

**AGENDA**

**ITEM**

**NO. 12**



SCIENCE & ENVIRONMENT DIVISION  
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## EXECUTIVE SUMMARY

**TO:** Mayor and Council  
**FROM:** Hannah Sanger, Science & Environment Division Manager  
**CC:** Jeff Mansfield, PWD  
**DATE:** April 28, 2020  
**RE:** Stormwater Intergovernmental Agreement

**Staff request that Council authorize the Mayor's signature on an updated Intergovernmental Agreement for stormwater management with the City of Chubbuck, Bannock County, Idaho Transportation Department (District 5), and Idaho State University.**

This Intergovernmental Agreement describes each organization's respective roles and responsibilities related to the federal stormwater permit for the Pocatello Urbanized Area (currently, NPDES Permit #IDS028053).

### BACKGROUND

The intergovernmental agreement is a requirement of the Pocatello Urbanized Area's federal stormwater permit. An agreement was initially signed in 2006 between Pocatello, Chubbuck, Bannock County and ITD#5 in 2006 (coinciding with the issuance of the area's first federal stormwater permit). This agreement was updated in 2011, with the addition of ISU as a potential new co-permittee. The 2020 agreement further was updated to reflect current permit conditions, and to make minor updates to the cost-share. The permittees current stormwater permit became effective on October 1, 2019.

The updated intergovernmental agreement provides for Pocatello to continue to conduct outreach/training, monitoring and permit administration activities on behalf of all the permittees. Costs are allocated based on a 50/50 split between population and geographic area within the permit area. The permittees set a budget each year to carry out these activities.

Annual Cost Apportionment (actual and expected budget for CY2020 and 2021: \$175,000/year):

Pocatello: 74%  
Chubbuck: 13.5%  
County: 12.5%  
ISU: flat fee of \$6600  
ITD: flat fee of \$6600

To carry this out the permittees meet monthly. Currently Pocatello is leading the permittees through the process of writing a permit-required 5-year plan for implementation of this permit (Stormwater Management Plan – SWMP). This SWMP describes the additional individual actions each permittee will take to meet the permit requirements (e.g. Erosion and Sediment Control enforcement, catch basin inspections and cleaning, and stormwater system mapping). The permittees are also working together on creating a joint stormwater system map (similar to the shared street map for our area).

### RECOMMENDATION

Staff recommend that Council authorize the Mayor's signature on an updated Intergovernmental Agreement for stormwater management with the City of Chubbuck, Bannock County, Idaho Transportation Department (District 5), and Idaho State University.

**INTERGOVERNMENTAL AGREEMENT  
FOR ROLES AND RESPONSIBILITIES UNDER THE NPDES  
MUNICIPAL SEPARATE STORM WATER PERMIT (Permit # IDS028053)**

This Intergovernmental Agreement entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the City of Pocatello (Pocatello), the City of Chubbuck (Chubbuck), the Idaho Transportation Department, District 5 (ITD), Bannock County (County), and Idaho State University (ISU), collectively the "Permittees", is made for the purpose of complying with the federal National Pollutant Discharge Elimination System Municipal Stormwater Permit ("NPDES Permit").

**RECITALS**

WHEREAS, Congress in 1987 amended Section 402 of the Federal Clean Water Act (33 U.S.C.A. section 1342 (p)) to require the Federal Environmental Protection Agency (EPA) to promulgate regulations ("the regulations") for applications for permits for storm water discharges; and

WHEREAS, the regulations are designed to control pollutants associated with storm water discharges through the use of the NPDES permit system which allows the lawful discharge of storm water into waters of the United States; and

WHEREAS, the regulations are designed to require NPDES permits for discharges from small Municipal Separate Storm Sewer Systems (MS4s) from a system-wide or jurisdiction wide basis; and

WHEREAS, the Permittees have received a NPDES Permit, effective October 2019; and

WHEREAS, the NPDES Permit requires that the Permittees maintain an intergovernmental agreement describing each organization's respective roles and responsibilities related to this permit. Any previously signed agreement may be updated, as necessary, in accordance with this permit.

NOW THEREFORE the Parties agree as follows:

**AGREEMENT**

**1. PURPOSE OF AGREEMENT**

The purpose of this agreement is to detail the duties, roles and responsibilities to be provided by the Permittees with respect to compliance with the regulations, requirements and commitments set forth in the NPDES Permit issued by EPA.

As per Section 2.5 in the NPDES Permit:

"Each Permittee is individually responsible for Permit compliance related only to portions of the MS4 owned or operated solely by that Permittee, or where this Permit requires a specific Permittee to take an action. The Permittees must work together under a joint agreement established pursuant to this Permit. Each Permittee is jointly responsible for Permit

compliance:

- A. Related to portions of the MS4 where operational or storm water management program (SWMP) implementation authority has been transferred from one Permittee to another, in accordance with the written and enforceable agreement between the Permittees as described in this Part;
- B. Related to portions of the MS4 where Permittees jointly own or operate a portion of the MS4;
- C. Related to the submission of reports or other documents required by Parts 3 and 5 of this Permit; and
- D. Where this Permit requires action and a specific Permittee is not named.”

## **2. GENERAL PROVISIONS**

- A. The City of Pocatello, the City of Chubbuck, the Idaho Transportation Department District 5, Bannock County, and Idaho State University are co-permittees in the NPDES Permit as provided in 40 CFR 122.33(b) (iii).
- B. Each Permittee will be responsible for complying with any NPDES Permit conditions relating to discharges from those parts of the MS4 that it continues to operate and maintain.
- C. The Permittees will utilize available monitoring and enforcement mechanisms, in full cooperation with other Permittees, to control the contribution of pollutants from one MS4 to another.
- D. Each party to this Agreement shall assign at least one representative to the Permittee group, which shall meet at least annually to assess and define necessary work tasks to comply with the terms and conditions of this Agreement and the issued permit. Additional meetings will be held based on the needs of the group.

## **3. STORM WATER PERMIT PROGRAM ROLES AND RESPONSIBILITIES**

- A. Program Administration and Management  
Pocatello shall be the lead agency for Program Administration and Management. Program Administration and Management consists primarily of:
  - i. Preparing the agenda, minutes, and other documents related to the regular and special meetings of the Permittees;
  - ii. Compiling the material from the Permittees for the filing of the Stormwater Management Plan (SWMP) and other required NPDES Permit documents to the EPA and/or Idaho DEQ;
  - iii. Commenting on proposed regulations that may impact permit implementation.
  - iv. Coordinating the development of template manuals and other documents for permittee use; and

- v. Coordinating various Permittee activities under the NPDES Permit.

The Permittees agree to cooperate with Pocatello in areas of administration, including regular attendance and participation in Permittee meetings, participation in the permit negotiations process as needed and timely submittal of data to Pocatello, upon request, for preparation of the Stormwater Management Plan and other required documents.

The Permittees shall reimburse Pocatello for their share of the Program Administration costs as set forth in Section 4 of this agreement.

**B. Monitoring Program**

Pocatello shall be the lead agency for the Monitoring Program. The Monitoring Program consists primarily of:

- a) Developing and implementing the monitoring program as described in the NPDES Permit, including the monitoring protocol, testing, and other activities;

The Permittees shall reimburse Pocatello for their share of the Monitoring Program costs as set forth in Section 4 of this agreement.

**C. Public Outreach and Training Program**

Pocatello shall be the lead agency for the Public Outreach Program. The Public Outreach Program consists primarily of:

- a) Developing and implementing the public outreach program as described in the NPDES permit;
- b) Developing and implementing the training programs as described in the NPDES permit; and
- c) Assessing outreach and training effectiveness towards any desired behavior change.

The Permittees shall reimburse Pocatello for their share of the Public Outreach and Training Program costs as set forth in Section 4 of this agreement.

**4. APPORTIONMENT OF COSTS**

**A. Cost Share**

1. Permittees shall reimburse Pocatello for their share of the Program Administration, Outreach/Training, and Monitoring costs based on their percentage of costs related to conduct of the Program elements as described in Sections 1-3 above.
2. Cost share portions for each of the Permittees was developed using an average cost based 50% on area and 50% on population, modified by the ITD and ISU contribution.

**a) Area Calculation (acres)**

Pocatello	11,176	=67%
Chubbuck	977	= 6%
Bannock County	2,935	=18%
ITD	813	= 5%
ISU	611	= 4%

*Total Area of Pocatello Urbanized Area= 16,512 acres*

**b) Population Calculation (# people, per 2010 census)**

Pocatello	54,255	= 75%
Chubbuck	13,922	= 19%
Bannock County	4,358	= 6%
ITD	----	
ISU	----	

*Total PUA = 72,535 people*

**c) Annual Cost Apportionment (50% area; 50% population)**

Pocatello:	74%
Chubbuck:	13.5%
County:	12.5%
ISU:	flat fee of \$6600
ITD:	flat fee of \$6600

**B. Timely Payments**

All amounts due and owing the City of Pocatello for the costs of Program Administration, Monitoring, Public Outreach/Training and other agreed upon expenses shall be paid within 60 days of invoicing.

**C. Budgeting**

The City of Pocatello shall present a budget for the following Permit Year (October –September) to the Permittees each January for consideration. The Permittees shall consider such budget, provide comment, and the budget shall be approved at a subsequent Permittee meeting held in March of each Permit Year, upon motion and approval by a majority of the Permittees present.

Throughout the Permit Year, modifications to categories within the approved budget shall be shared with the co-permittees on a semi-annual basis, at a minimum. No overall increase in the budget shall be authorized unless approved by the majority of the Permittees, and each Permittee has budget authority for such revisions.

## **5. TERMINATION AND MODIFICATION**

Each Permittee shall have the right to withdraw from and terminate its responsibilities under this Agreement at any time by serving upon all other Permittees 30-days advance written notice of withdrawal. Any Permittee withdrawing from this Agreement shall pay its proportionate share of any work performed pursuant to this Agreement up to the effective date of its withdrawal. Withdrawal from this Agreement is subject to the conditions of the NPDES Permit.

Should any party to this Agreement be determined by EPA not to be an operator of an MS4 requiring participation in a MS4 Phase II Storm Water Permit that party shall be allowed to immediately withdraw from this Agreement at no cost beyond those costs billed to the date of withdrawal. This Agreement may be modified in writing if executed by all Permittees and approved by EPA.

## **6. NOTICES**

Any notices which the party may desire to serve upon the other Permittees shall be in writing and shall be deemed served when delivered personally or when deposited in the United States mail with adequate postage to the following addresses:

**City of Pocatello**

Science & Environment Administrator  
P.O. Box 4169  
Pocatello, ID 83205-4169

**City of Chubbuck**

City Engineer  
PO Box 5604  
Chubbuck, ID 83202

**Bannock County**

County Engineer  
5500 S. 5<sup>th</sup> Ave.  
Pocatello, ID 83201

**Idaho Department of Transportation, District 5**

Environmental Planner  
5151 S. 5<sup>th</sup> Ave.  
Pocatello, ID 83204-2202

**Idaho State University**

Environmental Manager  
921 S. 8th Avenue, STOP 8042  
Pocatello, ID 83209-8042

## **7. INDEMNIFICATION/HOLDHARMLESS PROVISIONS**

**The City of Pocatello** agrees to defend, indemnify, and hold harmless the City of Chubbuck, Bannock County, the Idaho Transportation Department and Idaho State University, their officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising from the negligence or wrongful acts or omissions of the City of Pocatello, its officers, employees, or agents. The City of Pocatello shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the City or any of its officers, employees, or agents, and to the extent permitted by State law, including specifically, the limits set forth in the Idaho Tort Claims Act, and not by the City of Chubbuck, Bannock County, the Idaho Transportation Department, Idaho State University, or any of their officers, agents, or employees.

**The City of Chubbuck** agrees to defend, indemnify, and hold harmless the City of Pocatello, Bannock County, the Idaho Transportation Department, and Idaho State University, their officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising from the negligence or wrongful acts or omissions of the City of Chubbuck, its officers, employees, or agents. The City of Chubbuck shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the City or any of its officers, employees, or agents, and to the extent permitted by State law, including specifically, the limits set forth in the Idaho Tort Claims Act, and not by the City of Pocatello, Bannock County, the Idaho Transportation Department, Idaho State University, or any of their officers, agents, or employees.

**Bannock County** agrees to defend, indemnify, and hold harmless the City of Pocatello, the City of Chubbuck, the Idaho Transportation Department and Idaho State University, their officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising from the negligence or wrongful acts or omissions of Bannock County, its officers, employees, or agents. Bannock County shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the County or any of its officers, employees, or agents, and to the extent permitted by State law, including specifically, the limits set forth in the Idaho Tort Claims Act, and not by the City of Pocatello, City of Chubbuck, the Idaho Transportation Department, Idaho State University, or any of their officers, agents, or employees.

**The Idaho Transportation Department** agrees to defend, indemnify, and hold harmless the City of Pocatello, City of Chubbuck, Bannock County, and Idaho State University, their officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising from the negligence or wrongful acts or omissions of the Department, its officers, employees, or agents. The Department shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the Department or any of its officers, employees, or agents, and to the extent permitted



by State law, including specifically, the limits set forth in the Idaho Tort Claims Act, and not by the City of Pocatello, City of Chubbuck, Bannock County, Idaho State University, or any of their officers, agents, or employees.

**Idaho State University** agrees to defend, indemnify, and hold harmless the City of Pocatello, City of Chubbuck, Bannock County, and the Idaho Transportation Department, their officers, governing board, agents and employees, from any and all claims for loss or damage to property or injury or death to persons, including costs, expenses and reasonable attorney's fees, arising from the negligence or wrongful acts or omissions of the University, its officers, employees, or agents. The University shall be liable under the provisions of this paragraph for such obligations, costs and expenses only to the extent that such act or omission is caused by the University or any of its officers, employees, or agents, and to the extent permitted by State law, including specifically, the limits set forth in the Idaho Tort Claims Act, and not by the City of Pocatello, City of Chubbuck, Bannock County, the Idaho Transportation Department, or any of their officers, agents, or employees.

**8. ENTIRE AGREEMENT**

Except as provided otherwise herein, this instrument and any attachments hereto constitute the entire Agreement between the parties concerning the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**CITY OF POCA TELLO**

**CITY OF CHUBBUCK**

\_\_\_\_\_  
Brian C. Blad, Mayor

\_\_\_\_\_  
Kevin England, Mayor

ATTESTED TO BY:

\_\_\_\_\_  
Ruth Newsom, City Clerk

\_\_\_\_\_  
Joey Bowers, City Clerk

**APPROVED BY LEGAL**

Date 4/14/20 Atty B. See

Comments \_\_\_\_\_

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**IDAHO STATE UNIVERSITY**

**BANNOCK COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Dr. Glen Nelson, VP Finance & Business Affairs

\_\_\_\_\_  
Steven Brown, Chairman

**IDAHO TRANSPORTATION DEPARTMENT, DISTRICT 5**

\_\_\_\_\_  
Todd Hubbard, District Engineer