

**INTERGOVERNMENTAL AGREEMENT FOR ROLES
AND RESPONSIBILITIES UNDER THE PHASE II NPDES
MUNICIPAL SEPARATE STORM WATER PERMIT**

This Intergovernmental Agreement entered into this 20th day of November, 2008, by and between the City of Idaho Falls (the "City") and the State of Idaho, acting by and through the Idaho Transportation Department (the "ITD") (Each individually hereafter referred to as "co-permittee" and collectively as "co-permittees") is made for the purpose of complying with the federal National Pollutant Discharge Elimination System (NPDES) Part II Storm Water Application and Permit (Attachment 1).

RECITALS

WHEREAS, Congress in 1987 amended Section 402 of the Federal Clean Water Act (33 U.S.C.A. section 1342 (p) to require the Federal Environmental Protection Agency (EPA) to promulgate regulations ("the regulations") for applications for permits for storm water discharges; and

WHEREAS, the regulations are designed to control pollutants associated with storm water discharges through the use of the NPDES permit system which allows the lawful discharge of storm water into waters of the United States; and

WHEREAS, the regulations are designed to require NPDES permits for discharges from small Municipal Separate Storm Sewer Systems (MS4s) from a system-wide or jurisdiction wide basis; and

Whereas, the City of Idaho Falls and the Idaho Department of Transportation, submitted the Part II Application on March 4th, 2003; and

WHEREAS, the implementation of a storm water quality management program that satisfies federal NPDES storm water requirements requires definition of roles and responsibilities between co-permittees for contributions of pollutants from one part of the MS4 to another; and

WHEREAS, it is necessary to provide a basis for defining the co-permittees' primary intentions and relationships, responsibilities and obligations for ensuring compliance with the NPDES Municipal Storm Water requirements;

NOW THEREFORE the Parties agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this agreement is to detail the duties, roles and responsibilities to be provided by the parties/co-permittees with respect to compliance with the Federal NPDES Storm Water rules, regulations and requirements and the commitments set forth in the Part II NPDES Storm Water Application submitted by the parties/co-permittees to EPA. This Agreement in no way affects the responsibilities of any of the recipients of this NPDES Storm Water Permit (the Permit) to be issued by the EPA. Neither co-permittee will be responsible for the non-compliance of the other co-permittee with any provision contained within the Permit issued by EPA.

2. GENERAL PROVISIONS

- A. The City of Idaho Falls and the Idaho Transportation Department are co-permittees in the Part II Storm Water Permit Application as provided in 40 CFR 122.33(b) (iii).
- B. Each co-permittee will be responsible for complying with any Permit conditions relating to discharges from those parts of the MS4 that each co-permittee currently operates and maintains.
- C. Each co-permittee will utilize available monitoring and enforcement mechanisms, in full cooperation with the other co-permittee, to manage the contribution of pollutants from one MS4 to another.
- D. The co-permittees have been issued a NPDES Phase II Storm Water permit to address the requirements of the Federal NPDES Storm Water regulations and manage the contributions of pollutants to the MS4s to the maximum extent practicable. To comply with the NPDES MS4 Permit, the co-permittees agree to comply with the terms and conditions of this Agreement which incorporates the six minimum control measures as defined in the permit finalized May 1, 2007. This permit, with an effective date of May 1, 2007, and all provisions of said permit, are incorporated by reference into this Agreement. All co-permittees hereby acknowledge receipt of a copy of the final permit and the conditions contained therein.
- E. Each party to this Agreement shall assign at least one representative to the co-permittee group, which shall meet at least annually to assess and define necessary work tasks to comply with the terms and conditions of this Agreement and the issued permit. Additional meetings will be held based on the needs of the group. The City of Idaho Falls representative shall be the chair at these meetings.
- F. Each party to this Agreement shall participate in an advisory role in the general decision-making process. All final decisions shall be made jointly by the governing

bodies of the City of Idaho Falls and the Idaho Transportation Department after consultation with the co-permittee group.

3. STORM WATER PERMIT PROGRAM ROLES AND RESPONSIBILITIES

A. Program Administration and Management

- 1) The City of Idaho Falls will assume the administrative leadership of the management program, including management of this Agreement.
- 2) The ITD agrees to cooperate with the City of Idaho Falls in its administration of the management program, including regular attendance and participation in co-permittee meetings, participation in the permit negotiations process as needed and timely submittal of annual reporting data to the City of Idaho Falls each year.
- 3) All co-permittees shall provide necessary management and planning input to ensure that contributions of pollutants to MS4s are limited and the pollutant issues described in the Permit are addressed.
- 4) The ITD agrees to reimburse the City of Idaho Falls for its proportionate share of program administration costs as set forth in Section 4 of this Agreement.

B. Storm Water Management Program [Roles and responsibilities of the co-permittees relative to the six Minimum Control Measures, as described in the Permit, are noted below].

1) Public Education and Outreach

- a) The co-permittees agree to cooperate with each other to the extent necessary to ensure that the Best Management Practices (“BMP’s”) associated with public education and outreach can be carried out.
- b) The cooperation of the co-permittees shall include, but not be limited to, distribution of materials and information, access to MS4s owned and operated by the other co-permittee for educational purposes and the provision to the other co-permittee of documents and information in the possession of the co-permittee, the disclosure of which is not prohibited by law or rule, and which are necessary to carry out the BMP’s associated with public education and outreach.

2) Public Involvement and Participation

- a) Each co-permittee shall be responsible for conducting and carrying out the BMP’s associated with public participation and involvement in their individual areas of jurisdiction (see attached jurisdictional map). The ITD

shall be responsible to reimburse the City of Idaho Falls for costs associated with public participation and involvement as set forth in Section 4 of this Agreement.

- b) The co-permittees agree to cooperate to the maximum extent legally practicable and reasonable to inform and involve the public to prevent the illicit discharge of pollutants to the MS4s and to protect the water quality of storm water discharges to the Snake River and its tributaries within the MS4s.
 - c) The co-permittees shall independently educate, train, and provide staff to respond to and answer questions regarding storm water education.
 - d) Each co-permittee shall provide to the other co-permittee a contact person and phone number for the other co-permittee to contact with public involvement and participation issues.
- 3) Illicit Discharge Detection and Elimination
- a) Each co-permittee shall carry out the BMP's associated with illicit discharge detection and elimination within their respective jurisdictions.
 - b) Each co-permittee shall coordinate its actions to develop the legal and regulatory authorities necessary to prevent and eliminate illicit connections to its respective MS4s.
 - c) Each co-permittee shall identify and remove illicit discharges within its respective jurisdiction by establishing legal authority for enforcement actions and encouraging public education and involvement in eliminating illicit discharges.
- 4) Construction Site Storm Water Runoff Control
- a) Each co-permittee will retain responsibility for establishing and enforcing BMPs for new construction and redevelopment resulting in land disturbance of one acre or more within its individual MS4s.
 - b) Each co-permittee shall develop, implement and enforce requirements to reduce pollutants in storm water runoff to its individual MS4s from construction activities resulting in land disturbances of one acre or more.
 - c) Each co-permittee shall maintain and operate its individual MS4s in a manner that controls to the maximum extent practicable the contribution of pollutants from its MS4 to the MS4 of the other co-permittee.

- 5) Post Construction Storm Water Management in New Development and Redevelopment Areas
 - a) Each co-permittee shall develop, implement and enforce requirements to address post-construction storm water runoff from new development or redevelopment construction activities resulting in land disturbances of one acre or greater area.
 - b) Each co-permittee shall adopt an ordinance or other satisfactory regulatory mechanism to the extent allowable under state or local law to address post-construction runoff from new developments and redevelopment projects.
- 6) Pollution Prevention and Good Housekeeping for Municipal Operations
 - a) Each co-permittee shall develop and implement an operation and maintenance program intended and designed to prevent or reduce pollutant runoff from municipal operations within its MS4 jurisdictional boundaries.
 - b) Each co-permittee shall be responsible for carrying out the pollution prevention and good housekeeping operations on municipal operations within the MS4.

4. APPORTIONMENT OF COSTS

A. Program Administration and Management

- 1) The Storm Water Management Program shall be administered by the City of Idaho Falls. The ITD shall reimburse the City of Idaho Falls for its pro rata share of the Program Administration costs based on each co-permittee's percentage of costs related to conduct of the Program elements as described in Sections 1-3 above. For fiscal year 2009 (FY2009) (July 2008 through June 2009) estimated Program costs are \$40,000.00. Program cost shares shall be reevaluated at the end of FY 2009 and adjusted as necessary and agreed upon for FY 2010. Cost share portions for each of the co-permittee was developed using an average cost based on area contribution.
- 2) Area Calculation
 - a) The City of Idaho Falls = $22 \text{ mi}^2 = 98\% = \$39,200.00$
 - b) Idaho Transportation Department = $0.5 \text{ mi}^2 = 2\% = \800.00
 - c) Total Area of Idaho Falls Urbanized Area = 22 mi^2
 - d) Total Annual Program Costs = \$ 40,000.00
- 3) Cost Apportionment.
 - a. The City of Idaho Falls will pay \$ 39,200.00
 - b. Idaho Transportation Department will pay \$ 800.00

- 4) The City will develop a cost projection for expenses related to the permit prior to the start of the fiscal year in which the expenses will occur. The City will distribute the cost projection to the co-permittee so the co-permittee can budget for planned expenses. In the event costs arise that are classified as outside of “monitoring” or “public education and outreach,” the co-permittee will meet and determine the appropriate percentages of the financial responsibility for each co-permittee.

B. Timely Payments

All amounts due and owing the City for the costs of Program Administration and other agreed upon expenses shall be paid within 60 days of invoicing. Adjustments for any overpayments will be made annually at the end of the City’s fiscal year.

5. TERMINATION AND MODIFICATION

Each co-permittee shall have the right to withdraw from and terminate its responsibilities under this Agreement at any time by serving upon all other co-permittee 30-days advance written notice of withdrawal. Any co-permittee withdrawing from this Agreement shall pay its proportionate share of any work performed pursuant to this Agreement up to the effective date of its withdrawal. Withdrawal from this Agreement is subject to the conditions of the aforementioned federal NPDES Storm Water Phase II MS4 Permit.

This Agreement may be modified in writing if executed by each co-permittee.

Should any party to this Agreement be determined by EPA not to be an operator of an MS4 requiring participation in a MS4 Phase II Storm Water Permit that party shall be allowed to immediately withdraw from this Agreement at no cost beyond those costs billed to the date of withdrawal.

6. NOTICES

Any notices which the party may desire to serve upon the other co-permittee shall be in writing and shall be deemed served when delivered personally or when deposited in the United States mail with adequate postage to the following addressees:

City of Idaho Falls

ATTN: Chris Frederickson, City of Idaho Falls Engineer
P.O. Box 50220
Idaho Falls, ID 83405-0220

Idaho Department of Transportation

ATTN: Blake Rindlisbacher, District Engineer, ITD District 6
P. O. Box 97
Rigby, ID 83442

7. INDEMNIFICATION/HOLD HARMLESS PROVISIONS

The City agrees to defend, indemnify, and hold harmless the Idaho Transportation Department, and its officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising out of or directly related to the operation of the City's MS4s and caused by the negligence or wrongful acts or omissions of the City of Idaho Falls, its officers, employees, or agents. The City of Idaho Falls shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the City or any of its officers, employees, or agents and not by the Idaho Transportation Department, or any of their officers, agents, or employees.

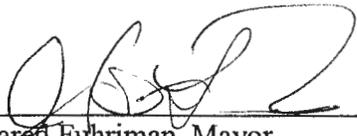
The ITD agrees to defend, indemnify, and hold harmless the City of Idaho Falls, and its officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising out of or directly related to the operation of the ITD's MS4s and caused by the negligence or wrongful acts or omissions of the Department, its officers, employees, or agents. The Department shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the Department or any of its officers, employees, or agents and not by the City of Idaho Falls, or any of their officers, agents, or employees.

8. ENTIRE AGREEMENT

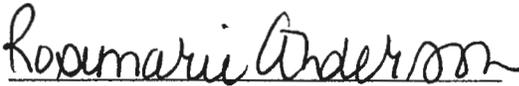
Except as provided otherwise herein, this instrument and any attachments hereto constitute the entire Agreement between the parties concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written.

CITY OF IDAHO FALLS

BY: 
Jared Fuhriman, Mayor

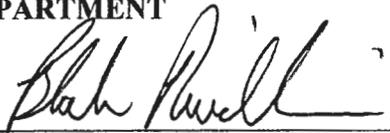
ATTESTED TO BY:


Rose Anderson, City Clerk



INTERGOVERNMENTAL AGREEMENT for the NPDES MUNICIPAL STORM WATER PERMIT FOR THE IDAHO FALLS URBANIZED AREA (Date Revision November 2008)

**IDAHO TRANSPORTATION
DEPARTMENT**

 2/5/09

Blake Rindlisbacher, District Engineer

Storm Water Co-Permittee Jurisdictions



January 22, 2009
1" = 4,800'



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|---------------------|-----------------------|
| Jurisdiction | ----- City Limit Edge |
| City Jurisdiction | ----- City Limit |
| Joint Jurisdiction | Snake River |
| ITD Jurisdiction | Waterway |

