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.

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. 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.

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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


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. 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
cooparatively 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., certified 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
Mayor

SUEZ WATER IDAHO INC.

Date: June 18, 2018
By: 
Gregory F. Wyant
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.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
Hand delivery or overnight mail:
322 East Front Street
Boise, ID 83702

SERVICE COPIES TO PROTESTANTS, INTERVENORS, AND INTERESTED PARTIES:

Stephan L. Burgos
Director
Public Works Department
CITY OF BOISE
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 433-5650
sburgos@cityofboise.org
Hand delivery or overnight mail:
150 N Capitol Blvd, City Hall #1
Boise, ID 83702
(For the City of Boise, intervenor in support)

Abigale R. Germaine, Esq.
Assistant City Attorney
City Attorney’s Office
CITY OF BOISE
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 384-4454
agermaine@cityofboise.org
Hand delivery or overnight mail:
150 N Capitol Blvd
Boise, ID 83702
(For the City of Boise, intervenor in support)
Chris M. Bromley, Esq.
McHugh Bromley PLLC
380 S 4th St, Ste 103
Boise, ID 83702
Facsimile: (208) 287-0864
cbromley@mchughbromley.com
(For the City of Boise, intervenor in support)

John Roldan, P.E.
Strategic Water Resources Manager
Public Works Department
CITY OF BOISE
PO Box 500
Boise, ID 83701-0500
Facsimile: (208) 433-5650
jroldan@cityofboise.org
Hand delivery or overnight mail:
150 N Capitol Blvd
Boise, ID 83702
(For the City of Boise, intervenor in support)

Warren Stewart, P.E.
City Engineer
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: (208) 898-9551
wstewart@meridiancity.org
(For the City of Meridian, intervenor in support)

Dale Bolthouse
Director
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: (208) 898-9551
dbolthouse@meridiancity.org
(For the City of Meridian, intervenor in support)
Kyle Radek, P.E.
Assistant City Engineer, Engineering Division
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: (208) 898-9551
kradek@meridiancity.org
(For the City of Meridian, intervenor in support)

Garrick Nelson
Staff Engineer II
Public Works Department
CITY OF MERIDIAN
33 E Broadway Ave, Ste 200
Meridian, ID 83642
Facsimile: (208) 898-9551
gnelson@meridiancity.org
(For the City of Meridian, intervenor in support)

Charles L. Honsinger, Esq.
HONSINGER LAW, PLLC
PO Box 517
Boise, ID 83701
Facsimile: (208) 908-8065
honsingerlaw@gmail.com
(For the City of Meridian, intervenor in support)

Brent Orton, P.E., MSC
Public Works Director, City Engineer
CITY OF CALDWELL
621 East Cleveland Blvd.
Caldwell, ID 83605
Facsimile: (208) 455-3012
borton@cityofcaldwell.org
(For the City of Caldwell, intervenor in support)

Christopher H. Meyer
Michael P. Lawrence
GIVENS PURSLEY LLP
601 West Bannock Street
Boise, Idaho 83702
Facsimile: (208) 388-1300
chrismeyer@givenspursley.com
mpl@givenspursley.com
(For SUEZ Water Idaho Inc., Applicant)
Cherese D. McLain, Esq.
MOORE, SMITH, BUXTON & TURCKE, CHARTERED
950 W Bannock St, Ste 520
Boise, ID 83702
Facsimile: 208-331-1202
cdm@msbtlaw.com
(For the Star Sewer & Water District, intervenor in support and for the City of Eagle, interested party)

S. Bryce Farris, Esq.
Andrew J. Waldera, Esq.
SAWTOOTH LAW OFFICES, PLLC
PO Box 7985
Boise ID 83707
Facsimile: 208-629-7559
bryce@sawtoothlaw.com
andy@sawtoothlaw.com
Hand delivery or overnight mail:
1101 W River St, Ste 110
Boise ID 83702
(For Nampa & Meridian Irrigation District and Settlers Irrigation District, protestants)

Albert P. Barker, Esq.
Shelley M. Davis, Esq.
BARKER, ROSHOLT & SIMPSON, LLP
PO Box 2139
Boise, ID 83701-2139
Facsimile: (208) 344-6034
apb@idahowaters.com
smd@idahowaters.com
Hand delivery or overnight mail:
1010 W Jefferson, Ste 102
Boise, ID 83702
(For Boise Project Board of Control, Big Bend Irrigation District, Boise-Kuna Irrigation District, and Wilder Irrigation District, protestants)
Richard T. Roats, Esq.
City Attorney
CITY OF KUNA
PO Box 13
Kuna, ID 83634
Facsimile: (208) 922-5989
rroats@kunaID.gov
kunaattorney@icloud.com
(For the City of Kuna, interested party)

Bob Bachman
Public Works Director
CITY OF KUNA
PO Box 13
Kuna, ID 83634
Facsimile: None
bbachman@kunaID.gov
Hand delivery or overnight mail:
6950 S Ten Mile Rd
Meridian, ID 83634
(For the City of Kuna, interested party)

COURTESY COPIES TO IDWR AND NON-PARTIES:

James Cefalo
Hearing Officer
Eastern Regional Office
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls ID 83402-6105
Facsimile: (208) 525-7177
james.cefalo@idwr.idaho.gov

Sharla Cox
Administrative Assistant
Eastern Regional Office
Idaho Department of Water Resources
900 North Skyline Dr., Ste. A
Idaho Falls ID 83402-6105
Facsimile: (208) 525-7177
sharla.cox@idwr.idaho.gov
Kimi White
Paralegal
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
kim.white@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

Garrick L. Baxter, Esq.
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

Emmi Blades, Esq.
Deputy Attorney General
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
emmi.blades@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702

Shelley W. Keen
Water Rights Section Manager
IDAHO DEPARTMENT OF WATER RESOURCES
PO Box 83720
Boise, ID 83720-0098
Facsimile: (208) 287-6700
shelley.keen@idwr.idaho.gov
Hand delivery or overnight mail:
322 E Front St
Boise, ID 83702
Matt J. Howard, Esq.
Water Rights Analyst
U.S. BUREAU OF RECLAMATION
Pacific Northwest Regional Office
1150 N Curtis Rd
Boise, ID 83706-1234
Facsimile: (208) 378-5305
mhoward@usbr.gov
(For the U.S. Bureau of Reclamation, withdrawn)

Paul L. Arrington, Esq.
Director
Idaho Water Users Association
1010 W Jefferson St, Ste 101
Boise, ID 83702
Facsimile: (208) 344-2744
paul@iwua.org

Christopher E. Yorgason