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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 SUEZ WATER IDAHO INC.,
BEING A COLLECTION OF INDIVIDUAL
APPLICATIONS FOR TRANSFERS OF
WATER RIGHTS AND APPLICATIONS
FOR AMENDMENT OF PERMITS.

**CITY OF MIDDLETON'S NOTICE OF
WITHDRAWAL OF PROTEST**

Protestant City of Middleton ("City") by and through its counsel, hereby notifies the Parties and the Idaho Department of Water Resources that it wishes to change its party status in the above-captioned matter in accordance with an Agreement between the City and SUEZ Water Idaho Inc. ("SUEZ"), attached hereto as Exhibit A.

The City hereby withdraws its protest to the IMAP, and requests that its status be changed to that of an independent intervenor in general support of IMAP.

In particular, the City supports the efforts of municipal providers serving rapidly growing communities in seeking 50-year planning horizons under the Municipal Water Rights Act of 1996. More specifically, the Agreement provides in paragraph 5:

The City and SUEZ 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.¹ 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-evaluated (but not more than once a decade) in light of current conditions with appropriate adjustments in the planning horizon. The Parties agree that when such re-evaluation 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.

As further noted in paragraph 6 of the attached Agreement, the City's general support of IMAP and the goals of the Municipal Water Rights Act of 1996 does not mean that the City will automatically agree with or endorse every action or position taken by SUEZ in this proceeding.

¹ The APOD language and its operation are further described in *SUEZ's Submission of Supplemental Authority on APODs* dated Nov. 28, 2017. The key point of that submission is to urge that the operative effect of the APOD language be explained by IDWR to clarify that, in the case of a curtailment area that covers only a portion of a municipal provider's service area, the APOD condition only prohibits the municipal provider from diverting from wells within the curtailment area under senior ground water rights not historically associated with those wells. The APOD condition does not prohibit diversion under water rights historically associated with wells within the area of curtailment from wells that are outside of the area of curtailment, even if those rights would be subject to curtailment if diverted from wells within the curtailment area.

Rather, the City will independently play an active role in the proceeding while supporting the ultimate goals reflected by the filing of IMAP.

Respectfully submitted this 21st day of June, 2018.

YORGASON LAW OFFICES, PLLC

By



Christopher E. Yorgason

Attorney for City of Middleton

Appendix A COPY OF AGREEMENT

2018 MUTUAL COOPERATION AGREEMENT BETWEEN THE CITY OF MIDDLETON AND SUEZ WATER IDAHO INC.

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

RECITALS

1. **IMAP proceeding.** On May 4, 2001, SUEZ (then known as United Water Idaho Inc.) filed a set of applications with the Idaho Department of Water Resources ("IDWR") entitled *In the Matter of Integrated Municipal Application Package ("IMAP") of SUEZ Water Idaho Inc., Being a Collection of Individual Applications for Transfers of Water Rights and Applications for Amendment of Permits*.

2. **Purpose of IMAP.** The IMAP is intended to quantify SUEZ'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 SUEZ's water rights portfolio by making each of its wells an alternate point of diversion ("APOD") for every ground water right (except those associated with its Ranney collectors).

3. **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 SUEZ in the Snake River Basin Adjudication ("SRBA"), IDWR approved SUEZ's motion to lift the stay in the IMAP proceeding.

4. **City's protest.** The City and others protested SUEZ's IMAP application.

5. **Shared goals for long term planning.** The City and SUEZ 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.¹ 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-evaluated (but not more than once a decade) in light of current conditions with appropriate adjustments in the planning horizon. The Parties agree that when such re-evaluation 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

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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.

6. **Support for the IMAP and similar RAFN and/or APOD applications.** In light of the Parties' shared goals described above, the City hereby expresses its good faith intent to play a supportive role with respect to SUEZ's IMAP application and similar RAFN and/or APOD applications in the future. Likewise, SUEZ expresses its good faith intent to be supportive of a similar long-term planning horizon and APODs in RAFN applications that might be filed by the City in the future. The Parties' general support of the IMAP and similar RAFN applications does not mean that either Party is obligated to agree with or endorse every action or position that might be taken by the other Party in connection with such filings.

7. **Mutual cooperation.** In addition to resolving the City'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.

TERMS OF AGREEMENT

8. **Withdrawal of protest** In light of the Parties' common interests as described in the recitals above, the City agrees to file appropriate document(s) requesting to change its status

in the IMAP proceeding from protestant to intervenor. The document(s) will include a copy of this Agreement as an exhibit and will explain that the City 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. SUEZ agrees not to oppose the City’s request to change its status.

9. **SUEZ’s service area.** SUEZ’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 *SUEZ’s Further Submission in Compliance with the Director’s January 11, 2013 Order* and was filed with IDWR on February 13, 2013. The same map is also reproduced as Exhibit 1 on page 45 of SUEZ’s *Master Water Plan for the Years 2015 to 2016*, which was submitted for the record in the IMAP proceeding on April 28, 2017. That map also shows, via a pink line, SUEZ’s “2012 Planning Area Boundary,” that being those additional areas that SUEZ anticipates serving within the next fifty years.

10. **The City’s service area.** The City operates its own municipal water delivery system serving businesses, residents, and other uses within the City and its Area of City Impact.

11. **No overlap.** SUEZ’s 2012 Planning Area Boundary and the City’s service area do not overlap or touch each other.

12. **Advance notice of changes in service area.** At this time, SUEZ has no plans or expectations whereby its service area (*i.e.*, certificated area) would be extended to include areas served by the City. Likewise, the City has no plans or expectations whereby its municipal water service area would be extended to include areas within SUEZ’s current or anticipated service area as shown on the above-described pink line map. If at some time in the future either Party

were to develop a plan or expectation to provide service or to drill a well within the other Party's service area, 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.

13. **Cooperation and communication.** In order to facilitate and enhance cooperation and communication between the Parties, the Parties agree to meet informally from time to time 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 and infrastructure, the Parties' evolving service areas, and public policy bearing on municipal water supply and planning. These meetings will be attended by staff of the respective Parties and such others as the Parties may invite.

14. **Legal counsel.** In negotiating this Agreement, the Parties have consulted and been represented by their respective legal counsel. In this matter, the City is represented by Yorganson Law Offices, PLLC, and SUEZ is represented by Givens Pursley LLP.

15. **Modification.** This Agreement may be modified by the Parties by mutual Agreement at any time. To be effective, such modifications shall be memorialized and acknowledged by both Parties in a writing and/or email(s).

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

17. **Enforcement.** This Agreement reflects good faith commitments made by the Parties to each other in the spirit of cooperation. It is not intended to be enforced through judicial or administrative proceedings.

18. **Renewal.** This Agreement shall remain in effect for ten 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.

CITY OF MIDDLETON

Date: June 6, 2018

By: Darin Taylor
Darin Taylor
Mayor

SUEZ WATER IDAHO INC.

Date: JUNE 18, 2018

By: Gregory P. Wyatt
Gregory P. Wyatt
Vice President and General Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of June, 2018, the foregoing was filed, served, and copied as shown below. Service by email is authorized by the Hearing Officer's Order of September 11, 2017 at page 3.

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