

- 7-7. Action Item: Authorize Mayor to sign Memorandum of Understanding with Thueson Construction, Inc. for installation of Sewer Trunkline Improvements for Southeast Nampa. (Approved by City Attorney Todd Lakey)

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this \_\_\_\_ day of June 2024, between the City of Nampa, Canyon County, Idaho, an Idaho municipal corporation (“City”) and Thueson Construction, Inc., an Idaho business corporation (“Developer”).

### Recitals

WEHERAS, City owns and operates an existing sewer collection infrastructure providing service to properties generally located in the southeasterly area of the City; and

WHEREAS, a regional sanitary sewer trunk line, with increased capacity to serve future anticipated development in the southeasterly area of the City needs to be constructed from City’s Wastewater Treatment Plant at 340 Railroad St., Nampa, Idaho, to approximately the intersection of Amity Ave and E. Railroad St. as depicted on the *Henrickson Property Sewer Trunk Line* draft drawing attached as Exhibit A and incorporated by this reference (“**Trunk Line Project**”); and

WEHEREAS, Developer, through an affiliated entity known as Triple Crown Investments LLC, owns and has contractual rights to buy, real property located generally east of S. Happy Valley Rd., south of E. Greenhurst Rd., and west of S. Robinson Rd. in Canyon County, Idaho that is appropriate for annexation into the corporate City limits and for development consistent with the City’s Comprehensive Plan (“**Developer Property**”); and

WHEREAS, City’s current sewer infrastructure can serve 675 equivalent dwelling units in the southeast area of City that includes the Developer Property (“**Existing Capacity**”); and

WHEREAS, the estimated cost of the Trunk Line Project is \$21,000,000; and

WHEREAS, Developer is willing to construct the Trunk Line Project at its sole cost and expense, subject to the terms and conditions of this MOU; and

WHEREAS, in consideration of Developer’s construction of the Trunk Line Project, City will allocate all Existing Capacity to development on Developer Property so that Developer can commence development prior to completion of the Trunk Line Project; and

WHEREAS, Developer will commit \$25,000 from the sale of every lot on Developer Property and pay the same to an escrow account established for the sole purpose of funding the Trunk Line Project, so that development of the Developer Property and the allocation by City of Existing Capacity becomes the funding source for the Trunk Line Project.

### Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

1. General:

a. Construction drawings showing the location of the Trunk Line Project construction details must be prepared, processed, reviewed and approved in writing by City in the manner typical for sewer main extensions as governed by Nampa City Code 8-2-14 (“**Approved Plans**”).

b. Any note, drawing element, written statement, or representation on construction drawings inconsistent with provisions of City code or this MOU shall not be construed as approved. If there is any conflict between this MOU and City Code then City Code shall control and govern. Any variation from provisions of City Code shall not be permitted unless specifically called out and separately approved.

c. Construction of the Trunk Line Project shall proceed in all respects in compliance with typical sewer main extensions as governed by Nampa City Code 8-2-14 including, without limitation, the issuance of permits, proof of bonding and insurance, construction timelines, indemnification provisions, submittal of as-built drawings, testing and dedication of facilities, traffic control, and project warranties.

d. The Developer is to employ a responsible design professional, preferably the engineer of record, to oversee construction, to perform and/or observe all requisite testing of completed facilities sufficiently to certify that improvements have been constructed according to Approved Plans and in compliance with applicable City, State, and Federal standards.

2. Responsibilities of the City

a. Subject to and contingent upon annual appropriation by the City Council, City will exercise good faith efforts to obtain any necessary rights-of-way from underlying property owners as necessary for the Trunk Line Project.

b. City staff intends to recommend approval of Developer’s land use entitlement requests, in one or more applications, for annexation, zoning, preliminary plat approval, and similar related requests, for residential development of Developer Property if in staff’s opinion said applications are in conformance with applicable state and federal code and regulations, City Code requirements and the City Comprehensive Plan.

c. Within seven (7) days of approval of annexation of the Developer Property, City shall issue a will-serve letter assuring that the Existing Capacity is dedicated to and made available for the use of approved development on the Developer Property.

d. The connection fee and regular service fee for sewer service shall be assessed by the City when sewer services are requested in accordance with City’s then applicable sewer fees..

e. City shall utilize its best, reasonable efforts to facilitate the Trunk Line Project by providing timely review and response of any permit requests, plan submittals, or similar need for City approval relevant to the Project and assisting in communications with property owners, including the railroad.

f. Once constructed and deemed compliant, City will accept dedication of the Trunk Line Project and agrees to operate, maintain, repair and/or replace the Trunk Line Project in a manner typical to sewer main extensions generally.

g. Reimbursement for construction of the Trunk Line Project through “latecomer” fees from those later connecting to it shall be available to Developer in accordance with City codes and policies.

h. Pay for all City-requested changes to, deviations from, or connections to the Trunk Line Project that are first required after the Approved Plans are issued and are for the benefit of City.

3. Responsibilities of Developer:

a. As a material part of the consideration for this MOU, Developer, itself and on behalf of its affiliate Triple Crown Investments LLC, and its successors, forever, hereby irrevocably consent to the annexation of the Developer Property into the City limits as a voluntary “Category A Annexation” under Idaho law. Notice of this requirement shall appear on any plat recorded in the office of the Canyon County Clerk and upon the covenants of any subdivision on said property.

b. Secure access and permits necessary for construction of the Trunk Line Project and comply with all laws, ordinances, rules and regulations applicable thereto.

c. Design, construct and pay for the Trunk Line Project in substantial conformance with the configuration set forth in Exhibit A. Any substantive changes to Exhibit A must be mutually agreed to in writing by the parties.

4. Escrow Account and Payments: City and Developer desire to facilitate funding of the Trunk Line Project with funds generated from development of the Developer Property. To help secure a portion of such funding, the Parties will contract with a local escrow account provider to serve as escrow agent for certain monies to be held and disbursed pursuant to standard and customary escrow instructions (“**Escrow Account**”). The Escrow Account shall be established prior to the first sale of any lot developed on the Developer Property. Developer will pay into the Escrow Account, at closing, the sum of \$25,000 from the sale of every lot on the Developer Property. The escrow instructions shall provide that disbursement may only be made from the account to reimburse mutually verified costs and expenses incurred in connection with design and construction of the Trunk Line Project. Developer acknowledges that the Escrow Account is unlikely to provide sufficient funds to cover all costs and expenses associated with the Trunk Line Project however, upon final completion, any funds remaining in the Escrow Account shall be released to Developer.

5. Remedies: If, after written notice and a sixty (60) day opportunity to cure, Developer fails to perform its obligations under this Agreement, including without limitation, its obligation to construct the Trunk Line Project, City shall be entitled to withdraw all funds then in the Escrow Account, and recover any unpaid contribution associated with Developer Property lot sales, as its sole remedy.
6. Time for Performance: Developer shall prepare and file annexation, zoning, a preliminary plat application, and any other associated land use applications for residential development on the Developer Property during the calendar year 2024. Upon approval, Developer shall proceed expeditiously with construction of required site improvements and diligently pursue final plat approval. Within thirty (30) days after the 400<sup>th</sup> lot on the Developer Property is sold, Developer must commence Trunk Line Project design and must diligently pursue the project thereafter through construction and completion.
7. Liability: Entering into this MOU shall not cause the City to obtain any responsibility or liability for construction of the Trunk Line Project. The Developer shall indemnify, hold harmless and defend City against any claims made related to construction including, but not limited to, joining any lawsuit related to the construction of the Trunk Line Project in which the City is named as a defendant. The City may elect to use an attorney of its choosing for any such defense and Developer shall be responsible for the reasonable costs and fees associated with such defense.
8. Severability. In the event any of the provisions of this MOU shall be deemed illegal or unenforceable, such determination shall not operate to invalidate any of the remaining provisions of this MOU.
9. Headings. The paragraph headings are for convenience only and are not a part of this MOU and shall not be used in interpreting or construing this MOU.
10. Binding Effect. The provisions and stipulations of this MOU shall inure to and bind the successors and assigns of the parties hereto.
11. Entity Authority. Each individual executing this MOU on behalf of an entity represents and warrants that he or she is duly authorized to execute and deliver this MOU on behalf of said entity.
12. Entire Agreement/Amendment: The parties agree and warrant that this MOU, together with the Exhibits attached hereto, constitute the entire agreement between the parties and supersedes all prior and contemporaneous agreements and discussion, and that this MOU, and all terms herein, may only be amended, modified and/or waived by an agreement in writing executed by all parties.
13. Termination: Once the Trunk Line Project has been constructed, dedicated to and accepted by City this MOU shall automatically terminate without any further action required by any party and no party shall have any further duties or obligations to the other party. If the annexation, zoning and preliminary plat for development of the Developer Property are not approved by the City by January 1, 2026 then this Agreement shall automatically terminate without any further

action required by any party and no party shall have any further duties or obligations to the other party.

14. Further Assurances: Each party hereto shall execute, acknowledge and deliver to the other parties such other documents and instruments, and take such other actions, as any other party shall reasonably request, or as may be reasonably necessary, to consummate the transaction contemplated in this MOU.

15. MOU Construction: All parties to this MOU have been, or have had the opportunity to be, represented by legal counsel in the course of the negotiations for and the preparation of this MOU. Accordingly, in all cases, the language of this MOU shall be construed simply, according to its fair meaning, and not strictly for or against any party regardless of which party caused the preparation of this MOU.

16. Statutory Certifications: In accordance with Idaho Code Section 67-2359 Developer hereby certifies that it is not owned or operated by the Government of China, as defined in said code section, and that during the term of this MOU it will not be owned or operated by the Government of China. In accordance with Idaho Code Section 67-2346 Developer hereby certifies that it is not currently engaged in, and during the term of this MOU will not engage in, a boycott of goods and services from Israel or territories under its control as defined in said code section. Pursuant to Idaho Code Section 18-8703, Developer certifies that it is not, and will not for the duration of this MOU, become an abortion provider or an affiliate of an abortion provider, as those terms are defined in the "No Public Funds for Abortion Act," Idaho Code Section 18-8701 et seq.

IN WITNESS WHEREOF, the undersigned have caused this MOU to be executed the day and year first above written.

**CITY OF NAMPA:**

By: \_\_\_\_\_  
Deborah Kling, Mayor

Attest: \_\_\_\_\_  
City Clerk

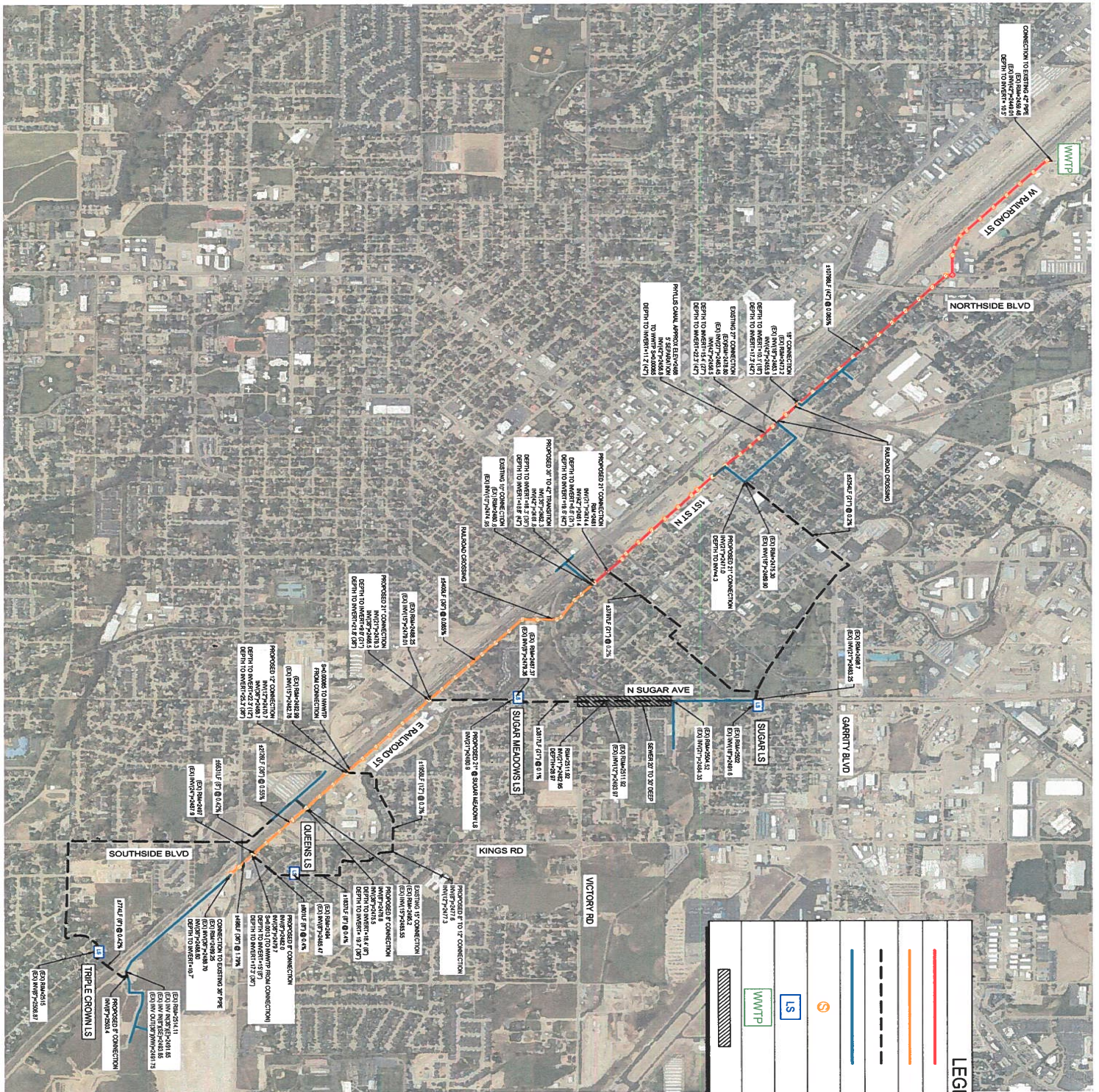
**DEVELOPER:**

Thueson Construction, Inc.

By: \_\_\_\_\_  
Lance Thueson, President

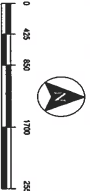
Exhibit A: Henrickson Property Sewer Trunk Line draft drawing





# EXHIBIT "A"

| LEGEND |                                     |
|--------|-------------------------------------|
|        | 42 INCH PIPE                        |
|        | 36 INCH PIPE                        |
|        | POSSIBLE RE-ROUTE FROM LIFT STATION |
|        | EXISTING SEWER LINE                 |
|        | MANHOLE                             |
|        | EXISTING LIFT STATION               |
|        | WASTE WATER TREATMENT PLANT         |
|        | DEEP SEWER                          |



Hendrickson EXHIBIT FOR:  
**KRAJINK PROPERTY**  
SEWER TRUNK LINE

**ARDURRA**  
COLLABORATE. INNOVATE. CREATE.  
332 N. BRIDGEMAN ROAD  
HAWAII, IDAHO 83407  
208-442-6300 | WWW.ARDURRA.COM

| REVISIONS |             | DATE | BORDER SIZE |
|-----------|-------------|------|-------------|
| NO        | DESCRIPTION | DATE | 22"x34"     |
| 0001      | DESIGNED    | 0000 | DESIGNED    |
| 0002      | DRAWN       | 0000 | DRAWN       |
| 0003      | CHECKED     | 0000 | CHECKED     |
| 0004      | APPROVED    | 0000 | APPROVED    |

**DRAFT**

ATTENTION: 1  
IF THIS DRAWING IS NOT USED FOR  
THE PROJECT, THE DRAWING IS  
NOT TO SCALE  
DATE: February 22, 2024  
PROJECT: 20004  
SHEET: 20004  
DISPLAY