

AMENDED VARIANCE CONDITIONS ACCEPTANCE AGREEMENT

Parties:

Highway District No. 4	District	15435 Highway 44, Caldwell ID 83607
City of Nampa	City	411 3 rd Street S., Nampa ID 83651

THIS AMENDED VARIANCE CONDITIONS ACCEPTANCE AGREEMENT made and entered this ____ day of _____, 2024, by and between City of Nampa, 411 3rd Street S., Nampa, Idaho 83651, a Municipal Corporation and Highway District No. 4 of 15435 Highway 44, Caldwell, Canyon County, Idaho 83607, a Highway District organized and existing pursuant to Chapter 13 of Title 40 Idaho Code, “District” herein, acting by and through its Board of Commissioners.

ARTICLE 1. DEFINITIONS

Wherever used in this Agreement, the following terms shall have the following meaning, unless the context indicates to the contrary.

- 1.1 Agreement:** means and refers to this Amended Variance Conditions Acceptance Agreement by and between the City and the District.
- 1.2 City:** means the City of Nampa, a municipal corporation, whose current address is 411 3rd Street S., Nampa, Idaho 83651, and who is a Party to this Agreement.
- 1.3 District:** means the Highway District No. 4, a Highway District organized and existing under and by virtue of the Laws of the State of Idaho, located in Canyon County, Idaho, a Party to this Agreement.
- 1.4 FCO:** means and refers to Case No. VAR 2015-04-1 Findings of Fact, Conclusions of Law, and Order of Decision Granting Variance Subject to Conditions issued on July 1, 2015.
- 1.5 Improvements:** means and refers to certain highway frontage improvements adjacent to the Subject Property on Midway Rd and Smith Avenue, including curb, gutter, sidewalk,

roadway widening, and drainage/irrigation improvements at all locations which are relevant to the subject of the Variance.

- 1.6 Park Development Phase I:** means and refers to construction or development of 4 ball fields, restrooms, park open space, and parking (approximately 160 spaces) in the southeast portion of the Subject Real Property.
- 1.7 Park Development Phase 2:** means and refers to construction of two rural commercial driveway access to Smith Ave, conversion of existing Midway Rd access to right-in-right-out operations, construction of additional parking area, multi-use field, splash pad and exercise area, and sports courts.
- 1.8 Park Development Phase 3:** means and refers to construction of four soft ball fields and a comfort station.
- 1.9 Park Development Final Phase:** means and refers to construction of two baseball fields and a restroom facility.
- 1.10 Subject Real Property:** means and refers to the real property described in Exhibit 1 [Application] and being a portion of the north ½ of the southeast ¼ of Section 24, T3N, R3W, Boise Meridian, Canyon County and referenced as County Parcel # R3303301100, containing approximately 52.5 acres.
- 1.11 Variance:** means and refers that certain variance, granted by the Board of Commissioners of the Highway District to the City in CASE NO. VAR 2015-04-1 Findings of Fact, Conclusions of Law and Order of Decision Granting Variance Subject to Conditions issued on July 1, 2015.

ARTICLE 2. RECITALS

- 2.1 WHEREAS,** the authority and the intentions of the Parties was established in the Variance (Case No. VAR 2015-04-1), and set forth in the FCO issued July 1, 2015 and the same is herein included in these recitals as if set forth at length; and
- 2.2** The Parties entered into of the original Variance Conditions Acceptance Agreement dated July 17, 2015, and recorded with Canyon County as instrument No. 2015-027697, to establish conditions for the deferral of the Improvements granted by the Variance and amended said agreement on _____, and recorded with Canyon County as instrument No _____; and
- 2.3** The City has completed Phase 1 and 2 of the development of the subject property, and desires to make other improvements for Phase 3 which do not substantially increase the use of or traffic generated by the Subject Real Property, where such Phase 3 improvements would require amendment to the amended _____ Agreement; and
- 2.4** The Commissioners of the District have considered the City's request to amend the

conditions, to allow for further improvements to the Subject Real Property described as Midway Sports Park Phase 3; and

- 2.5** The Commissioners of the District determined at their _____ regular meeting that amendments to the amended _____ Agreement would be sufficient to accommodate the City's desire for additional improvements to the Subject Property without detriment to the original intent and grant of the Variance, and that the request was not adverse to the public's or the District's interests; and
- 2.6** The Parties acknowledge the above is adequate consideration for entering into this amended Agreement and accept the terms and conditions established herein.

ARTICLE 3. AMENDED VARIANCE CONDITIONS

The City by entering into this amended Agreement does hereby accept the terms and conditions of the Variance as modified by this amended Agreement:

- 3.1** The City shall cause the Improvements to be constructed in accordance with the Highway District's Standards [established at the time such improvements are required] at the time such improvements are required, when:
- 3.1.1** Similar improvements are constructed on Midway Road between Lone Star Avenue and Smith Avenue on either side of the roadway, or on adjoining parcels to the Subject Real Property; or
- 3.1.2** Prior to the completion of the final phase of construction for the Midway Park on the Subject Real Property; or
- 3.1.3** After a period of five (5) years from the date of this amended agreement the Highway District may require the improvements within one (1) year of written notification by the Highway District to make such improvements; and
- 3.1.4** In the event the City or the City's successor in title fails to timely construct the improvements, then in that event the Highway District may proceed to construct the improvements for which the City or the City's successor in title shall immediately reimburse the Highway District for all expenses the Highway District incurred, including administrative overhead expense upon receipt of written notice and demand for the same.
- 3.1.5** City may with approval from the Highway District provide a payment in-lieu of construction of the Improvements to the Highway District.
- 3.1.5.1** If the City chooses to provide payment in-lieu of construction for the Improvements the City shall provide prior to issuance of an approach

permit for the final phase of construction:

- 3.1.5.1.1** Provide construction estimates to the Highway District for review and approval
 - 3.1.5.1.2** Provide a cash deposit equal to 100% of the approved construction estimate to the Highway District. Highway District agrees that these funds will only be used to construct the Improvements unless such funds are returned pursuant to paragraph 3.1.5.1.3.
 - 3.1.5.1.3** In the event the City annexes the roadways adjacent to Midway Park prior to construction of the Improvements by the Highway District, the Highway District shall return the cash deposit to the City.
- 3.2** The City grant a warranty deed for public road right-of-way 40 feet in width along the Smith Avenue frontage of the Subject Real Property (approximately 1,511 feet) and provide the Highway District with a title commitment demonstrating unencumbered ownership of the parcel; and
- 3.3** With construction of Park Development Phase 2, the slope from the shoulder of the Smith Avenue shall be flattened to not steeper than 4 horizontal to 1 vertical along the entire north boundary of the Subject Real Property.
- 3.4** The existing access to Midway from the Subject Real Property is to be converted to right-in-right-out operations with Park Development Phase 2; and
- 3.5** Two new driveway approaches meeting ACCHD Standard Drawing 106 may be constructed onto Smith Avenue at the locations shown on the Midway Park Phase 2 Site Plan; and
- 3.6** Work proposed for modifications to existing or construction of new access to Midway Rd or Smith Avenue, and other work within those road rights-of-way shall be detailed on improvement drawings, and approved by the District prior to construction. Improvement drawings and the work shall include provisions for collection and disposal of stormwater runoff from the Smith Avenue road right-of-way in accordance with District standards. The City or its contractor shall obtain from the District a right-of-way permit for the work and associated traffic controls.
- 3.7** The City agrees to reimburse the District for reasonable expenses for signs, hardware, and pavement markings necessary to convert the Midway Rd/Smith Avenue intersection from two-way stop control to all-way stop control, in order to mitigate the impacts from new traffic created by Phase 2 development of the Subject Real Property.
- 3.8** The City's development of the Subject Real Property shall comply with all other

requirements of Highway District No. 4's standards.

**ARTICLE 4.
ASSIGNMENT OF VARIANCE CONDITIONS AGREEMENT.**

- 4.1** This Agreement shall run with the Subject Real Property and be fully binding upon the owner(s) and successors of the Subject Real Property. This agreement shall be recorded in the records of Canyon County, Idaho.

**ARTICLE 5.
DEFAULT BY CITY**

- 5.1** In the event the City fails to construct the Improvements to Highway District Standards and/or in a timely manner or fails to make the payment in-lieu of construction as required and provided in Section 3 of this Agreement, the City shall be in default of this Agreement.
- 5.2** In the event the City is in default of this Agreement the District may provide thirty (30) days written notice to the City identifying the default and notification of the District's election on default to:
- 5.2.1** Proceed to construct the Improvements and/or as the case may be to reconstruct or complete the construction of the Improvements in accordance with the remedies and procedures provided to the District in Article 6 of this Agreement.

**ARTICLE 6.
DISTRICT REMEDIES ON DEFAULT AND DEFAULT PROCEDURES**

- 6.1 Default Remedies:** In the event the City is in default of this Agreement and fails to timely cure its default, the District may then elect to proceed to construct the Improvements which are the subject of the default and/or, as the case may be, reconstruct or complete the construction of the Improvements which are the subject of the default, the costs of which shall be paid by the City and which costs shall include:
- 6.1.1** Highway District costs for materials, labor, independent contract expense, and engineering and administration expense associated and incurred in the construction of the Improvements.
- 6.2 Default Procedure:** In the event of the City is in default of this Agreement and it fails to timely cure its default, the District may then pursue its remedies under this Agreement as follows:
- 6.2.1** The District shall given written notice to the City that it has elected to proceed with construction of the Improvements.

6.2.2 The District shall then cause the Improvements to be constructed and, upon acceptance of the Improvements, send a written Notice of Improvements Construction Costs to the City, which notice shall set forth the amounts of the Improvements Construction Costs and shall notify the City that the same are due within thirty (30) days of the date of the Notice of Improvements Construction Costs.

6.2.3 In the event the City does not timely pay District after being provided with written Notice of Improvements Construction Costs, the City agrees the District may file a mechanics and materialmen lien as it is herein agreed that the Improvements are required by the District as a condition of the City's development of and its convenient use and occupancy of the Subject Real Property and therefore are an improvement of the Subject Real Property.

ARTICLE 7. SEVERABILITY

7.1 The provisions of this Agreement are hereby declared separable, and if any section, clause or phrase hereof is hereafter declared invalid and unconstitutional, the same shall not affect the validity of the remaining portions of this Agreement.

ARTICLE 8. GENERAL PROVISIONS

8.1 Recording: This Agreement shall be recorded by the District with the Canyon County Recorder's Office.

8.2 Changes; Alterations. No change, alteration, modification, or addition to this Agreement shall be effective unless in writing and properly executed by the Parties hereto.

8.3 Governing Law. This Agreement shall in all respects be subject to, and governed by, the laws of the State of Idaho.

8.4 Attorney's Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

8.5 Notices. All notices required to be given to each of the Parties hereto under the terms of this Agreements shall be given by depositing a copy of such notice in the United States mail, postage prepaid, to the respective Parties hereto at the following address:

City:

Attention: Debbie Kling, Mayor
 City of Nampa
 411 3rd Street S.
 Nampa ID 83651

District:

Attention: Director
 Highway District No. 4
 15435 Hwy 44
 Caldwell ID 83607

Or to such other address as may be designated by writing delivered to the other Party. All notices given shall be deemed completed as of the date of mailing except as otherwise expressly provided herein.

- 8.6 Binding Effect.** This Agreement shall inure to the benefit of and bind the Parties hereto and their respective heirs, representatives, successors and assigns. The City shall have the right to assign its rights hereunder.
- 8.7 Titles.** The titles in this Agreement are for convenience only and shall not be used in any way to interpret the Agreement.
- 8.8 Captions.** The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction of interpretation of any of its provisions.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF NAMPA

 By: Debbie Kling, Mayor

HIGHWAY DISTRICT NO. 4

 By: Jay S. Gibbons, Commissioner

ATTEST:

 Angela Franks, Secretary

ACKNOWLEDGEMENTS

STATE OF IDAHO)
 : ss
County of Canyon)

On this _____ day of _____, 2024, before me the undersigned, a Notary Public in and for the state of Idaho, personally appeared **Debbie Kling**, known or identified to me to be the Mayor of the City of Nampa that executed the instrument and acknowledged to me that he executed the same for and on behalf of the City of Nampa, Idaho.

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

(SEAL)

Notary Public for Idaho
My Commission Expires: _____

STATE OF IDAHO)
 : ss
County of Canyon)

On this _____ day of _____, 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared **Jay S. Gibbions**, Commissioner of the Board of Commissioners of Highway District No. 4, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same for and on behalf of Highway District No. 4.

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

(SEAL)

Notary Public for Idaho
My Commission Expires: _____

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