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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF INTEGRATED
MUNICIPAL APPLICATION PACKAGE
("IMAP") OF UNITED WATER IDAHO
INC., BEING A COLLECTION OF
INDIVIDUAL APPLICATIONS FOR
TRANSFERS OF WATER RIGHTS AND
APPLICATIONS FOR AMENDMENT OF
PERMITS.

**UNITED WATER'S SUBMISSION OF 2014
MUTUAL COOPERATION AGREEMENT
WITH THE CITY OF CALDWELL**

Applicant United Water Idaho Inc. ("United Water") hereby submits, for inclusion in the official record of the above-captioned contested case, a copy of the executed *2014 Mutual Cooperation Agreement Between the City of Caldwell and United Water Idaho Inc. ("2014 Caldwell/UWID Agreement")* attached hereto as Exhibit A together with a copy of *Resolution No. 36-14* attached hereto as Exhibit B. The City of Caldwell ("City") has confirmed to United Water's counsel that it does not object to submission of these documents for inclusion in the record.

Resolution No. 36-14 authorized the City to enter into the *2014 Caldwell/UWID Agreement*. The *2014 Caldwell/UWID Agreement* is a private agreement, and its submission is

not intended to create third-party rights or third-party enforceability. Instead, the *2014 Caldwell/UWID Agreement* is offered for the record because its provisions are relevant to this proceeding. Among other things, the *2014 Caldwell/UWID Agreement* “completely supersede[s] and replace[s]” the *Mutual Cooperation Agreement and Stipulation and Withdrawal of Protests of the City of Caldwell and the City of Caldwell*, both dated November 24, 2003, as between United Water and the City. *2014 Caldwell/UWID Agreement* ¶ 9; see also *2014 Caldwell/UWID Agreement* ¶¶ 3-5. The *2014 Caldwell/UWID Agreement* documents the commitment of the parties to advance the goals and objectives of the 1996 Municipal Water Rights Act through ongoing communication and cooperation on issues of water rights and water supply. *2014 Caldwell/UWID Agreement* ¶¶ 12-15. It also expresses the parties’ support for their “common goals and interests with respect to implementation of the 1996 Municipal Water Rights Act” including, in particular, “long term planning over a 50-year planning horizon.” *2014 Caldwell/UWID Agreement* ¶¶ 7-8.

Respectfully submitted this 14th day of March, 2014.

GIVENS PURSLEY LLP

By 
Christopher H. Meyer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of March, 2014, the foregoing was filed, served, and copied as shown below. United Water Idaho Inc. requests that the Idaho Department of Water Resources place this document on its website for the IMAP.

DOCUMENT FILED:

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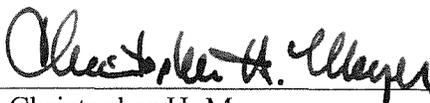

Christopher H. Meyer

EXHIBIT A: 2014 CALDWELL/UWID AGREEMENT

2014 MUTUAL COOPERATION AGREEMENT BETWEEN THE CITY OF CALDWELL AND UNITED WATER IDAHO INC.

The City of Caldwell and United Water Idaho Inc. ("United Water") (collectively "Parties") enter into this Mutual Cooperation Agreement ("Agreement").

RECITALS

1. **IMAP proceeding.** On May 4, 2001, United Water filed a set of applications with the Idaho Department of Water Resources ("IDWR") entitled *In the Matter of Integrated Municipal Application Package ("IMAP") of United Water Idaho Inc., Being a Collection of Individual Applications for Transfers of Water Rights and Applications for Amendment of Permits*. The IMAP is intended to quantify United Water's reasonably anticipated future needs ("RAFN") pursuant to the Municipal Water Rights Act of 1996 and thereby to protect its existing portfolio of rights from forfeiture during its planning horizon. The IMAP also seeks to integrate United Water's water rights portfolio by making each of its wells an alternate point of diversion ("APOD") for every water right.

2. **Protests.** The City of Caldwell and others protested United Water's IMAP application.

3. **2003 Stipulation.** United Water, the City of Meridian, and the City of Caldwell, executed a *Stipulation and Withdrawal of Protests of the City of Meridian and the City of Caldwell* (the "2003 Stipulation"). The 2003 Stipulation is dated November 24, 2003 and was filed with IDWR in the IMAP proceeding on that day.

4. **2003 Agreement.** United Water, the City of Meridian, and the City of Caldwell also entered into a *Mutual Cooperation Agreement* dated November 24, 2003 ("2003

Agreement”). Although dated and made effective as of November 24, 2003, the 2003 Agreement was executed by United Water on January 22, 2004, by the City of Meridian on February 10, 2004, and by the City of Caldwell on February 20, 2004.

5. **Prior Agreements did not become effective.** The 2003 Stipulation and the 2003 Agreement are referred to collectively as the “Prior Agreements.” The Prior Agreements were intended to fully settle and withdraw protests filed by the City of Meridian and the City of Caldwell in the above-referenced matter. However, the Prior Agreements were conditioned upon certain actions and approvals by IDWR. Those actions and approvals have not occurred as of the date of this Agreement.

6. **IMAP stay and relaunch.** The IMAP was stayed by order of IDWR on December 18, 2003. On July 6, 2012, nearly a decade later, following issuance of partial decrees to United Water in the Snake River Basin Adjudication (“SRBA”), IDWR approved United Water’s motion to lift the stay in the IMAP proceeding.

7. **Shared goals for long term planning.** The City of Caldwell and United Water have common goals and interests with respect to implementation of the 1996 Municipal Water Rights Act. Both Parties believe that sound and effective long range planning for municipal water supplies, based on full disclosure and public scrutiny, is in the public interest and in their common best interests. The Parties support the standard condition language for APODs (alternate points of diversion) that was approved by the Idaho Supreme Court in *City of Pocatello v. Idaho*, 152 Idaho 830, 275 P.3d 845 (2012). This language allows municipal providers to pump water associated with any ground water right from any authorized point of diversion, while protecting other water right holders from material injury. The Parties support the concept of long term planning over a 50-year planning horizon with appropriate justifying

data. The Parties agree that if municipal water providers are allowed to hold water rights free from forfeiture to meet RAFN over a multi-decade planning horizon, it is appropriate for IDWR to impose a condition allowing projected water needs for RAFN to be periodically re-quantified (but not more than once a decade) in light of current conditions. The Parties agree that when such re-quantification of RAFN occurs, the municipal provider should be allowed to extend its planning horizon for up to 50 years from that point in time and retain those water rights (and their original priority dates) that continue to be required to meet RAFN under the extended planning horizon based on appropriate justifying data. The Parties further acknowledge and support provisions in the Municipal Water Rights Act of 1996 requiring a municipal provider to establish that it qualifies as such. In particular, the Parties acknowledge and support those provisions (contained in I.C. § 42-222) prohibiting the sale of water rights (or portions thereof) held solely to meet RAFN where such rights will be transferred to a different nature of use or to uses outside of the municipal provider's service area. The Parties recognize that these restrictions are not intended to prohibit the exchange or transfer of water rights held for RAFN purposes to accommodate adjustments in service area boundaries between municipal providers.

8. **Support for the IMAP and similar RAFN applications.** In light of the Parties' shared goals described above, the City of Caldwell has expressed its good faith intent to play a supportive role with respect to United Water's IMAP application and similar applications in the future. Likewise, United Water has expressed its good faith intent to be supportive of similar long term RAFN applications that may be filed by the City of Caldwell in the future.

9. **Parties' intent to supersede Prior Agreements and to resolve IMAP protest.** The Parties have decided to change the terms of settlement contained in the Prior Agreements

and wish to execute this Agreement, which will completely supersede and replace the Prior Agreements as between the Parties.

10. **Mutual cooperation.** In addition to resolving the City of Caldwell's IMAP protest, this Agreement addresses other areas of mutual cooperation. In the past, the Parties have worked cooperatively with each other to improve levels of communication, and to understand water supply issues and other areas of mutual concern. This Agreement confirms and reaffirms that spirit of cooperation. These terms are intended to facilitate cooperation and to avoid surprise, conflict, and injury with respect to water rights and water supply.

TERMS OF AGREEMENT

11. **Withdrawal of protest.** In light of the Parties' common interests as described in the recitals above, the City of Caldwell agrees to file appropriate document(s) requesting to change its status in the IMAP proceeding from protestant to intervenor. The document(s) will explain that the City of Caldwell wishes to realign its party status because it no longer "protests" the IMAP and that it wishes to remain a party to the proceeding in order to protect its interests and to express its general support for the IMAP. United Water agrees not to oppose the City of Caldwell's request to change its status.

12. **United Water's service area.** United Water's current municipal water service area (referred to by the Idaho Public Utilities Commission as its "certificated area") is depicted on a map submitted to IDWR in connection with the IMAP proceeding. The most recent version of this map is attached as Attachment C to *United Water's Further Submission in Compliance with the Director's January 11, 2013 Order* and was filed with IDWR on February 13, 2013. That map also shows, via a pink line, United Water's "2012 Planning Area Boundary," that being those additional areas that United Water anticipates serving within the next fifty years

from 2012. The 2012 Planning Area Boundary is more than ten miles from the City of Caldwell's area of city impact.

13. **Caldwell's service area.** The City of Caldwell operates its own municipal water delivery system serving businesses, residents, and other uses within the City of Caldwell.

14. **Advance notice of changes in service area.** At this time, United Water has no plans or expectations whereby its service area would be extended to include areas served by the City of Caldwell or located within the City of Caldwell's area of city impact. Likewise, the City of Caldwell has no plans or expectations whereby its municipal water service area would be extended to include areas within United Water's current or anticipated service area as shown on the above-described map. If at some time in the future either Party were to develop a plan or expectation to the contrary, that Party agrees to give advance notice to the other Party and to engage in good faith discussions with the other Party regarding their respective service areas.

15. **Cooperation and communication.** In order to facilitate and enhance cooperation and communication between the Parties, the Parties agree to meet informally at least once a year or more often at the request of either Party. These meetings are intended to provide an ongoing opportunity for constructive dialog on issues of mutual concern regarding water supply infrastructure, public policy, and long term planning to meet the municipal water needs of their customers. These meetings will be attended by top level Idaho staff of the respective Parties and such others as the Parties may invite. This provision reflects the Parties efforts to improve lines of communication, but noncompliance with this provision shall not be deemed a breach of this Agreement.

16. **Legal counsel.** In negotiating this Agreement, the Parties have consulted and been represented by their respective legal counsel. In this matter, the City of Caldwell is represented by the City Attorney, and United Water is represented by Givens Pursley LLP.

17. **Modification.** This Agreement may be modified by the Parties by mutual Agreement at any time. To be effective, such modifications shall be memorialized in writing or email from one Party to the other, or by a mutually executed document.

18. **Effective date.** This Agreement shall be effective as of the last date shown on the signature blocks below.

19. **Renewal.** This Agreement shall remain in effect for twenty-five years from the effective date, and may be renewed for additional ten-year periods upon agreement of the Parties.

The undersigned have read this Agreement and agree to its terms.

THE CITY OF CALDWELL.

Date: February 18, 2014

By: 
~~Garret L. Nantelas~~ Jim Blacker
~~Mayor~~ City Council President

UNITED WATER IDAHO INC.

Date: FEBRUARY 28, 2014

By: 
Gregory P. Wyatt
Vice President and General Manager

EXHIBIT B: RESOLUTION NO. 36-14

RESOLUTION NO. 36-14

BE IT HEREBY RESOLVED by the Mayor and Council of the City of Caldwell, Idaho, that the Mayor and Clerk of said City are hereby authorized to execute that certain Agreement titled "2014 Mutual Cooperation Agreement Between the City of Caldwell and United Water Idaho Inc." including agreement to change Caldwell's status in regards to the Integrated Municipal Application Package (IMAP) by United Water Idaho to Idaho Department of Water Resources from protestant to intervener; and which Agreement is attached hereto and made a part hereof as if set forth in full.

PASSED BY THE COUNCIL of the City of Caldwell, Idaho this 18th day of February, 2014.

APPROVED BY THE MAYOR of the City of Caldwell, Idaho, this 18th day of February, 2014.

Approved

By

Jim Blacker
~~Mayor~~

Jim Blacker
Council President

ATTEST:

By

Sandra Dyer
City Clerk

