

AGENDA
SPECIAL COUNCIL MEETING OF THE MAYOR AND CITY COUNCIL
IN THE COUNCIL CHAMBERS – 81 ELKHORN ROAD
CITY OF SUN VALLEY, IDAHO
MAY 31, 2016 - 3:00 P.M.

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT - *The Mayor and Council welcome comments from the public on any subject. Please state your name and address for the record. Public comments may be limited to three (3) minutes.*

COUNCIL COMMENT (5 min.)

MAYOR COMMENT (5 min.)

QUESTIONS FROM THE PRESS (3 min.)

| | |
|--|----|
| CITY ATTORNEY INTERVIEWS (135 min.); | 1 |
| 1. Frederick Allington (45 min.); | 5 |
| 2. Maria Hart, Parsons Behle & Latimer (45 min.); | 27 |
| 3. Matthew Johnson, White Peterson Gigray & Nichols, P.A. (45 min.); | 45 |

EXECUTIVE SESSION – Pursuant to Idaho Code 74-206 section (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

DISCUSSION/ACTION (5 min.)

4. Possible action on hiring a public officer, employee, staff member or individual agent (5 min.); (no documents)

ADJOURNMENT - *Meeting will conclude after the completion of agenda items or at the latest 9:00 p.m. Any item under discussion or consideration at 9:00 p.m. will be completed. Any remaining items on the agenda will be scheduled for another meeting.*

CITY OF SUN VALLEY

REQUEST FOR PROPOSALS CITY ATTORNEY SERVICES

The City of Sun Valley invites interested legal firms or private practice attorneys to submit written proposals to provide contract legal services to the City. The successful firm(s) must be able to provide a designated individual to serve as City Attorney.

If you or your firm is interested in this opportunity, please submit your proposal in a sealed envelope marked “**City Attorney Proposal**” and address it to:

Alissa Weber
City Clerk
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353

Proposals may be submitted in person or by mail and will be accepted at the City Clerk’s Office until **4:00 p.m. on Friday, April 1, 2016**.

The City reserves the right to reject any or all proposals, to request additional information concerning any proposals for purpose of clarification, to accept or negotiate any modification to any proposal, and to waive any irregularities if such would serve the best interests of the City. **All inquiries regarding the Request for Proposals should be directed to Susan E. Robertson, City Administrator at (208) 622-4438 or srobertson@svidaho.org.**

ABOUT THE CITY

Sun Valley, incorporated in 1947, is a community of 1,412 residents in Blaine County, Idaho. Located in the Wood River Valley, Sun Valley encompasses approximately 9.9 square miles and is predominantly a residential community with the Sun Valley Resort as the major employer. In addition to alpine skiing, the surrounding area offers Nordic ski trails, single track and road biking routes, mountain climbing, hiking, and pristine river fishing. The arts are unusually cosmopolitan with a summer symphony, dance, film, concerts, lectures and opera some of the cultural offerings in the area. The citizens of Sun Valley take pride in the community and are committed to preserving this uniquely special place in concert with sustainable growth. Transparency, openness, civility, and responsiveness are expected traits by the residents.

The City is governed by a Mayor and a City Council consisting of four members. All elected officials serve four-year terms on a staggered basis. The City Council meets on a regular basis at 4:00 p.m. on the first Thursday of each month. The Mayor appoints the City’s officers subject to the consent of the City Council. In Sun Valley, the City Clerk, City Treasurer, City Attorney, and City Administrator are City Officers.

Services provided by the City include administration, community development, building inspection, police protection, street and path maintenance, and fire protection/emergency medical services. The City’s fiscal year is October 1 – September 30 and the current City budget is approximately \$6.5 million dollars.

CITY OF SUN VALLEY

CITY ATTORNEY

The City Attorney serves as a statutory officer and chief legal advisor for the City of Sun Valley, an Idaho Municipal Corporation and provides legal services as set forth in Idaho Statutes 50-204, 50-206, and 50-208(A). The City contracts with an independent law firm to handle the City's prosecutorial work. The City also contracts with independent law firms when necessary to assist with employment, benefit, and other issues.

GENERAL LEGAL DUTIES

- Provide legal advice, consultation, and opinions when requested for the Mayor, City Council, Planning & Zoning Commission, and City staff on a wide variety of subjects including, but not limited to, land use, zoning, ordinance and resolution development and interpretation, general municipal law, public records, open meetings, local option tax administration, public works bidding and construction, purchasing, leasing, purchase and sale of property, public disclosure issues, tort liability, and risk management;
- Prepare and review ordinances, resolutions, regulations, deeds, agreements, contracts and related documents for legal correctness and acceptability;
- Review City Council agenda packet and attend all regular City Council meetings unless excused by the Mayor (regularly held at 4 p.m. on the second Thursday of the month);
- Attend meetings of the Planning and Zoning Commission and other meetings when so requested by the Mayor.
- Advise and assist in code enforcement activities.
- Answer correspondence and telephone inquiries regarding requests for information on City ordinances, complaints, claims, land acquisitions, and related legal transactions.
- Perform research and investigation regarding matters affecting the City and its officials, including damages and suits by or against the City, suits affecting the City in its municipal authority to zone, suits affecting the City in its relationship to other governmental jurisdictions, and proceedings before judicial and quasi-judicial bodies. Work cooperatively with the City Prosecutor and any special legal counsel retained by the City.
- Provide the Mayor and City Council with guidance as to Robert's Rules of Order and related procedural matters at City Council meetings;
- As non-routine duties, handle litigation when necessary related to planning, zoning, and/or governance matters, handle real estate transactions, and prepare liens, affidavits, pleadings or briefs all as and when requested by the Mayor, City Administrator or City Council.

MINIMUM TRAINING AND EXPERIENCE REQUIREMENTS

Possess a license to practice law in the State of Idaho. Have a minimum of five years of experience with, and a comprehensive knowledge of, municipal codes, and State and Federal law with particular reference to municipal law. Possess knowledge of established precedents and sources of legal reference; judicial procedures and rules of evidence; and legal limitations and authority of various municipal departments.

Possess skill in determining whether a legal or administrative approach would best resolve a problem; apply legal principles and knowledge to complex legal problems; ability to prepare and take cases to trial if necessary; present material clearly and logically in oral or written form; deal effectively with people including the general public and those interested or involved in suits against the City; negotiate agreements and real estate sale or acquisition.

CITY OF SUN VALLEY

COMPENSATION

The 2015 - 2016 Annual Budget for the City Attorney is \$50,452. Compensation for the City Attorney will depend upon the qualifications and experience of the successful applicant or firm and may be set at a different level than the amount budgeted at the discretion of the City Council. Compensation may be an annual retainer, hourly basis, fixed fee arrangement, some other compensation arrangement or any combination thereof as agreed to by the Mayor and City Council.

APPOINTMENT

The Mayor will appoint the City Attorney subject to City Council confirmation. The City Attorney will take direction from the Mayor. The City intends to enter into an agreement with the applicant or firm selected. There is no residency requirement.

ADDITIONAL INFORMATION

The hours that have been expended providing City Attorney services over the last three years follow below.

| | <u>2012-13</u> | <u>2013-14</u> | <u>2014-15</u> |
|---------------------|----------------|----------------|----------------|
| City Attorney Hours | 493 | 344 | 184 |

EVALUATION AND SELECTION PROCESS

The Mayor and City Council will review all proposals and determine which firms and/or individuals submitting proposals will be interviewed. It is expected that interviews will be held in April 2016 for those firms and/or individuals selected for an interview. It is anticipated that the formal appointment of the City Attorney will be made in May 2016.

CITY OF SUN VALLEY

SUBMITTAL REQUIREMENTS

1. Please submit a comprehensive resume detailing education and qualifications for the individual to be designated as City Attorney as well as for any individual(s) who may assist with attorney services. Include:
 - Name of the individual;
 - Name of the firm/municipality/agency;
 - Education;
 - Dates of employment;
 - Legal training and years of practice including municipal or other local public sector law practice;
 - Idaho Bar number (including date of admittance to Idaho Bar);
 - Years and statement of other types of clientele represented;
 - Litigation experience (types of cases); and
 - Mediation and/or arbitration experience (types of cases).
2. Please indicate any specialized areas of legal training and/or experience for the individual to be designated as City Attorney and the firm, if relevant. Any relevant legal resources should also be identified.
3. Please submit a list of four professional references with knowledge of the applicant's experience and knowledge of municipal law.
4. Please submit a writing sample (i.e. opinion, position statement, brief, etc.).
5. Please indicate how the firm proposes to provide City Attorney services for the City: a flat-rate monthly retainer (and said amount of retainer), an hourly basis, fixed fee arrangement for various services, or some other compensation method. If hourly rate billing is preferred, please state the hourly rates for the designated City Attorney and associates for general work, and for special services, such as litigation, if at a different rate.

It is expected that the City Attorney will prosecute and/or defend matters under their purview as part of the fee unless he or she advises the Mayor in writing that other legal counsel should be hired or that an alternative fee arrangement is warranted and said arrangement is approved by the City Council. Please define what would be considered to be extraordinary service to be provided over and beyond the normal services and the basis for compensation thereof.
6. Please indicate type and unit rate for any expected reimbursement of expenses beyond the retainer or hourly rate to be charged. The City will not pay a markup on reimbursable expenses. If the attorney or firm submitting a proposal is located outside of the Wood River Valley, such proposal should address travel costs, travel time charges if any, and possible use of conference calls in lieu of personal attendance.
7. Please indicate the amount and type of professional liability insurance carried.
8. Please define standard time frames for responses direction and/or inquiry from the Mayor, City Council, City Administrator and other staff members.
9. Please list all public clients for which the firm currently provides services or are under a retainer.
10. Please disclose any potential conflicts of interest that may arise in the performance of City Attorney duties by you or any member of your law firm.

FREDERICK C. ALLINGTON
Attorney At Law
115 Second Avenue South
Hailey, Idaho 83333
(208) 788-7802
Fax: (208) 788-7901
Email: allingtonlaw@gmail.com
ISB #4414



March 31, 2016

The Honorable Peter Hendricks
Mayor
City of Sun Valley
P.O. Box 416
Sun Valley, ID 83353

Dear Mayor Hendricks,

I would like to take this opportunity to apply for the position of City Attorney for the City of Sun Valley and to set forth my qualifications.

I have practiced law in Blaine County for twenty-four years. During this time, I have spent the last nine years as the Bellevue City Attorney, advising the city and staff on a broad range of legal issues. Those issues include: annexations, employment, land use planning, public works projects, drafting ordinances and contracts and leases. I am familiar with open meeting laws and the laws dealing with ethics in government, as well as familiarity with more specific formal procedures such as the administrative process and appeals.

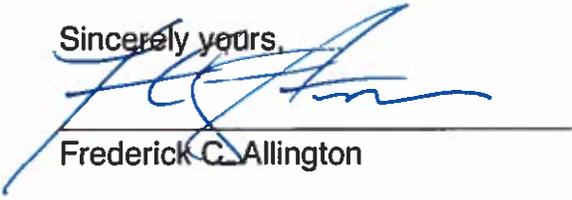
In addition, I am currently the Prosecuting Attorney for the cities of Ketchum, Sun Valley, Hailey and Bellevue. Additionally, I have a considerable amount of trial and appellate experience, arguing cases before Magistrate Court, District Court and Idaho Supreme court. I am also a firm believer in the mediation process and have successfully used mediators to settle some of my cases.

After speaking with the Mayor in Late January about representing Sun Valley as its interim counsel, I was at first hesitant because of the controversies that affected the City during the last administration. However, during my brief tenure as interim counsel, my experience has been nothing but positive.

I have been particularly impressed with the competence and professionalism of staff and the commitment by the Mayor and Council to manage the City in a positive direction. I would like to be a part of this team and believe that my legal

experience is well suited for this position. I have enclosed a proposal for your review. Thank you for your consideration. I look forward to receiving your reply.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'F. Allington', is written over a horizontal line. The signature is stylized and cursive.

Frederick C. Allington

FREDERICK C. ALLINGTON, ESQ.

115 2nd Ave. South

Hailey, Idaho 83333

Tel: (208) 788-7802

Fax: (208) 788-7901

Idaho State Bar Number: 4414

Experience

Frederick C. Allington Attorney at Law

Hailey, Idaho

- Bellevue City Attorney, 2007-present: Advising the City of Bellevue on all civil matters.
- City Prosecutor, 1996-present: Prosecution of all misdemeanors occurring within the Cities of Sun Valley, Ketchum, Hailey and Bellevue, advising the police agencies on all matters relating to criminal law.
- General civil practice including litigation, divorce, adoptions and real estate transactions.

Blaine County

Hailey, Idaho

- Deputy Prosecuting Attorney, 1992-1996: Advised the Planning and Zoning Commission and advised Blaine County on civil cases. Prosecution of misdemeanors, felonies, juveniles, cases under The Child Protection Act, mental commitments, and appeals.

Education

University of Idaho College of Law

Moscow, Idaho

Juris Doctor, May 1991

Admission to the Bar 1991

College of Idaho

Caldwell, Idaho

Bachelor of Arts, History, 1987

REFERENCES

Jim Phillips, 788-3496

Ned Williamson, 788-6688

Christopher Koch, 788-2128

Jim Thomas, 788-5545

RESPONSE FOR REQUEST FOR PROPOSAL

Frederick Allington (hereinafter "Attorney") and the City of Bellevue (hereinafter "City") Agree to enter into a contract wherein Attorney agrees to provide the following legal services to City:

1. Provide legal advice, consultation, and opinions when requested by the Mayor, City Council, Planning and Zoning Commission and City Staff.
2. Prepare and review ordinances, resolutions, regulations, deeds, agreements, contracts and related documents for legal correctness and acceptability.
3. Review City Council agenda packet and attend all regular City Council meetings unless excused by the Mayor.
4. Attend meetings of the Planning and Zoning Commission and other meetings when so requested by the Mayor
5. Advise and assist in code enforcement activities.
6. Answer correspondence and telephone inquiries regarding requests for information on City ordinances, complaints, claims, land acquisitions, and related legal transactions
7. Perform research and investigation regarding matters affecting the City and its officials, including damages and suits by or against the City, suits affecting the City in its municipal authority to zone, suits affecting the City in its relationship to other governmental jurisdictions, and proceedings before judicial and quasi-judicial bodies. Work cooperatively with the City Prosecutor and any special legal counsel retained by the City.
8. Provide the Mayor and City Council with guidance as to Robert's Rules of Order and related procedural matters at City Council meetings.
9. Represent the City in litigation related to planning, zoning, and/or governance matters, facilitate real estate transactions, and prepare liens, affidavits, pleadings or briefs all as and when requested by the Mayor, City Administrator or City Council.

Compensation: The City agrees to pay Attorney One Hundred and Seventy-Five Dollars (\$175.00) per hour. Attorney shall submit a monthly invoice.

Liability Insurance: Attorney shall carry professional liability insurance with a \$1,000,000.00 limit.

Expenses: Attorney is an independent contractor and shall be responsible for his overhead including administrative staff, office supplies, computers and software, professional dues, liability insurance, CLE fees and rent. Upon prior approval, City shall be responsible for reimbursing Attorney for all other expenses incurred in the performance of the above-listed duties.

Response Times: Attorney shall make all reasonable efforts to promptly respond to all inquiries from the Mayor, Council and staff within twenty-four hours.

Public Clients: Attorney is currently under contract with the cities of Sun Valley, Ketchum, Hailey and Bellevue.

Potential Conflicts: Attorney is not aware of any actual or potential conflicts.

FREDERICK C. ALLINGTON
 115 2nd Ave. South
 Hailey, Idaho 83333
 Telephone: (208) 788-7802
 Fax: (208) 788-7901
 ISB # 4414

Attorney for Respondent

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

| | | |
|---|---|----------------------|
| LEE PUBLISHING, INC., a Delaware corporation, d/b/a Wood River Journal, |) | |
| |) | Case No. CV-2004-660 |
| |) | |
| Petitioner, |) | |
| |) | BRIEF OF RESPONDENT |
| vs. |) | CITY OF BELLEVUE |
| |) | |
| CITY OF BELLEVUE, IDAHO, an Idaho municipal corporation, |) | |
| |) | |
| Respondent, |) | |
| |) | |
| vs. |) | |
| |) | |
| EXPRESS PUBLISHING, INC., |) | |
| |) | |
| Intervenor. |) | |
| |) | |

INTRODUCTION

The Idaho Mountain Express (The Express) and the Wood River Journal (The Journal) are weekly papers published within Blaine County, Idaho. The Express is published in Ketchum, Idaho and The Journal is published in Hailey, Idaho. The City of Bellevue sought to change its official newspaper of record from The Journal to The Express. Three properly noticed hearings were had on the subject resulting in the passage of an ordinance designating The Express as the

official newspaper.

ISSUES ON APPEAL

1. Whether The Express qualifies as a newspaper of general circulation.
2. Whether the City Council's action amounted to an abuse of discretion.
3. Whether the City Council provided due process to the Petitioner.

OBJECTION TO FACTS OUTSIDE THE RECORD

The Petitioner seeks by affidavit to inject facts into the record that do not exist. Councilperson Ivie, has stated, under oath, that she never made the statements attributed to her in the Petitioner's brief. (See Affidavit of Vivian Ivie attached hereto and incorporated by reference as Exhibit A.) Therefore, to the extent that Petitioner has gone outside the record, the Respondent objects.

FACTS

On March 14, 2004, Pam Morris, of Express Publishing sent a letter to the Mayor and City Council of Bellevue, Idaho requesting that the city consider using the Idaho Mountain Express as its official newspaper. (Record, Exh. A-C.) The issue was placed on the March 25, 2004 Agenda. (Record, Exh. D.) During March 25, 2004 Council meeting, Pam Morris presented her reasons why the city should choose the The Express as its official newspaper. (Transcript of March 25, 2004 Meeting p. 1-5.) The Council decided to consider and discuss the issue at a later meeting. (Transcript of March 25, 2004 Meeting, p. 7.) There was no representative from The

Journal present at the March 25, 2004 meeting.

The issue was once again placed on the Agenda for April 22, 2004. (Record, Exh. F.) During the April 22, 2004 meeting, the Council and Mayor debated the pros and cons of designating the The Express as its official newspaper, a motion was made, and it was decided by the Council to designate the Mountain Express as the official newspaper for Bellevue. The only legal question posed to City Attorney Jim Phillips was whether an ordinance needed to be adopted. Once again, no representative from The Journal was present.

The Journal must have gotten word of the Council's decision because Kristin Kennedy of the Wood River Journal, was given time on the June 10, 2004 Agenda prior to the vote on adopting an ordinance designating the Idaho Mountain Express as the newspaper of record for Bellevue. (Record, Exh. H.).

At the June 10, 2004 Council Meeting, attorney Frederick Allington, represented the city on the issue of designating The Express as newspaper of record. The representatives of The River Journal were given an opportunity to be heard. The only issue raised by The Journal during the hearing was whether The Express qualified as a newspaper of general circulation as defined in Idaho Code §60-106. Based upon advice from legal counsel, the Council determined that The Express was the paper with the highest paid circulation as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months. (Record, Exh. B and K.) The Council voted and the ordinance designating the Idaho Mountain Express as the newspaper of record was passed. (Transcript of June 10, 2004 Meeting, p. 23-25.)

STANDARD OF REVIEW

In *White v. City of Twin Falls*, 81 Idaho 176, 338 P.2d 778 (1959) the court stated that a presumption exists in favor of the validity of a municipal ordinance. In *Enterprise Inc. v Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) the Court, quoting McQuillen on Municipal Corporations stated, “no principle of law is better established than that courts will not sit in review of proceedings of municipal officers and departments involving legislative discretion, except, as hereafter noted, in cases of fraud, corruption, or arbitrary, unreasonable actions amounting to abuse of discretion.” In *City of Idaho Falls v. Grimmitt*, 63 Idaho 90 (1941) the Court stated, “[e]very presumption is to be indulged in favor of the exercise of that discretion, unless arbitrary action is clearly disclosed.” *Id.* at 96.

ARGUMENT

I. The Idaho Mountain Express Qualifies as a Newspaper of General Circulation.

The only legal issue presented at the June 10, 2004 city council meeting was whether The Express qualified as a newspaper of general circulation. Idaho Code §50-215 directs municipalities, by ordinance, to designate an official newspaper as follows:

The city council of each city shall, by ordinance, designate a newspaper within the provisions of title 60, Idaho Code, to be the official newspaper of that city. Said newspaper shall be one published within said city, or if none there be, then a newspaper published within the county in which said city is situated, or the nearest Idaho newspaper of general circulation within the city

In one very long sentence, Idaho Code §60-106 sets forth the qualifications of newspapers for legal notices as follows:

No legal notice, advertisement or publication of any kind required or provided by the laws of the state of Idaho, to be published in a newspaper, shall be published

or have any force or effect, as such, unless the same be published in a newspaper of general interest published in the state of Idaho, and which newspaper if published weekly, has been continuously and uninterruptedly published in the county during a period of seventy-eight (78) consecutive weeks prior to the first publication of the notice, or advertisement, and, if published daily, has been so published as a daily newspaper in the county during a period of twelve (12) consecutive months prior to the first publication of the notice or advertisement; provided that, notwithstanding any other provision of Idaho laws, the term "newspaper of (or having) general circulation," wherever used in Idaho Code as a qualification of newspapers required to be used for the publication of notice, shall mean a "newspaper," as defined in this section, that is published within the boundaries of the governmental entity wherein the notice is required to be published and which newspaper has the largest paid circulation among all newspapers published in that governmental entity as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months that was filed on the annual statement of ownership, management and circulation with the U.S. postal service on the date immediately preceding the date of the required publication of notice; *excepting that, where no newspaper is published within the governmental entity required to publish a notice, the term "newspaper of (or having) general circulation" shall mean the newspaper with the largest paid circulation published within any county in which the governmental entity is located, or the newspaper published nearest to the boundaries of the governmental entity; . . .* [Emphasis added]

Assuming for argument's sake that both newspapers in question were published in the City of Bellevue, §60-106 would mandate the designation of The Express as the newspaper of record. As between the two newspapers, The Express would have the "*largest paid circulation among all newspapers published in that governmental entity as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months.*" (See Record, Exh. B and K.)

However, neither paper is published within the city of Bellevue so §60-106 gives the city a choice: either the paper with the largest paid circulation published within Blaine County or the newspaper published nearest to the boundaries of the City of Bellevue. In determining which paper has the "largest paid circulation" §60-106 directs the city to the sworn statement of

average total paid or requested circulation for the preceding twelve (12) months. In this case it is Exhibits B and K of the Record. Exhibits B and K are titled, Statement of Ownership, Management, and Circulation. These documents break out the sales/distribution figures for each newspaper into different categories. On line C of those documents is the category "Total Paid and/or Requested Circulation". For The Express, line C equals 1549 and for The Journal line C equals 964. Therefore, according to §60-106, The Express satisfies the requirements of being called a "newspaper of (or having) general circulation."

The Respondent concedes that The Journal is published closer to the City of Bellevue than The Express. Therefore, Bellevue could have legally designated either paper to publish its notices. The Council, for reasons stated on the record during three legally noticed hearings and after considering facts presented to them by both newspapers, opted for The Express.

When making the decisions between two qualified newspapers, the City of Bellevue was exercising its legislative discretion and the courts should only invalidate the ordinance in cases of fraud, corruption, or arbitrary, unreasonable actions amounting to abuse of discretion. In *Enterprise*, supra, the Court stated, "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." *Id* at 339.

II. The Petitioner Has Not Shown That the City Council's Actions Involved Fraud, Corruption, or Arbitrary, Unreasonable Actions Amounting to Abuse of Discretion

Petitioner alleges that the Mayor and Councilperson Ivie were predisposed in favor of The Express. In the Mayor's case, it is alleged that he had predetermined to vote in favor of the ordinance, which was evidenced by his open hostility at the meeting. As to the Mayor's bias, he

sat through three legally noticed meeting where discussion was had regarding the designation of The Express as the official newspaper. The mayor may have been impatient with The Journal's presentation but there is no evidence in the record to suggest that he was hostile or biased or that he did not consider the presentation made by The Express prior to casting his vote. What is clear is that the Mayor thought that Express would likely reach more members of the public.

(Transcript of April 22, 2004 Meeting p. 2.)

Vivian Ivie did not make the statements attributed to her in Petitioner's brief. The record does not support the allegation as well. During the April 22, 2004 meeting, Councilperson Ivie specifically asked if both papers could share the designation of official newspaper (Transcript of April 22, 2004 Meeting p. 2.) – certainly not the behavior of someone with an axe to grind.

III. The Petitioner's Due Process Rights Were Not Violated.

Moreover, the procedure to designate an official newspaper is not akin to a conditional use permit or a zoning ordinance. §50-215 and §60-106 do not endow a newspaper with a property right; it is merely a designation. The statutes, if followed by the city, ensure that the most effective notice will be provided to its citizens. The only guidelines set forth in the statutes deal with frequency of publication, largest paid circulation and proximity to the municipality. Absent abuse of discretion, fraud etc., the only question this court should be asking is whether the city designated a newspaper that satisfies the criteria in §60-106.

In the present case, the Council held three properly noticed meetings. During those meetings the Council received information as to which newspaper had the largest paid circulation and which newspaper was published closest to the boundaries of Bellevue. Both

newspapers were given an opportunity to be heard. The council voted to enact the ordinance in question. Based on these facts, the Council complied with the statutes in question and in doing so, provided both parties with more due process than is required under the law.

CONCLUSION

Based on the aforementioned, the City Council's action should be affirmed.

Respectfully submitted this 3rd day of February, 2005.

Frederick C. Allington

FREDERICK C. ALLINGTON
 115 2nd Ave. South
 Hailey, Idaho 83333
 Telephone: (208) 788-7802
 Fax: (208) 788-7901
 ISB # 4414

Attorney for Respondent

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BLAINE

| | | |
|--|---|----------------------|
| LEE PUBLISHING, INC., a Delaware corporation, d/b/a Wood River Journal, |) | Case No. CV-2004-660 |
| |) | |
| Petitioner, |) | |
| |) | BRIEF OF RESPONDENT |
| vs. |) | CITY OF BELLEVUE |
| |) | |
| CITY OF BELLEVUE, IDAHO, an Idaho municipal corporation, |) | |
| |) | |
| Respondent, |) | |
| |) | |
| vs. |) | |
| |) | |
| EXPRESS PUBLISHING, INC., |) | |
| |) | |
| Intervenor. |) | |
| _____ |) | |

INTRODUCTION

The Idaho Mountain Express (The Express) and the Wood River Journal (The Journal) are weekly papers published within Blaine County, Idaho. The Express is published in Ketchum, Idaho and The Journal is published in Hailey, Idaho. The City of Bellevue sought to change its official newspaper of record from The Journal to The Express. Three properly noticed hearings were had on the subject resulting in the passage of an ordinance designating The Express as the

official newspaper.

ISSUES ON APPEAL

1. Whether The Express qualifies as a newspaper of general circulation.
2. Whether the City Council's action amounted to an abuse of discretion.
3. Whether the City Council provided due process to the Petitioner.

OBJECTION TO FACTS OUTSIDE THE RECORD

The Petitioner seeks by affidavit to inject facts into the record that do not exist. Councilperson Ivie, has stated, under oath, that she never made the statements attributed to her in the Petitioner's brief. (See Affidavit of Vivian Ivie attached hereto and incorporated by reference as Exhibit A.) Therefore, to the extent that Petitioner has gone outside the record, the Respondent objects.

FACTS

On March 14, 2004, Pam Morris, of Express Publishing sent a letter to the Mayor and City Council of Bellevue, Idaho requesting that the city consider using the Idaho Mountain Express as its official newspaper. (Record, Exh. A-C.) The issue was placed on the March 25, 2004 Agenda. (Record, Exh. D.) During March 25, 2004 Council meeting, Pam Morris presented her reasons why the city should choose the The Express as its official newspaper. (Transcript of March 25, 2004 Meeting p. 1-5.) The Council decided to consider and discuss the issue at a later meeting. (Transcript of March 25, 2004 Meeting, p. 7.) There was no representative from The

Journal present at the March 25, 2004 meeting.

The issue was once again placed on the Agenda for April 22, 2004. (Record, Exh. F.) During the April 22, 2004 meeting, the Council and Mayor debated the pros and cons of designating the The Express as its official newspaper, a motion was made, and it was decided by the Council to designate the Mountain Express as the official newspaper for Bellevue. The only legal question posed to City Attorney Jim Phillips was whether an ordinance needed to be adopted. Once again, no representative from The Journal was present.

The Journal must have received word of the Council's decision because Kristin Kennedy of the Wood River Journal, was given time on the June 10, 2004 Agenda prior to the vote on adopting an ordinance designating the Idaho Mountain Express as the newspaper of record for Bellevue. (Record, Exh. H.).

At the June 10, 2004 Council Meeting, attorney Frederick Allington, represented the city on the issue of designating The Express as newspaper of record. The representatives of The River Journal were given an opportunity to be heard. The only issue raised by The Journal during the hearing was whether The Express qualified as a newspaper of general circulation as defined in Idaho Code §60-106. Based upon advice from legal counsel, the Council determined that The Express was the paper with the highest paid circulation as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months. (Record, Exh. B and K.) The Council voted and the ordinance designating the Idaho Mountain Express as the newspaper of record was passed. (Transcript of June 10, 2004 Meeting, p. 23-25.)

STANDARD OF REVIEW

In *White v. City of Twin Falls*, 81 Idaho 176, 338 P.2d 778 (1959) the court stated that a presumption exists in favor of the validity of a municipal ordinance. In *Enterprise Inc. v Nampa City*, 96 Idaho 734, 536 P.2d 729 (1975) the Court, quoting McQuillen on Municipal Corporations stated, “no principle of law is better established than that courts will not sit in review of proceedings of municipal officers and departments involving legislative discretion, except, as hereafter noted, in cases of fraud, corruption, or arbitrary, unreasonable actions amounting to abuse of discretion.” In *City of Idaho Falls v. Grimmert*, 63 Idaho 90 (1941) the Court stated, “[e]very presumption is to be indulged in favor of the exercise of that discretion, unless arbitrary action is clearly disclosed.” *Id.* at 96.

ARGUMENT

I. The Idaho Mountain Express Qualifies as a Newspaper of General Circulation.

The only legal issue presented at the June 10, 2004 city council meeting was whether The Express qualified as a newspaper of general circulation. Idaho Code §50-215 directs municipalities, by ordinance, to designate an official newspaper as follows:

The city council of each city shall, by ordinance, designate a newspaper within the provisions of title 60, Idaho Code, to be the official newspaper of that city. Said newspaper shall be one published within said city, or if none there be, then a newspaper published within the county in which said city is situated, or the nearest Idaho newspaper of general circulation within the city

In one very long sentence, Idaho Code §60-106 sets forth the qualifications of newspapers for legal notices as follows:

No legal notice, advertisement or publication of any kind required or provided by the laws of the state of Idaho, to be published in a newspaper, shall be published

or have any force or effect, as such, unless the same be published in a newspaper of general interest published in the state of Idaho, and which newspaper if published weekly, has been continuously and uninterruptedly published in the county during a period of seventy-eight (78) consecutive weeks prior to the first publication of the notice, or advertisement, and, if published daily, has been so published as a daily newspaper in the county during a period of twelve (12) consecutive months prior to the first publication of the notice or advertisement; provided that, notwithstanding any other provision of Idaho laws, the term "newspaper of (or having) general circulation," wherever used in Idaho Code as a qualification of newspapers required to be used for the publication of notice, shall mean a "newspaper," as defined in this section, that is published within the boundaries of the governmental entity wherein the notice is required to be published and which newspaper has the largest paid circulation among all newspapers published in that governmental entity as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months that was filed on the annual statement of ownership, management and circulation with the U.S. postal service on the date immediately preceding the date of the required publication of notice; excepting that, *where no newspaper is published within the governmental entity required to publish a notice, the term "newspaper of (or having) general circulation" shall mean the newspaper with the largest paid circulation published within any county in which the governmental entity is located, or the newspaper published nearest to the boundaries of the governmental entity;* . . . [Emphasis added]

Assuming for argument's sake that both newspapers in question were published in the City of Bellevue, §60-106 would mandate the designation of The Express as the newspaper of record. As between the two newspapers, The Express would have the "*largest paid circulation among all newspapers published in that governmental entity as verified by the sworn statement of average total paid or requested circulation for the preceding twelve (12) months.*" (See Record, Exh. B and K.)

However, neither paper is published within the city of Bellevue so §60-106 gives the city a choice: either the paper with the largest paid circulation published within Blaine County or the newspaper published nearest to the boundaries of the City of Bellevue. In determining which paper has the "largest paid circulation" §60-106 directs the city to the sworn statement of

average total paid or requested circulation for the preceding twelve (12) months. In this case it is Exhibits B and K of the Record. Exhibits B and K are titled, Statement of Ownership, Management, and Circulation. These documents break out the sales/distribution figures for each newspaper into different categories. On line C of those documents is the category "Total Paid and/or Requested Circulation". For The Express, line C equals 1549 and for The Journal line C equals 964. Therefore, according to §60-106, The Express satisfies the requirements of being called a "newspaper of (or having) general circulation."

The Respondent concedes that The Journal is published closer to the City of Bellevue than The Express. Therefore, Bellevue could have legally designated either paper to publish its notices. The Council, for reasons stated on the record during three legally noticed hearings and after considering facts presented to them by both newspapers, opted for The Express.

When making the decisions between two qualified newspapers, the City of Bellevue was exercising its legislative discretion and the courts should only invalidate the ordinance in cases of fraud, corruption, or arbitrary, unreasonable actions amounting to abuse of discretion. In *Enterprise*, supra, the Court stated, "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached." *Id* at 339.

II. The Petitioner Has Not Shown That the City Council's Actions Involved Fraud, Corruption, or Arbitrary, Unreasonable Actions Amounting to Abuse of Discretion

Petitioner alleges that the Mayor and Councilperson Ivie were predisposed in favor of The Express. In the Mayor's case, it is alleged that he had predetermined to vote in favor of the ordinance, which was evidenced by his open hostility at the meeting. As to the Mayor's bias, he

sat through three legally noticed meeting where discussion was had regarding the designation of The Express as the official newspaper. The mayor may have been impatient with The Journal's presentation but there is no evidence in the record to suggest that he was hostile or biased or that he did not consider the presentation made by The Express prior to casting his vote. What is clear is that the Mayor thought that Express would likely reach more members of the public.

(Transcript of April 22, 2004 Meeting p. 2.)

Vivian Ivie did not make the statements attributed to her in Petitioner's brief. The record does not support the allegation as well. During the April 22, 2004 meeting, Councilperson Ivie specifically asked if both papers could share the designation of official newspaper (Transcript of April 22, 2004 Meeting p. 2.) – certainly not the behavior of someone with an axe to grind.

III. The Petitioner's Due Process Rights Were Not Violated.

Moreover, the procedure to designate an official newspaper is not akin to a conditional use permit or a zoning ordinance. §50-215 and §60-106 do not endow a newspaper with a property right; it is merely a designation. The statutes, if followed by the city, ensure that the most effective notice will be provided to its citizens. The only guidelines set forth in the statutes deal with frequency of publication, largest paid circulation and proximity to the municipality. Absent abuse of discretion, fraud etc., the only question this court should be asking is whether the city designated a newspaper that satisfies the criteria in §60-106.

In the present case, the Council held three properly noticed meetings. During those meetings the Council received information as to which newspaper had the largest paid circulation and which newspaper was published closest to the boundaries of Bellevue. Both

newspapers were given an opportunity to be heard. The council voted to enact the ordinance in question. Based on these facts, the Council complied with the statues in question and in doing so, provided both parties with more due process than is required under the law.

CONCLUSION

Based on the aforementioned, the City Council's action should be affirmed.

Respectfully submitted this 3rd day of February, 2005.

Frederick C. Allington

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of February, I served a true and correct copy of the within and foregoing document upon the attorney named below in the manner noted:

Mick Hodges, Esq.
Post Office Box 3088
Twin Falls, Idaho 83303-1901

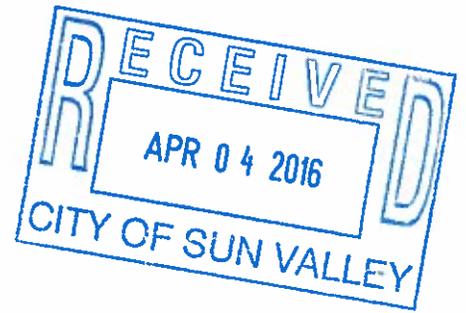
Rand Peebles
P.O.Box 297
Ketchum, Idaho 83340

_____ By causing copies of the same to be deposited in the United States mail, postage prepaid, at the post office at Hailey, Idaho.

_____ By causing copies of the same to be hand delivered to the office of the above attorney at his office located at _____.

_____ By causing copies of the same to be telecopied to said attorney at his telecopier number: 726-9328.

Frederick C. Allington



**City of Sun Valley – City Attorney Proposal
Prepared by Parsons Behle & Latimer**

March 31, 2016

**PARSONS
BEHLE &
LATIMER**

**National Expertise.
Regional Law Firm.**

CONFIDENTIAL

TABLE OF CONTENTS

A. Introduction

Cover LetterPage 1

B. Qualifications

1. Firm Overview.Page 3

2. Scope of Services.Page 3

3. Parsons Behle & Latimer Legal Team.Page 4

4. Parsons Behle & Latimer Proposed Fee StructurePage 4

5. Additional Submittal RequirementsPage 5

Appendix A

Attorney Profiles

Appendix B

Writing Sample

Appendix C

Public Agency Clients

**PARSONS
BEHLE &
LATIMER**

800 West Main Street, Suite 1300
Boise, Idaho 83702
Main 208.562.4900
Fax 208.562.4901

A Professional
Law Corporation

Maria O. Hart
Attorney at Law
Direct 208 562 4893
MHart@parsonsbehle.com

March 31, 2016

VIA FEDERAL EXPRESS

The Honorable Peter Hendricks,
Mayor of the City of Sun Valley, and
Members of the Sun Valley City Council
City of Sun Valley
P.O. Box 416
81 Elkhorn Road
Sun Valley, ID 83353

**Re: City Attorney Proposal
Statement of Qualifications – Introduction Letter**

Dear Mayor Hendricks and City Council Members:

Thank you for the opportunity to present Parsons Behle & Latimer's ("Parsons") Statement of Qualifications to provide contract legal services to the City of Sun Valley ("Sun Valley"). Parsons is a full-service law firm with a strong background in municipal law, real estate law, governmental relations, municipal financing, employment law, water rights, and general complex commercial litigation. We are confident of our firm's ability to provide Sun Valley all of the legal services it may require.

Originally founded in 1882, Parsons is a regional firm with offices in Boise, Salt Lake City, Las Vegas, Phoenix, Reno, and Washington D.C. We offer our clients a complete range of legal services and can provide Sun Valley with expert legal assistance in each practice area identified in your Request for Proposals. The enclosed information packet provides detailed information about our outstanding attorneys who would be part of your legal team. In addition to the proffered team, we can draw from a deep bench of attorneys across our offices, in particular, several attorneys who serve as legal counsel to resort cities, including the Town of Alta, Utah, home to Alta Ski Resort. Parsons has represented the Town of Alta for more than three decades.

Parsons is one of the most competitive firms in the Intermountain Region in both experience and cost. We strive to provide our clients with efficient, practical, and timely legal service. Our primary focus is on problem solving and providing our clients the best possible

City of Sun Valley
March 31, 2016
Page Two

legal advice. At the same time, we are always conscious of recognizing and preparing for possible litigation issues. We believe the result is the best value for your legal dollars.

Parsons has enjoyed providing Sun Valley with legal services and looks forward to building on that relationship by serving as its City Attorney. We welcome the opportunity to meet with you in person to further discuss our proposal. Thank you for your consideration.

Sincerely,

PARSONS BEHLE & LATIMER



Maria O. Hart

MOH:nb
Enclosures

B. QUALIFICATIONS

Thank you for the opportunity to present our proposal on how Parsons Behle & Latimer ("Parsons") can assist The City of Sun Valley ("Sun Valley") with its legal needs. Parsons has the experience and flexibility to develop tailored legal services to meet Sun Valley's legal needs on a cost effective and timely basis.

1. FIRM OVERVIEW

Founded in 1882, Parsons is one of the oldest and best-regarded law firms in the Intermountain West. Headquartered in Salt Lake City with offices in Boise, Las Vegas, Phoenix, Reno, and Washington D.C., Parsons has a multi-jurisdictional regional, national, and international practice. With more than 135 attorneys, Parsons affords a wide range of legal services in the major practice areas critical to business, including Municipal Law; Corporate & Finance; Energy & Utilities; Litigation; Bankruptcy; Employment & Labor; Environmental & Permitting; Intellectual Property; Real Estate; Tax; and Government Relations and Lobbying. Additionally, we offer a complete range of legal services to a wide range of clients in diverse industries. We have forged relationships with multi-billion dollar companies; start-up companies; high-tech enterprises; financial organizations; utilities; and local, state and federal agencies.

Parsons is also one of the most cost-effective firms in the United States. Our operating costs in the cities in which our offices are located are far less than in other major cities, and our operating method is not as highly leveraged as other large firms. We pride ourselves in providing our clients with efficient, timely, practical, problem-solving legal advice. Our senior attorneys work directly on matters and do not over-staff projects with large numbers of inexperienced attorneys. As such, our hourly rates are among the lowest in the nation for mid to large sized firms.

2. SCOPE OF SERVICES

Sun Valley has solicited Requests for Proposals for the services of an Idaho-licensed attorney or law firm to serve as its legal counsel. The team of attorneys Parsons proposes for this work are experienced and understand the legal issues Sun Valley faces, having recently provided research and advisory guidance for Sun Valley regarding restrictive covenants.

Parsons' attorneys have built enduring relationships with public officials, providing legal services in almost every discipline that touches public law. Our attorneys have worked with many local city council members, served as staff to federal and state judges, as well as staff to federal and state officials.

Our proposed team for Sun Valley's City Attorney position consists of three associate attorneys and one senior partner, each of whom is licensed to practice in the State of Idaho. All are members in good standing with the Idaho State Bar with no history of disciplinary actions. Each are committed to high standards of responsiveness and have significant experience working with governmental entities, as described in each of their biographies attached. In addition to our primary team, attorneys from every discipline and specialty within the firm are available and willing to consult on discrete and specialized issues as they arise. In particular, Parsons has more than three decades of experience with municipal law and extensive knowledge of issues unique to ski resort towns through its representation of the Town of Alta.

We understand that Sun Valley does not require full-time legal services and the annual need is variable. These services will largely include attendance at Council meetings as well as additional

time before each meeting to prepare for questions that may be asked of the attorney during these meetings.

Beyond the regularly scheduled meetings, Parsons can assist Sun Valley with all of its additional legal needs. We have extensive experience dealing with the drafting, reviewing, and implementation of municipal ordinances, contracts, policies, and resolutions. We also have experience representing the interest of municipalities before the Court and among interested parties including negotiation of settlements, supply contracts, services providers, and other areas. We also have significant litigation experience, including drafting memoranda, pleadings, declarations, real estate issues, affidavits, declarations, mediation, arbitration, trials, and appeals.

The fee structure we are proposing offers a cost-effective solution that meets Sun Valley’s ordinary and monthly legal needs while providing flexibility to meet any unforeseen issues as they may arise.

3. PARSONS BEHLE & LATIMER LEGAL TEAM

Parsons proposes that Maria Hart, associate attorney, would be the primary relationship manager for this contract. Jamie Ellsworth, associate attorney, who was raised in the Valley and still returns “home” to visit family and friends, and Amy Lombardo, associate attorney, would be available to assist as needed. While Ms. Hart would be the primary point of contact, any member of the team has the experience and availability to attend City Council meetings and other appointments as requested by Sun Valley, provide legal research and opinions, and interpret, draft, or revise municipal ordinances. David Jensen, a partner in the firm with 27 years of experience, would also provide legal services to Sun Valley primarily by consulting with the legal team and advising the team and city staff on more complex issues. Complete attorney biographies for the legal team are included in **Appendix A**.

| 2016 ATTORNEY RATES* | | | | |
|----------------------|---|---------------|-------------------------|---------|
| Attorney | Position | Standard Rate | Parsons Employment Date | Bar No. |
| Maria Hart | Associate attorney – relationship manager | \$235/hour | 7/14/2014 | 8979 |
| Jamie Ellsworth | Associate attorney – team member | \$275/hour | 11/1/2011 | 8372 |
| Amy Lombardo | Associate attorney – team member | \$275/hour | 10/01/2012 | 8646 |
| David Jensen | Shareholder – team advisor | \$320/hour | 10/7/2014 | 4218 |

*2016 billing rates for other attorneys range from \$200 to \$495 per hour.

4. PARSONS BEHLE & LATIMER PROPOSED FEE STRUCTURE

We strive to understand our clients' needs and provide proactive (as opposed to reactive) services, which, in our experience, reduces legal costs over the long term.

REDUCED TEAM MEMBER HOURLY RATES

- **Volume Discount:** Parsons will offer Sun Valley a 10 percent reduction on its 2016 standard hourly rates for the first \$40,000 in fees. In addition, the firm will offer an additional 5 percent



reduction on its standard hourly rates for fees billed beyond \$40,000. The firm also agrees to freeze its hourly rates effective through December 31, 2017. Parsons is also willing to consider alternative billing arrangements, such as fixed fees, blended rates or contingency fee, for specific projects on a case-by-case basis.

- To the extent Sun Valley requires specialized legal service that falls outside customary legal needs, Parsons will offer up to a 10 percent discount for these specialized services.

TRAVEL BETWEEN BOISE AND SUN VALLEY

- Parsons is available to travel between Boise and Sun Valley for all required in-person meetings and events and will not charge for time traveled between Boise and Sun Valley as well as the expenses associated with travel including transportation, lodging and meals.
- Parsons can be available via telephone or video conference in lieu of personal attendance.

FIXED FEE SERVICES

- Parsons will provide the following services on a fixed fee schedule, to be discussed and determined as needs arise:

Training: Parsons can provide training in areas such as open meeting compliance and employment practices, the level of which can be designed to complement any on-line training.¹

Policy and template: Parsons will review and update any needed policies and/or templates in areas such as employment and procurement. This can be done at the hourly rates or an agreed-upon fixed fee to be determined.

Copying: Customary printing services will be included at no charge. Costs for additional printing and/or copying services can be discussed.

5. ADDITIONAL SUBMITTAL REQUIREMENTS

RESUMES: please see the comprehensive biographies attached as Appendix A.

PROFESSIONAL REFERENCES:

- The Honorable Tom Pollard, Mayor of the Town of Alta, telephone number: [REDACTED]
- Kate Black, Town Clerk for the Town of Alta, telephone number: [REDACTED]
- Ben Mason, partner at the law firm Morley Mason, telephone number: [REDACTED]
- Steven D. Briglia, Town Attorney for the Town of Vienna, telephone number: [REDACTED]
- Additional references available upon request.

WRITING SAMPLE: Please see Appendix B for a confidential writing sample. We will promptly provide a non-confidential writing sample upon request.

¹ Additionally, Parsons provides many trainings and written advisory alerts (at no charge) on the ever changing landscape of legal issues related to many topics of interest to Sun Valley and other clients. Interested staff would always be welcome to attend such training sessions.

PROFESSIONAL LIABILITY INSURANCE: Parsons is covered by Columbia Casualty Co. (CNA) in the amount of \$15,000,000.

STANDARD RESPONSE TIME: One member of the team will respond to inquiries from the Mayor, City Council, City Administrator and other staff members within 12 hours.

PUBLIC AGENCY CLIENTS: Please see Appendix C.

POTENTIAL CONFLICTS: Parsons has initiated a conflicts check and no potential conflicts are known.

Parsons cherishes its relationships with its clients and is excited to build on its relationship with Sun Valley. We look forward to structuring a long-term legal relationship with Sun Valley that meets its legal, business and economic needs.

Appendix A

Attorney Profiles

MARIA O. HART

Associate

BIOGRAPHY

Maria O. Hart is a member of the firm's Litigation, Trials & Appeals practice group at Parsons Behle & Latimer. Ms. Hart's practice focuses generally on commercial litigation and business law.

She has experience representing businesses and individuals in both Idaho and Montana. Her practice involves litigation in both federal and state court pursuing or defending against a variety of issues including litigating real estate transactions, determining the enforceability of non-compete clauses in employment contracts, applying for and enforcing trademark protection, defending clients in adversary proceedings in bankruptcy, and defending employers against claims of discrimination. She also has experience responding to FOIA and Privacy Act requests.

Ms. Hart has experience litigating and interpreting numerous municipal ordinances. She has helped resolve client issues through mediation and arbitration.

Ms. Hart has been practicing law for five years.

Prior to joining the Boise office of Parson Behle & Latimer, she was an attorney at one of the largest Idaho-based law firms

ACCOMPLISHMENTS

Academic

Brigham Young University, J. Reuben Clark Law School (J.D., 2012)

BYU Journal of Public Law, Lead Articles Editor

Recipient of the Faculty Award for Meritorious Contribution and Distinguished Service

Eastern Michigan University, *summa cum laude*, (B.S., 2001)

Major in History, minor in Music

ASSOCIATIONS

Professional

Secondment, Battelle Energy Alliance, LLC at Idaho National Laboratory (July 2015 – October 2015), advise on employment-related matters. Idaho Falls, ID

Idaho State Bar (2012 – Present) Litigation, Bankruptcy and Real Estate Sections



800 West Main Street, Suite, 1300

Boise, Idaho 83702

Main 208.562.4900

Direct 208.562.4893

mhart@parsonsbehle.com

PRACTICE AREAS

Litigation, Trials & Appeals
Business & Commercial Litigation
Real Estate Litigation
Insurance
Employment Litigation
Drafting & Enforcement of Non-Compete Agreements
Health Care

LICENSED/ADMITTED

Idaho
Montana
U.S. Dist. Court, Dist. of Idaho
U.S. Dist. Court, Dist. of Montana

ASSOCIATIONS

Professional

American Bar Association, Member

J. Reuben Clark Law Society, Board Member (2010 - Present)

Idaho Women Lawyers (2015 - Present)

Community

Youth Empowered to Succeed Mentor Program, Mentor (July 2009 - Present)

Ms. Ellsworth is committed to being a mentor in Youth Empowered to Succeed - a group that matches mentors with children placed in the foster care system.

AMY A. LOMBARDO

Associate

BIOGRAPHY

Amy A. Lombardo has tried numerous jury and bench trials and defended many appellate matters on brief, including published decisions in the areas of municipal law, damages, and evidence. Ms. Lombardo has experience resolving cases for clients in mediation, arbitration, and before administrative tribunals. Prior to joining the Boise office of Parsons Behle & Latimer, she regularly appeared in court throughout the Commonwealth of Virginia and the District of Columbia, and served as a law clerk to the Honorable R. Terrence Ney in Fairfax County, Virginia.

Ms. Lombardo is a litigator and a lobbyist, practicing within both the Litigation, Trials & Appeals and Government Relations Departments of Parsons Behle & Latimer. Ms. Lombardo's government relations practice stems from a background in politics. Prior to law school, she worked on Capitol Hill for Idaho members of both the United States Senate and House of Representatives. In Idaho, she held positions at the Office of the Governor and on an election campaign for the governor of Idaho. Ms. Lombardo has experience drafting legislation, introducing legislation before the Idaho Legislature, and building coalitions to secure passage of legislation. Most recently, Ms. Lombardo represented Tesla Motors, Inc. to defeat legislation which would have outlawed Tesla's direct-to-consumer sales business model in Idaho. Ms. Lombardo has also passed substantive legislation in Idaho. She recently worked with Idaho Lt. Governor Brad Little and Micron Technology to draft, lobby, and pass legislation aimed at protecting Idaho businesses from bad faith patent assertion claims.

Ms. Lombardo is currently Vice President of the Idaho Women Lawyers. She holds bachelor's degrees from Boise State University in Political Science and History, where she graduated *magna cum laude*, and she received her Juris Doctor from George Mason University while working full time on Capitol Hill and for local Virginia attorneys.



800 West Main Street, Suite, 1300
Boise, Idaho 83702
Main 208.562.4900
alombardo@parsonsbehle.com

PRACTICE AREAS

Litigation, Trials & Appeals
Business & Commercial Litigation
Government Relations & Lobbying
Product Liability Litigation
Employment Litigation
Appeals

LICENSED/ADMITTED

Idaho
Virginia
District of Columbia
U.S. Dist. Court, Dist. of Idaho
U.S. Dist. Court, Eastern Dist. of Virginia
U.S. Dist. Court, Western Dist.
of Virginia

ACCOMPLISHMENTS

Academic

George Mason University School of Law (J.D., 2005)

Trial Advocacy Competition Finalist

Boise State University (1999)

B.S., Political Science, *Magna Cum Laude*

B.A., History, *Magna Cum Laude*

Top Ten Scholar Nominee

ASSOCIATIONS

Professional

American Inns of Court No. 130 (2011-2013)

Idaho Women Lawyers, Vice President (2014-present) Board of Directors (2011-2014)

Defense Research Institute, Women in the Law Committee (2010-present)

Publication Subcommittee; Author, "Best Advice" Newsletter Column

PUBLICATIONS

"Patent Troll" Bill Will Protect Idaho Businesses," *Idaho Business Review* (March 21, 2014)

"Guns in the Workplace & Employer Liability," *Idaho Business Review* (April 25, 2013)

"Idaho Law Regarding the Measure of Damages for Animals Need Not be Revisited," *The Advocate*, Idaho State Bar (March 14, 2013)

Author, "Best Advice" Newsletter Column for Defense Research Institute

REPRESENTATIVE MATTERS

Covel, et al. v. Town of Vienna, et al., 280 Va. 151, 694 S.E.2d 609 (2010)

Covel, et al. v. Town of Vienna, et al., 78 Va. Cir. 190 (March 14, 2009)

DAVID S. JENSEN

Shareholder

BIOGRAPHY

David Jensen represents clients in real estate transactions, commercial and consumer lending, business entity formation, mergers and acquisitions, and general business planning. Examples of Mr. Jensen's experience and transactions include:

- Representing a public pension fund in multimillion dollar real property term loans.
- Representing a bank in multimillion dollar commercial construction loans.
- Representing a bank in multimillion dollar asset-based commercial loans.
- Serving as Idaho counsel for a leading supplier of software and services to the financial services industry.
- Representing a bank in purchasing and selling real property.
- Representing a non-profit hospital in an FHA Section 242 mortgage loan transaction.
- Representing landlords and tenants in negotiating and drafting leases.
- Representing buyers and sellers in purchasing and selling businesses.

He has served as a member of the committees that reviewed the following uniform acts for adoption in Idaho: the Revised Uniform Partnership Act, the Revised Uniform Limited Partnership Act, the Revised Uniform Limited Liability Company Act, and Revised Article 9 of the Uniform Commercial Code.

Mr. Jensen frequently lectures at various CLE courses and other seminars on real estate, business, and lending issues.

ACCOMPLISHMENTS

Academic

University of Minnesota Law School (J.D., 1989)

Cum Laude

Carleton College (B.A., 1984, with Distinction)



800 West Main Street, Suite, 1300
Boise, Idaho 83702
Main 208.562.4900
Direct 208.562.4904
dsjensen@parsonsbehle.com

PRACTICE AREAS

Banking & Finance
Corporate Transactions & Securities
Real Estate
Start-Ups & Venture Capital
Taxation

LICENSED/ADMITTED

Idaho
U.S. Dist. Court, Dist. of Idaho
South Dakota

Professional

Ranked in Chambers USA – Real Estate and Corporate/Commercial

Clerkship, Honorable Richard W. Sabers, Justice of the Supreme Court of South Dakota

ASSOCIATIONS

Professional

Idaho State Bar – Real Property Section, past Chair; Business and Corporate Law Section, past Chair, Inaugural Distinguished Section Member Award

American Bar Association

Fellow in the American College of Real Estate Lawyers

Risk Management Association

Community

Trustee, Idaho Lions Sight & Hearing Foundation, Inc.

Boise Vista Lions

Advisor, Venturing Crew 33

Assistant Scoutmaster Troop 33

Leadership Boise

PRESENTATIONS

"Choice of Business Entity: To LLC, or Not to LLC, That Is the Question," Idaho State Bar, Business and Corporate Law Section, Professional Development Series (October 15, 2014)

"Real Property Law for Appraisers" (January 24, 2014)

Appendix B of the proposal was redacted due to its privileged nature.
It is included in the confidential meeting materials.

Appendix C

Public Agency Clients

CONFIDENTIAL

PUBLIC AGENCY CLIENTS

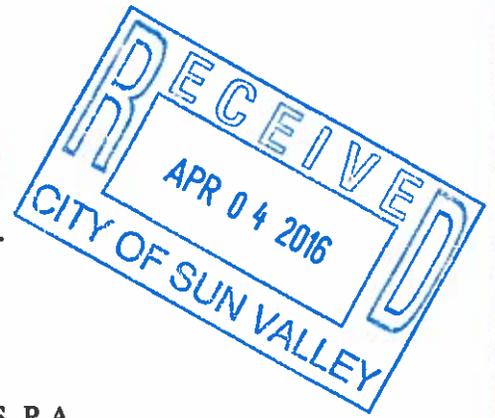
Parsons Behle & Latimer is currently or has recently provided services for the following public agencies:

- | | |
|---|--|
| Bear River Water Conservancy District, Utah | Salt Lake City Corporation |
| Beaver County, Utah | State of Utah |
| Carbon County Water Conservancy District, Utah | Town of Alta, Utah |
| City of Henderson, Nevada | Tooele County, Utah |
| City of Sun Valley, Idaho | Town of Stockton, Utah |
| Jordanelle Special Service District, Utah | Town of Vienna, Virginia |
| Los Angeles Department of Water & Power (operating agent for Intermountain Power Agency) | Utah and Salt Lake Canal Company |
| Loudoun County Public Schools, Virginia | Utah Transit Authority |
| Kane County Water Conservancy District, Utah | Utah Department of Transportation |
| Public Employee Retirement Systems, Idaho | Washington County Water Conservancy District, Utah |

CONFIDENTIAL

WHITE PETERSON

ATTORNEYS AT LAW



WHITE, PETERSON, GIGRAY & NICHOLS, P.A.

CANYON PARK AT THE IDAHO CENTER

5700 E. FRANKLIN RD., SUITE 200

NAMPA, IDAHO 83687-7901

TEL (208) 466-9272

FAX (208) 466-4405

Response to Request for Proposal
PROPOSAL FOR LEGAL SERVICES
FOR THE
CITY OF SUN VALLEY

TABLE OF CONTENTS

| | |
|--|----|
| About the Firm..... | 2 |
| Municipal Corporation and Governance Law..... | 3 |
| Real Estate and Development/Land Use Law..... | 3 |
| Environmental, Administrative Law and Regulatory Compliance..... | 3 |
| Public Works and Municipal Utilities..... | 3 |
| Collections..... | 4 |
| Public Safety and Code Enforcement..... | 4 |
| Litigation..... | 4 |
| Employment Law..... | 4 |
| Labor Law..... | 4 |
| Ordinance/Policy/Regulations Drafting..... | 5 |
| Finance..... | 5 |
| Intergovernmental Relations..... | 5 |
| Attorneys..... | 6 |
| Matthew A. Johnson..... | 6 |
| Wm. F. Gigray, III..... | 8 |
| William L. Punkoney..... | 11 |
| Legal Assistant..... | 12 |
| Additional Attorneys..... | 12 |
| Access, Communication and Availability..... | 13 |
| Conflict of Interest..... | 14 |
| Proactive Approach to Legal Services..... | 15 |
| Compensation | 16 |
| Additional Legal Services..... | 16 |
| Retainer Legal Services..... | 17 |
| General Company Data..... | 18 |
| Professional References..... | 19 |
| Writing Sample..... | 20 |
| Sample No. 1 | |
| Sample No. 2 | |
| Sample No. 3 | |

ABOUT THE FIRM

White Peterson is a general practice law firm with a specialization in representing and advising local government clients. The Firm's collective experience in representing local government clients includes ongoing legal services in all phases of municipal, special service, and school district operations. This firm has been in Nampa since 1968 and has represented municipal clients for over 40 years. Presently, there are seven attorneys practicing in the Firm. Our offices are located directly in front of the Ford Idaho Center in Nampa, Idaho with easy access to Interstate 84.

The following is a list of our municipal and special service district clients:

Cities:

City of Cascade;
City of McCall;
City of Melba; and
City of Wilder.

The Firm also represented the City of Nampa from 1974 to 2014, the City of Meridian from 1998 to 2004, the City of Caldwell from 1990 to 1995 and the City of Greenleaf from 1990 to 2002.

Highway Districts:

Canyon Highway District No. 4;
Golden Gate Highway District No. 3;
Homedale Highway District; and
M.O.J.O. Board (a Joint Powers Agreement between Canyon Highway District No. 4, Golden Gate Highway District No. 3, and Notus-Parma Highway District No. 2).

Fire Districts:

Caldwell Rural Fire Protection District;
Homedale Rural Fire Protection District;
Kuna Rural Fire District;
Nampa Fire Protection District;
New Plymouth Fire Protection District;
Star Fire Protection District; and
Wilder Rural Fire Protection District.

Cemetery Districts:

Greenleaf Cemetery District;
Joint Fairview Cemetery Maintenance District;
Kuna Cemetery District; and
Pleasant Ridge Cemetery Maintenance District.

Irrigation Districts:

Golden Gate Irrigation District; and
Canyon Hill Irrigation District.

School Districts:

School District No. 132 (Caldwell School District)

Other:

Garden Valley Recreation District;
2 Forks Recreational Water and Sewer District;
McCall Redevelopment Agency;
North Lake Recreational Sewer and Water District;
Nampa Development Corporation;
Wilder Housing Authority; and
Wilder Free Library District.

Additionally, White Peterson specializes in the following areas of law directly related to its municipal clients:

Municipal Corporation and Governance Law

Our Firm works with our local government clients on a daily basis to understand, handle, and administer under Idaho's municipal corporations law and associated governance laws such as the Open Meetings Law, Public Records, Law, and Ethics in Government Law. We routinely assist with public records reviews and requests, records management policy, municipal powers questions, meeting organization, executive session issues, ethics and conflict of interest questions, elections administration, and budget issues and concerns. Our legal support staff also works closely with local government clerks to track, calendar, notice, and record as necessary on these general municipal corporation procedures.

Real Estate and Development/Land Use Law

In the process of representing governmental clients, we have experience in real property and right-of-way acquisitions, and land use regulation. Our real property acquisitions and development experience includes: annexations, platting, special use, variances, vacations, easements, administrative facilities, recreational property, public rights-of-way, material sites and acquisitions involving joint powers of a number of governmental entities as well as local improvement district formation and projects. We have assisted in large construction and development projects, including new water systems, sewer system upgrades, fire stations, administrative offices, real estate purchases, elementary and high schools, and the Idaho Center in Nampa, to name just a few.

Environmental, Administrative Law and Regulatory Compliance

White Peterson is experienced in negotiations, compliance, and administrative agency actions related to wastewater, storm water, drinking water and water rights, irrigation, airports, highways and transportation. Our firm is able to assist clients with issues arising from federal regulatory programs, such as the Clean Water Act, National Environmental Policy Act, Clean Air Act, RCRA, and CERCLA. In addition, we assist clients with state regulatory issues arising under the Idaho Environmental Protection and Health Act, the state water quality standards, underground storage tank requirements, and general natural resource and environmental concerns. We are experienced with administrative rule-making and administrative review processes, as well as assisting city staff with enforcing local restrictions and permits required by federal and state law.

Public Works and Municipal Utilities

The Firm has extensive experience with municipal public works and administrative utilities, including wastewater, storm water, drinking water, irrigation, parks and roads and streets. Our attorneys have decades of legal experience counseling cities, highway districts, water and sewer districts, and irrigation districts. In addition, we are experienced and have assisted with municipal utility rate-setting and adjustments, obtaining public works project financing and working with the Idaho Revenue Bond Act (including assisting with both elections and judicial confirmation lawsuits), acquiring rights-of-way, handling eminent domain issues (including prosecuting and defending), and negotiating use of qualified facilities by private utilities, as well as advising in the creation, application, and enforcement of city public works policy.

Collections

Our Firm has worked closely with our local government clients to address collections policies and practices. We have advised and assisted on collections policy, collections process updates, collections notices, options for small-claims courts proceedings, and additional options such as special assessments when appropriate.

Public Safety and Code Enforcement

White Peterson has worked closely with police and fire departments for municipal clients of all sizes. We have assisted in a variety of matters including public records, personnel matters, labor negotiations, analysis of constitutional issues such as due process, and departmental organization. White Peterson also has ongoing experience with the enforcement of international safety codes, fire codes, building codes, nuisance abatement, and municipal codes.

Litigation

White Peterson has considerable litigation experience. The following is a list of the types of litigation our Firm has handled for local government clients: declaratory judgment actions; defense of ACLU suits and claims involving speech, rights of assembly and petition gathering; defense of claimed violations of Article VIII, Section 3 of the Idaho Constitution; election contests; eminent domain; fair housing; highway validation; human rights; inverse and de facto condemnation claims; judicial review; land use planning matters; Open Meeting Law; quiet title actions; and tort claims.

Employment Law

Our Firm helps clients develop effective personnel policies which address hiring practices and protocols, pre-employment inquiry process, employee evaluation, discipline and discharge hearings, including issues unique to public sector employers, and unemployment claims and hearings. We have conducted investigations into allegations of employee misconduct and have made recommendations to the employers regarding employee discipline ranging from oral reprimands to discharge. We have reviewed, commented upon, and revised employee improvement plans to clarify expectations and consequences. We have also assisted in the development of employee benefits policies and addressed employee benefit issues. Part of our work in this area is to coordinate with our client's employment insurance carrier to improve the likelihood that adverse action against an employee will not result in litigation, or, if litigation ensues, increase the probability of a favorable outcome for the client.

Labor Law

The attorneys at White Peterson have considerable experience with a variety of federal and state laws regarding labor. This includes familiarity with the Fair Labor Standards Act, Equal Employment Opportunity Act of 1972 together with the Presidential Executive Orders Nos. 12898 and 13166 and the regulations issued by the Equal Employment Opportunity Commission, Americans with Disabilities Act, Rehabilitation Act of 1973, Vietnam Era Veterans' Readjustment Assistance Act of 1974, Uniformed Services Employment and Reemployment Rights Act of 1994, Age Discrimination in Employment Act, Family and Medical Leave Act, Equal Pay Act of 1963, Civil Rights Acts of 1964 and 1991 which prohibit discrimination in employment, and the Drug Free

Schools and Communities Act of 1989 which through the Federal Department of Education rules require all schools receiving federal funds to take steps to implement programs to prevent the unlawful possession, use, or distribution of drugs by faculty or students. We have defended cases before the Idaho Human Rights Commission and in federal court.

Ordinance/Policy/Regulations Drafting

Our Firm has experience in drafting all types of ordinances, regulations and policy for local government entities. It is an everyday part of our practice.

We also are active in monitoring, and at times participating, in legislative and regulatory activity that will impact our local government clients. This includes active involvement in both the Idaho Municipal Attorneys and the Association of Idaho Cities. Our involvement in tracking and commenting on legislation helps us to provide counsel to our local government clients on of issues of concern and of local statute or policy changes needed in response to state or federal legislative or regulatory changes.

Finance

White Peterson now and has for years of representing various clients been very involved in the financial side of municipal administration. This has included involvement in the budgeting process. We have provided legal services in the development and establishment of standing funds (including standing funds under joint powers agreements with other governmental agencies). Our attorneys also work with government auditors on a regular basis to ensure best accounting practices are followed. Additionally, our firm has also had experience with the Idaho Depository Law, municipal bonds, and impact fees.

Intergovernmental Relations

It is very important for municipalities to work together with neighboring jurisdictions, state and Federal agencies. We have experience in drafting and coordinating joint powers agreements, cooperative efforts of various jurisdictions, including state agencies, when there is a common problem or a need to coordinate. These efforts have included responses to NPDES, FEMA, MS4 regulation, highway jurisdictional matters involving work agreements, material site ownership and operation, joint crushing operations, corridor access management, highway exchange maintenance agreements, joint lobbying efforts on legislation both involving state and county legislative efforts and bill drafting. Our firm members are very involved in the Association of Idaho Cities and Idaho Municipal Attorneys Association.

ATTORNEYS

Designation of Proposed Primary Attorney: White Peterson proposes that the primary attorney that will be coordinating work for the City of Sun Valley will be Matthew A. Johnson. William F. Gigray, III, shareholder, and William L. Punkoney, shareholder will serve as primary backup on coordination, additional points of contact and as team members in providing legal counsel as needed.

MATTHEW A. JOHNSON

Practice Areas Municipal and Local Government; Planning and Zoning; Land Use; Environmental and Natural Resources; Water Rights; Administrative Law and Regulatory Compliance; Public Policy; Real Estate; Homeowners Associations; Corporate and Non-Profit Entities; Estate Planning

Education Washington University in St. Louis, J.D. 2007; Washington University in St. Louis, M.A. Political Science 2007; College of Idaho, B.A. 2000

Admitted 2007, Idaho and U.S. District Court, District of Idaho

Memberships Third Judicial District Bar Association (President, 2010-2011; Secretary, 2009-2010); Idaho Municipal Attorneys; International Municipal Lawyers Association; Idaho State Bar Real Property Section

Community Interests Rotary Club of Nampa (Treasurer); Nampa Schools Foundation; Nampa Chamber of Commerce, Government Relations Committee, Nampa KID Soccer, First United Presbyterian Church.

Awards 2015 Mountain States Super Lawyers Rising Star; 2013 Idaho Municipal Attorneys Promising Newcomer Award; 2007 American Bar Association, Section of State and Local Government, Student Award.

References Michael Fuss, Public Works Director
CITY OF NAMPA
411 3rd Street South
Nampa, ID 83651
(208) 468-5420

 Martin Lutrell, Mayor
CITY OF MELBA
P.O. Box 209
Melba, ID 83641
(208) 495-2722

 Rob Terry, Mayor
CITY OF CASCADE
P.O. Box 649
Cascade, ID 83611
(208) 382-4279

Mr. Johnson joined White Peterson in 2007. He attended the College of Idaho from 1996 to 2000, and then moved to St. Louis where he pursued a joint degree program at Washington University in St. Louis. He obtained his law degree and a master's degree in political science, emphasizing in the study of judicial and administrative politics.

Mr. Johnson has focused a significant portion of his practice on local government entities. Immediately upon joining the firm he became the City Attorney for the City of Melba and an assistant attorney, focused on planning and zoning, for the City of Wilder. He also assists Mr. Gigray with counsel and representation for the Wilder Rural Fire District, Golden Gate Highway District, Canyon Highway District No. 4, Kuna Rural Fire District, and other special districts. Mr. Johnson also has served as the City Attorney for the City of Cascade since December 2013.

Environmental and administrative law is a particular area of expertise for Mr. Johnson. Since joining the firm he has worked closely with the Department of Public Works for the City of Nampa on preparation, review, negotiation, and response to National Pollutant Discharge Elimination System (NPDES) permits for storm water and wastewater issued by the EPA. Mr. Johnson served on the City's storm water regulatory team that sought to address and handle new storm water regulations imposed on the City by EPA. He also advises the City's wastewater regulatory team, which has been working and planning for the handling of new wastewater requirements in a forthcoming NPDES permit renewal.

In addition, Mr. Johnson has advised and assisted on numerous Nampa Public Works projects and policies, including the Industrial Incentive Policy, an innovative policy that balances wastewater planning with economic development opportunities. In the winter of 2012 he served as the lead attorney on judicial confirmation proceedings that were required to meet an application deadline within a couple months of a notice to Nampa of loan funds availability. The judicial confirmation was successfully accomplished within a very tight window of time and enabled Nampa to obtain a substantial low-interest Idaho Department of Environmental Quality (IDEQ) loan for wastewater upgrades, saving millions of dollars for the City. Currently Mr. Johnson is assisting the City with negotiations with IDEQ and the EPA to more appropriately handle wastewater issues related to temperature and infiltration/re-use of treated wastewater.

In addition to wastewater and storm water issues, Mr. Johnson has also assisted Nampa and other local government clients with water rights, right-of-way and access issues, special district formation, rate-setting and adjustments, procurement and sale of property, real property acquisition, and utility relocation. He has also handled the range of general municipal law issues, such as public records, open meetings, ordinances and resolutions, contract negotiations, finance and budget issues, and elections issues.

Mr. Johnson currently serves on the board of the Idaho Municipal Attorneys Association and has been recognized as an up and coming municipal attorney. He has presented to the Idaho Municipal Attorneys Association on environmental law issues, particularly with regards to storm water, wastewater, and utility funding. He serves as moderator and a presenter for an annual seminar on open meetings and public records for National Business Institute.

No complaints have been filed against Mr. Johnson by the Idaho State Bar. No city or client has sued Mr. Johnson for malpractice.

WM. F. GIGRAY, III

| | |
|----------------------------|---|
| <i>Practice Areas</i> | Municipal and Local Government; Real Estate; Corporate and Business Formation; Trusts; Litigation; Probate; Estate Planning |
| <i>Peer Review Rating</i> | BV Rated "Distinguished" 4.4 out of 5 by Martindale-Hubbell ¹ |
| <i>Education</i> | University of Idaho, J.D., 1972, University of Idaho, B.A., 1969 |
| <i>Admitted</i> | 1973, Idaho and U.S. District Court, District of Idaho; 1980, U.S. Supreme Court; U.S. Court of Appeals, Ninth Circuit |
| <i>Memberships</i> | Third Judicial District Bar Association (President, 1978-1979); Idaho Trial Lawyers Association (President, 2001-2002; Member, Board of Directors, 1998-2003); The American Association for Justice; American Trial Lawyers Association Top 100 Trial Lawyers; National School Boards Association's Council of School Attorneys |
| <i>Community Interests</i> | Caldwell Chamber of Commerce (Legal Counsel); Caldwell Foundation for Educational Opportunity, Inc. (President); Greenbelt Civic League of Caldwell (President); Foundation for Ada/Canyon Trail Systems (Vice President) |
| <i>References</i> | <p>Alicia M. Almazan, Mayor CITY OF WILDER 219 3rd Street Wilder, Idaho 83676 (208) 482-6204</p> <p>Wendy Burrows-Severy, Clerk/Treasurer CITY OF WILDER 219 3rd Street Wilder, Idaho 83676 (208) 482-6204</p> <p>Nathan Coyle, City Manager CITY OF MCCALL 216 E. Park Street McCall, Idaho 83638 (208) 634-1003</p> <p>Chuck Stout, Chairman of the Board of Trustees CALDWELL SCHOOL DISTRICT NO. 132 1101 Cleveland Boulevard, Caldwell, Idaho 83605 (208) 455-3300</p> |

¹ **BV Distinguished® (3.0-4.4)** - BV Distinguished® is an excellent rating for a lawyer with some experience. A widely respected mark of achievement, it differentiates a lawyer from his or her competition. It is based on survey responses from practicing lawyers and active judges.

Jodie Mills, Superintendent
CALDWELL SCHOOL DISTRICT NO. 132
1202 Fillmore Street
Caldwell, Idaho 83605
(208) 455-3300

Rick Youngblood, Chairman of the Board of Commissioners
CANYON HIGHWAY DISTRICT NO. 4
15435 Hwy 44
Caldwell, Idaho 83607
(208) 454-8135

Joe Stear, Mayor, and past Chairman of the Board of Commissioners
CITY OF KUNA and KUNA RURAL FIRE DISTRICT
763 W Avalon Street
Kuna, Idaho 83634
(208) 922-5546

David Lincoln, Commissioner
GOLDEN GATE HIGHWAY DISTRICT NO. 3
500 Golden Gate Ave.
Wilder, Idaho 83676
(208) 482-6267

And also:
Administrator
HOUSING AUTHORITY OF THE CITY OF WILDER
500 South 5th Street
Wilder, Idaho 83676
(208) 482-7750

Mr. Gigray has served as general counsel for municipal and numerous special service districts since the mid-1970s. He has also served as counsel for School District No. 132, Canyon County, state of Idaho since 1988. Currently he serves as general counsel for over 20 local government entities in Canyon, Ada, Owyhee, Boise, Valley and Payette counties. He regularly attends City Council, Board of Commissioners, Board of Trustees and Board of Directors meetings and provides advice regarding the open meetings, public records, budgets and other fiscal matters as well as numerous other general operations, administration and parliamentary procedure as needed. Due to his longevity in providing legal services to municipal and other local government entities he has considerable experience in developing administrative protocols, drafting and reviewing policy, contracts and joint power agreements, handling personnel matters, records policy and public records request procedures and responses, assisting with elections including formation, general elections, special override levy and bond elections, handling litigation not covered by insurance and declaratory judgment actions, eminent domain, encroachment actions, assisting with procurement and surplus property matters, drafting ordinance, resolutions and legislation and governing board hearings both quasi-judicial and legislative.

As general counsel for the Caldwell School District over the past 20+ years, Mr. Gigray has had the opportunity to provide legal services in all phases of the School District's functions. This

includes everything from drafting records policy complying with state and federal law, providing legal advice concerning matters of board of trustees' conflicts of interest, school attendance, special levy election matters, certificated and non-certificated personnel matters including issues over renewable contracts teacher and administrator evolutions and student and personal discipline hearings. He represented the Caldwell School District in a racial discrimination class action suit several years ago in federal court in the defense of numerous claims of discrimination at all levels of school district functions and proposed and negotiated a settlement involving a very complex model of reporting and administrative actions which resolved the lawsuit and was successfully completed.

Mr. Gigray has considerable experience with governmental audit responsibilities, GASB 34 reporting, budget preparation and administration. Property acquisition and sale of both real and personal is and has been a considerable part of his legal services to municipal, special service and school district. Projects include many new schools, highway rights of way, administrative offices, water and sewer utility easements, building construction contracts including design build, major equipment purchases and surplus, and exchanges of personal and real property both with other governmental entities and with the public. Related legal services have also included drafting requests for proposals for professional engineering and architectural services, bid procedures and specifications, and all types of procurement from noticed bidding, quotes, piggyback bid and sole source procurement procedures and process. Mr. Gigray has developed with the special services districts complete policy codes inclusive of all standing policies. He also has considerable experience in negotiations involving interagency cooperation and joint power agreement drafting. Other governmental experience includes district formation and numerous annexations.

Providing legal advice for bond elections and the issuance of bonds is also part of Mr. Gigray's experience. He has experience with general obligation and revenue bonds for buildings and infrastructure projects in many types of districts and cities. He provided legal services to the College of Idaho in the issuance of Nonprofit Facilities Revenue Bonds obtaining financing for the cost of dormitory improvements in 1997 and College Facility Revenue Bonds for what is now Northwest Nazarene University, for acquisition and construction of a performing arts auditorium and certain dormitory facilities in 1996.

Mr. Gigray has prosecuted judicial confirmation for the City of Caldwell for the replacement of the Purple Sage irrigation system and for the transfer of the City's municipal irrigation system assets to the Caldwell Lateral Irrigation District.

Mr. Gigray has considerable experience with 501(c)(3) organizations including the formation and IRS qualification in 1992 of the Caldwell Foundation for Educational Opportunity, Inc. This Foundation now has raised over a million dollars and provides over 30+ scholarships to graduating students of Caldwell High School, and grants to teachers, students and administrative staff of the Caldwell School District. He has served as President since the formation of this Foundation. Other foundation experience includes the formation and IRS qualification of the Greenbelt Civic League of Caldwell, Inc. in 1981 which foundation has played a key role in the development of Caldwell's greenbelt along the Boise River including the purchase and development of Whittenburger Park which lies adjacent to the Boise River and Centennial Way. Mr. Gigray has served as President of this Foundation since its formation. He has also served as legal counsel for the Caldwell Community Foundation, Inc. and serves as President of the Foundation for Ada/Canyon Trails Systems, Inc. which is actively involved in planning and establishing a trails and pathways system throughout Ada and Canyon Counties.

No complaints have been filed against Mr. Gigray by the Idaho State Bar. No city or client has sued Mr. Gigray for malpractice.

WILLIAM L. PUNKONEY

| | |
|-----------------------|---|
| <i>Practice Areas</i> | Municipal Law; Contract Law; Regulatory Compliance; Real Property Law; Business Law; Civil Litigation; Estate Planning; Bankruptcy; Eminent Domain; Franchise Agreements; Purchase Agreements; Public Records. |
| <i>Education</i> | University of Idaho College of Law, J.D. 2010, The College of Idaho, B.A. 2005. Dean's List every semester in Law School; Editor-in-Chief, Idaho Law Review; Chairman, Federalist Society |
| <i>Admitted</i> | 2010, Idaho and U.S. District Court, District of Idaho |
| <i>Memberships</i> | Idaho State Bar |
| <i>References</i> | <p>Nathan Coyle, City Manager CITY OF MCCALL 216 E. Park Street McCall, Idaho 83638 (208) 634-1003</p> <p>Randy Haverfield, Chairman NAMPA DEVELOPMENT CORPORATION 9 12th Ave. South Nampa, Idaho 83651 (208) 468-5430</p> <p>Holger (Andy) Petersen, Commissioner/Secretary NAMPA FIRE PROTECTION DISTRICT 820 2nd Street South Nampa, Idaho 83651 (208) 468-5770</p> <p>Darrell W. Jackson, Chairman of the Board of Commissioners WILDER RURAL FIRE PROTECTION DISTRICT 601 Patriot Way Wilder, Idaho 83676 (208) 482-7563</p> |

Mr. Punkoney has significant experience providing legal counsel to municipalities including the Cities of Wilder and McCall; The Nampa Development Corporation; Caldwell School District No. 132; the Fire Protection Districts for Nampa, Star, Marsing and Wilder; and Canyon Highway District No. 4 and Golden Gate Highway District No. 3. Mr. Punkoney has worked closely with department heads and staff in the Fire Districts and City Departments including the Utility Billing, Parks and Recreation, and the Finance Department.

Outside of municipal law, Mr. Punkoney has experience representing business and individual clients' interest in matters ranging from bankruptcy, civil litigation, family law and real property disputes and transactions. He has also made multiple presentations to the Idaho Association of Highway Districts, the Idaho State Fire Commissioners' Association, and various seminars for fellow attorneys related to real property law and debt collection.

No complaints have been filed against Mr. Punkoney by the Idaho State Bar. No city or client has sued Mr. Punkoney for malpractice.

LEGAL ASSISTANT

Joan Howell, our municipal law and policy legal assistant, will serve as primary support staff to Matthew Johnson and for the City of Sun Valley. Joan coordinates and communicates with our local government clients, particularly with clerks, to assist in policy and legal support.

ADDITIONAL ATTORNEYS

The following attorneys would be available on specialized issues or projects as needed:

- **William F. Nichols** – Mr. Nichols has significant experience in municipal law, impact fees and land use law. Additionally, Mr. Nichols serves as general counsel for the City of McCall and for the Nampa Development Corporation. Mr. Nichols has more than 20 years of experience acting as an arbitrator in Oregon under the Oregon court annexed mandatory arbitration for civil cases involving less than \$50,000. He also has experience with labor arbitrations involving labor grievances.
- **Brian O'Bannon** – Mr. O'Bannon focuses on intellectual property, constitutional and appellate law.
- **Phillip A. Peterson** – Mr. Peterson has significant experience with employment benefits and tax law.
- **Terrence R. White (of-counsel)** – Mr. White has over forty years experience in municipal law, land use and real estate law. Mr. White served as the city attorney for the City of Nampa until 2014.

The attorneys of our Firm are all in good standing and licensed to practice before all courts and administrative agencies of the State of Idaho.

Martindale-Hubbell Rating: White Peterson has an AV Preeminent rating

ACCESS, COMMUNICATION AND AVAILABILITY

Our office is located at 5700 E. Franklin Rd., Suite 200, in Nampa, Idaho. We are approximately 168 miles from Sun Valley, with an estimated driving time of two hours and fifty minutes. We are prepared to provide in-person attendance for meetings and legal services via driving as necessary or requested. Mileage and travel costs would be billed to the City unless otherwise incorporated via negotiation into a retainer agreement.

Our office hours are 8:00 a.m. to 5:30 p.m. Services during the evening, weekends, or holidays are available via appointment. Our local government attorneys are experienced with handling meetings and appointments outside of normal business hours.

Our Firm provides our attorneys with communication technology, including smart phones, such that they are reasonably available at most times, including by e-mail, and are able to respond promptly when needed in emergency situations or upon appointment outside regular business hours. We are experienced in making arrangements to be available in emergency or urgent situations, including in-person attendance of meetings, telephonic attendance, and videoconference attendance.

For efficiency purposes and to manage costs to the City of Sun Valley, our intention would be to primarily provide legal counsel and communication via telephone, electronic mail, and videoconferencing. In-person attendance of meetings and/or conferences would be available on an as-needed basis and we are open to discussion of a regular or semi-regular meeting attendance schedule based upon what the City needs and within the City's budgetary considerations.

Our local government team of attorneys and support staff allows us to timely handle needed legal services. We encourage open and regular communication between City officials and staff and our office to assist in expediting information gathering and responses on issues. An initial contact, via telephone or e-mail, on a question or issue would typically be through Mr. Johnson as primary attorney or Ms. Howell as our local government support staff member. That inquiry would then be addressed directly by Mr. Johnson or Ms. Howell, or if they are unavailable forwarded to another member of our local government team for review and response. An initial verbal or electronic response will typically be provided within one day of inquiry. Most standard inquiries will be fully addressed and a written response provided within five to fourteen days depending on complexity, or in situations requiring substantial additional research or drafting an anticipated schedule of response will be provided within that same timeframe. For situations falling under an hourly rate, a scope of work including a description of the task, estimated timeframe, and estimated cost, is provided within the above timeframes. Our office is experienced and fully prepared to handle and address emergency or urgent issues within shorter timeframes when necessary.

Our local government team is experienced in working with outside legal counsel in specialized areas such as bond counsel or with insurance-provided defense counsel. We are fully willing to coordinate with the City as needed in such situations where outside counsel is needed or desired by the City.

CONFLICT OF INTEREST

We have performed a conflict of interest review on clients of the firm, looking back three years, and have identified no current legal engagements where our firm is representing a client directly adverse to the City of Sun Valley or imminently likely to be adverse to the City of Sun Valley. At this time we do not anticipate any conflicts of interest regularly arising with respect to performance of City Attorney duties for the City of Sun Valley.

PROACTIVE APPROACH TO LEGAL SERVICES

White Peterson has successfully helped local government clients of all sizes navigate challenges and opportunities through an approach that emphasizes experienced and preventative legal counsel. Our approach to legal services encourages that the City Attorney be a key sounding board for the City governance and management team. We emphasize a pro-active and preventative approach to legal services that seeks to identify potential issues and problems early so they can be prevented via planning, policy and administration, minimizing the need to handle problems retroactively or through costly litigation. While we have significant experience in problem-solving and fixing and can do so as needed; we encourage an approach to legal services that is problem-preventing. To this end, while being budget-conscious, we encourage provision of legal services that allows for regular and early communication of City management with the City Attorney and provides for regular attendance and participation of the City Attorney in governing meetings.

Municipal law is an area that is becoming increasingly complex and specialized. The breadth of our firm's experience and practice areas allows us to provide Sun Valley an experienced primary City Attorney who is the main point of contact and a consistent point of communication, while also providing the experience and capabilities of a full service law firm. Since our attorneys representing local government clients also coordinate through our local government practice group, we are also able to offer experiences and insights from a variety of local governments so as to share and provide ideas and solutions. In addition, our practice group proactively monitors the Idaho Legislature in order to understand proposed legislation that could affect our municipal clients. By doing so, we are able to prepare our clients for changes in the law that could affect daily operations. The diversity of experience and practice areas within our firm also allows us to provide a broader range of legal services, which helps to minimize the need to bring in outside counsel.

White Peterson's preventative legal services philosophy also focuses on helping our local government clients, as needed, to develop policies and procedures to help streamline and standardize processes. This also includes being available for training and education for City leaders and staff. Such training and process development can help achieve cost-savings through minimizing ad hoc decision making and by providing guidance and consistency through staff or governance transitions.

A pro-active approach to legal services also helps promote the values of transparency, openness, civility, and responsiveness that the City has identified as key values for Sun Valley.

Pages 16 and 17 of the proposal were redacted due to their privileged nature.
They are included in the confidential meeting materials.

GENERAL COMPANY DATA

Legal Name and Address:

White, Peterson, Gigray & Nichols, P.A.
5700 E Franklin Road, Suite 200
Nampa, Idaho 83687-7901

Point of Contact:

Matthew A. Johnson
5700 E. Franklin Road, Suite 200
Nampa, ID 83687-7901
Tel: (208) 466-9272
Fax: (208) 466-4405
Email: mjohnson@whitepeterson.com

Type of Entity:

Professional Association

Federal Employer Identification Number:

82-0309660

Professional Liability Insurance:

White Peterson carries professional liability insurance with Travelers with coverage limits over \$1,000,000 per occurrence. Certificate of proof of insurance will be provided as necessary.

PROFESSIONAL REFERENCES

| |
|--|
| <p>Rob Terry, Mayor CITY OF CASCADE 105 South Main Street Cascade, Idaho 83611 Office: 208-382-4279 <i>mayorrob@cascadeid.us</i></p> |
| <p>Martin Lutrell, Mayor Noni Stapleton, City Clerk CITY OF MELBA 401 Carrie Rex Ave Melba, Idaho 83641 Office: 208-495-2722 <i>martin_summit@qwestoffice.net</i> <i>cityclerk@cityofmelba.org</i></p> |
| <p>Nathan Coyle, City Manager CITY OF McCALL 216 E. Park Street McCall, Idaho 83638 (208) 634-1488 <i>ncoyle@mccall.id.us</i></p> |
| <p>Michael Fuss, P.E., MBA, <i>Public Works Director</i> CITY OF NAMPA Nampa City Hall 411 3rd Street South Nampa, Idaho 83651 (208) 468-5420 <i>fussm@cityofnampa.us</i></p> |
| <p>Tom Dale, Canyon County Commissioner (previously Mayor, City of Nampa) 1115 Albany Street, Room 101 Caldwell, Idaho 83605 (208) 454-7507 <i>tdale@canyonco.org</i></p> |

We would be happy to provide additional references and recommendations, including other local government clients and professional groups, such as the Association of Idaho Cities, if such further information would be helpful or desired.

WRITING SAMPLE

We have provided three writing samples to show a variety of documents our firm provides for clients, including correspondence and reports to the Council and persuasive pleadings filed with the Court.

Sample No. 1

Communication with Mayor and City Council
Ordinance explanation

Sample No. 2

Communication with Mayor and City Council
City Attorney Report

Sample No. 3

Petition for Judicial Review

WHITE PETERSON

ATTORNEYS AT LAW

WM. F. GIGRAY, III
MATTHEW A. JOHNSON
WILLIAM F. NICHOLS *
BRIAN T. O'BANNON *

WHITE, PETERSON, GIGRAY & NICHOLS, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901

TEL (208) 466-9272

FAX (208) 466-4405

EMAIL: mjohnson@whitepeterson.com

PHILIP A. PETERSON
WILLIAM L. PUNKONEY
DAVIS F. VANDERVELDE **
TERRENCE R. WHITE ***

* Also admitted in OR

** Also admitted in NV

*** Also admitted in WA

November 20, 2015

To: Mayor and City Council, City of Melba

Re: Draft Ordinance 250 - Liquor by the Drink

The attached draft ordinance is in follow-up to the local referendum election of November 3, 2015. The result of that election, as reviewed and certified by the county and city, is to authorize the retail sale of liquor by the drink within city limits.

Draft Ordinance 250 deletes Melba City Code 3-1-13, which currently prohibits the sale of liquor by the drink.

The other amendments within the draft ordinance are intended to allow for liquor by the drink licenses to be reviewed, issues, and administered in similar manner to the existing beer and wine license processes. This would also allow Noni to use the same kind of form as beer/wine with only minor changes.

Here is a summary of the amendments:

- Throughout the chapter, "liquor by the drink" was generally added in when relevant any time "beer and/or wine" were listed.
- 3-1-2 Purpose was edited to remove now unnecessary language regarding effective dates.
- 3-1-3 Definitions were updated, with the primary change being to simply refer to Idaho Code definitions on some terms (since some of the City definitions had not been updated in conjunction with state law definition changes). This will keep the City up to date with any future changes the state may make on how it defines beer, liquor, and wine.
- All licensing provisions were edited to provide similar processes for liquor by the drink as are done for beer and wine (with the exception that there is no off premises allowed for liquor).
- 3-1-9(C) provides for a number of licenses as would be allowed by state law. Idaho Code 23-903 provides that a retail liquor license is allowed at one per 1,500 in population. Two licenses may be issued for a city with a population of 1,500 or less upon application to the state.

Here are some additional questions and items the City may wish to consider either in the review of this draft ordinance or for consideration as to future amendments:

- Are the days and hours of sale appropriate? See 3-1-11.
- Are the fees appropriate? See 3-1-7. Under Idaho Code § 23-916 the City can charge a fee up to 75% of the state fee. The state license fee varies based upon population. It is currently \$300 per year for a town under 1,000 in population and \$500 for cities between 1,000 and 3,000 population. I.C. § 23-904.

- Are there any requirements or processes where the City feels liquor by the drink should be treated differently from beer/wine?
- The City may want to check with the state as to what may be needed from the city and/or businesses to allow for two retail liquor by the drink licenses under I.C. 23-903. See 3-1-9(C).
- The City may want to consider amending 3-1-7 to provide that such fees are set by resolution (allowing for a simpler process for future fee changes).
- The City needs to go through the notice and public hearing process of Idaho Code 63-1311A to set the new fee for liquor by the drink licenses. If the City wants to do amendments to have all the alcohol fees set by resolution (per bullet above); it would probably be most efficient to do that all in one process within the next meeting or two.
- I've also attached a copy of the City Code of Wilder's Liquor Control Chapter. This is merely for your information and to see how another city has approached the same topic. It has some specifics and additional items, such as bartender licenses, that may be of interest for future consideration.

Respectfully submitted,

Matthew A. Johnson
City Attorney

WHITE PETERSON

ATTORNEYS AT LAW

WM. F. GIGRAY, III
MATTHEW A. JOHNSON
WILLIAM F. NICHOLS *
BRIAN T. O'BANNON *
PHILIP A. PETERSON

WHITE, PETERSON, GIGRAY, ROSSMAN, NYE & NICHOLS, P.A.
CANYON PARK AT THE IDAHO CENTER
5700 E. FRANKLIN RD., SUITE 200
NAMPA, IDAHO 83687-7901

TEL (208) 466-9272

FAX (208) 466-4405

EMAIL: mjohnson@whitepeterson.com

WILLIAM L. PUNKONEY
TODD A. ROSSMAN
DAVIS F. VANDERVELDE **
TERRENCE R. WHITE ***

* Also admitted in OR

** Also admitted in NV

*** Also admitted in WA

March 24, 2014

To: Mayor and Councilmembers, City of Cascade

Re: City Attorney Report for 3/24/14

Greg Rehn Lease

The additional information regarding renewal, termination, and maintenance responsibilities (automobiles, tree branches) was added to the lease. The City received the certification of insurance for Mr. Rehn. Pam has the final version of the lease for any final review and approval and then the mayor's signature.

American Legion - Property Exchange

The American Legion provided me with the necessary background information. I am working to finalize the Property Exchange Agreement and associated easements and documents. The Council has already authorized the exchange, so once the documents are finished I will coordinate with Pam and the Mayor on signatures of the parties and recording.

American Legion - CUP for Sign

The Mayor has my review and recommendation to share regarding this matter and whether another public hearing is necessary.

Collections Policy

We have done a review of the utility billing sections of the City Code and are preparing a memorandum for the Council to recommend some updates and policy approaches. I will coordinate with Pam and hope to have this on the agenda within the next couple meetings.

Pending/Threatened Litigation

No further updates at this time. I am continuing to monitor per our conversation at last meeting's executive session.

Respectfully,
Matt

F I L E D
A.M. P.M.

NOV - 1 2012

CANYON COUNTY CLERK
K CANO, DEPUTY

Terrence R. White
Matthew A. Johnson
WHITE PETERSON GIGRAY ROSSMAN
NYE & NICHOLS, P.A.
5700 East Franklin Road, Suite 200
Nampa, Idaho 83687-7901
Telephone: (208) 466-9272
Facsimile: (208) 466-4405
ISB Nos. 1351, 7789
trw@whitepeterson.com
mjohnson@whitepeterson.com

Attorneys for Petitioner

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

IN RE: THE CITY OF NAMPA
WASTEWATER TREATMENT FACILITY,
THE CITY OF NAMPA,

Petitioner.

CASE NO. CX12-10681C

PETITION FOR JUDICIAL
REVIEW

Fee Category: EXEMPT

COMES NOW, the Petitioner, the City of Nampa, Idaho, by and through the City Council (hereinafter "Petitioner" or "City") and its attorneys of record, the law firm of WHITE PETERSON GIGRAY ROSSMAN NYE & NICHOLS, P.A., pursuant to Idaho Code §§ 7-1301 through 1313, and hereby petitions this Court for a judicial examination and determination of the validity and authority of the power of Petitioner to enter into a certain loan agreement and associated promissory note and financing documents with the State of Idaho in order to finance the construction of certain Wastewater Treatment Facility improvements necessitated by federal

PETITION FOR JUDICIAL REVIEW - 1

COPIY

regulatory requirements (the "Phase 1 Project"). Idaho Code §§ 7-1301 through 1313, provides a mechanism for obtaining a judicial examination of the validity of actions and the power of local entities, by providing certainty prior to the expenditure and commitment of extensive public resources, thereby promoting the public welfare.

Pursuant to the requirements of Idaho Code § 7-1304(2), which requires "a clear statement of the legal authority for the proposed expenditure" and "facts on which the validity of such bond or obligation is founded," the Petitioner sets forth the following:

1. This *Petition* is made by Petitioner, the City of Nampa, as a political subdivision of the State of Idaho pursuant to the Idaho Judicial Confirmation Law, Idaho Code §§ 7-1301 through -1313.

2. The City of Nampa is a municipal corporation, incorporated under the laws of the State of Idaho, Idaho Code §§ 50-101 through 2912.

3. The City of Nampa is a "political subdivision," as defined at Idaho Code § 7-1303(6), authorized to utilize a judicial confirmation proceeding pursuant to Idaho Code § 7-1304.

4. The City Council of the City of Nampa, Idaho, is a "governing body," as defined at Idaho Code § 7-1303(4)(b), authorized to file this *Petition* pursuant to Idaho Code § 7-1304(1).

5. The City owns, operates, and maintains a wastewater treatment facility and system for the collection, treatment, and disposal of sewage and wastewater and for the protection of the health and welfare of the general public, pursuant to Idaho Code §§ 50-301, 50-302, 50-304, 50-323, 50-332, 50-33, and 50-1027 through 1042.

6. The City possesses the authority to issue revenue bonds as a non-exclusive method to finance its wastewater system pursuant to the Idaho Revenue Bond Act, Idaho Code §§ 50-1027 through 1042.

7. The City has the power to “contract and be contracted with,” to “acquire, hold, lease, and convey property, real and personal,” and to “erect buildings or structures of any kind, needful for the uses or purposes of the city; and exercise all powers and perform all functions of local self-government in city affairs as are not specifically prohibited by or in conflict with the general laws or the constitution of the state of Idaho.” Idaho Code § 50-301.

8. The City is empowered and obligated to make local ordinances, resolutions, and regulations so as “to maintain the peace, good government and welfare of the corporation and its trade commerce and industry,” which requires the City to provide for the general public welfare and safety of the community. Idaho Code § 50-302.

9. The City may pass all ordinances and regulations necessary to preserve the public health. Idaho Code § 50-304

10. The City has the power to “borrow money and pledge the credit, revenue and public property of the corporation for the payment thereof, in the manner provided by law, and to evidence the same by issuance of bonds, notes or warrants.” Idaho Code § 50-237.

11. The City has the power to make and provide for the rehabilitation of its facilities or other improvements, including sewer, by way of repair, rebuilding, renovation, and remodeling of such facilities or improvements. Idaho Code § 50-315.

12. The City is subject to limitations on its authority to incur indebtedness as set forth in Article VIII, Section 3 of the Idaho Constitution.

13. The City constructed sanitary sewer lines and a community septic tank in the early 1900's. The existing plant was constructed in 1948 and 1949, and began operating in 1950. An expansion and modernization of the plant began in 1976 and was completed in 1982. Currently the City wastewater system consists of one wastewater treatment facility and a collection system serving properties both in and outside the city limits.

14. The City wastewater treatment facility has the capacity to receive and treat 18 million gallons of wastewater per day. The City maintains three hundred and forty-six miles of sewer pipes, ranging from six to forty-two inches in diameter. The system serves 24,000 residential customers, 3,200 commercial customers, and ten industrial customers.

15. After treatment, the wastewater treatment facility discharges the treated water into Indian Creek. Indian Creek is a "water of the United States" under the Clean Water Act, 33 USC § 1251 et seq. Therefore, the City operates under a wastewater discharge permit issued through the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act and administered by the United State Environmental Protection Agency (EPA).¹

16. The City of Nampa Wastewater Treatment Facility operates under NPDES Permit No. ID-002206-3. This permit became effective February 1, 1999. It was originally set to expire on February 2, 2004, but has been administratively extended pending issuance of a new permit.

17. In the past twenty years, concerns have arisen regarding certain pollutant loads, most particularly phosphorus, in the Snake River and the Lower Boise River as a tributary of the Snake River. These concerns have led to additional regulatory requirements and more stringent

¹ While many states have obtained "primacy" where NPDES permits are administered by that state through a state agency, the State of Idaho is one of five states that have not obtained such status. Therefore NPDES permits in Idaho are administered by the U.S. EPA.

discharge limits, particularly on phosphorus, for municipal wastewater facilities discharging into the Boise River and its tributaries.

18. EPA is currently drafting an updated NPDES permit for the Nampa Wastewater Treatment Facility. A draft permit is to be issued in the first half of 2013, with a public comment period to follow.

19. The new NPDES permit for the City of Nampa Wastewater Treatment Facility will contain significant increases in regulatory requirements. Most notably, the new permit will contain significantly stricter discharge limits for total phosphorus. The City's 1999 NPDES permit contained no effluent limits on total phosphorus, only monitoring requirements. The City's new NPDES permit will contain an effluent limit as low as 500 micrograms per liter within five years, with an even lower limit on a ten year implementation schedule. New permits issued in March 2012 for two City of Boise wastewater facilities set total phosphorus seasonal limits at 70 micrograms per liter, to be achieved within ten years. The EPA has made clear that the Boise permits are an indicator of expected limits for other Treasure Valley NPDES permits with discharges to the Boise River or its tributaries.

20. The City of Nampa has adopted and is pursuing a phased approach to wastewater treatment facility upgrades necessary to comply with substantially increased phosphorus limits, as well as other NPDES regulatory requirements. Phase 1 of this approach allows the City to immediately proceed on urgent and necessary wastewater treatment facility upgrades necessary to meet NPDES permit requirements covering the next five years. In particular, these upgrades will allow the City to meet a total phosphorus seasonal limit of 500 micrograms per liter by 2018. Phase 2 allows the City flexibility to adapt its treatment option at a later permit cycle based upon updated information as to the ongoing regulatory requirements and additional information

on the feasibility and cost of longer term treatment options. This phased approach was approved by the City Council at a special meeting on March 29, 2012. See Minutes of March 29, 2012 Special Meeting, attached hereto as *Exhibit A*.

21. The City is currently proceeding with Phase 1 of the Project, which is already in the design phase. Phase 1 includes rehabilitation, reconfiguration, and upgrades to update the treatment process facilities at the WWTF, including addition of a third aeration basin, a solids handling facility, an anaerobic digester, and a primary effluent pump station, as well as the demolition of a trickling filter and secondary clarifier. The estimated cost of Phase 1 is Twenty Eight Million Dollars (\$28,000,000).

22. The City has been evaluating its options for funding the necessary improvements under Phase 1, including discussion of cash financing and revenue bond financing. Cash financing would require a wastewater rate increase of approximately seventy-one percent (71%). Revenue bond financing, at an estimated interest rate of 4.8%, would require a rate increase of thirty-one percent (31%).

23. Pursuant to Idaho Code § 39-3626 and rules and regulations promulgated pursuant thereto, the State of Idaho Department of Environmental Quality (DEQ) administers a Clean Water State Revolving Fund (CWSRF) loan program. The CWSRF program allows DEQ to "make grants and loans at or below market interest rates, as funds are available, to any municipality to assist said municipality in the construction of sewage treatment works." Idaho Code § 39-3626(1).

24. On August 28, 2012, the City received a letter, dated August 23, 2012, from DEQ with updated information on additional funding under the CWSRF program for fiscal year 2013. *DEQ Letter of August 23, 2012*, attached as *Exhibit B*, the letter states that DEQ, based on

refinancing of existing loans, will now have an additional \$50 million to make available for new wastewater loans for FY 2013. Entities on the FY 2013 priority list and able to meet loan application requirements by January 1, 2013 will be considered for this additional loan funding.

25. The City of Nampa had submitted a Letter of Interest to DEQ for financing of wastewater projects for FY 2013 and was ranked at 17th on the FY 2013 priority list. At the original CWSRF funding level, this made it extremely unlikely the City would be offered a CWSRF loan. However, the additional funding only recently made available significantly increases the likelihood that sufficient money will be available for the CWSRF wastewater loans such that the City of Nampa may be able to successfully obtain such a loan.

26. Under the CWSRF loan, the City would borrow approximately Seventeen Million Dollars (\$17,000,000) at an interest rate of 2% for a twenty (20) year term. Over the term of the loan, this would result in savings of approximately Seven and One-Half Million Dollars (\$7,500,000) versus a traditional revenue bond.

27. Due to ballot deadlines set by the State of Idaho and the timing of the DEQ Letter of August 23, 2012, it was unfeasible for the City to submit a question on pursuing a CWSRF loan to the electorate for the November 2012 election. The earliest available election date at which the City could submit a question on a CWSRF loan to the electorate is May 2013, which is too late to obtain FY 2013 CWSRF financing.

28. DEQ requires that the CWSRF Loan Application be complete and submitted by December 31, 2012. Time is of the essence for the City to pursue the CWSRF Loan with its significantly lower interest rate. The City does not have the option to wait for the May 2013 election without increasing the cost of financing to ratepayers by Seven and One-Half Million Dollars (\$7,500,000).

29. As a loan application condition, the DEQ requires that the City obtain judicial confirmation finding: (a) that the debt is an ordinary and necessary expense under Art. VIII, § 3, of the Idaho Constitution, thereby allowing the City to incur the loan obligation without a vote of the electorate; and (b) that the City is authorized to agree to the terms and conditions set forth in the loan offer. A copy of Form 3-A: Sample DEQ Loan Offer, Acceptance, and Agreement is attached hereto as *Exhibit C*.

30. Article VIII, Section 3, of the Idaho Constitution, provides that no county, city, or other political subdivision shall incur any indebtedness or liability, in any manner or for any purpose, exceeding in that year the income and revenue provided to it for such year, without the assent of two-thirds (or, in the case of certain revenue bonds, the assent of the majority) of the qualified electors thereof voting at an election held for that purpose, but Art. VIII, § 3, contains the following exception: "provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state."

31. The City has the authority to enter into the loan agreement and to secure the loan by a promissory note, based upon Art. XII, § 4, of the Idaho Constitution, Idaho Code § 50-237, and Idaho Code § 50-1033, and has the authority to pledge system revenues as security for a loan without an approving vote of the electorate pursuant to Idaho Code §§ 50-237, 50-301, and 50-1033.

32. Petitioner has exercised its authority pursuant to the above statutes, as well as Idaho Code §§ 50-302, 50-315, 50-323 and 7-1301 through 1313, to approve its Resolution No. 34-2012 declaring the need to acquire and construct the above-described Project; finding that the acquisition, construction and financing of the Project are both ordinary and necessary to meet the wastewater requirements and public health and safety needs and requirements of the City; and

authorizing the acquisition, construction and financing of the Project. Such Resolution further authorizes the City to enter into the loan agreement, promissory note and related financing documents in order to finance and procure the Project, and to proceed with filing of judicial confirmation proceedings. See a copy of Resolution No. 34-2012 attached hereto as *Exhibit D* and by this reference made a part hereof.

33. Petitioner seeks a determination of the validity of the proposed loan agreement, as required by the State under the terms of the agreement, and in particular:

- a. Whether the expenditures for this City of Nampa Phase 1 Project constitute ordinary and necessary expenses under Article VIII, Section 3 of the Idaho Constitution;
- b. Whether the loan documents, which obligate the City to repay the loan over twenty (20) years, are valid under Article VIII, Section 3 of the Idaho Constitution;
- c. Whether the City has the power and authority to execute such loan documents.

34. Judicial determination of the validity of the proposed loan obligation pursuant to Idaho Code § 7-1301 through 1313 will serve the public interest and welfare.

35. The City Council of Nampa conducted a public hearing in compliance with Idaho Code § 7-1304(3) on October 15, 2012, and subsequently on October 29, 2012, via Resolution No. 41-2006, found and determined that the filing of the Petition is in the best interests of the citizens of Nampa.

36. Petitioner has complied or will comply with all publication, posting, mailing of notice, and hearing requirements pursuant to Idaho Code §§ 7-1304, 7-1305 and 7-1306.

37. This action is in the nature of a proceeding *in rem* and jurisdiction of all interested parties will be obtained by publication and posting as provided under Idaho Code §§ 7-1305 and 7-1306.

WHEREFORE, Petitioner prays as follows:

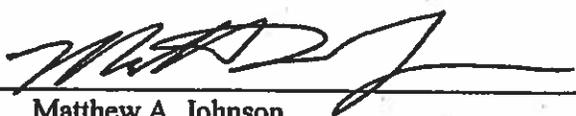
a. For an order setting the date and time of a hearing herein and directing the giving of notice hereof as provided by law;

b. For a judicial examination and determination of the validity of the power and authority of Petitioner (1) to apply for and enter into the proposed loan agreement with the State, (2) to incur indebtedness under such as an "ordinary and necessary expense", (3) to issue its evidence of such indebtedness to the State, and (4) to pledge its wastewater system revenues to the repayment of such indebtedness; and

c. For such other and further relief as the Court deems proper.

DATED this 1st day of November, 2012.

WHITE PETERSON

By: 

Matthew A. Johnson

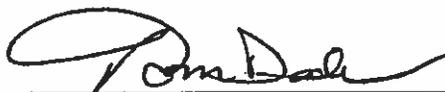
Attorney for Petitioner City of Nampa

VERIFICATION

STATE OF IDAHO)
) ss.
COUNTY OF CANYON)

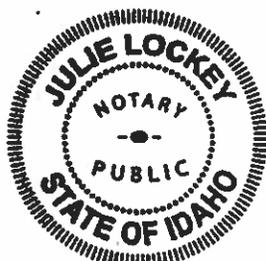
TOM DALE, being first duly sworn upon oath, deposes and says:

That I am Mayor of the City of Nampa, Idaho, Petitioner in the above-entitled action; that I have read the within and foregoing *Petition for Judicial Review*, know the contents thereof and believe the facts therein to be true.



Tom Dale

SUBSCRIBED AND SWORN TO before me this 1 day of November, 2012.





NOTARY PUBLIC FOR IDAHO
My commission expires 5/11/2017

Work\Nampa\9647.304 Wastewater Rates\Wastewater Treatment Plant DEQ Loan\PLEADINGS\Petition for Judicial Confirmation - DEQ CWSRF Loan 11-01-12 lh.docx