretation of law, which**
22 **cannot defeat summary judgment.**

23 IHD incorrectly asserts that the JPA lacks consideration, because it depended on an agreement
24 by the City that it would not seek dissolution of the District, which is not within the authority of the City
25 to do. It is undisputed that the parties reached an agreement to settle Sandpoint Independent Highway
26

1 District v. Board of County Commissioners of Bonner County and the City of Sandpoint, Intervenor,
 2 138 Idaho 887, 71 P.3d 1034 (2003) (Sandpoint III)¹, in which the City of Sandpoint was an intervenor.
 3 That Stipulation for Settlement provided that the parties agreed that the interests of taxpayers would best
 4 be served by continuing the arrangement that the City and IHD had previously agreed upon regarding
 5 payment by the IHD to the City of all ad valorem taxes collected on properties within the City limits,
 6 with the City maintaining the streets within the City limits. (Stipulation for Settlement, ¶10) The parties
 7 also agreed that continued litigation and the anticipated dissolution election would be costly and not in
 8 the best interests of the public. (Stipulation for Settlement, ¶11) Based on these decisions, the parties
 9 stipulated that they would enter into a JPA reflecting this arrangement, that the City would request the
 10 Bonner County Board of Commissioners to vacate the dissolution election, and the parties would agree
 11 to dismiss the case with prejudice. (Complaint, Ex. "A") The parties indeed enter into the JPA
 12 (Complaint, Ex. "B"), and the District Court for Bonner County approved the stipulated settlement, and
 13 ordered that the case be dismissed with prejudice. (Ex. "A" Plaintiff's Response to Defendants' Motion
 14 to Dismiss) The stipulation ended all continued litigation and developed the agreement which
 15 established the ad valorem tax apportionment.

18 Thus, it is undisputed that the City changed its position as consideration for the agreement
 19 reached with IHD. See, Shore v. Peterson, 146 Idaho 903, 912, 204 P.3d 1114 (2009) (forbearance from
 20 exercising a right, such as the right to resort to courts to settle a dispute, constitutes consideration). It is
 21 also undisputed that settlement of a dispute or controversy constitutes consideration. See, Warren v.
 22 Kopman, 55 Idaho 785, 47 P.2d 920 (1935). Whether or not the County Commissioners or the

25 ¹ The circumstances surrounding the various related pieces of litigation in this matter are fully laid out in the City's Response
 26 to IHD's motion to dismiss.

1 electorate could proceed with a dissolution action and whether the City could by itself determine
2 whether the Highway District will be dissolved is irrelevant to the consideration to the dismissal and the
3 JPA. It remains undisputed that the parties agreed to stipulate to a settlement, which included that the
4 City (as a party) would vacate its petition for the dissolution election, and request that the Board of
5 County Commissioners do so as well, both of which occurred. The City's agreement was not illusory;
6 whether other parties thereafter chose to pursue dissolution of the IHD did not impact the City's
7 agreement to dismiss and settle the suit, and seek the cooperation of other parties.

9 Moreover, additional consideration for the JPA existed, in that the parties reached an appropriate
10 cooperation for the maintenance of streets and payment of taxes. The cessation of the dissolution action
11 was only a portion of the consideration supporting the JPA.

12 Further, any claim that there was insufficient or illegal consideration for the JPA does not raise
13 any issues of fact, because the express terms of the agreement are undisputed; whether adequate
14 consideration exists can be an issue of law when the facts are undisputed. AED, Inc. v. KDC
15 Investments, LLC, 155 Idaho 159, 167, 307 P.3d 176 (2013) (whether a contract is void and
16 unenforceable based on illegal consideration is a question of law); World Wide Lease, Inc. v.
17 Woodworth, 111 Idaho 880, 884, 728 P.2d 769 (Idaho App. 1986) (existence or sufficiency of
18 consideration is determined as a matter of law when the facts are uncontroverted). As a result, IHD's
19 claim that the JPA lacked valuable consideration does not create an issue to defeat summary judgment.
20
21

22 **3.3 The validity of the Joint Powers Agreement based on IHD's claim of an**
23 **unenforceable "perpetual" term is an issue of law appropriate for summary**
24 **judgment.**

25 IHD's argument regarding the termination clause of the JPA once again raises no issue of fact to
26 defeat summary judgment, but is a claim that as a matter of law, the "perpetual" term is void and

1 unenforceable, rendering the JPA void and unenforceable. Just as outlined in IHD's motion to dismiss,
2 this is an issue of law which cannot defeat summary judgment, and on which this Court has already
3 ruled. As noted by the court in its Memorandum Decision and Order Denying Defendant's Motion to
4 Dismiss, the statutory mandate for a JPA under Idaho Code §67-2738 has been satisfied, and the terms
5 of the statute and the JPA will be given their plain meaning, establishing the legality of the JPA. The
6 court further noted there was nothing about the express term of the JPA that was ambiguous, and its
7 interpretation and compliance with the statute is thus a question of law for the court. See, Idaho Dept. of
8 Health & Welfare, supra.; Farm Bureau, supra.

9
10 As a result, IHD raises no basis in its response on summary judgment to establish any issue of
11 fact regarding the enforcement of the term, other than its alleged illegality which this Court has found
12 incorrect. As a result, summary judgment establishing that the JPA is properly enforceable is
13 appropriate.
14

15 **3.4 The provision in the JPA and the Memorandum of Understanding relating to the**
16 **vacation of roads similarly requires interpretation of law and does not create any**
17 **genuine issue of fact to defeat summary judgment; and the Idaho Supreme Court**
18 **has already established the propriety of imbuing the City with vacation powers.**

19 Contrary to IHD's claim that it has the exclusive authority to vacate streets, rendering the
20 Memorandum of Understanding and the JPA unenforceable, the Supreme Court has already interpreted
21 Idaho's statutory scheme differently, as IHD well knows. In City of Sandpoint v. Sandpoint Independent
22 Highway District, 126 Idaho 145, 879 P.2d 1078 (1994) (Sandpoint I), the specific question was raised
23 regarding whether the City had the authority to maintain and vacate public rights of way within the
24 City's borders. The Supreme Court analyzed all of the statutory provisions within Title 40 to determine
25 that the IHD had exclusive right to maintain and vacate public streets within the City, but only "where
26

1 the City does not have a functioning street department." Id. at 152; see also, I.C. §40-1323 (city council
2 of an incorporated city allowed to exercise the powers and duties of the highway district with respect to
3 streets within the city limits); and I.C. §50-1330 (highway district granted exclusive supervisory
4 authority over public streets "**excluding** public streets and public rights of way located inside of an
5 incorporated city that has a functioning street department." (Emphasis added) The remaining litigation
6 between the parties occurred when the City developed a functioning street department, and sought to
7 exercise the right to maintain and vacate City streets, which the Supreme Court clearly envisioned as
8 appropriate. The litigation was settled with the IHD and the City agreeing to the authority of the City
9 under Idaho's statutory scheme to maintain and vacate streets. In accordance with the settlement
10 agreement, they entered into the JPA in July of 2003 reflecting that the City would exercise exclusive
11 general supervisory authority over the streets and public rights of way within the City, which would
12 include "acquisitions, vacations and abandonments." (Complaint, Ex. B, p. 1-2) Two years later the City
13 and IHD further memorialized the procedure for the vacation of City streets in the Memorandum of
14 Understanding, in which the IHD once again acknowledged the City's control and right to vacate public
15 streets within City limits. (Complaint, Ex. C) IHD fails to cite the entirety of the statutory scheme, and
16 the express terms of the parties' various agreements; as already firmly established via the history of this
17 litigation, these are issues of statutory and contract interpretation for this court, and no basis exists to
18 defeat summary judgment.
19
20
21

22 **3.5 IHD cannot defeat summary judgment by simply claiming that some of the relief**
23 **requested is overly broad or now moot; the court can simply fashion the**
24 **appropriate relief.**

25 IHD asserts that the request by the City for an order enjoining the District from interfering with
26 the City's operation and maintenance of its streets under the JPA is an improper request for relief

1 because no facts were presented that the IHD so interfered, and the City is not entitled to such a broad
2 sweeping injunction order. IHD also asserts that the requests for an order transferring the funds and
3 complying with the JPA is "moot" because the parties had entered into a stipulated preliminary
4 injunction. None of these arguments defeats the City's motion for summary judgment requesting
5 declaratory and permanent injunctive relief, because the court fashions that remedy, and IHD's claims do
6 not defeat the underlying right to the relief. This Court can determine the necessary scope, and no
7 genuine issue for trial exists regarding that scope.
8

9 And obviously, at the time the Complaint was filed, the District was not paying under the JPA,
10 and that conduct indeed interfered with the operation and maintenance of the streets; as a result, the City
11 requested appropriate injunctive and declaratory relief assuring continued payment of the amounts due.
12 Now, presumably, the preliminary injunction would need to be made permanent, ensuring the continued
13 payment of the ad valorem taxes in accordance with the JPA, and such relief is not "moot."
14

15 **3.6 The award of costs and fees is an issue of law for the court.**

16 Under §12-121, a judge may award reasonable attorneys fees to the prevailing party when the
17 case was brought, pursued, or defended frivolously, unreasonably, or without foundation. Phillips v.
18 Blazer-Henry, 154 Idaho 724, 302 P.3d 349 (2013). It is for the court to make that determination, which
19 is reviewed for an abuse of discretion. Chavez v. Barrus, 146 Idaho 212, 192 P.3d 1036 (2008). There
20 exists here no legitimate bases for the IHD to have suddenly ceased compliance with agreements
21 executed ten years previously, when there had been no changes to either the law or the facts over the
22 course of the ten year period. The City of Sandpoint was forced to file suit to recover the amounts being
23 improperly withheld by IHD, in order to enable it to conduct the important public service of street
24 maintenance. IHD defended its withholding of monies, and moved to dismiss plaintiff's Complaint,
25
26

1 outlining all of its bases in law, but failed to raise a single genuine legal defense to paying the
 2 ad valorem taxes pursuant to express terms of the settlement agreement, Memorandum of
 3 Understanding, the Joint Powers Agreement, and their past practice for ten previous years. Moreover,
 4 IHD continues to claim factual issues exist to preclude summary judgment or require a trial, but it still
 5 has failed to identify them, which unreasonably requires this motion. Summary judgment for an award
 6 of fees is appropriate.
 7

8 **4. Conclusion.**

9 For the foregoing reasons, the City of Sandpoint requests that the court enter summary judgment
 10 in its favor.

11 DATED this 15th day of July, 2014.

12
 13 *C. Matthew Andersen*

14
 15 C. MATTHEW ANDERSEN, ISB No. 3581
 16 WINSTON & CASHATT, LAWYERS,
 a Professional Service Corporation

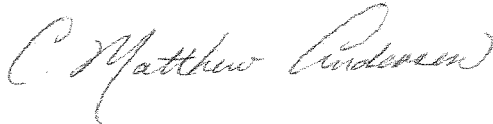
17 SCOT R. CAMPBELL, ISB No. 4121
 18 SANDPOINT CITY ATTORNEY

19 Attorneys for City of Sandpoint
 20
 21
 22
 23
 24
 25
 26

1 I hereby certify that I caused a true and
 2 complete copy of the foregoing to be mailed,
 3 postage prepaid; hand delivered; sent
 4 via facsimile on July 15, 2014, to:

4 David R. Wynkoop
 5 Sherer & Wynkoop, LLP
 6 730 N. Main Street
 7 P.O. Box 31
 8 Meridian, ID 83680

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 10 James, Vernon & Weeks, P.A.
 11 1626 Lincoln Way
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13 

14 C. MATTHEW ANDERSEN

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In the Supreme Court of the State of Idaho

STATE OF IDAHO
 COUNTY OF BONNER
 DISTRICT COURT
 July 29, 2014
 9:10 AM
 Pmt

IN THE MATTER OF THE MOTION FOR)
 APPEAL BY PERMISSION.)
 -----)
 CITY OF SANDPOINT, a municipal)
 corporation of the State of Idaho)
)
 Plaintiff,)
 v.)
 INDEPENDENT HIGHWAY DISTRICT, a)
 political subdivision of the State of Idaho,)
)
 Defendant.)

ORDER DENYING MOTION FOR)
 APPEAL BY PERMISSION)
)
 Supreme Court Docket No. 42236-2014)
 Bonner County No. 2013-1342)
)
 Ref. No. 14-308)

A MOTION FOR APPEAL BY PERMISSION AND STAY OF PROCEEDINGS with attachments and a MEMORANDUM IN SUPPORT OF MOTION FOR APPEAL BY PERMISSION were filed by counsel for Defendant on June 23, 2014, requesting this Court for an Order granting an appeal by permission of the district court's Memorandum Decision and Order Denying Defendant's Motion to Dismiss, file-stamped December 9, 2013 in Bonner County case no. CV-2013-1342. Thereafter, CITY OF SANDPOINT'S MEMORANDUM IN OPPOSITION TO MOTION FOR APPEAL BY PERMISSION was filed by counsel for Plaintiff on July 3, 2014. The Court is fully advised; therefore, after due consideration,

IT HEREBY IS ORDERED that Defendant's MOTION FOR APPEAL BY PERMISSION AND STAY OF PROCEEDINGS be, and hereby is, DENIED.

DATED this 29 July, 2014.

By Order of the Supreme Court

Stephen W. Kenyon

 Stephen W. Kenyon, Clerk

cc: Counsel of Record
 District Court Clerk
 District Judge John T. Mitchell

FILED 7-31-14

AT 1:53 O'Clock p M
CLERK OF DISTRICT COURT

Deputy

**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.)
)
 INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho,)
)
) *Defendant.*)
)

Case No. **BON CV 2013 1342**

MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFF CITY OF SANDPOINT'S MOTION FOR SUMMARY JUDGMENT

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the Motion for Summary Judgment filed by the plaintiff City of Sandpoint (City).

The Complaint filed on August 15, 2013, arises out of an alleged breach of contract claim initiated by City. Complaint and Request for Declaratory and Injunctive Relief, p. 7. Long before City filed its Complaint, on July 8, 2003, the parties entered into the contract, entitled Joint Powers Agreement (Agreement). *Id.*, p. 8. City claims the defendant Independent Highway District (IHD) breached the Agreement on July 11, 2013, when it refused to perform a material term of the Agreement by withholding funds from City. *Id.*, Exhibit D. In addition to withholding funds, IHD unilaterally gave notice of the termination of the Agreement in its entirety on July 25, 2013. *Id.*, Exhibit E.

The parties entered into the Agreement as part of a settlement that was reached on July 3, 2003, following protracted litigation. See generally Memorandum Decision

273

and Order Denying Defendant's Motion to Dismiss, pp. 1-4 (providing summary of previous litigation and circumstances surrounding entry into the Joint Powers Agreement). This Court summarized the Agreement as follows:

The Joint Powers Agreement was intended to be a permanent resolution as it stated, under the heading "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." [Complaint, Exhibit B, p. 1]. The City would assume responsibility for all the streets within its limits. *Id.* The IHD promised to pay the City all ad valorem property tax funds from levies of properties with the City limits. *Id.*, p. 3. In return, the City, which had jointly petitioned for the IHD's dissolution election, would request the Bonner County Board of Commissioners to vacate the dissolution election and dismiss the action with prejudice. *Id.*, p. 5. The parties stipulated that the Joint Powers Agreement could only be terminated by mutual agreement of both parties. *Id.*, pp. 1, 4.

Memorandum Decision and Order Denying Defendant's Motion to Dismiss, pp. 3-4. Funds are not currently being withheld due to the stipulated entry of a preliminary injunction on December 18, 2013. City of Sandpoint's Memorandum in Support of Summary Judgment, pp. 2-3.

On June 4, 2014, City filed the present motion for summary judgment, requesting that the Court declare the Agreement and the Memorandum of Understanding to be legal and enforceable, and for an Order requiring IHD to comply with all obligations of the Agreement in the form of a permanent injunction. City of Sandpoint's Motion for Summary Judgment, pp. 1-2. In support of their motion, City filed a supporting memorandum that expressly "[i]ncorporates the authority and argument made in its Response to the IHD's Motion to Dismiss, as well as the Court's reasoning set out in its Memorandum Decision and Order." *Id.*, p. 3. Additionally, City has requested an award of costs and attorney fees it incurred as a result of the present action. *Id.*, p. 2.

IHD responded in opposition to the motion for summary judgment on July 8, 2014, alleging that material issues of fact remain disputed in regards to the breach of

contract claim. See Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4. Accompanying their response memorandum are the following: "Affidavit of Marj Tilley;" "Second Affidavit of Marj Tilley;" and the "Affidavit of Julie Bishop." City filed its reply memorandum on July 15, 2014, entitled "City of Sandpoint's Reply in Support of Summary Judgment."

Hearing on City's motion for summary judgment was held on July 22, 2014, at the conclusion of which the Court took City's motion for summary judgment under advisement. Because this Court finds no genuine issues of material fact remain for trial, summary judgment must be granted in favor of City against IHD for the reasons set forth below.

II. STANDARD OF REVIEW.

Summary judgment is proper "[i]f the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See I.R.C.P. 56(c). The moving party carries the burden of proving the absence of genuine issues of material fact. *Rouse v. Household Finance Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 707, 99 P.3d 1092, 1097 (2004) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)). Any facts in dispute are liberally construed in favor of the nonmoving party, with any inference reasonably drawn from the record done so in favor of the nonmoving party. *Kiebert v. Goss*, 144 Idaho 225, 227, 159 P.3d 862, 864 (2007) (citing *Lockheed Martin Corp. v. Idaho State Tax*

Comm'n, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006)).

The establishment of an absence of a genuine issue of material fact by the moving party shifts the burden to the nonmoving party to provide specific facts showing there is a genuine issue for trial. *Id.* at 228, 159 P.3d at 864 (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). “[I]f the nonmoving party fails to provide a sufficient showing to establish the essential elements of his or her case, judgment shall be granted to the moving party.” *Porter v. Bassett*, 146 Idaho 399, 403, 195 P.3d 1212, 1216 (citing *Atwood v. Smith*, 143 Idaho 110, 113, 138 P.3d 310, 313 (2006)). The nonmoving party may use circumstantial evidence to create a genuine issue of material fact. *Edged In Stone, Inc. v. Northwest Power Systems, LLC*, 156 Idaho 176, 321 P.3d 726, 730 (2014) (citing *ParkWest Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)). To create a genuine issue, “[h]owever, the [nonmoving] party may not rest on a mere scintilla of evidence.” *ParkWest Homes, LLC. V. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013) (citing *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991)). The nonmoving party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); see *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). If reasonable people might reach conflicting inferences about the evidence, the motion for summary judgment must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 69, 593 P.2d 402, 404 (1979) (citing *Otts v. Brough*, 90 Idaho 124, 409 P.2d 95 (1965)).

If an action is being tried without a jury, “[t]he trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting

inferences.” *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007) (citing *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)). The fact finder is responsible for resolution of conflicts between the possible inferences. *Id.* (citing *Cameron v. Neal*, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997)). If the Idaho Supreme Court reviews the decision of a judge serving as fact finder, it “[e]xercises free review over the entire record that was before the district judge to determine whether either side was entitled to judgment as a matter of law and reviews the inferences drawn by the district judge to determine whether the record reasonably supports those inferences.” *Id.* (citing *Intermountain Forest Management*, 136 Idaho at 236, 31 P.3d at 924). City’s Complaint does not demand a jury trial. IHD has yet to file an Answer and has not at any time made a demand for a jury trial. Thus, the Court is able to make reasonable inferences.

III. ANALYSIS OF CITY’S MOTION FOR SUMMARY JUDGMENT.

A. All Provisions of the Joint Powers Agreement and Memorandum of Understanding are Legal, Valid, and Enforceable and IHD Materially Breached by Withholding Funds and Unilaterally Terminating the Agreement.

City argues summary judgment is appropriate declaring the Agreement and Memorandum of Understanding to be legal, valid, and enforceable, because there are no genuine issues of material fact remaining for trial. City of Sandpoint’s Memorandum in Support of Summary Judgment, p. 3. It argues that all of IHD’s challenges to the Agreement involve the legal interpretation of Idaho law and the unambiguous terms of the Agreement itself. *Id.* Finally, City asserts that if the Agreement is legal, then it is also enforceable, and they are entitled to relief. *Id.*

In response, IHD claims material issues of fact remain which prevents summary

judgment on the breach of contract claim. Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4. Specifically, IHD claims that while City has asserted it is "[d]ue penalties and interest collected in relation to the ad valorem taxes owed under the Joint Powers Agreement," none of the evidence before the Court indicates City is entitled to receive anything other than the ad valorem taxes collected from City residents. *Id.* Further, IHD reasserts their arguments from the earlier motion to dismiss: that the termination clause is illusory, that proper consideration was not given for the agreement, and that a perpetual agreement runs counter to Idaho law. *Id.*, pp. 5-7. Finally, IHD claims that only highway districts may abandon or vacate a highway district road and that the alleged delegation of the authority to City is invalid and unenforceable. *Id.*, p. 6-7.

In this case, there are no genuine issues of material fact that would prevent this Court granting the motion for summary judgment. In support of this conclusion, the Court must address whether the Agreement obligated IHD to turn over all revenue collected from City residents including interest and penalties, whether the consideration given by City was sufficient, whether City may share the power to abandon or vacate a district road, and whether the relief requested is overly broad. Each of these will be discussed in turn below. This Court thoroughly and exhaustively addressed any other issue raised by IHD, including the legality of the contract previously in its Memorandum Decision and Order Denying Plaintiff's Motion to Dismiss. See *generally* Memorandum Decision and Order Denying Defendant's Motion to Dismiss. The Court's previous analysis includes a lengthy discussion of whether the Agreement is invalid due to its perpetual nature. *Id.* pp. 16-18. Thus, this memorandum will be limited specifically to the above-mentioned arguments advanced by IHD.

1. IHD is Obligated to Turn Over All Revenues From District Levies on Property Located Within City Limits.

In the verified complaint, City seeks all tax revenues received by IHD that were allegedly withheld from City. Complaint and Request for Declaratory and Injunctive Relief, p. 11, ¶ 51(b). IHD disputes that City is entitled to penalties and interest from ad valorem taxes collected because during the course of performance of the Agreement the IHD has never paid those sources of revenue to City. Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4. IHD apparently claims that this discrepancy now creates an ambiguity in the Agreement. *Id.* In response, City argues that the issue of whether or not IHD has turned over interest in the past is irrelevant to the legal issue of whether City is entitled to those amounts. City of Sandpoint's Reply in Support of Summary Judgment, p. 4. City further asserts it is undisputed City has previously been paid delinquent taxes and that it makes no sense why the accompanying interest and penalties were not also turned over. *Id.*

In this case, a plain reading of the Agreement shows IHD was obligated to turn over to City all revenue from levies on property within city limits. See Joint Powers Agreement Between the City of Sandpoint and the Sandpoint Independent Highway District, p. 3. The interpretation of a clear and unambiguous contract is a question of law. *Lamprech v. Jordan, LLC*, 139 Idaho 182, 75 P.3d 743 (2003) (citing *Iron Eagle Dev't, L.L.C. v. Quality Design Systems, Inc.*, 138 Idaho 487, 491, 65 P.3d 509, 513 (2003)). Contracts that are unambiguous are given their plain meaning. *Id.* "The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered." *Id.* Intent of the parties is determined from the contract as a whole. *Id.* (citing *Daugharty v. Post Falls Highway Dist.*, 134 Idaho 731, 735, 9 P.3d 534, 538 (2000)). "If a contract is found ambiguous, its interpretation is a

question of fact.” *Id.* However, the determination that “[a] contract is ambiguous is a question of law.” *Id.* (citing *Boel v. Steward Title Guar. Co.*, 137 Idaho 9, 13, 43 P.3d 768, 772 (2002)). A contract that is reasonably subject to conflicting interpretations is ambiguous. *Id.* (citing *Lewis v. CEDU Educ. Serv., Inc.*, 135 Idaho 139, 144, 15 P.3d 1147, 1152 (2000)).

Here, the Agreement between City and IHD is not reasonably subject to conflicting interpretations. Under the relevant section of the Agreement detailing revenue distribution, the parties agreed to the following:

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

Joint Powers Agreement Between the City of Sandpoint and the Sandpoint Independent Highway District, p. 3 (emphasis added). “All” is defined as “the whole number, quantity, or amount.” Webster’s Ninth New Collegiate Dictionary p. 71 (1983). The term “tax,” broadly, “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.

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 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.

Certainly, it must be taken into consideration that IHD has stated in an affidavit to have "[n]ever paid any penalties or interest collected on late payments of ad valorem taxes to the City of Sandpoint." Second Affidavit of Marj Tilley, p. 2. As such, they dispute that they should pay penalties and interest to City in the future. Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4.

However, failure to distribute exact monies owed to a city by highway districts does not in itself imply an ambiguity because such distributions have previously been subject to simple human error and oversight. *See generally City of Rexburg v. Madison County*, 115 Idaho 88, 89 764 P.2d 838, 839 (1988) (county paid city 5% rather than statutory minimum of 50% of relevant ad valorem taxes for twenty-two (22) years before either party discovered the discrepancy but the Court held that despite this the district had a statutory duty to pay the 50% to the city). While neither party has briefed the total sum of interest and penalties owing as a result of delinquent taxes collected from City residents, it is reasonable to infer that the amount is proportionally less than the shortfall in *City of Rexburg*. If a city can go twenty-two years without noticing it is only being paid one-tenth of funds due, it is reasonable to infer that City here may not have taken notice of the discrepancy in the decade following the formation of the contract. This alone does not create an ambiguity in the contract. It merely shows oversight by City in failing to realize IHD failed to perform in accordance with the Agreement. The language of the Agreement is clear. IHD should have been paying City all revenue from ad valorem taxes, including interest and penalties. Thus, the failure to properly

apportion interest from delinquent taxes cannot imply ambiguity in the contract.

2. The Joint Powers Agreement is Supported by Adequate Consideration.

The Agreement, as previously found by this Court, is supported by adequate consideration. Memorandum Decision and Order Denying Defendant's Motion to Dismiss, p. 20. IHD now argues City's agreement to not pursue dissolution of the highway district cannot serve as adequate consideration because "[n]o statute allows a city to play any role in determining whether the highway district would be dissolved." Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 5. City has previously stated in an incorporated briefing that "[a]s consideration for entering into the JPA, the City agreed to assist in withdrawing the petition to dissolve the District and agreed not to challenge future annexations to the District. The election did not occur." Plaintiff's Response to Defendant's Motion to Dismiss, p. 7. They further argue that the agreement to not pursue dissolution was part of a stipulated settlement approved by the District Court for Bonner County and therefore by forbearing from exercising their right adequate consideration was given. City of Sandpoint's Reply in Support of Summary Judgment, p. 5. Moreover, they claim additional consideration was given when "[t]he parties reached an appropriate cooperation for the maintenance of streets and payment of taxes." *Id.*, p. 6.

No statute prevents City from playing a role in the dissolution of the highway district. Idaho Code § 40-1802 requires that "All proceedings for the dissolution of highway districts shall be initiated by a petition of twenty-five (25) or more qualified electors of the district" I.C. § 40-1802. Upon petition by the requisite number of electors, the "[highway district] commissioners shall proceed to consider the petition and all written objections to it, **and shall hear all persons in relation to it, and shall**

hear or take testimony as may be offered” I.C. § 40-1805 (emphasis added).

While the initial twenty-five (25) electors must be individuals serving in their individual capacity as voters, and thus excludes the City as a governmental entity since it has no capacity to cast a vote, nothing in the plain language of the above statute prevents the City from testifying or encouraging City residents to vote for dissolution once the necessary electors have been found.

City has previously demonstrated its ability to offer testimony in favor of the dissolution of the highway district. The Idaho Supreme Court, in a previous action involving the present parties, found the testimony of the Sandpoint City Treasurer to be illustrative when considering whether dissolution would be in the best interest of the district. *Sandpoint Independent Highway Dist. v. Board of County Com’rs of Bonner County*, 138 Idaho 887, 892, 71 P.3d 1034, 1039 (2003). In that case, the Idaho Supreme Court quoted the following testimony of the Sandpoint City Treasurer:

The net effect of the taxpayers in the City of Sandpoint will be slight. The savings in duplicated services and administrative costs will compensate for the decreased revenues available to the city Street Departments. Except for possible changes unrelated to this issue, county residents should see their tax bill for Bonner County and Bridge decrease.

Id. The reasonable inference to be drawn is that city residents would naturally look to city officials for guidance as to whether it was in their interest to support dissolution. The Idaho Supreme Court itself looked to a city official to support its findings. It is disingenuous for IHD to argue City could play no role in the dissolution process simply because it is not immediately apparent from reading the relevant statute.

As the Court previously stated in its Memorandum Decision and Order Denying Defendant’s Motion to Dismiss, “[t]here is consideration in the present case because the IHD has agreed to pay money and the City has agreed to forebear its legal efforts to dissolve the IHD.” Memorandum Decision and Order Denying Defendant’s Motion to

Dismiss, p. 19. The City ceased its pursuit to legally dissolve the Highway District within Bonner County. *Id.* No statute prevents City from exercising its right to participate in the process for dissolution of a highway district. Thus, valid consideration existed.

3. City May Share in the Power to Vacate and Abandon IHD Streets.

IHD argues that summary judgment is not appropriate at this time because “[o]nly highway districts have the power and authority to abandon or vacate a highway district road.” Memorandum in Response to City of Sandpoint’s Motion for Summary Judgment, p. 6 (citing I.C. § 40-203). Further, IHD argues the power cannot be delegated. *Id.* (citing *Blaha v. Ada County Board of Commissioners*, 134 Idaho 770, 9 P.3d 1236 (2000)). The issue of whether the district may delegate authority to vacate streets was not previously addressed in the motion to dismiss. *Id.* In response, City argues that the Idaho Supreme Court has interpreted the statutory scheme differently. City of Sandpoint’s Reply in Support of Summary Judgment, p. 7. They further argue that the express terms of the Agreement and Memorandum of Understanding, as well as the entirety of the Idaho statutory scheme, are issues of law for this court to interpret. *Id.*, p. 8.

City, both of its own authority and sharing in that of IHD pursuant to the Agreement, may vacate or abandon district streets. The right of a city to vacate streets has been recognized under statutory law. Idaho Code § 40-1323 addresses the powers and duties of a city and its city council when included within a highway district. See I.C. § 40-1323. The relevant portion of that chapter reads as follows:

Each incorporated city, or portion of it, within a highway district, **shall constitute a separate division of the district.** The city council of each incorporated city within the territory of a highway district, so far as relates to their city, **shall have the powers and duties** as provided by this chapter and **as provided in chapter 3, title 50, Idaho Code**, in such case.

I.C. § 40-1323 (emphasis added). Under I.C. § 50-311, the chapter expressly referenced in the above statute, “[c]ities are empowered to: create, open, widen or extend any street, avenue, alley or lane, annul, **vacate or discontinue** the same whenever deemed expedient for the public good” I.C. § 50-311 (emphasis added).

The term “highways” is defined by statute to “[m]ean roads, streets, alleys and bridges” I.C. § 40-109. Thus, the Idaho Legislature has recognized that a city may have the authority to vacate streets, including highways. Since cities constitute separate divisions of the highway district in which they are included, they still must adhere to any statutory requirements for vacation or abandonment. *Id.*

The Agreement and Memorandum of Understanding expressly require City to adhere to statutory requirements. Under the Memorandum of Understanding, City and IHD agreed to the following:

- 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.**

Memorandum of Understanding, pp. 1-2 (emphasis added). Thus, City obligated itself both contractually and statutorily to comply with the requirements of I.C. § 40-203 should it choose to abandon or vacate any street. That particular section of the Idaho Code does not expressly prohibit City from exercising such power. Rather, the

provision reads that “[a] board of county or highway district commissioners, **whichever shall have jurisdiction of the highway system**, shall use the following procedure to abandon and vacate any highway or public right-of-way” I.C. § 40-203(1) (emphasis added). As shown above, through exercise of the Agreement and the incorporated Memorandum of Understanding, IHD extended its jurisdictional authority to a division of the district that by itself may have already had the authority to vacate streets, that being the City of Sandpoint.

The authority cited by IHD is inapt because it only applies to actions taken by a city outside of its boundaries. The defendants cited to *Blaha v. Board of Ada County Com'rs*, 134 Idaho 770, 9 P.3d 1236 (200), for the proposition that a highway district could never delegate its authority to vacate streets to a city. That case, however, is inapposite to the facts before the Court because it dealt with the exercise of co-equal jurisdiction of a separate matter outside the corporate limits of a city. *Blaha*, 134 Idaho at 777, 9 P.3d at 1243. In that case, the Idaho Supreme Court recognized that there were constitutional limitations because the Court had previously held “[t]hat the power of cities and counties only exists within the sovereign boundaries of the cities and the counties respectively.” *Id.* (citing *Clydes Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798; *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983)). Thus, if City were exercising its authority to abandon or vacate highways outside of its corporate boundaries, there would be a very real issue.

Here, however, there is no accusation or question of fact that City is exercising authority outside of its corporate boundaries. Pursuant to the Memorandum of Understanding, it is made explicitly apparent that the authority of City is limited to its city

limits. Because of this recognized limitation and the absence of evidence that City has ever exercised authority outside of its boundaries, no question of material fact remains for trial.

4. The Relief Requested is Not Overly Broad.

IHD argues City is not entitled to “[a]n order enjoining the District from interfering with the City’s operation and maintenance of its streets under the Joint Powers Agreement.” Memorandum in Response to City of Sandpoint’s Motion for Summary Judgment, p. 7. They argue that, excepting the money being withheld from City, there are no facts in this case that suggest IHD has interfered with City inside the city limits. *Id.* City responded by asserting that none of IHD’s arguments prevent summary judgment in this case “[b]ecause the court fashions that remedy, and IHD’s claims do not defeat the underlying right to the relief.” City of Sandpoint’s Reply in Support of Summary Judgment, p. 9. They state that the Court determines the necessary scope of relief, and as such there is no genuine issue for trial. *Id.* Further, City argues that the preliminary injunction in this case needs to be permanent, ensuring that the Agreement is complied with. *Id.*

Here, there is not an overly broad request for relief. In its Complaint, City requested “[a]n order enjoining the District from interference with the City’s operation and maintenance of its streets pursuant to the Joint Powers Agreement” Complaint, p. 12. As this Court has already held, the Agreement is a legal and enforceable contract. The relief requested by City is only that which the IHD previously agreed to under the Agreement, with no additional stipulations. Because IHD unilaterally decided to cease complying with the Agreement previously, it is not unreasonable to grant relief to City that would prevent the same from happening again in the future.

B. City is the Prevailing Party and Might Be Entitled to Attorneys' Fees and Costs.

City requests “[a]n award of costs and attorney fees incurred in this action as allowed by law, I.C. § 12-121 and I.R.C.P. 54.” City of Sandpoint’s Motion for Summary Judgment, p. 2. In response, IHD argues City “[h]as advanced no argument or authority showing that IHD’s defense was frivolous. Further, given that a material issue of fact prevents entry of judgment in favor of the City, there are no grounds for an award of attorney fees under I.C. § 12-121.” Memorandum in Response to City of Sandpoint’s Motion for Summary Judgment, p. 8. In response, City has argued that there was no legitimate basis for IHD to cease compliance with the agreements, an action that forced City to file suit in order to recover the necessary funds to continue an important public service. City of Sandpoint’s Reply in Support of Summary Judgment, p. 9. Further, they argue IHD has failed to raise any genuine legal defense as to why payments under the Agreement were ceased. *Id.*

In this case, an award of attorney’s fees is likely appropriate. Idaho Code § 12-121 states that “[i]n any civil action, the judge may award reasonable attorney’s fees to the prevailing party or parties” I.C. § 12-121. The Idaho Supreme Court has interpreted that section such that “[a]n award of attorney fees under [I.C.] § 12-121 is not a matter of right to the prevailing party.” *Philips v. Blazier-Henry*, 154 Idaho 724, 731, 302 P.3d 349, 356 (2013) (quoting *Milchalk v. Milchalk*, 148 Idaho 224, 235, 220 P.3d 580, 591 (2009)). The Court “permits the award of attorneys fees to the prevailing party if the court determines the case was brought, pursued or defended frivolously, unreasonably or without foundation.” *Id.* (quoting *Commercial Ventures, Inc. v. Rex M. Lynn Lea Family Trust*, 145 Idaho 208, 218-19, 177 P.3d 955, 965-66 (2008)). Finally, the “entire course of the litigation must be taken into account and if there is at least one

legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation.” *Id.* (quoting *Milchalk*, 148 Idaho at 235, 220 P.3d at 591). Thus, under I.C. § 12-121, IHD is correct in saying there would need to be a showing that the case was defended frivolously. If, at a later time, City persists in requesting fees under I.C. § 12-121, the Court will make that analysis.

However, I.C. § 12-121 might not be the most applicable statute. In 2013, the Sixty-First Idaho Legislature adopted Idaho Senate Bill No. 1332, effective March 27, 2012, revising the language of I.C. § 12-117. Entitled, “Attorney’s fees, witness fees, and expenses awarded in certain instances”, the new language reads:

In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney’s fees, witness fees and other reasonable expenses. For purposes of this subsection, “governmental entity” means any state agency or political subdivision.”

I.C. § 12-117(4). That same Chapter defines “political subdivision” as “[meaning] a city, a county, any taxing district, or a health district” I.C. § 12-117(5)(b). The Idaho Supreme Court has held that “[a] highway district is a “taxing” district” within the meaning of I.C. § 12-117.” *Halvorson v. North Latah County Highway Dist.*, 151 Idaho 196, 209, 254 P.3d 497, 510 (2011) (citing I.C. § 63-3101; I.C. § 40-1308). Because the City of Sandpoint is a “city” and the Independent Highway district is a “taxing district,” I.C. § 12-117(4) applies to this case.

City did not claim fees under I.C. § 12-117(4) in any filings with this Court prior to the hearing on the instant motion. At that hearing, the Court inquired of counsel for the City why that was the case.

At this juncture, City’s reason is not relevant. The prevailing party is not required to state with specificity the specific code provision it seeks fees under until the Rule

54(e)(5) fee request. See I.R.C.P. 54(e)(5); see also *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 721, 117 P.3d 130, 135 (2005). Under I.C. § 12-117(4), the only factor is whether City was the prevailing party. There is no doubt in the Court's mind that City is in all aspects the prevailing party as compared to IHD. The Court so finds City to be the prevailing party in this litigation.

Thus, if City requests fees under I.C. § 12-117(4), City is entitled to those fees as the prevailing party and the only issue at the time of a motion under I.R.C.P. 54(e)(5) will be the amount of those fees. Should City request fees only under I.C. § 12-121, then the Court at that time will address the issue of whether IHD defended this case frivolously, unreasonably, or without foundation, and, if it concludes that issue in City's favor, then at that time the amount of fees will be determined.

IV. CONCLUSION AND ORDER.

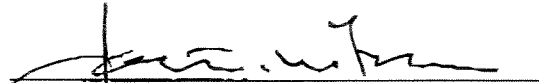
For the reasons stated above,

IT IS HEREBY ORDERED plaintiff City's Motion for Summary Judgment is GRANTED in all aspects against defendant IHD.

IT IS FURTHER ORDERED plaintiff City is the prevailing party in this litigation.

IT IS FURTHER ORDERED counsel for plaintiff City shall prepare a judgment consistent with this memorandum decision and order.

Entered this 31st day of July, 2014.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 31 day of July, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Lawyer</u>	<u>Fax #</u>
Scot R. Campbell	208 255 1368	C. Matthew Andersen	208 765-2121
Susan Weeks	208 664-1684	David E. Wynkoop	208 887-4865


Linda Oppelt, Deputy Clerk

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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.

INDEPENDENT HIGHWAY DISTRICT, a
 political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

ORDER GRANTING DECLARATORY
 RELIEF

THIS MATTER came before the Court on City of Sandpoint's Motion for Summary Judgment granting declaratory relief pursuant to I.R.C.P. 56, 57, 65 and I.C. §10-1201 et. seq. The court having considered the:

- Plaintiff's Verified Complaint and attachments;
- The Court's Memorandum Decision and Order Denying Defendant's Motion to Dismiss entered December 9, 2013;
- The Court's Reciprocal Preliminary Injunction Order;
- City of Sandpoint's Motion for Summary Judgment;
- Memorandum in Support of Summary Judgment;
- Affidavit of Scot Campbell filed 11/7/13;

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- Affidavit of Shannon Syth filed 11/7/13;
- IHD's Memorandum in Response to Motion for Summary Judgment;
- Affidavit of Marj Tilley;
- Second Affidavit of Marj Tilley;
- Affidavit of Julie Bishop;
- City of Sandpoint's Reply in Support of Summary Judgment;
- and the pleadings filed in this matter

The Court having found:

1. There is a controversy between the parties that is appropriate for declaratory relief.
2. There are no genuine material issues of fact that are actual and in good faith controverted.
3. Based on the reasoning previously stated by the Court, summary judgment in favor of the

City of Sandpoint is appropriate.

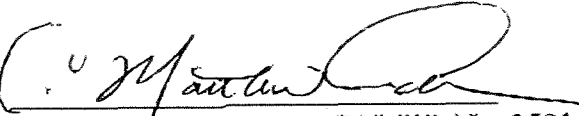
4. It is the Court's abiding conviction that the Independent Highway District's defense of this matter was unreasoned and without foundation.

IT IS NOW THEREFORE ORDERED:

1. The City of Sandpoint's Motion for Summary Judgment is Granted.
2. The Memorandum of Understanding of September 14, 2005 between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.
3. The Joint Powers Agreement between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.
4. The Independent Highway District is ordered to comply in all respects with its obligations set forth in the Memorandum of Understanding and the Joint Powers Agreement.

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Presented by:



C. MATTHEW ANDERSEN, ISB No. 3581
WINSTON & CASHATT
Attorneys for Plaintiff

SUSAN P. WEEKS, ISB No. 4255
JAMES, VERNON & WEEKS, PA
Attorneys for Independent Highway District

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2 complete copy of the foregoing to be mailed,
3 postage prepaid; hand delivered; sent
via facsimile on July 31, 2014, to:

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5 Winston & Cashatt
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7 Spokane, WA 99201
8 509-838-1416 (fax)

9 R. Scot Campbell
10 Sandpoint City Attorney
11 1123 Lake Street
12 Sandpoint, ID 83864
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20 James, Vernon & Weeks
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22 Coeur d'Alene, ID 83814
23 (208) 664-1684 (fax)

Linda Jones

CLERK OF THE COURT

CLERK OF DISTRICT COURT
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Attorneys for City of Sandpoint

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342
NOTICE OF PRESENTMENT
(without oral argument)

NOTICE IS HEREBY GIVEN that Plaintiff will bring on for presentment, without oral argument, its Motion for Award of Attorney's Fees and Costs on Wednesday, August 27, 2014, or as soon thereafter, before the Honorable John T. Mitchell.

1 DATED this _____ day of August, 2014.



3 C. MATTHEW ANDERSEN, ISB No. 3581
4 WINSTON & CASHATT, LAWYERS,
5 a Professional Service Corporation

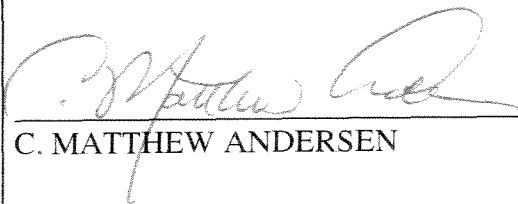
6 SCOT R. CAMPBELL, ISB No. 4121
7 SANDPOINT CITY ATTORNEY

8 Attorneys for City of Sandpoint

9 I hereby certify that I caused a true and
10 complete copy of the foregoing to be mailed,
11 postage prepaid; hand delivered; sent
12 via facsimile on August ____, 2014, to:

13 David R. Wynkoop
14 Sherer & Wynkoop, LLP
15 730 N. Main Street
16 P.O. Box 31
17 Meridian, ID 83680

18 Susan P. Weeks
19 James, Vernon & Weeks, P.A.
20 1626 Lincoln Way
21 Coeur d'Alene, ID 83814



22 C. MATTHEW ANDERSEN

IDAHO
COUNTY OF BONNER
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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
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CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

CITY OF SANDPOINT'S MOTION FOR
AWARD OF ATTORNEY'S FEES AND
COSTS

The City of Sandpoint requests that the Court enter an order and judgment awarding it \$56,131.75 in attorney fees as permitted by I.C. §12-117 as well as discretionary costs of \$775.29 as allowed by I.R.C.P. 54(d)(1)(D) incurred in commencement of this action.

1 DATED this 13th day of August, 2014.

2
3 
4 C. MATTHEW ANDERSEN, ISB No. 3581
5 WINSTON & CASHATT, LAWYERS,
6 a Professional Service Corporation

7 SCOT R. CAMPBELL, ISB No. 4121
8 SANDPOINT CITY ATTORNEY

9 Attorneys for City of Sandpoint

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11 complete copy of the foregoing to be mailed,
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24 C. MATTHEW ANDERSEN

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
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CITY OF SANDPOINT, a municipal
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Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

CITY OF SANDPOINT'S MEMORANDUM
IN SUPPORT OF ATTORNEY'S FEES AND
COSTS

1. Relief Requested.

The City of Sandpoint requests that the Court enter an order and judgment awarding it \$56,131.75 in attorney fees as permitted by I.C. §12-117 as well as discretionary costs of \$775.29 as allowed by I.R.C.P. 54(d)(1)(D) incurred in commencement of this action.

1
2 **2. Summary of Argument.**

3 The Court's order of July 31, 2014, provides entitlement to attorney fees pursuant to I.C. §12-
4 117(4). The only issue on this motion then is the amount of the City of Sandpoint's attorney's fees.
5 (With the award of fees being granted pursuant to I.C. §12-117, the City withdraws its request for fees
6 pursuant to I.C. §12-121 as now moot.) Further, briefing on the issue of entitlement is not necessary.

7 As required by I.R.C.P. 54(e)(5), the request for attorney's fees is included in the Memorandum
8 of Costs as well as supported by the Affidavit of C. Matthew Andersen.

9
10 **3. Basis for Amount Requested for Award of Attorney Fees.**

11 The action was commenced by the City of Sandpoint's Attorney, Scot R. Campbell. The City
12 subsequently engaged Winston & Cashatt to appear in the matter. The City of Sandpoint does not
13 request an award of attorney's fees for the legal services of Mr. Campbell or initial costs incurred by the
14 City of Sandpoint.

15 This case has had resolution based on legal principals. There has not been any significant
16 discovery beyond the several affidavits filed for the Court's consideration. Thus, the request for an
17 award of attorney's fees consists in the main for the background investigation, significant legal research,
18 preparation of filings and argument to the Court. In addition, there has been an I.A.R. 12(c) request to
19 the Supreme Court for appeal by permission, which has been denied. The City of Sandpoint requests its
20 fees for responding to the request for permission to appeal both before this Court and before the
21 Supreme Court.
22

23 The principal legal matters before the Court that required legal services were the filing of the
24 Complaint, the response to the IHD's motion to dismiss, the response to the motion for appeal by
25 permission and the City of Sandpoint's motion for Summary Judgment.
26

1 The Affidavit of C. Matthew Andersen sets forth the attorneys providing services, the nature of
2 the services and the representation these services were reasonable and necessary for the result reached in
3 this matter.

4 In determining the amount to be awarded, the Court is guided by the factors set forth in I.R.C.P.
5 54(e)(3). As applicable to this case, the factors are addressed in the Affidavit of C. Matthew Andersen.
6

7 **4. Basis for Award of Costs.**

8 I.R.C.P. 54(d)(1) sets forth recoverable costs. The City of Sandpoint's recoverable discretionary
9 costs requested is \$775.29. I.R.C.P. 54(d)(1)(D).

10 DATED this 13th day of August, 2014.

11 

12 C. MATTHEW ANDERSEN, ISB No. 3581
13 WINSTON & CASHATT, LAWYERS,
14 a Professional Service Corporation

15 SCOT R. CAMPBELL, ISB No. 4121
16 SANDPOINT CITY ATTORNEY

17 Attorneys for City of Sandpoint
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via facsimile on August 13, 2014, to:

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12 

13 C. MATTHEW ANDERSEN

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WINSTON & CASHATT, LAWYERS,
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cma@winstoncashatt.com

Attorneys for City of Sandpoint

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

MEMORANDUM OF COSTS AND
AFFIDAVIT OF C. MATTHEW ANDERSEN
IN SUPPORT OF ATTORNEY'S FEES AND
COSTS

The Court having entered is Memorandum Decision and Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment on July 31, 2014 in the above-entitled action, Plaintiff asks that the following costs be awarded against Defendant Independent Highway District:

1 2. I was first admitted to the practice of law in the state of Washington in 1976. Upon
2 admission, I served three years as an officer in the U.S. Army Judge Advocate Corps as a prosecuting
3 attorney. Since 1980, I have practiced continuously with the firm of Winston & Cashatt in Spokane,
4 Washington providing legal representation of clients in civil and criminal litigation matters. My practice
5 concentrates on commercial litigation. My practice includes trials and appeals in federal and state
6 courts. I have been admitted to practice in the following courts: Washington State Supreme Court
7 (October 1976); Federal Court, District of Maryland (May 1978); United States Supreme Court
8 (November 1982); U.S. Court of Appeals, Ninth Circuit (November 1982); Federal Court of Claims
9 (September 1980); U.S. District Court for the Eastern District of Washington (May 1980); Federal U.S.
10 Military Court of Appeals (March 1977); Federal Court, Western District of Washington (December
11 1992); U.S. District Court, State of Idaho (1987); Idaho State Supreme Court (September 1986); U.S.
12 Court of Appeals for the Federal Circuit (October 1991). I am a fellow of the American College of Trial
13 Lawyers (April 2006).

14 3. I have been a principal in the law firm of Winston & Cashatt since 1983. Winston &
15 Cashatt is a firm of approximately 25 lawyers and has been in existence since 1972 following the merger
16 of two respected former Spokane law firms. The firm focuses its practice on litigation, with an
17 emphasis on complex matters.

18 4. My practice is principally focused on commercial and employment litigation. I have
19 been retained from time to time to represent the interests of public entities.

20 5. My partner, Beverly Anderson was first admitted to practice in 1984, and has been a
21 principal at Winston & Cashatt since 1989. Winston & Cashatt offers a unique service to our clients.
22 Ms. Anderson spearheads our research effort within the firm. Working with the litigation counsel, she
23 conducts or supervises research and brief writing for all phases of major litigation both, including
24
25
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1 motions practice, jury instructions, trials briefs, and appellate work. In addition to the Washington State
2 Bar, she is admitted to practice in the U.S. District Court for the Eastern District of Washington and the
3 United States Courts of Appeal for the Ninth Circuit and the Federal Circuit. Ms. Anderson has
4 submitted briefing in numerous cases in state and federal trial courts, Washington Courts of Appeal,
5 Washington Supreme Court, U.S. District Courts in Washington and Idaho, Ninth Circuit Court of
6 Appeals, Federal Claims Court and Federal Circuit. She has also argued cases in the Federal Circuit and
7 the Washington Court of Appeals. Ms. Anderson has also been an adjunct professor of legal research
8 and writing at Gonzaga University School of Law since 1991. Ms. Anderson performed significant
9 representation on identifying and researching IHD legal theories and the law applicable to the motion to
10 dismiss and motion for summary judgment filed in this case. Ms. Anderson is not admitted to practice
11 in the state of Idaho, but her directed research was done under my supervision.

12
13
14 6. This case arises out of a Joint Powers Agreement ("JPA") executed with the Independent
15 Highway District ("IHD").

16 7. Plaintiff retained Winston & Cashatt on or about September 26, 2013 to represent its
17 interests. I am the principal attorney appearing in the matter. All matters were under my supervision
18 and direction.

19
20 **REASONABLE ATTORNEYS' FEES AND COSTS**

21 8. In making this affidavit in support of fees, I have considered the effort required to prepare
22 this matter for trial, and submission of dispositive motions to resolve the matter short of trial, all in light
23 of the requirements of Idaho law, and after due consideration of the factors in setting a reasonable fee as
24 set forth in I.R.C.P. 54(e)(3). These factors were considered in my assessment of the appropriateness of
25 the amount requested. Based on this review, it is my opinion the request is reasonable. In summary, the
26 I.R.C.P. 54(e)(3) factors are relevant and applicable to this request as follows:

1 a. The time and labor required to defend this action.

2 The time expended was necessary to respond to the legal arguments offered by the IHD. These
3 included the detailed arguments that the agreements in effect between the parties violated Idaho
4 Constitution, Article VIII, §3; that I.C. §40-801 had been violated by the agreements; that the Joint
5 Powers Act had been violated; an argument concerning Perpetual Agreements; arguments about the
6 obligations set forth in IC 40-1333; as well as the legal question of whether the agreements and changes
7 in position by the parties operate as legal consideration.

8
9 The arguments offered by IHD were substantial and required significant legal research to aid the
10 court in arriving at its order. The necessity of analysis to arrive at a conclusion is amply demonstrated
11 by the breath of the Court's twenty-two page order of December 9, 2013.

12 IHD's filings on its I.R.C.P. 12(b)(6) motion presented procedural hurdles to an early appeal.
13 The parties attempted to find a procedural resolution without success. This Court agreed with the
14 request for an early appeal by granting permission to pursue an interlocutory appeal. That effort was not
15 successful. However, while that effort was being pursued, to comply with the Court's scheduling order,
16 it was necessary for the City of Sandpoint to file its motion for Summary Judgment.

17
18 Although the summary judgment motion relied upon the Court's earlier ruling, IHD filed a
19 vigorous objection asserting certain matters of law should be viewed as disputed facts. This response
20 required a more detailed reply.

21
22 b. The novelty and difficulty of the questions.

23 The issues raised by IHD, and the manner in which they were raised, created a difficult
24 procedural posture. In essence, the case needed to be tried out on a motion that was not appealable, but
25 which presented issues of Constitutional proportion that the IHD contend are novel.

1 c. The skill requisite to perform the legal service properly and the experience and
2 ability of the attorney in the particular field of law.

3 The issues raised in this action constitute a dispute of significant taxpayer dollars concerning the
4 resolution of litigation using statutorily permitted procedures. The case has a history of over twenty (20)
5 years, three trips to the State Supreme Court and the prospect of yet another trip in this matter.

6 Winston & Cassatt's skill in responding to IHD and any associated appeal is for the Court to
7 determine.

8 d. The prevailing charges for like work.

9 My current and customary hourly rate is \$375.00 per hour. I have agreed to charge \$325.00 per
10 hour on this matter as I am representing a public entity. Ms. Anderson has been billed at the rate of
11 \$225.00 per hour. These are commensurate with the skill and level of experience necessary to represent
12 the interests of a party in litigation of this nature during the time the legal work was being performed.
13 The rate is prevailing in cases that require the level of law firm support, resources for trial preparation,
14 travel, expertise and skill for trial as are present in this case. Where appropriate, the services of other
15 lawyers, both principals and associates, at Winston & Cashatt were utilized to minimize the costs to the
16 clients. They have been billed at an hourly rate between \$195.00 and \$350.00 an hour. In my opinion
17 these rates for legal services are prevailing and competitive in the area. The hourly rates for the
18 attorneys performing work on this matter are reasonable and customary hourly rates for this type of legal
19 work.
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1 The rates charged for and hours worked by attorneys in this matter are summarized as follows
2 and are based upon the billing invoices attached as Exhibit A:

		Hourly Rate	Total Hours	
4	Principal	C. Matthew Andersen	\$325.00	106.35
5	Principal	Beverly L. Anderson	\$225.00	84.3
6	Principal	Beverly L. Anderson	\$250.00	.50
7	TOTAL			191.15

8
9 I also directed the use of paralegals and law clerks in this case. Law clerks employed by
10 Winston & Cashatt are billed at \$95.00 and paralegals at \$120.00. The use of both law clerks and
11 paralegals were necessary in this matter. The services they performed were legal in nature; were
12 supervised by an attorney; the law clerks and paralegal are qualified to perform the work; the nature of
13 the services is detailed for review in the attached billings. In my opinion the rates charged are
14 customary and market rates charged for comparable work in the area. These services are used to
15 decrease the costs to our clients. In my opinion the law clerk and paralegal fees charged are more than
16 reasonable and summarized as:

		Hourly Rate	Total Hours	
18	Law Clerk	Tyler R. Whitney	\$95.00	20.5
19	Paralegal	Cheryl L. Kregel	\$120.00	4.4
20	TOTAL			24.9

21
22
23 All of the time worked, the attorneys' fees, the staff fees and the costs incurred in defending this
24 case that were billed to the clients were necessary and reasonable to obtain the result for Defendants as
25 the prevailing party.
26

1 e. Whether the fee is fixed or contingent.

2 This engagement was on a fixed hourly basis. The clients were required to fund the litigation as
3 it progressed. The basis of the request is based on actual billings to the clients.

4 f. The time limits imposed by the client or the circumstances of the case.

5 Although the parties wanted prompt resolution for the benefit of the taxpayers, this factor has not
6 been of significance in the matter.

7 g. The amount involved and the results obtained.

8 This matter was commenced because IHD ceased making the agreed upon payments. The
9 payments annually due to the City of Sandpoint exceed \$300,000. This sum is a substantial portion of
10 the funds needed by the City of Sandpoint to maintain its streets. IHD threatened to seek recoupment of
11 the entire amount paid over the ten (10) years, plus interest. The defense was rejected and summary
12 judgment was entered in favor of the City of Sandpoint.

13 h. The undesirability of the case.

14 This factor is not applicable. It is respectfully noted that not all firms in the area would have the
15 resources to pursue the matter on behalf of the City of Sandpoint.

16 i. The nature and length of the professional relationship with the client.

17 This matter was the first engagement of Winston & Cashatt by the City of Sandpoint.

18 j. Awards in similar cases.

19 This is known to the Court.

20 k. The reasonable cost of automated legal research if the Court finds it was
21 reasonably necessary in preparing the parties case.

22 Winston & Cashatt regularly and effectively utilizes Westlaw as its principal automated research
23 tool. Beverly Anderson, the firm's primary research partner has 26 years of experience in the use of
24
25
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1 computer aided research and is most proficient in its use. Ms. Anderson has reviewed the time and costs
2 associated with the use of Westlaw, and find it to be reasonable and necessary. The use of Westlaw
3 greatly expedited the necessary and complex research in this case and was used reasonably by the
4 lawyers working on the case to reduce the costs to the clients. Electronic research is critical to the ability
5 for a law firm today to remain competitive and to provide the proper legal representation. The use of
6 electronic research is cost effective. As shown by the briefing filed with the Court there has been
7 significant legal research in this case.
8

9 The Westlaw charges incurred in this case were \$586.50. Without the benefit of this electronic
10 tool, the charges for attorney research time would have been greater.

11 9. Time billed on an hourly basis for legal services provided by Winston & Cashatt is kept
12 by each individual performing legal services who record their effort with the use of a computer based
13 program. The computer program used by Winston & Cashatt is known as ProLaw and is tailored, inter
14 alia, for tracking of attorney time. Billing entries by the time keeper are entered contemporaneously
15 with the service rendered. Bills are produced from the recorded data in the form of a computer-
16 generated summary which becomes a billing invoice which reports the timekeeper's work performed
17 and the time expended for that effort. The City of Sandpoint was billed on a monthly basis and has
18 remained current on the billings in this case.
19

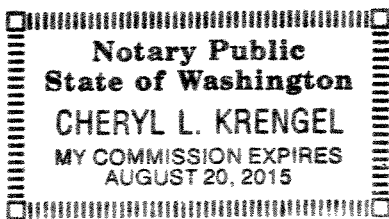
20 10. A copy of the recorded data for the legal services rendered for Plaintiff in this matter is
21 attached as Exhibit "A". The work performed is identified by the initials of the individual performing
22 the work, the type of work done and the date of the work and the time spent performing the work.
23

24 11. Exhibit "A" includes a summary of the requested attorneys' fees, paralegal fees and law
25 clerk fees in the amount of \$56,131.75, which were reasonably and necessarily incurred to defend the
26 case.

1 12. I have read the contents of the foregoing affidavit, know the contents thereof, and believe
2 the same to be true. I declare of penalty of perjury that the foregoing fees and costs are correct and was
3 necessarily incurred in this action.
4

5
6 C. Matthew Andersen
7

8 SUBSCRIBED AND SWORN to before me this 13th day of August, 2014.
9



14 Cheryl Kregel
15 Notary Public in and for the State of Washington
16 Residing at Greenacres
17 My appointment expires: 8/20/15

18 I hereby certify that I caused a true and
19 complete copy of the foregoing to be mailed,
20 postage prepaid; hand delivered; sent
21 via facsimile on August 13th, 2014, to:

22 David R. Wynkoop
23 Sherer & Wynkoop, LLP
24 730 N. Main Street
25 P.O. Box 31
26 Meridian, ID 83680

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

27
28 C. Matthew Andersen
29 C. MATTHEW ANDERSEN
30

Winston & Cashatt
 LAWYERS
 A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
 91-1041332

601 W. Riverside Avenue, Suite 1900
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 (509) 838-6131

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City of Sandpoint
 1123 Lake Street
 Sandpoint, ID 83864

Statement Date: September 30, 2013
 Refer To: 113103-118687
 Invoice No: 54664

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

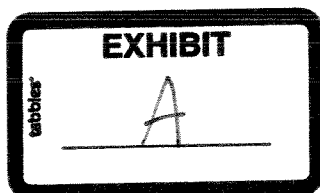
Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District
Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
9/26/2013	BLA	Conference with M. Andersen re outline of issues and course of pleadings to move for declaratory relief.	0.60	135.00
9/27/2013	CMA	Work on outline of motion. Phone conference with S. Campbell.	1.00	325.00
9/27/2013	BLA	Review Complaint for Declaratory Relief. Review correspondence re claim that Joint Powers Agreement is invalid. Research re unconstitutionality claim.	1.20	270.00
9/27/2013	CLK	Prepare notice of association. Email to S. Campbell.	0.30	36.00
9/30/2013	BLA	Research re constitutional basis to object to Joint Powers Agreement.	1.90	427.50
Sub-total Fees: \$				1,193.50

Rate Summary

C. Matthew Andersen	1.00 hours at \$	325.00/hr	\$	325.00
Beverly L. Anderson	3.70 hours at \$	225.00/hr	\$	832.50
Cheryl L. Kregel	0.30 hours at \$	120.00/hr	\$	36.00
Total hours:	5.00			1,193.50



City of Sandpoint

Refer To: 113103-118687
Invoice No: 54664

Current Invoice Amount Due (Fees + Expenses): \$ 1,193.50

Previous Invoice(s) Balance Due: \$ 0.00

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 1,193.50

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
 LAWYERS
 A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
 91-1041332

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City of Sandpoint
 1123 Lake Street
 Sandpoint, ID 83864

Statement Date: November 12, 2013
 Refer To: 113103-118687
 Invoice No: 54665

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

**Sandpoint Independent Highway District
 Professional Fees**

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
10/4/2013	BLA	Research re Joint Powers agreement, constitutionality of contract. Review legislative history and other statutes from S. Campbell.	2.20	495.00
10/7/2013	BLA	Research re ownership of city streets by county, types of unconstitutional indebtedness of municipality.	2.20	495.00
10/8/2013	BLA	Research re ownership of city streets by city if Highway District cedes ownership.	1.40	315.00
10/9/2013	BLA	Research re ownership of city streets, and ability of Highway District to return title to City as opposed to County ownership. Email to S. Campbell.	2.60	585.00
10/11/2013	TRW	Isolate relevant caselaw from Westlaw.	3.10	294.50
10/14/2013	BLA	Review District's brief in support of motion to dismiss.	0.80	180.00
10/16/2013	TRW	Work on directed research re response to motion to dismiss.	3.50	332.50
10/16/2013	BLA	Research re constitutionality of joint powers agreement.	2.30	517.50
10/16/2013	TRW	Worked on reply to motion to dismiss.	3.20	304.00
10/17/2013	BLA	Research re statutory scheme and validity of joint powers agreement.	3.80	855.00
10/18/2013	CMA	Work on structure of response brief.	1.00	325.00
10/22/2013	CMA	Review of filings. Phone conference with S. Campbell. Prepare no objection.	1.00	325.00
10/23/2013	TRW	Work on response to motion to dismiss.	0.40	38.00
10/23/2013	CMA	Work on outline of response brief.	2.00	650.00
10/25/2013	TRW	Work on response to motion to dismiss.	2.00	190.00
10/28/2013	TRW	Work on response to motion to dismiss (no charge).	0.30	0.00
10/28/2013	BLA	Research re constitutionality of apportionment under Joint Powers	1.50	337.50

City of Sandpoint

Refer To: 113103-118687

Invoice No: 54665

agreement, validity of Joint Powers Agreement.

10/30/2013	CMA	Work on response to District's Motion to Dismiss.	5.00	1,625.00
10/31/2013	CMA	Work on form of response brief.	4.00	1,300.00
10/31/2013	BLA	Research re joint powers agreements and constitutional and statutory validity.	3.30	742.50

Sub-total Fees: \$ 9,906.50

Rate Summary

C. Matthew Andersen	13.00 hours at \$	325.00/hr	\$	4,225.00
Beverly L. Anderson	20.10 hours at \$	225.00/hr	\$	4,522.50
Tyler R. Whitney	0.30 hours at \$	0.00/hr	\$	0.00
Tyler R. Whitney	<u>12.20 hours at \$</u>	<u>95.00/hr</u>	<u>\$</u>	<u>1,159.00</u>
Total hours:	45.60			9,906.50

Current Invoice Amount Due (Fees + Expenses): \$ 9,906.50

Previous Invoice(s) Balance Due: \$ 1,193.50

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 11,100.00

Balance History

0-30	31-60	61-90	91+
\$0.00	\$1,193.50	\$0.00	\$0.00

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City of Sandpoint
 1123 Lake Street
 Sandpoint, ID 83864

Statement Date: December 9, 2013
 Refer To: 113103-118687
 Invoice No: 55018

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District

Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
11/1/2013	TRW	Worked on response to motion to dismiss (no charge).	0.80	0.00
11/1/2013	BLA	Research re indebtedness under constitutional prohibitions, consideration for joint powers agreements, judicial estoppel, other application of joint powers agreements nationwide.	4.80	1,080.00
11/4/2013	TRW	Worked on response to motion to dismiss.	1.40	133.00
11/4/2013	BLA	Research re duration requirement. Work on brief in opposition to motion to dismiss.	2.90	652.50
11/5/2013	TRW	Worked on response to motion to dismiss.	3.40	323.00
11/5/2013	BLA	Work on brief in opposition to motion to dismiss.	2.20	495.00
11/5/2013	CMA	Work on brief. Meeting with S. Campbell. Draft affidavits of S. Campbell and S. Syth.	6.00	1,950.00
11/6/2013	CLK	Work on stipulation for extension of time. Work on motion for extension of time. Phone call with S. Weeks' office.	0.80	96.00
11/6/2013	TRW	Worked on response to motion to dismiss.	3.50	332.50
11/6/2013	BLA	Work on brief in opposition to motion to dismiss.	4.10	922.50
11/6/2013	CMA	Response to Def's Motion to Dismiss.	10.00	3,250.00
11/7/2013	CMA	Finalize Response to Def's Motion to Dismiss.	5.00	1,625.00
11/7/2013	BLA	Work on brief in opposition to motion to dismiss.	3.00	675.00
11/8/2013	TRW	Researched standard for conversion to summary judgment (no charge).	1.00	0.00
11/8/2013	CMA	Review of motion to strike. Direct preparation of response. Message to S. Campbell.	1.00	325.00
11/8/2013	BLA	Review motion to strike. Conference with M. Andersen re response. (no charge).	0.50	0.00

			Refer To: 113103-118687		
City of Sandpoint			Invoice No:	55018	
11/11/2013	TRW	Pulled cases from WestLaw. Worked on response to motion to strike. (no charge).	1.00	0.00	
11/11/2013	BLA	Research re basis for court to exercise discretion to exclude declarations submitted in response to 12(b)(6) motion. Final brief in opposition to motion to strike.	0.50	125.00	
11/11/2013	CMA	Revise response to objection to motion to strike. Message to S. Campbell.	1.00	325.00	
11/12/2013	BLA	Review reply brief from District. Research re provisions of statute regarding District's authorities.	1.10	247.50	
11/12/2013	CMA	Prepare for hearing.	4.00	1,300.00	
11/13/2013	TRW	Researched case law. Attended hearing. (no charge).	3.50	0.00	
11/13/2013	CMA	Prepare for hearing on motion to dismiss. Prepare and file supplemental authorities. Travel. Meet with clients. Attend hearing.	8.00	2,600.00	
11/14/2013	CMA	Letter to counsel. Consult with S. Campbell.	1.00	325.00	
			<u>Sub-total Fees: \$</u>		<u>16,782.00</u>

Rate Summary

C. Matthew Andersen	36.00 hours at \$	325.00/hr	\$	11,700.00
Beverly L. Anderson	0.50 hours at \$	0.00/hr	\$	0.00
Beverly L. Anderson	18.10 hours at \$	225.00/hr	\$	4,072.50
Beverly L. Anderson	0.50 hours at \$	250.00/hr	\$	125.00
Cheryl L. Krengel	0.80 hours at \$	120.00/hr	\$	96.00
Tyler R. Whitney	6.30 hours at \$	0.00/hr	\$	0.00
Tyler R. Whitney	8.30 hours at \$	95.00/hr	\$	788.50
Total hours:		70.50		16,782.00

Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11/7/2013	Photocopy charges.	39.45
11/8/2013	Messenger Service.	10.00
11/12/2013	Westlaw.	105.88
<u>Sub-total Expenses: \$</u>		<u>155.33</u>

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
11/15/2013	City of Sandpoint	1,193.50

City of Sandpoint
11/22/2013 City of Sandpoint

Refer To: 113103-118687
Invoice No: 55018
9,906.50

Sub-total Payments: \$ 11,100.00

Current Invoice Amount Due (Fees + Expenses): \$ 16,937.33

Previous Invoice(s) Balance Due: \$ 0.00

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 16,937.33

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
L A W Y E E R S
 A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
 91-1041332

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City of Sandpoint
 1123 Lake Street
 Sandpoint, ID 83864

Statement Date: January 15, 2014
 Refer To: 113103-118687
 Invoice No: 55426

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District

Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
12/11/2013	CMA	Review of court's order. Phone conference with S. Campbell. Letter to counsel re reinstating payments.	2.00	650.00
12/11/2013	BLA	Review and analyze decision on motion to dismiss. Conference with M. Andersen re potential necessity for new motion, or agreed order. Phone conference with S. Campbell and M. Andersen.	0.80	180.00
12/12/2013	CMA	File review to as certain status of the need for follow on pleadings.	0.50	162.50
12/16/2013	BLA	Research re basis for Temporary Restraining Order for potential motion.	2.70	607.50
12/16/2013	CMA	Begin preparation of injunction hearing. Messages to counsel. Phone conference with S. Weeks.	2.50	812.50
12/17/2013	BLA	Review proposed order on preliminary injunction. Phone conference with M. Andersen and S. Campbell. (no charge).	0.40	0.00
12/17/2013	CMA	Work on form of an injunction. Numerous phone calls with S. Weeks. Phone conference with S. Campbell.	3.00	975.00
12/18/2013	CMA	Finalize form of agreed injunction. Numerous drafts and conversations with counsel. Travel and attend hearing.	5.00	1,625.00
Sub-total Fees: \$				5,012.50

Rate Summary

C. Matthew Andersen	13.00 hours at \$	325.00/hr	\$	4,225.00
Beverly L. Anderson	0.40 hours at \$	0.00/hr	\$	0.00
Beverly L. Anderson	3.50 hours at \$	225.00/hr	\$	787.50
Total hours:		16.90		5,012.50

City of Sandpoint

Refer To: 113103-118687
 Invoice No: 55426

Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
12/16/2013	Westlaw.	345.17
Sub-total Expenses: \$		345.17

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
1/6/2014	City of Sandpoint	16,937.33
Sub-total Payments: \$		16,937.33

Current Invoice Amount Due (Fees + Expenses):	\$ 5,357.67
Previous Invoice(s) Balance Due:	\$ 0.00
Applicable Interest:	\$ 0.00
Total Balance Due (Current & Previous Invoices):	\$ 5,357.67

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
LAWYERS
A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
91-1041332

601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
(509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
WEB SITE: www.winstoncashatt.com

City of Sandpoint
1123 Lake Street
Sandpoint, ID 83864

Statement Date: February 10, 2014
Refer To: 113103-118687
Invoice No: 55763

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District
Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
1/22/2014	CMA	Phone conference with S. Weeks. Prepare ADR report. Review issues related to certification. Phone conference with S. Campbell.	1.50	487.50
1/22/2014	BLA	Analyze court's order, preliminary injunction, and requested relief in the Complaint. Outline potential courses of action to trigger appeal, necessity to move for summary judgment. Conference with M. Andersen re litigation plan. Phone call with S. Campbell and M. Andersen re litigation plan.	0.80	180.00
1/23/2014	CMA	Phone conference with S. Campbell re annexation issues. Message to S. Weeks.	0.50	162.50
1/24/2014	CMA	Work on structure of certification. Phone conference with S. Weeks. Message to S. Campbell.	1.00	325.00
Sub-total Fees: \$				1,155.00

Rate Summary

C. Matthew Andersen	3.00 hours at \$	325.00/hr	\$	975.00
Beverly L. Anderson	0.80 hours at \$	225.00/hr	\$	180.00
Total hours:	3.80			1,155.00

Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
1/3/2014	To C. Matthew Andersen for travel to/from Coeur d'Alene for hearing on motion to dismiss on November 13, 2013.	39.55

City of Sandpoint

Refer To: 113103-118687
 Invoice No: 55763

Sub-total Expenses: \$ 39.55

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
2/10/2014	City of Sandpoint	<u>5,357.67</u>

Sub-total Payments: \$ 5,357.67

Current Invoice Amount Due (Fees + Expenses): \$ 1,194.55

Previous Invoice(s) Balance Due: \$ 0.00

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 1,194.55

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
LAWYERS
A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
91 1041332

601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
(509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
WEB SITE: www.winstoncashatt.com

City of Sandpoint
1123 Lake Street
Sandpoint, ID 83864

Statement Date: March 6, 2014
Refer To: 113103-118687
Invoice No: 56168

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District

Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
2/5/2014	CMA	Review of Memorandum Decision and Order Denying Motion to Dismiss. First draft of 54(b) language. Redraft joint report to the court.	1.50	487.50
2/20/2014	CMA	Work on certification issues. Research. Messages to S. Campbell. Phone conference with S. Campbell. Efforts at reaching S. Weeks.	2.00	650.00
2/20/2014	BLA	Research re language requirements for 54(b) certification in Idaho. Review proposed language.	0.40	90.00
2/21/2014	CMA	Work on issues related to 54(c) certification. Phone conference with S. Weeks. (no charge).	1.00	0.00
2/21/2014	BLA	Research re propriety of use of judgment on the pleadings stipulation to achieve appealable issue. Review court order, pleadings.	1.60	360.00
2/23/2014	BLA	Research re propriety of use of judgment on the pleadings stipulation to achieve appealable issue.	1.00	225.00
2/25/2014	CMA	Review case law. Messages to S. Weeks re result of approach on judgment on the pleadings. Communications with S. Campbell.	1.50	487.50
Sub-total Fees: \$				2,300.00

Rate Summary

C. Matthew Andersen	1.00 hours at \$	0.00/hr	\$	0.00
C. Matthew Andersen	5.00 hours at \$	325.00/hr	\$	1,625.00
Beverly L. Anderson	3.00 hours at \$	225.00/hr	\$	675.00
Total hours:	9.00			2,300.00

City of Sandpoint

Refer To: 113103-118687
 Invoice No: 56168

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
2/21/2014	City of Sandpoint	1,194.55
Sub-total Payments: \$		1,194.55

Current Invoice Amount Due (Fees + Expenses): \$ 2,300.00

Previous Invoice(s) Balance Due: \$ 0.00

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 2,300.00

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
 LAWYERS
 A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
 91 1041332

601 W. Riverside Avenue, Suite 1900
 Spokane, WA 99201
 (509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
 WEB SITE: www.winstoncashatt.com

City of Sandpoint
 1123 Lake Street
 Sandpoint, ID 83864

Statement Date: April 2, 2014
 Refer To: 113103-118687
 Invoice No: 56472

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District
Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
3/3/2014	CLK	Prepare proposed order re motion to vacate. Email to counsel.	0.50	60.00
3/5/2014	CMA	Prepare response to Auditor's Letter.	1.50	487.50
				Sub-total Fees: \$ 547.50

Rate Summary

C. Matthew Andersen	1.50 hours at \$	325.00/hr	\$	487.50
Cheryl L. Krengel	0.50 hours at \$	120.00/hr	\$	60.00
Total hours:		2.00		547.50

Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
3/14/2014	Westlaw.	69.21
		Sub-total Expenses: \$ 69.21

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
3/21/2014	City of Sandpoint	2,300.00
		Sub-total Payments: \$ 2,300.00

City of Sandpoint

Refer To: 113103-118687
Invoice No: 56472

Current Invoice Amount Due (Fees + Expenses): \$ 616.71
Previous Invoice(s) Balance Due: \$ 0.00
Applicable Interest: \$ 0.00
Total Balance Due (Current & Previous Invoices): \$ 616.71

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
LAWYERS
A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
91 1041332

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Spokane, WA 99201
(509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
WEB SITE: www.winstoncashatt.com

City of Sandpoint
1123 Lake Street
Sandpoint, ID 83864

Statement Date: June 6, 2014
Refer To: 113103-118687
Invoice No: 57395

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District

Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
5/7/2014	CMA	Review of motion for interlocutory appeal. Message to S. Campbell.	1.00	325.00
5/13/2014	CMA	Review and begin work on form of response brief to motion for interlocutory appeal. Direct research.	1.50	487.50
5/13/2014	BLA	Review and analyze brief in support of IHD motion for interlocutory appeal. Research re requisites for interlocutory appeal. Draft response in opposition to motion for interlocutory appeal.	2.80	630.00
5/14/2014	CLK	Work on response to motion re interlocutory appeal (no charge).	0.70	0.00
5/14/2014	BLA	Research re denial of interlocutory review based on trial court denial of motion, despite trial court certification. Final brief in opposition to motion for interlocutory review.	1.10	247.50
5/14/2014	CMA	Finalize brief to be submitted.	1.50	487.50
5/19/2014	BLA	Review cases cited in Response Memo for oral argument preparation.	0.40	90.00
5/19/2014	CMA	Review of IHD reply. Formulate response positions at hearing. Message to S. Campbell.	0.80	260.00
5/21/2014	CMA	Prepare for, travel and attend hearing on Motion for Permissive Appeal.	2.50	812.50
5/23/2014	BLA	Phone conference with M. Andersen and S. Campbell re hearing results and plan for summary judgment (no charge).	0.30	67.50
5/23/2014	CMA	Phone conference with S. Campbell. Arrange for hearing date. Direct work on motion for summary judgment. (no charge).	1.00	325.00
Sub-total Fees: \$				3,732.50

Winston & Cashatt
LAWYERS
A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
91-1041332

601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
(509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
WEB SITE: www.winstoncashatt.com

City of Sandpoint
1123 Lake Street
Sandpoint, ID 83864

Statement Date: July 15, 2014
Refer To: 113103-118687
Invoice No: 58031

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District

Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
5/30/2014	BLA	Review previous pleadings. Draft and edit motion/memorandum in support of summary judgment.	1.40	315.00
6/2/2014	CMA	Edit memo and motion.	1.00	325.00
6/2/2014	CLK	Work on summary judgment memo. Draft motion.	0.60	72.00
6/3/2014	CMA	Finalize form of motion and review/insert applicable rules re motion. Confer re filing of earlier affidavits with the clerk.	1.45	471.25
6/24/2014	CMA	Work on issues related to request for discretionary appeal.	1.00	325.00
6/24/2014	BLA	Review and analyze District's motion and brief for discretionary appeal.	0.90	202.50
6/25/2014	BLA	Research re case law cited in motion for interlocutory appeal. Draft response in opposition to motion for discretionary appeal.	3.30	742.50
6/25/2014	CMA	Work on objection to motion for discretionary appeal.	2.00	650.00
6/26/2014	CMA	Work on objection to discretionary appeal (no charge).	1.50	0.00
6/26/2014	BLA	Work on brief in opposition to motion for discretionary appeal.	1.40	315.00
6/30/2014	BLA	Work on brief in opposition to motion for discretionary appeal.	4.40	990.00
			Sub-total Fees: \$	4,408.25

Rate Summary

C. Matthew Andersen	1.50 hours at \$	0.00/hr	\$	0.00
C. Matthew Andersen	5.45 hours at \$	325.00/hr	\$	1,771.25
Beverly L. Anderson	11.40 hours at \$	225.00/hr	\$	2,565.00
Cheryl L. Krengel	0.60 hours at \$	120.00/hr	\$	72.00

City of Sandpoint

Refer To: 113103-118687
 Invoice No: 58031

Total hours: 18.95

4,408.25

Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
6/16/2014	Westlaw.	66.24
Sub-total Expenses: \$		<u>66.24</u>

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
7/7/2014	City of Sandpoint	3,771.70
Sub-total Payments: \$		<u>3,771.70</u>

Current Invoice Amount Due (Fees + Expenses): \$ 4,474.49

Previous Invoice(s) Balance Due: \$ 0.00

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 4,474.49

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
LAWYERS
A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
91-1041332

601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
(509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
WEB SITE: www.winstoncashatt.com

City of Sandpoint
1123 Lake Street
Sandpoint, ID 83864

Statement Date: August 11, 2014
Refer To: 113103-118687
Invoice No: 58512

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

**Sandpoint Independent Highway District
Professional Fees**

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
7/1/2014	BLA	Final brief in opposition to motion for interlocutory appeal.	3.00	675.00
7/1/2014	BRB	Prepare letter to Idaho Supreme Court/Court of Appeals (no charge).	0.10	0.00
7/2/2014	BLA	Final brief in opposition to motion for permissive appeal. Email correspondence with S. Campbell and M. Andersen.	1.10	247.50
7/9/2014	BLA	Review and analyze IHD's response in opposition to motion for summary judgment for reply.	0.90	202.50
7/10/2014	CMA	Work on reply brief re summary judgement. Task map with B. Anderson.	1.00	325.00
7/10/2014	BLA	Initial draft reply brief in support of motion for summary judgment.	4.20	945.00
7/11/2014	BLA	Work on reply brief in support of summary judgment.	4.00	900.00
7/11/2014	CMA	Work on reply brief. Phone conference with S. Campbell.	1.50	487.50
7/14/2014	BLA	Research re right of City to vacate streets, consideration for contract, statutory interpretation on issues of law, attorneys fees recovery for frivolous suit. Work on reply brief in support of motion for summary judgment.	4.80	1,080.00
7/14/2014	CMA	Work on reply re summary judgment.	2.00	650.00
7/15/2014	BLA	Conference with M. Andersen. Conference with S. Campbell. Work on and final reply brief in support of summary judgment.	1.10	247.50
7/21/2014	CMA	Prepare for hearing on summary judgment. Prepare form of order. Message to S. Campbell.	4.00	1,300.00
7/22/2014	CMA	Prepare, travel, attend hearing re summary judgment and meet with counsel.	4.00	1,300.00
7/29/2014	CMA	Review of order from Supreme Court and determine if fees and cost can be awarded at this juncture.	0.50	162.50

City of Sandpoint

Refer To: 113103-118687
 Invoice No: 58512

Sub-total Fees: \$ 8,522.50

Rate Summary

C. Matthew Andersen	13.00 hours at \$	325.00/hr	\$	4,225.00
Beverly L. Anderson	19.10 hours at \$	225.00/hr	\$	4,297.50
Beverly R. Briggs	0.10 hours at \$	0.00/hr	\$	0.00
Total hours: 32.20				8,522.50

Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
7/16/2014	To FEDEX for postal charges on July 2, 2014.	21.39
7/22/2014	To C. Matthew Andersen for travel to Coeur d'Alene for hearing on Summary Judgment motion July 22, 2014.	39.20
Sub-total Expenses: \$		<u>60.59</u>

Payments Received Since Previous Invoice:

<u>Date</u>	<u>Description</u>	<u>Amount</u>
8/8/2014	City of Sandpoint	4,474.49
Sub-total Payments: \$		4,474.49

Current Invoice Amount Due (Fees + Expenses): \$ 8,583.09

Previous Invoice(s) Balance Due: \$ 0.00

Applicable Interest: \$ 0.00

Total Balance Due (Current & Previous Invoices): \$ 8,583.09

Balance History

0-30	31-60	61-90	91+
\$0.00	\$0.00	\$0.00	\$0.00

Winston & Cashatt
L A W Y E E R S
A PROFESSIONAL SERVICE CORPORATION

Tax I.D. No.
91-1041332

601 W. Riverside Avenue, Suite 1900
 Spokane, WA 99201
 (509) 838-6131

E-MAIL ADDRESS: info@winstoncashatt.com
 WEB SITE: www.winstoncashatt.com

City of Sandpoint
 1123 Lake Street
 Sandpoint, ID 83864

Statement Date: August 12, 2014
 Refer To: 113103-118687

ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Invoice for fees due for legal services performed and for costs advanced are for period of first date through last date shown below.

Sandpoint Independent Highway District

Professional Fees

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
8/1/2014	CMA	Research and provide guidance on fee application. Message to S. Campbell.	0.60	195.00
8/5/2014	CMA	Initiate review re fee petition.	0.50	162.50
8/11/2014	CLK	Work on memo in support of fees and costs, memorandum of costs and affidavit of M. Andersen. Draft proposed order.	2.20	264.00
8/11/2014	CMA	Work on Memo re Costs; Cost Memo and affidavit,; Judgment and Permanent Injunction (Draft). Message to S. Campbell.	6.00	1,950.00
Sub-total Fees: \$				2,571.50

Rate Summary

C. Matthew Andersen	7.10 hours at \$	325.00/hr	\$ 2,307.50
Cheryl L. Kregel	2.20 hours at \$	120.00/hr	\$ 264.00
Total hours:	9.30		2,571.50

CITY OF SANDPOINT
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 AUG 21 P 1:42

CLERK DISTRICT COURT

cm
DEPUTY

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

ORDER GRANTING REQUEST FOR
ATTORNEY'S FEES AND COSTS

THIS MATTER came before the Court on City of Sandpoint's request for attorney's fees and costs permitted by I.C. §12-117 as well as discretionary costs incurred in commencement of the action as allowed by I.R.C.P. 54(d)(1)(D). The court having considered the:

- Court's Memorandum Decision and Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment;
- City of Sandpoint's Memorandum in Support of Attorney's Fees and Costs;
- City of Sandpoint's Memorandum of Costs and Affidavit of C. Matthew Andersen in Support of Attorney's Fees and Costs;
- and the pleadings filed in this matter

The Court having found good cause to grant Plaintiff's request for attorney's fees and costs:

IT IS NOW THEREFORE ORDERED:

1. The City of Sandpoint is awarded attorney's fees in the amount of \$ 0 and discretionary costs in the amount of \$ 56,131.75 for a total of fee and cost award of \$ 56,131.75. *JTM 8/21/14*

DONE IN OPEN COURT this 21st day of August, 2014.

[Signature]
HONORABLE JOHN T. MITCHELL

Presented by:

[Signature]
C. MATTHEW ANDERSEN, ISB No. 3581
WINSTON & CASHATT
Attorneys for Plaintiff

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1 I hereby certify that I caused a true and
complete copy of the foregoing to be mailed,
2 postage prepaid; hand delivered; sent
3 via facsimile on August 21, 2014, to:

4 C. Matthew Andersen
Winston & Cashatt
5 601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
6 509-838-1416 (fax)

7 Scot R. Campbell
8 Sandpoint City Attorney
1123 Lake Street
9 Sandpoint, ID 83864
10 (208) 255-1368 (fax)

11 David E. Wynkoop
12 Sherer & Wynkoop, LLP
P.O. Box 31
13 Boise, ID 83680
(208) 887-4865 (fax)

14 Susan P. Weeks
15 James, Vernon & Weeks
1626 Lincoln Way
16 Coeur d'Alene, ID 83814
(208) 664-1684 (fax)

17
18 Cherie Moore
19 CLERK OF THE COURT

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STATE OF IDAHO
COUNTY OF BONNER
DISTRICT COURT

2014 AUG 21 P 1:42

DISTRICT COURT

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SCOT R. CAMPBELL, ISB No. 4121
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1123 Lake Street
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C. MATTHEW ANDERSEN, ISB No. 3581
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Attorneys for City of Sandpoint

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

DECLARATORY AND MONETARY
JUDGMENT
[PROPOSED]

JUDGMENT CREDITOR: City of Sandpoint

JUDGMENT DEBTOR: Independent Highway District

ATTORNEYS FOR JUDGMENT CREDITOR: C. Matthew Andersen
WINSTON & CASHATT LAWYERS
601 W. Riverside Ave., Suite 1900
Spokane, WA 99201

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and

Scot R. Campbell
SANDPOINT CITY ATTORNEY
1123 Lake Street
Sandpoint, Idaho 83864

ATTORNEYS FOR JUDGMENT
DEBTOR:

David R. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main Street
P.O. Box 31
Meridian, ID 83680

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

JUDGMENT AMOUNT
ATTORNEY'S FEES AND
COSTS:

\$ 56,131.75 JWC 5/21/14

POST JUDGMENT INTEREST: To accrue at the legal rate allowed by Idaho law

DECLARATORY JUDGEMENT

The Court entered its Order Granting Declaratory Relief and its Memorandum Decision and Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment both on July 31, 2014. For the reasons set forth in the Memorandum Decision, the Court hereby declares pursuant to I.C. §10-1201 et. seq., the following rights, status and legal relations between the City of Sandpoint and the Independent Highway District:

1. The Memorandum of Understanding of September 14, 2005 between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

2. The Joint Powers Agreement between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

3. The Independent Highway District is ordered to comply in all respects with its obligations set forth in the Memorandum of Understanding and the Joint Powers Agreement and Permanent Injunction shall issue with regard to that obligation.

4. The Independent Highway District is directed to include in its payment of ad valorem taxes to the City of Sandpoint all taxes collected pursuant to I.C. §40-800 et. seq., including without limitation any collection for delinquent taxes, interest and costs, that are collected as a result of Independent Highway District levies on the taxpayers of the City of Sandpoint.

MONETARY JUDGMENT

The Court having entered its Order awarding Plaintiff's Request for Attorney's Fees and Costs on August 21, 2014, 2014, and based the Memorandum of Costs and Affidavit of Counsel thereon, the Court enters judgment in favor of Plaintiff, City of Sandpoint, and against Defendant, Independent Highway District.

JUDGMENT is entered this date against Plaintiff in favor of Defendant in the amount of \$ 0 for costs and \$ 56,131.75 for attorney's fees for a total judgment of \$ 56,131.75

Post judgment interest to bear at the legal rate allowed by Idaho law from the date of this Judgment until paid in full.


DONE IN OPEN COURT this 21st day of August, 2014.

HONORABLE JOHN T. MITCHELL

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Presented by:

WINSTON & CASHATT, LAWYERS


C. MATTHEW ANDERSEN, ISB No. 3581
Attorneys for Plaintiff

I hereby certify that I caused a true and complete copy of the foregoing to be mailed, postage prepaid; hand delivered; sent via facsimile on August 21, 2014, to:

C. Matthew Andersen
Winston & Cashatt
601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
509-838-1416 (fax)

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, ID 83864
(208) 255-1368 (fax)

David E. Wynkoop
Sherer & Wynkoop, LLP
P.O. Box 31
Boise, ID 83680
(208) 887-4865 (fax)

Susan P. Weeks
James, Vernon & Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814
(208) 664-1684 (fax)


CLERK OF THE COURT

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 AUG 22 P 4:35

CLERK DISTRICT COURT

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DEPUTY

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, <p style="text-align: right;">Plaintiff,</p> vs. INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho, <p style="text-align: right;">Defendant.</p>	Case No. CV-13-01342 AMENDED ORDER GRANTING REQUEST FOR ATTORNEY'S FEES AND COSTS
---	---

THIS MATTER came before the Court on City of Sandpoint's request for attorney's fees and costs permitted by I.C. §12-117 as well as discretionary costs incurred in commencement of the action as allowed by I.R.C.P. 54(d)(1)(D). The court having considered the:

- Court's Memorandum Decision and Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment;
- City of Sandpoint's Memorandum in Support of Attorney's Fees and Costs;
- City of Sandpoint's Memorandum of Costs and Affidavit of C. Matthew Andersen in Support of Attorney's Fees and Costs;
- and the pleadings filed in this matter

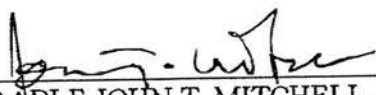
The Court having found good cause to grant Plaintiff's request for attorney's fees and costs:

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IT IS NOW THEREFORE ORDERED:

1. The City of Sandpoint is awarded attorney's fees in the amount of \$56,131.75 and discretionary costs in the amount of \$0 for a total of fee and cost award of \$56,131.75.

DONE IN OPEN COURT this 22nd day of August, 2014.



HONORABLE JOHN T. MITCHELL

Presented by:



C. MATTHEW ANDERSEN, ISB No. 3581
WINSTON & CASHATT
Attorneys for Plaintiff

1 I hereby certify that I caused a true and
2 complete copy of the foregoing to be mailed,
3 postage prepaid; hand delivered; sent
via facsimile on August 25th, 2014, to:

4 C. Matthew Andersen
5 Winston & Cashatt
6 601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
509-838-1416 (fax)

7 Scot R. Campbell
8 Sandpoint City Attorney
9 1123 Lake Street
10 Sandpoint, ID 83864
(208) 255-1368 (fax)

11 David E. Wynkoop
12 Sherer & Wynkoop, LLP
13 P.O. Box 31
Boise, ID 83680
(208) 887-4865 (fax)

14 Susan P. Weeks
15 James, Vernon & Weeks
16 1626 Lincoln Way
Coeur d'Alene, ID 83814
(208) 664-1684 (fax)

18
19 Cherie Moore
20 CLERK OF THE COURT

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CLERK OF DISTRICT COURT
COUNTY OF BONNER
JUDICIAL DISTRICT

2014 AUG 22 P 4:35

CLERK DISTRICT COURT
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SCOT R. CAMPBELL, ISB No. 4121
SANDPOINT CITY ATTORNEY
1123 Lake Street
Sandpoint, Idaho 83864
Telephone: (208) 263-0534
Facsimile: (208) 255-1368
scampbell@ci.sandpoint.id.us

C. MATTHEW ANDERSEN, ISB No. 3581
WINSTON & CASHATT, LAWYERS,
a Professional Service Corporation
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814
Telephone: (208) 667-2103
Facsimile: (208) 765-2121
cmaw@winstoncashatt.com

Attorneys for City of Sandpoint

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

AMENDED DECLARATORY AND
MONETARY JUDGMENT
[PROPOSED]

JUDGMENT IS ENTERED AS FOLLOWS:

JUDGMENT CREDITOR: City of Sandpoint
JUDGMENT DEBTOR: Independent Highway District

1 ATTORNEYS FOR JUDGMENT
2 CREDITOR:

C. Matthew Andersen
WINSTON & CASHATT LAWYERS
601 W. Riverside Ave., Suite 1900
Spokane, WA 99201

3
4 and

5 Scot R. Campbell
6 SANDPOINT CITY ATTORNEY
7 1123 Lake Street
Sandpoint, Idaho 83864

8 ATTORNEYS FOR JUDGMENT
9 DEBTOR:

David R. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main Street
P.O. Box 31
Meridian, ID 83680

12 Susan P. Weeks
13 James, Vernon & Weeks, P.A.
14 1626 Lincoln Way
Coeur d'Alene, ID 83814

15 JUDGMENT AMOUNT
16 ATTORNEY'S FEES AND
17 COSTS:

\$56,131.75

18 POST JUDGMENT INTEREST: To accrue at the legal rate allowed by Idaho law

19 **DECLARATORY JUDGEMENT**

20 The Court entered its Order Granting Declaratory Relief and its Memorandum Decision and
21 Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment both on July 31, 2014. For
22 the reasons set forth in the Memorandum Decision, the Court grants the City of Sandpoint its requested
23 relief and hereby declares pursuant to I.C. §10-1201 et. seq., the following rights, status and legal
24 relations between the City of Sandpoint and the Independent Highway District:
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1. The Memorandum of Understanding of September 14, 2005 between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

2. The Joint Powers Agreement between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

3. The Independent Highway District is ordered to comply in all respects with its obligations set forth in the Memorandum of Understanding and the Joint Powers Agreement and Permanent Injunction shall issue with regard to that obligation.

4. The Independent Highway District is directed to include in its payment of ad valorem taxes to the City of Sandpoint all taxes collected pursuant to I.C. §40-800 et. seq., including without limitation any collection for delinquent taxes, interest and costs, that are collected as a result of Independent Highway District levies on the taxpayers of the City of Sandpoint.

MONETARY JUDGMENT

The Court having entered its Amended Order awarding Plaintiff's Request for Attorney's Fees and Costs on August 22, 2014, based the I.R.C.P. 54(e)(5) Memorandum of Costs and Affidavit of Counsel thereon, the Court enters judgment in favor of Plaintiff, City of Sandpoint, and against Defendant, Independent Highway District.

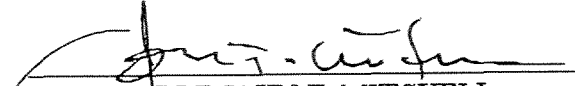
MONETARY JUDGMENT IS ENTERED AS FOLLOWS:

1. Plaintiff shall recover from Defendant in the amount of \$0 for costs and \$56,131.75 for attorney's fees for a total monetary judgment of \$56,131.75.

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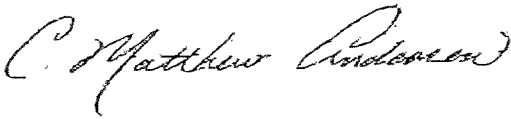
2. Post judgment interest to bear at the legal rate allowed by Idaho law from the date of this Judgment until paid in full.

DONE IN OPEN COURT this 22nd day of August, 2014.


HONORABLE JOHN T. MITCHELL

Presented by:

WINSTON & CASHATT, LAWYERS



C. MATTHEW ANDERSEN, ISB No. 3581
Attorneys for Plaintiff

1 I hereby certify that I caused a true and
2 complete copy of the foregoing to be mailed,
3 postage prepaid; hand delivered; sent
via facsimile on August 25th, 2014, to:

4 C. Matthew Andersen
5 Winston & Cashatt
6 601 W. Riverside Avenue, Suite 1900
Spokane, WA 99201
509-838-1416 (fax)

7 Scot R. Campbell
8 Sandpoint City Attorney
9 1123 Lake Street
10 Sandpoint, ID 83864
(208) 255-1368 (fax)

11 David E. Wynkoop
12 Sherer & Wynkoop, LLP
13 P.O. Box 31
Boise, ID 83680
(208) 887-4865 (fax)

14 Susan P. Weeks
15 James, Vernon & Weeks
16 1626 Lincoln Way
17 Coeur d'Alene, ID 83814
(208) 664-1684 (fax)

18 Cherie Moore
19 CLERK OF THE COURT

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DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

SUSAN P. WEEKS
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COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.
2014 AUG 27 PM 4 43
CLERK DISTRICT COURT
DEPUTY

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

CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT,
a political subdivision of the State of Idaho,

Defendant.

Case No. CV-2013-01342

MOTION FOR RECONSIDERATION

COMES NOW Defendant, Independent Highway District, by and through its attorneys of record, David E. Wynkoop of Sherer & Wynkoop, LLP and Susan P. Weeks of James, Vernon & Weeks, P.A. and moves this Court, pursuant to I.R.C.P. 11(a)(2)(B) for reconsideration of this Court's August 21, 2014 Order Granting Request for Attorney's Fees and Costs and this Court's

August 22, 2014 Amended Order Granting Request for Attorney's Fees and Costs. Specifically, Defendant Independent Highway District seeks reconsideration on the following matters:

1. The Court entered its Order Granting Request for Attorney's Fees and Costs and Amended Order Granting Request for Attorney's Fees and Costs prior to the period for objection to such fees and costs.

2. Defendant Independent Highway District has filed an objection which should be considered by the Court.

This motion is supported by a memorandum and affidavit filed herewith. Oral argument is requested.

DATED this 27th day of August, 2014.

JAMES, VERNON & WEEKS, PA

By:


Susan P. Weeks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2014, I served a true and correct copy of the foregoing MOTION FOR RECONSIDERATION upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Andersen
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121

Hon. John T. Mitchell
Chamber Copy

XX via facsimile to 208-446-1132

Christine Elmore

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.
2014 AUG 27 PM 4 43
CLERK DISTRICT COURT
DEPUTY

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
1626 LINCOLN WAY
COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT,
a political subdivision of the State of Idaho,

Defendant.

Case No. CV-2013-01342

OBJECTION TO MEMORANDUM OF
COSTS AND ATTORNEY FEES AND
MOTION TO DISALLOW COSTS AND
ATTORNEY FEES

Independent Highway District, pursuant to I.R.C.P. 54(d)(6) and I.R.C.P. 54e(6) and hereby object to the Memorandum of Attorney's Fees and Costs requested by City of Sandpoint. This objection is supported by the supporting memorandum filed herein. Oral argument is requested.

JAMES, VERNON & WEEKS, PA

By: Susan P. Weeks
Susan P. Weeks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2014, I served a true and correct copy of the foregoing AFFIDAVIT OF MARJ TILLEY upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Andersen
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814


XX via facsimile to 208-765-2121

Hon. John T. Mitchell
Chamber Copy

XX via facsimile to 208-446-1132

Christae Elmose

2014 AUG 27 PM 4 43

CLERK DISTRICT COURT

DEPUTY

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
1626 LINCOLN WAY
COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT,
a political subdivision of the State of Idaho,

Defendant.

Case No. CV-2013-01342

AFFIDAVIT OF SUSAN P. WEEKS IN
OPPOSITION TO MOTION FOR
ATTORNEY FEES

STATE OF IDAHO)

: ss

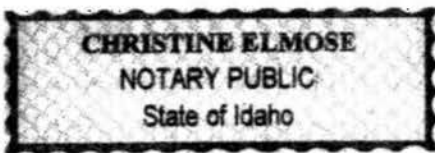
County of Kootenai)

1. I, Susan P. Weeks, after first being duly sworn, depose and say:

2. I am one of the attorneys for the Defendant, Independent Highway District in the above-entitled case. I make this affidavit based upon personal knowledge and am competent to testify as to all matters contained herein.
3. I have been practicing law in the First Judicial District since my admission on September 20, 1990. I am familiar with the hourly civil litigation rate of attorneys in the First Judicial District.
4. Attorneys in the First Judicial District with more than 15 years of experience bill between \$225 an hour to \$285 an hour. It has been my experience that the \$285 rate is reserved for complex civil litigation.
5. I recently concluded a matter before the Idaho Court of Appeals wherein the attorney representing the opposing party, Eric Stidham of the Boise branch of Holland & Hart, charged \$285 an hour for complex litigation involving issues related to federal environmental laws (CERCLA and RCRA) and bankruptcy issues.
6. I recently concluded a trial on a foreclosure which involving non-complex business litigation, and the opposing counsel, John Miller, charged \$200 per hour.
7. My billing rate for non-complex civil litigation is \$225 an hour. My billing rate for complex civil litigation is \$250 an hour. Certain clients are charged less based upon the duration of their relationship with my firm and the fact that the client brings repeat business to the firm.
8. I have contacted four local firms to inquire into their hourly civil litigation rates. Joel Hazel is charging \$285 an hour at his highest rate. Doug Marfice is billing \$250 an hour at his normal rate. Brent Featherston is billing \$250 at his normal rate. Ausey ("Rusty") Robnett's billing rate is currently \$250 an hour for non-recurring clients.

Susan P. Weeks
Susan P. Weeks

Subscribed and sworn to before me this 27th day of August, 2014.



Christine Elmore
Notary for the State of Idaho
Commission Expires: 6/27/2020

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2014, I served a true and correct copy of the foregoing AFFIDAVIT OF SUSAN P. WEEKS IN SUPPORT OF MOTION FOR RECONSIDERATION upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Andersen
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121

Hon. John T. Mitchell
Chamber Copy

XX via facsimile to 208-446-1132

Christine Elmore

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FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

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

CITY OF SANDPOINT, a municipal
corporation of the State of Idaho,

Plaintiff,

vs.

INDEPENDENT HIGHWAY DISTRICT,
a political subdivision of the State of Idaho,

Defendant.

Case No. CV-2013-01342

MEMORANDUM IN SUPPORT OF
OBJECTION TO MEMORANDUM OF
COSTS AND ATTORNEY FEES AND
MOTION TO DISALLOW COSTS AND
ATTORNEY FEES

Plaintiff filed a Memorandum of Costs and Affidavit of C. Matthew Andersen in Support of Attorney's Fees and Costs on August 13, 2014. Seven days later, on August 21, 2014, prior to the expiration of time for Defendant to object to such costs and attorney fees, the Court entered its Order Granting Requests for Attorney's Fees and Costs, awarding no attorney fees and \$56,131.75 in discretionary costs. On August 22, 2014, this Court entered an Amended Order

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.
2014 AUG 27 PM 4 43
CLERK DISTRICT COURT
DEPUTY

Granting Requests for Attorney's Fees and Costs, granting no costs and awarding \$56,131.75 in attorney fees. Both orders indicate they were done in open court, although no hearing was held on either day.

STANDARD

The district court's decision to award attorney fees is a discretionary decision, subject to the abuse of discretion standard of review. *Bailey v. Sanford*, 139 Idaho 744, 753, 86 P.3d 458, 467 (2004). In determining whether a party prevailed entirely or partially, a court must consider three things: "(a) the final judgment or result obtained in the action in relation to the relief sought by the respective parties; (b) whether there were multiple claims or issues between the parties; and (c) the extent to which each of the parties prevailed on each of the issues or claims." *Chadderdon v. King*, 104 Idaho 406, 411, 659 P.2d 160, 165 (1983); *Jerry J. Joseph C.L.U. Ins. Assoc., Inc. v. Vaught*, 117 Idaho 555, 557, 789 P.2d 1146, 1148 (Ct.App. 1990).

ARGUMENT

Idaho Rule of Civil Procedure 54(e)(1) provides that a trial court may award reasonable attorney fees to a prevailing party in a civil action where a statute or contract provide for such relief. Whether a party has prevailed is determined by the trial court in the exercise of its discretion by considering "the final judgment or result of the action in relation to the relief sought by the respective parties." The Court previously determined that Plaintiff prevailed in this action.

The Rule also specifies the factors the trial court must consider in determining the reasonableness of an award of attorney fees:

Amount of Attorney Fees. In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

(A) The time and labor required.

- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

Idaho Rule of Civil Procedure 54(e)(3).

In determining whether a party prevailed entirely or partially, a court must consider three things: "(a) the final judgment or result obtained in the action in relation to the relief sought by the respective parties; (b) whether there were multiple claims or issues between the parties; and (c) the extent to which each of the parties prevailed on each of the issues or claims." *Chadderdon v. King*, 104 Idaho 406, 411, 659 P.2d 160, 165 (1983); *Jerry J. Joseph C.L.U. Ins. Assoc., Inc. v. Vaught*, 117 Idaho 555, 557, 789 P.2d 1146, 1148 (Ct.App. 1990).

1. Entitlement to Attorney Fees

City of Sandpoint requested attorney fees under I.C. § 12-120. At the hearing on the motion for summary judgment, the Court inquired into why the City of Sandpoint was not requesting attorney fees under I.C. § 12-117. In its Memorandum of Costs, the City requested attorney fees under I.C. § 12-117. In relevant part, Idaho Code § 12-117 provides:

(4) In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable

expenses. For purposes of this subsection, "governmental entity" means any state agency or political subdivision.

2. Reasonableness of Attorney Fees

In this matter, the City of Sandpoint filed a Complaint before Winston & Cashatt was hired to represent its interest. According to the Affidavit of Matthew Andersen, his firm was retained September 26, 2013 to represent the City of Sandpoint. The billing invoices provided by City's counsel in support of its request contains detailed time entries describing the services provided by the City's attorneys and paralegals between September 26, 2013, and August 11, 2014.

On September 30, 2013, C. Matthew Andersen filed a notice of appearance and notice of association. On October 22, 2013, City's counsel filed a non-objection to the District's request for additional time to file a brief in support of a motion to dismiss. On November 7, 2013, City's counsel filed a response to District's motion to dismiss. On November 7, 2013, City filed two affidavits related to the Motion to Dismiss, which this Court struck. On November 13, 2013, City filed a supplemental citation to authority, and a response to District's motion to strike. The Court conducted a hearing on the Motion to Dismiss on November 13, 2013. On December 18, 2013, the City and District stipulated to entry of a reciprocal preliminary injunction. On March 3, 2014, the City and District filed a stipulated motion to vacate the trial. On May 14, 2014, the City filed a response to the District's motion for leave to file an interlocutory appeal. The City attended a hearing on the interlocutory appeal on May 21, 2014. The City filed an opposition with the Supreme Court to the request to grant an interlocutory appeal. On May 27, 2014, the City moved for summary judgment, notice of hearing and memorandum in support of summary judgment. The summary judgment memorandum relied in large part on the pleadings filed in response to the motion for summary judgment. On July 15, 2014, the City filed a reply brief in

support of its motion for summary judgment. The Court conducted a hearing on July 22, 2014 on the summary judgment. On August 13, 2014, the City filed a Notice of Presentment of a judgment, a motion for an award of attorney fees, and costs and a memorandum in support of the attorney fees and costs.

In the present case, there were only two parties, no exchange of discovery (because this case mainly involved legal, rather than factual, issues), no use of expert witnesses, no trial preparation and no trial. This case mainly presented pure questions of law and simply involved an exchange of dispositive motions on these legal issues. This case did not transcend the boundaries of an average attorney's abilities. Despite the limited litigation necessary to conclude the case, the City of Sandpoint requests attorney fees for \$56,131.75 for the above work performed by Winston & Cashatt and discretionary costs of \$775.29.

Criterion (D) of Rule 54(e)(3) requires the Court to consider "the prevailing charges for like work." The Idaho Supreme Court stated in *Lettunich v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110, 120 (2005) that the trial court "should consider the fee rates generally prevailing in the pertinent geographic area, rather than what any particular segment of the legal community may be charging." The District respectfully asserts that the costs and fees claimed by Plaintiff are excessive and should be reduced. First, the hourly rates charged by Plaintiff's counsel are not in accordance with the prevailing rate of the local community. Mr. Andersen's claimed hourly rate is \$325, while Ms. Anderson's claimed hourly rate is \$225. Cheryl Kregel's hourly rate for paralegal work is \$120. Another person, Tyler Whitney, identified as a law clerk, was billed at a rate of \$95.00 per hour.

The prevailing local market rate for attorneys with similar skills and experience as Mr. Anderson in the First Judicial District is between \$225 and \$285. The local market rate for

attorneys in the First Judicial District with similar skills to Ms. Anderson is between \$225 and \$250. Mr. Anderson indicates in the section regarding the prevailing charges for like work that the litigation was of such a nature it required law firm support, resources for trial preparation, travel, expertise and skill for trial. Because this case was determined on dispositive motions without aid of discovery, this argument lacks merit. All legal cases require the attorney be skilled. However, this case was not complex and did not require extraordinary commitments by Winston & Cashatt.

In *Samuel v. Black Rock Development, Inc., et al.*, Kootenai County Case No. CV 2012-4492, in an opinion issued March 18, 2013, this Court found Robert A. Dunn's hourly rate of \$400.00 per hour to be unreasonable; a rate of \$275.00 per hour for an attorney licensed five years unreasonable; a fee of \$225.00 per hour for an attorney licensed seven years unreasonable, and a rate of \$220.00 per hour for an attorney licensed six years unreasonable. The Court also found paralegal fees of \$95.00 per hour and \$110.00 per hour unreasonable. This Court adjusted the fees downward by 33%. Like *Samuel*, District submits the rates billed in this case were not reasonable.

Further, the time committed to the matter was not reasonable. Mr. Andersen indicates in his affidavit he has extensive experience in civil litigation, and Ms. Andersen has extensive experience in legal research and writing of all kinds. Given this experience and background, and that research and writing is a routine task for these attorneys, the time dedicated to these tasks is not reasonable. The District moved to dismiss. The City prepared a response. The billing records indicate that the City spent 36.7 hours dedicated to research related to its response. Another 57.1 hours was spent outlining the response brief, writing the response brief, and reviewing the written response brief. Review of the District's reply brief accounts for another

13.1 hours being billed. Preparation and attendance at the hearing encompassed yet another 12 hours of billable time. The District submits that 118.9 hours to research the limited issues raised in the motion to dismiss, prepare a response to the motion to dismiss, review the reply brief and attend oral argument on the motion to dismiss is excessive and unreasonable.

Further, the City's counsel spent 14.9 hours on the stipulated preliminary injunction. Thereafter, the City devoted 7.8 hours to determining if the motion to dismiss could be certified under Rule 54. Although not as excessive as the hours spent on the response brief, these hours remain high for such limited legal tasks.

Counsel for the City billed 14.7 hours to oppose the motion for leave to file a permissive appeal, which includes the time to attend the hearing. Another 19.1 was expended to prepare a memorandum to the Idaho Supreme Court, which covered the same arguments raised to the district court. In total, 33.8 hours was dedicated to opposing the permissive appeal. Again, this expenditure of time is not reasonable given the task.

On the motion for summary judgment, which largely incorporated the previous briefing of the parties, the City's counsel expended 32.95 hours. This time included appearance at the hearing. Once again, especially in light of the 118.9 hours expended on the motion to dismiss, these hours are not reasonable.

An unrelated charge for which the District should not be charged is 1.5 for preparation an "auditor's letter" on March 5, 2014. Presumably this was a letter to the auditor regarding pending and threatened litigation for the City's annual audit. It was unrelated to the litigation.

Given the litigation, the fees sought are excessive. The City participated in three contested motions, and opposed an interlocutory appeal. There was no discovery. There was no

use of experts. The issues were largely matters related to a constitutional issue and statutory issues. Nothing about the circumstances made the case undesirable.

3. Discretionary costs

The City requests discretionary costs. Idaho Rule of Civil Procedure 54(d)(1)(D) gives a court power to award discretionary costs when the costs were necessary and exceptional costs reasonably incurred, and which, in the interest of justice, should be awarded. The City seeks payment of discretionary charges, claiming they were necessary. However, the City does not explain why the costs were exceptional. All of the discretionary costs submitted by the City are normal costs associated with litigation. Nothing about them are exceptional. Therefore, the Court should decline to award these costs.

DATED this 27th day of August, 2014.

JAMES, VERNON & WEEKS, PA

By: 
Susan P. Weeks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Andersen
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121

Hon. John T. Mitchell
Chamber Copy

XX via facsimile to 208-446-1132



DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. 2429

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
1626 LINCOLN WAY
COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. 4255

Attorneys for Defendant
Independent Highway District

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 AUG 28 PM 12 06

CLERK DISTRICT COURT
DEPUTY

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

CITY OF SANDPOINT, a municipal corporation)
of the State of Idaho,)
)
) Plaintiff,)
)
vs.)
)
INDEPENDENT HIGHWAY DISTRICT, a)
political subdivision of the State of Idaho,)
)
) Defendant.)
_____)

CASE NO. CV 2013-01342
AFFIDAVIT OF
BRENT FEATHERSTON

STATE OF IDAHO)
) ss.
County of Bonner)

BRENT FEATHERSTON, being first duly sworn deposes and states:

- 1. I make the following statements of my own personal knowledge.

AFFIDAVIT OF BRENT FEATHERSTON: 1


2. I am an Idaho licensed attorney. I was admitted in Idaho as a licensed attorney on September 24,1992.

3. I practice in the First Judicial District and I am familiar with the local attorney rate for attorneys in both Kootenai County and Bonner County for municipal litigation, civil litigation, commercial litigation, contract claims and constitutional issues.

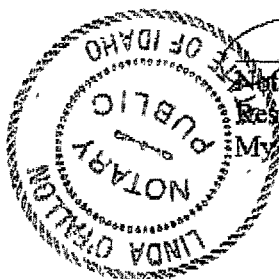
4. My current billing rate is \$250 per hour, although I bill some clients less.

5. A rate of \$325.00 per hour for an attorney in the First Judicial District with a similar background and experience as mine is above the market rate.

DATED this 28th day of August, 2014.


BRENT FEATHERSTON

SUBSCRIBED AND SWORN TO before me this 28 day of August, 2014.


Linda Tallon
Notary Public for Idaho
Residing at: Booneville, Idaho
My Commission Expires: 3-29-16

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2014, I served a true and correct copy of the foregoing AFFIDAVIT OF MARJ TILLEY upon the following, by the method indicated below:

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

C. Matthew Andersen
WINSTON & CASHATT, LAWYERS
250 Northwest Boulevard, Suite 206
Coeur d'Alene, Idaho 83814

XX via facsimile to 208-765-2121

Hon. John T. Mitchell
Chamber Copy

XX via facsimile to 208-446-1132

Christine Elmore

David E. Wynkoop
Sherer & Wynkoop, LLP
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ISB No. 2429

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1626 Lincoln Way
Coeur d'Alene, ID 83814
Telephone: (208) 667-0683
Facsimile: (208) 664-1684
ISB No. 4255

Attorneys for Defendant Independent Highway District

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

CASE NO. CV-2013-01342

NOTICE OF APPEAL

FILING CATEGORY: L4

FILING FEE: \$129.00
(Exempt I.C. § 67-2301)

Hon. John T. Mitchell presiding

**TO: THE ABOVE NAMED PLAINTIFF, CITY OF SANDPOINT, AND THE
PARTIES' ATTORNEYS, SCOT CAMPBELL C. MATTHEW ANDERSEN, AND THE
CLERK OF THE ABOVE-ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Independent Highway District, appeal against the
above-named Respondent, City of Sandpoint, from the August 21, 2014

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DISTRICT
2014 SEP 4 AM 9 03
CLERK DISTRICT COURT
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DEPUTY

Declaratory and Monetary Judgment and the August 22, 2014 Amended

Declaratory and Monetary Judgment.

2. Appellants have a right to appeal to the Idaho Supreme Court and the judgments described in Paragraph 1 are appealable under and pursuant to Rule 11(a)(1), Idaho Appellate Rules.
3. A preliminary statement of the issues on appeal which the Appellants then intend to assert in the appeal; provided, such list of issues on appeal shall not prevent the Appellants from asserting other issues on appeal:

(a) Did the District Court err in granting summary judgment to Plaintiff on the grounds enunciated therein?

4. No order has been entered sealing all or any portion of the record.
5. The Appellant has request no preparation of any portion of any reporter's transcript:
6. The Appellants request the following records from the Clerk's records pursuant to

I.A.R. 27(b).

08/16/2013	Complaint and Request for Declaratory and Injunctive Relief
09/09/2013	Motion to Dismiss
09/20/2013	Defendant's Motion for Enlargement of Time to File Brief
10/11/2013	Brief in Support of Motion to Dismiss
11/07/2013	Plaintiff's Response to Defendant's Motion to Dismiss
11/07/2013	Affidavit of Scot R. Campbell
11/07/2013	Affidavit of Shannon Syth
11/08/2013	Motion to Strike Portions of Plaintiff's Response Brief and Affidavits
11/12/2013	Reply Brief in Support of Defendant's Motion to Dismiss
11/13/2013	Plaintiff's Supplemental Citation to Authority
11/13/2013	Plaintiff's Response to Defendant's Motion to Strike Response Brief and Affidavits
12/09/2013	Memorandum Decision and Order Denying Defendant's Motion to Dismiss
12/18/2013	Stipulation for Reciprocal Preliminary Injunction
12/18/2013	Reciprocal Preliminary Injunction Order

03/03/2014 Stipulated Motion To Vacate Trial Date
03/04/2014 Order Vacating Trial Date
06/04/2014 City of Sandpoint's Motion for Summary Judgment [Oral Argument Requested]
06/04/2014 City of Sandpoint's Memorandum in Support of Summary Judgment
06/12/2014 Order Granting Rule 12 Interlocutory Appeal Certification
07/08/2014 Affidavit of Marj Tilley
07/08/2014 Second Affidavit of Marj Tilley
07/08/2014 Affidavit of Julie Bishop
07/08/2014 Memorandum in Response to City of Sandpoint's Motion for Summary Judgment
07/15/2014 City of Sandpoint's Reply in Support of Summary Judgment
07/29/2014 Order Denying Motion for Appeal by Permission
07/31/2014 Memorandum Decision and Order Granting Plaintiff City of Sandpoint's Motion for Summary Judgment
07/31/2014 Order Granting Declaratory Relief
08/13/2014 Notice of Presentment (without oral argument)
08/13/2014 City of Sandpoint's Motion for Award of Attorney's Fees and Costs
08/13/2014 City of Sandpoint's Memorandum in Support of Attorney's Fees and Costs
08/13/2014 Memorandum of Costs and Affidavit of C. Matthew Andersen in Support of Attorney's Fees and Costs
08/21/2014 Order Granting Request for Attorney's Fees and Costs
08/21/2014 Declaratory and Monetary Judgment
08/22/2014 Amended Order Granting Request for Attorney's Fees and Costs
08/22/2014 Amended Declaratory and Monetary Judgment
08/28/2014 Affidavit of Brent Featherston

7. Exhibits: There are no exhibits to be copied and sent to the Supreme Court.
8. I certify:
 - (a) That the clerk of the district court has been paid the estimated fees for preparation of the reporter's transcript and clerk's record.
 - (c) The appellate filing fee has been paid.
 - (d) Service has been made upon all the parties required to be served pursuant

to Idaho Appellate Rule 20.

DATED this 4TH day of September, 2014.

JAMES, VERNON & WEEKS, P.A.

By Susan P. Weeks
Susan P. Weeks
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4TH day of September, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:


C. Matthew Anderson
Winston & Cashatt
250 Northwest Blvd., Ste 206
Coeur d'Alene, ID 83814

XX via facsimile to 208-765-2121

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864

XX via facsimile to 208-255-1368

Susan P. Weeks

STATE OF IDAHO
 COUNTY OF BONNER
 FIRST JUDICIAL DISTRICT
 2014 SEP 18 PM 1 35
 CLERK OF DISTRICT COURT


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SCOT R. CAMPBELL, ISB No. 4121
 SANDPOINT CITY ATTORNEY
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C. MATTHEW ANDERSEN, ISB No. 3581
 WINSTON & CASHATT, LAWYERS,
 a Professional Service Corporation
 250 Northwest Boulevard, Suite 206
 Coeur d'Alene, Idaho 83814
 Telephone: (208) 667-2103
 Facsimile: (208) 765-2121
cma@winstoncashatt.com

Attorneys for City of Sandpoint

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/Appellant,
 vs.
 INDEPENDENT HIGHWAY DISTRICT, a
 political subdivision of the State of Idaho,

 Defendant/Respondent.

Case No. CV-13-01342
 REQUEST FOR ADDITIONAL RECORD

TO: THE ABOVE NAMED APPELLANT AND THE PARTY'S ATTORNEY
 AND: THE CLERK OF THE ABOVE ENTITLED COURT

REQUEST FOR ADDITIONAL RECORD
 PAGE 1

Winston & Cashatt
 A PROFESSIONAL SERVICE CORPORATION
 250 Northwest Blvd., Suite 206
 Coeur d'Alene, Idaho 83814
 Phone: (208) 667-2103

1 NOTICE IS HEREBY GIVEN, that the Respondent in the above entitled proceeding hereby
 2 requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the clerk's record in
 3 addition to that required to be included by the I.A.R. and the notice of appeal. Any additional record is
 4 to be provided in electronic format pursuant to I.A.R. 27(b):
 5

Register Date	Description
9/20/2013	Notice of Hearing re: Defendant's Motion for Enlargement of Time to File Brief
12/3/2013	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order
6/12/2014	Motion for Appeal by Permission and Stay of Proceedings
6/23/2014	Memorandum in Support of Motion for Appeal by Permission
7/9/2014	City of Sandpoint's Memorandum in Opposition to Motion for Appeal by Permission
8/27/2014	Motion for Reconsideration
8/27/2014	Objection to Memorandum of Costs and Attorney Fees and Motion to Disallow Costs and Attorney Fees
8/27/2014	Affidavit of Susan Weeks in Opposition to Motion for Attorney Fees
8/27/2014	Memorandum in Support of Objection to Memorandum of Costs and Attorney Fees and Motion to Disallow Costs and Attorney Fees
9/4/2014	Notice of Appeal

20 I certify that a copy of this request for additional record has been served upon the clerk of the
 21 district court and upon all parties required to be served pursuant to Rule 20.
 22
 23
 24
 25

1 DATED this 18th day of September, 2014.



2
3 C. MATTHEW ANDERSEN, ISB No. 3581
4 WINSTON & CASHATT, LAWYERS,
5 a Professional Service Corporation

6 SCOT R. CAMPBELL, ISB No. 4121
7 SANDPOINT CITY ATTORNEY


8 Attorneys for Respondent City of Sandpoint

9 I hereby certify that I caused a true and
10 complete copy of the foregoing to be mailed,
11 postage prepaid; hand delivered; sent
12 via facsimile on September 18, 2014, to:

13 David R. Wynkoop
14 Sherer & Wynkoop, LLP
15 730 N. Main Street
16 P.O. Box 31
17 Meridian, ID 83680

18 Susan P. Weeks
19 James, Vernon & Weeks, P.A.
20 1626 Lincoln Way
21 Coeur d'Alene, ID 83814

22 Bonner County District Court
23 Attn: Civil Clerk
24 215 S. First Avenue
25 Sandpoint, ID 83864

26 
C. MATTHEW ANDERSEN

REQUEST FOR ADDITIONAL RECORD
PAGE 3

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 206
Coeur d'Alene, Idaho 83814
Phone: (208) 867-2103

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2014 OCT 17 AM 8:48

DAVID E. WYNKOOP
SHERER & WYNKOOP, LLP
730 N. MAIN ST.
P.O. BOX 31
MERIDIAN, IDAHO 83680
208-887-4800
FAX 208-887-4865
I.S.B. NO. 2429

SUSAN P. WEEKS
JAMES, VERNON & WEEKS, PA
1626 LINCOLN WAY
COEUR D-ALENE, IDAHO 83814
208-667-0683
FAX 208-664-1684
I.S.B. NO. 4255

Attorneys for Defendant Independent Highway District

STATE OF IDAHO
County of Bonner
FILED Oct 17, 2014
AT 9:00 O'Clock A M
CLERK, DISTRICT COURT
Dmtt
Deputy

IN THE SUPREME COURT
OF THE STATE OF IDAHO

FILED - ORIGINAL
OCT 17 2014
Supreme Court Court of Appeals
Entered on ATS by

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 Docket No. 42517-2014
Bonner County No. CV-2013-1342

RESPONSE TO CONDITIONAL
DISMISSAL AND REQUEST
APPEAL BE RETAINED

On September 22, 2014, this Court entered its Order Conditionally Dismissing Appeal in the above matter. Appellant was required to obtain a final judgment that complies with the July 1, 2014 change to I.R.C.P. 54(a) from the District Court within twenty-one (21) days or file a response with this Court why a final judgment was not entered. A hearing is scheduled with the District Court on October 23, 2014, at which time the District Court will be requested to enter a

RESPONSE TO CONDITIONAL DISMISSAL AND REQUEST APPEAL BE RETAINED: I

final judgment which complies with I.R.C.P. 54(a). Therefore, Appellant requests an extension of time to October 30, 2014 to obtain the final judgment .

DATED this 14th day of October, 2014.

JAMES, VERNON & WEEKS, P.A

By Susan P. Weeks
Susan P. Weeks

SHERER & WYNKOOP, LLP

By David E. Wynkoop
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of October, 2014, I served a true and correct copy of the foregoing upon the following, by the method indicated below:

C. Matthew Anderson
Winston & Cashatt
250 Northwest Blvd., Ste 206
Coeur d'Alene, ID 83814
via U.S. Mail

Scot R. Campbell
Sandpoint City Attorney
1123 Lake Street
Sandpoint, Idaho 83864
via U.S. Mail

Christine Elmore

In the Supreme Court of the State of Idaho

2014 OCT -4 P 4: 54

CITY OF SANDPOINT,

Plaintiff-Respondent,

v.

INDEPENDENT HIGHWAY DISTRICT,

Defendant-Appellant.

CLERK DISTRICT COURT
Dmt

ORDER GRANTING EXTENSION OF
TIME TO OBTAIN A FINAL
JUDGMENT

Supreme Court Docket No. 42517-2014
Bonner County No. 2013-1342

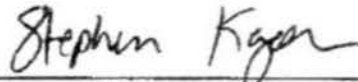
Ref. No. 14-483

An ORDER CONDITIONALLY DISMISSING APPEAL was entered by this Court September 22, 2014 for the reason a final judgment had not been entered by the District Court. A RESPONSE TO CONDITIONAL DISMISSAL AND REQUEST APPEAL BE RETAINED was filed by counsel for Appellant October 17, 2014. Therefore,

IT HEREBY IS ORDERED that Appellant's request that this appeal be retained is GRANTED. Appellant shall obtain a final judgment on or before November 10, 2014 or this appeal may be dismissed.

DATED this 4th day of November, 2014.

By Order of the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Judge

STATE OF IDAHO
COUNTY OF BONNER
FIRST JUDICIAL DIST.

2014 NOV 14 A 8:05

CLERK DISTRICT COURT

DEPUTY

1
2 SCOT R. CAMPBELL, ISB No. 4121
3 SANDPOINT CITY ATTORNEY
4 1123 Lake Street
5 Sandpoint, Idaho 83864
6 Telephone: (208) 263-0534
7 Facsimile: (208) 255-1368
8 scampbell@ci.sandpoint.id.us

9 C. MATTHEW ANDERSEN, ISB No. 3581
10 WINSTON & CASHATT, LAWYERS,
11 a Professional Service Corporation
12 250 Northwest Boulevard, Suite 206
13 Coeur d'Alene, Idaho 83814
14 Telephone: (208) 667-2103
15 Facsimile: (208) 765-2121
16 cma@winstoncashatt.com

17 Attorneys for City of Sandpoint

18
19 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE
20 OF IDAHO, IN AND FOR THE COUNTY OF BONNER

21 CITY OF SANDPOINT, a municipal
22 corporation of the State of Idaho,

23 Plaintiff,

24 vs.

25 INDEPENDENT HIGHWAY DISTRICT, a
26 political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

SECOND AMENDED DECLARATORY AND
MONETARY JUDGMENT
[PROPOSED]

JUDGMENT IS ENTERED AS FOLLOWS:

JUDGMENT CREDITOR: City of Sandpoint

JUDGMENT DEBTOR: Independent Highway District

1 ATTORNEYS FOR JUDGMENT
2 CREDITOR:

C. Matthew Andersen
WINSTON & CASHATT LAWYERS
601 W. Riverside Ave., Suite 1900
Spokane, WA 99201

4 and

5 Scot R. Campbell
6 SANDPOINT CITY ATTORNEY
7 1123 Lake Street
8 Sandpoint, Idaho 83864

8 ATTORNEYS FOR JUDGMENT
9 DEBTOR:

David R. Wynkoop
Sherer & Wynkoop, LLP
730 N. Main Street
P.O. Box 31
Meridian, ID 83680

12 Susan P. Weeks
13 James, Vernon & Weeks, P.A.
14 1626 Lincoln Way
15 Coeur d'Alene, ID 83814

15 JUDGMENT AMOUNT
16 ATTORNEY'S FEES AND
17 COSTS:

\$56,131.75

17 POST JUDGMENT INTEREST: To accrue at the legal rate allowed by Idaho law

18 **DECLARATORY JUDGEMENT**

19 The Court grants the City of Sandpoint its requested relief and hereby declares pursuant to I.C.
20 §10-1201 et. seq., the following rights, status and legal relations between the City of Sandpoint and the
21 Independent Highway District:
22

23 1. The Memorandum of Understanding of September 14, 2005 between the City of
24 Sandpoint and the Independent Highway District is legal, valid and enforceable.
25
26

2. The Joint Powers Agreement between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

3. The Independent Highway District is ordered to comply in all respects with its monetary and other obligations set forth in the Memorandum of Understanding and the Joint Powers Agreement.

4. A Permanent Injunction shall issue with regard to that obligation.

5. The Independent Highway District is directed to include in its payment of ad valorem taxes to the City of Sandpoint all taxes collected pursuant to I.C. §40-800 et. seq., including without limitation any collection for past, present or future delinquent taxes, interest and costs, that are collected as a result of Independent Highway District levies on the taxpayers of the City of Sandpoint.

MONETARY JUDGMENT

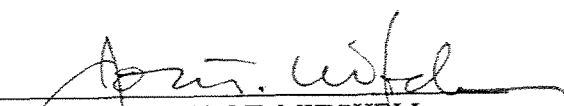
The Court enters judgment in favor of Plaintiff, City of Sandpoint, and against Defendant, Independent Highway District.

MONETARY JUDGMENT IS ENTERED AS FOLLOWS:

1. Plaintiff shall recover from Defendant in the amount of \$0 for costs and \$56,131.75 for attorney's fees for a total monetary judgment of \$56,131.75.

2. Post judgment interest to bear at the legal rate allowed by Idaho law from the date of this Judgment until paid in full.

DONE IN OPEN COURT this 13th day of November, 2014.


HONORABLE JOHN T. MITCHELL

1 Presented by:

2 WINSTON & CASHATT, LAWYERS

3
4
5 _____
6 C. MATTHEW ANDERSEN, ISB No. 3581
7 Attorneys for Plaintiff

8 I hereby certify that I caused a true and
9 complete copy of the foregoing to be mailed,
10 postage prepaid; hand delivered; sent
11 via facsimile on November 14, 2014, to:

12 C. Matthew Andersen
13 Winston & Cashatt
14 601 W. Riverside Avenue, Suite 1900
15 Spokane, WA 99201
16 509-838-1416 (fax)

17 Scot R. Campbell
18 Sandpoint City Attorney
19 1123 Lake Street
20 Sandpoint, ID 83864
21 (208) 255-1368 (fax)

22 David E. Wynkoop
23 Sherer & Wynkoop, LLP
24 P.O. Box 31
25 Boise, ID 83680
26 (208) 887-4865 (fax)

27 Susan P. Weeks
28 James, Vernon & Weeks
29 1626 Lincoln Way
30 Coeur d'Alene, ID 83814
31 (208) 664-1684 (fax)

32 _____
33 *Linda Campbell*
34 CLERK OF THE COURT

384

CLERK OF DISTRICT COURT
 COUNTY OF BONNER
 DISTRICT 1
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 CLERK

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 Facsimile: (208) 765-2121
cma@winstoncashatt.com

Attorneys for City of Sandpoint

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.
 INDEPENDENT HIGHWAY DISTRICT, a
 political subdivision of the State of Idaho,

 Defendant.

Case No. CV-13-01342

FINAL JUDGMENT
 [PROPOSED]

DECLARATORY AND MONETARY JUDGMENT IS ENTERED AS FOLLOWS:

The Court grants the City of Sandpoint its requested relief and hereby declares pursuant to I.C.
 §10-1201 et. seq., the following rights, status and legal relations between the City of Sandpoint and the
 Independent Highway District:

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1. The Memorandum of Understanding of September 14, 2005 between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

2. The Joint Powers Agreement between the City of Sandpoint and the Independent Highway District is legal, valid and enforceable.

3. The Independent Highway District is ordered to comply in all respects with its monetary and other obligations set forth in the Memorandum of Understanding and the Joint Powers Agreement.


4. A Permanent Injunction shall issue with regard to that obligation.

5. The Independent Highway District is directed to include in its payment of ad valorem taxes to the City of Sandpoint all taxes collected pursuant to I.C. §40-800 et. seq., including without limitation any collection for past, present or future delinquent taxes, interest and costs, that are collected as a result of Independent Highway District levies on the taxpayers of the City of Sandpoint.

6. Plaintiff shall recover from Defendant in the amount of \$0 for costs and \$56,131.75 for attorney's fees for a total monetary judgment of \$56,131.75.

7. Post judgment interest to bear at the legal rate allowed by Idaho law from the date of this Judgment until paid in full.

DONE IN OPEN COURT this 22nd day of November, 2014.


HONORABLE JOHN T. MITCHELL

1 Presented by:

2 WINSTON & CASHATT, LAWYERS

3
4 *C. Matthew Andersen*

5
6 C. MATTHEW ANDERSEN, ISB No. 3581
7 Attorneys for Plaintiff

8 I hereby certify that I caused a true and
9 complete copy of the foregoing to be mailed,
10 postage prepaid; hand delivered; sent
via facsimile on November 24, 2014, to:

11 C. Matthew Andersen
12 Winston & Cashatt
13 601 W. Riverside Avenue, Suite 1900
14 Spokane, WA 99201
15 509-838-1416 (fax)

16 Scot R. Campbell
17 Sandpoint City Attorney
18 1123 Lake Street
19 Sandpoint, ID 83864
20 (208) 255-1368 (fax)

21 David E. Wynkoop
22 Sherer & Wynkoop, LLP
23 P.O. Box 31
24 Boise, ID 83680
25 (208) 887-4865 (fax)

26 Susan P. Weeks
James, Vernon & Weeks
1626 Lincoln Way
Coeur d'Alene, ID 83814
(208) 664-1684 (fax)

25 *Cherie Moore*
26 CLERK OF THE COURT

FINAL JUDGMENT
PAGE 3

Winston & Cashatt
A PROFESSIONAL SERVICE CORPORATION
250 Northwest Blvd., Suite 208
Coeur d'Alene, Idaho 83814
Phone: (208) 667-2103

2015 FEB 13 PM 12 29
DOCKED
[Signature]

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.

INDEPENDENT HIGHWAY DISTRICT, a
political subdivision of the State of Idaho,

Defendant.

Case No. CV-13-01342

ORDER DENYING MOTION TO ALTER OR
AMEND JUDGMENT

THIS MATTER came before the Court on Defendant's Motion to Alter or Amend Judgment.

The court having considered the:


- Defendant's Memorandum in Support of Defendant's Motion to Alter or Amend Judgment;
- Defendant's Amended Memorandum in Support of Defendant's Motion to Alter or Amend Judgment;
- City of Sandpoint's Response to Defendant's Motion to Alter or Amend Judgment;
- Declaration of C. Matthew Andersen;
- Reply Memorandum in Support of Defendant's Motion to Alter or Amend Judgment;
- and the pleadings filed in this matter

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IT IS NOW THEREFORE ORDERED;

Defendant's Motion to Alter or Amend Judgment is denied.

DONE IN OPEN COURT this 10th day of April, 2015.


HONORABLE JOHN T. MITCHELL

Presented by:


C. MATTHEW ANDERSEN, ISB No. 3581
WINSTON & CASHATT
Attorneys for Plaintiff

1 I hereby certify that I caused a true and
2 complete copy of the foregoing to be mailed,
3 postage prepaid; hand delivered; sent
via facsimile on April 16th, 2015, to:

4 C. Matthew Andersen
5 Winston & Cashatt
6 601 W. Riverside Avenue, Suite 1900
7 Spokane, WA 99201
8 509-838-1416 (fax)

9 R. Scot Campbell
10 Sandpoint City Attorney
11 1123 Lake Street
12 Sandpoint, ID 83864
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14 David E. Wynkoop
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19 Susan P. Weeks
20 James, Vernon & Weeks
21 1626 Lincoln Way
22 Coeur d'Alene, ID 83814
23 (208) 664-1684 (fax)

24 *[Handwritten Signature]*
25 CLERK OF THE COURT - *Deputy*
26

IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF SANDPOINT,	)	SUPREME COURT NO. 42517-2014
	)	BONNER COUNTY CV2013-1342
Plaintiff-Respondent,)	
vs.)	
	)	CLERK'S CERTIFICATE
INDEPENDENT HIGHWAY DISTRICT,)	
)	
Defendant- Appellant.)	
_____)	

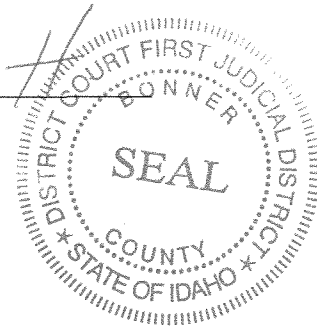
I, Michael W. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do certify that the foregoing Record in this cause was compiled and bound under my direction and is a true, correct and complete Record of the pleadings and documents requested by Appellant Rule 28.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 23rd day of ~~June~~, 2015.

July

MICHAEL W. ROSEDALE
Clerk of the District Court

Saranne
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF SANDPOINT,	)	SUPREME COURT NO. 42517-2014
	)	BONNER COUNTY CV2013-1342
Plaintiff-Respondent,)	
vs.)	
	)	CLERK'S CERTIFICATE OF EXHIBITS
INDEPENDENT HIGHWAY DISTRICT,)	
)	
Defendant- Appellant.)	
_____)	

I, Michael R. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that the following is offered as the Clerk's exhibit on appeal:

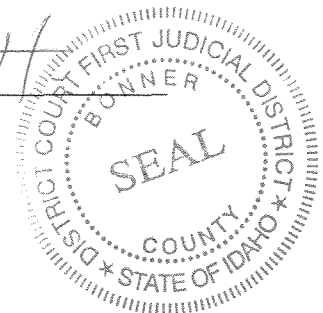
NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 23rd day of ~~June~~, 2015.

July

MICHAEL R. ROSEDALE
Clerk of the District Court

Baranne H
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

CITY OF SANDPOINT,	)	SUPREME COURT NO. 42517-2014
	)	BONNER COUNTY CV2013-1342
Plaintiff-Respondent,)	
vs.)	
	)	CLERK'S CERTIFICATE OF SERVICE
INDEPENDENT HIGHWAY DISTRICT,)	
)	
Defendant- Appellant.)	
_____)	

I, Michael R. Rosedale, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Bonner, do hereby certify that I have personally served or mailed, by United Parcel Service, one copy of the CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

MR. SCOT R. CAMPBELL
1123 LAKE STREET
SANDPOINT, ID 83864

MS. SUSAN P. WEEKS
1626 LINCOLN WAY
COEUR D'ALENE, ID 83814

ATTORNEY FOR RESPONDENT

ATTORNEY FOR APPELLANT

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 23rd day of ~~June~~, 2015.

July

MICHAEL R. ROSEDALE
Clerk of the District Court

Darlene H.
Deputy Clerk

