

Certificate of Service

I hereby certify that on this 27th day of February, 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Diane M. Hanian	<input type="checkbox"/>	U.S. Mail
Commission Secretary	<input type="checkbox"/>	Hand Delivery
Idaho Public Utilities Commission	<input type="checkbox"/>	Overnight Mail
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<i>Commission</i>		

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

CITY OF EAGLE, an Idaho municipal
corporation,

Plaintiff,

vs.

EAGLE WATER COMPANY, INC., an Idaho
corporation,

Defendant.

Case No. CV01-19-03534

**COMPLAINT FOR
DECLARATORY AND OTHER
RELIEF**

CITY OF EAGLE (the "City"), by and through its attorneys of record, Holland & Hart LLP, alleges as its Complaint against EAGLE WATER COMPANY, INC. ("Eagle Water"), as follows:

INTRODUCTION

1. By June 2008, Eagle Water was in trouble. It was struggling economically; it was struggling with regulatory and environmental issues.

2. The Idaho Department of Environmental Quality (“DEQ”)—which regulates public drinking water systems—had imposed a moratorium on new connections to Eagle Water’s system. Eagle Water was subject to a consent order and enforcement by DEQ and a show cause hearing before the Idaho Public Utilities Commission (“PUC”). Eagle Water needed a large supply of standby water for firefighting and other purposes and could not continue to operate without it. Eagle Water had failed to connect residents within its approved service area due to the DEQ-imposed connection moratorium.

3. Faced with these circumstances, Eagle Water approached the City for the help it needed. The City had recently completed a large water storage tank close to Eagle Water’s system. Eagle Water could connect—through an intertie—to the City’s storage tank for the standby water. The City and Eagle Water approved an Intertie Agreement in July 2008—a contract between Eagle Water and the City. As consideration for the City’s commitments, Eagle Water granted the City a very valuable right—a permanent Right of First Refusal—providing the City with notice and the opportunity to match any bona fide offer Eagle Water received for the purchase of any part or all of its water system.

4. To comply with the Right of First Refusal, Eagle Water’s notice must disclose the amount and terms of the offer in detail.

5. The Agreement then provides the City with “the exclusive right for 30 days after receiving such notice . . . to provide Notice of Intent to Purchase [by the city] the Water System or portion thereof to which such . . . offer refers at the amount of said offer.”

6. In May 2018 Eagle Water decided to sell its system to H2O Eagle Acquisition LLC (“H2O”). But having received the benefit of the Agreement and being saved from its regulatory dilemma, Eagle Water reneged on its promises to the City. Eagle Water did not give

the required notice to the City with the terms of the offer. It never provided the City a chance to purchase Eagle Water on those terms. Eagle Water did not honor the City's "permanent" Right of First Refusal and later claimed it never existed.

7. In fact, the sale to H2O was part of a larger plan to sell some or all of Eagle Water's assets to others. H2O inked a deal with SUEZ Water Idaho, Inc. ("SUEZ") on September 20, 2018. That deal attempted to assign to SUEZ all of H2O's rights—obtained in violation of the Right of First Refusal—to acquire Eagle Water. The transactions with H2O and SUEZ have not closed. Yet Eagle Water has not given the City the notice required by the Agreement, or the crucial contracted-for opportunity for the City to exercise the Right of First Refusal.

8. The City files this suit to vindicate its contractual rights, to hold Eagle Water to its bargained for duties, and to have the opportunity to purchase any or all of the Eagle Water system on the terms of the initial bona fide third-party offer that Eagle Water received.

PARTIES

9. Plaintiff City of Eagle is a city located within Ada County, Idaho, a political subdivision of the State of Idaho.

10. Defendant Eagle Water Company, Inc. is an Idaho corporation with its principal place of business in Eagle, Idaho.

11. Eagle Water owns and conducts a water utility supply and distribution business ("System") in and around Eagle, Idaho.

12. Eagle Water is a utility regulated by the PUC pursuant to the terms and conditions of PUC Certificate of Public Convenience and Necessity No. 278, as amended, and pursuant to other PUC authorities.

13. Eagle Water currently serves approximately 4,200 customers within its certification service area.

14. Eagle Water's service area is adjacent to the area served by the City's Municipal Water Department.

JURISDICTION AND VENUE

15. This Court has jurisdiction over the claims and parties to this action under Idaho Code § 5-514(a) and (c).

16. This action involves the transaction of business within the State of Idaho.

17. Venue is proper in Ada County under Idaho Code § 5-404.

18. The Defendant Eagle Water resides in Ada County; and the events, acts, and omissions giving rise to the City's causes of action alleged below occurred in Ada County.

GENERAL ALLEGATIONS

19. On July 12, 2008, the City and Eagle Water entered into the Intertie Agreement ("Agreement").

20. Among the purposes of the Agreement was to allow Eagle Water to connect its distribution lines and the City's one-million-gallon water tank so that Eagle Water could satisfy certain regulatory requirements for fire protection and other services to its customers.

21. The Agreement is attached hereto as **Exhibit 1**.

22. The Agreement was signed by Robert V. DeShazo, Jr., President of Eagle Water, and Phil Bandy, Mayor of City of Eagle.

23. The Agreement was accepted by the City at the City Council meeting held on July 10, 2008.

24. Over the next decade, the City had discussions with Eagle Water and others about the City acquiring some or all of Eagle Water's System. These discussions did not result in an agreement for the City to acquire any part of the System.

THE CITY'S PERMANENT RIGHT OF FIRST REFUSAL

25. The Agreement provides, in part:

6. Right of First Refusal. If E[agle Water] determines to sell or convey all or any part of its Water System, which shall be deemed to include, but not be limited to, water rights, wells and other infrastructure, and receives a bona fide offer for this Water System, E[agle Water] shall give notice to City [of Eagle] stating E[agle Water's] desire to sell and the amount and terms of such offer in detail. City [of Eagle] shall have the exclusive right for 30 days after receiving such notice to provide Notice of Intent to Purchase the Water System or portion thereof to which such bona fide offer refers at the amount of said offer [T]his Right of First Refusal applies solely to an "E[agle Water] Change of Control Transaction", which means one or a series of transactions in which (i) all or substantially all of E[agle Water]'s Water System is sold to a third party, or (ii) there is a stock sale, merger, consolidation or similar transaction as a result of which said third party owns a majority of the outstanding voting and outstanding capital stock of E[agle Water] or any successor owner of E[agle Water]. This Right of First Refusal shall be permanent

Agreement, ¶ 6 (Ex. 1).

26. Eagle Water determined to sell all of its System to H2O, a third party, in May 2018.

27. Eagle Water received a bona fide offer to purchase all of Eagle Water's System from H2O in May 2018.

28. H2O's offer was an "Eagle Water Change of Control Transaction" under the Agreement.

29. Eagle Water was obligated under the Agreement to provide notice to the City stating the amount and terms of the offer in detail from H2O before it could enter into an agreement with H2O to sell its System.

30. The City's Right of First Refusal was triggered when Eagle Water received the offer to purchase all of the System from a third party—H2O.

31. Eagle Water did not notify the City when it received the third-party offer to sell its System.

32. The City had no obligation or duty to provide Eagle Water with a Notice of Intent to Purchase the System because it did not receive notice from Eagle Water containing the amount and terms of the offer from H2O.

33. Eagle Water and SUEZ filed a Joint Application and Request for Modified Procedure before the PUC to approve this sale on November 15, 2018.

34. At that time, the City learned that Eagle Water had entered into an agreement to sell its System to H2O and that H2O has entered into an agreement with SUEZ purporting to sell or assign its rights to Eagle Water's System to SUEZ.

EAGLE WATER'S FAILURE TO MAKE REQUIRED MONTHLY PAYMENTS

35. The Agreement also provides, in part:

3.2 Cash Payment. In addition, [Eagle Water] shall pay City [of Eagle] a fee for the connection to the Storage Tank of \$10,000.00 per month commencing on the date the interconnection is completed and approved by the Idaho Department of Environmental Quality (DEQ).

36. The Agreement further provides, in part:

4. Duration. . . . If the Intertie continues past 18 months from the Commencement date, the Intertie Lease Cash Payment shall increase five percent (5%) and every 18 months thereafter.

37. The interconnection construction was completed on July 22, 2008. As of the date of filing of this Complaint, Eagle Water's System remains connected to the City's storage tank.

38. The interconnect was approved by DEQ on July 25, 2008.

39. Eagle Water began making the required monthly payments in August 2008.

40. Eagle Water made nine monthly payments. Eagle Water missed its first monthly payment for May 2009 and has not made a required monthly payment since that date.

41. The required monthly payments increased to \$10,500.00 beginning in February 2010.

42. The required monthly payments increased to \$11,025.00 beginning in August 2011.

43. The required monthly payments increased to \$11,576.25 beginning in February 2013.

44. The required monthly payments increased to \$12,155.06 beginning in August 2014.

45. The required monthly payments increased to \$12,762.81 beginning in February 2016.

46. The required monthly payments increased to \$13,400.95 beginning in August 2017.

47. The required monthly payments increased to \$14,071.00 beginning in February 2019.

48. Eagle Water has not terminated the Agreement in accordance with paragraph 7 of the Agreement which requires 30-days prior written notice to terminate. Agreement, ¶¶ 7, 12 (Ex. 1).

EAGLE WATER IS IN DEFAULT UNDER THE AGREEMENT

49. The Agreement further provides, in part:

10.1. **Default.** Each of the following events shall constitute an event of default:

10.1.1. [Eagle Water] fails to make, on or before the date which it is due, any payment to be made to the City [of Eagle] pursuant to the provisions of this Agreement; or

10.1.2. Either party materially breaches this Agreement.

10.2. **Remedies.** If any default shall occur, the non-defaulting party shall give the defaulting party notice of default. Such default must be cured within fifteen (15) days of the Notice of Default

Agreement ¶ 10 (Ex. 1).

50. Eagle Water's failure to comply with Section 6 of the Agreement and to provide the City with its Right of First Refusal was a material breach of the Agreement and therefore a default under the Agreement.

51. Eagle Water failed to make \$1,389,632.26 in payments to the City. This failure is a default under the Agreement.

52. On January 14, 2019, the City, through counsel, sent Eagle Water a Notice of Default regarding: (i) Eagle Water's failure to comply with the Right of First Refusal; and (ii) Eagle Water's failure to continue to make the monthly payment to the City for the intertie connection.

53. Eagle Water responded, through counsel, on January 29, 2019, and refused to honor the City's Right of First Refusal.

54. Eagle Water also specifically denied "that any such enforceable right [of first refusal] currently exists or existed in the past."

55. Eagle Water did not address the outstanding monthly payments owed to the City or cure its default.

56. The Agreement also provides, in part:

11. **Attorneys Fees.** In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorney fees to be fixed by the arbitrator, or court of applicable jurisdiction.

Agreement ¶11 (Ex. 1).

COUNT I

BREACH OF CONTRACT - RIGHT OF FIRST REFUSAL

57. The City hereby realleges and incorporates by reference all factual allegations contained in the preceding Paragraphs as if fully set forth herein.

58. The City and Eagle Water entered into the Agreement.

59. The City agreed to allow Eagle Water to connect its System to the City's storage tank.

60. As partial consideration in return, Eagle Water granted the City a permanent right of first refusal triggered by Eagle Water receiving a bona fide offer from a third party to purchase "all or any portion of the Water System."

61. The Agreement is a binding contract.

62. Eagle Water relied upon and used the fact of its physical interconnection to meet its regulatory obligations and stay in business.

63. Eagle Water determined to sell all of its System and received a bona fide offer from a third party—H2O—in May 2018.

64. Eagle Water was contractually obligated to provide notice to the City containing the amount and detailed terms of the offer.

65. Eagle Water breached the Agreement by failing to notify the City when it received an offer to purchase the System.

66. The breach of contract by Eagle Water proximately caused damage to the City.

67. The City has been damaged due to the breach of contract by Eagle Water in an amount as will be established at trial.

COUNT II

BREACH OF CONTRACT - PAYMENT UNDER THE AGREEMENT

68. The City hereby realleges and incorporates by reference all factual allegations contained in the preceding Paragraphs as if fully set forth herein.

69. The City and Eagle Water entered into the Agreement whereby the City agreed to allow Eagle Water to connect its System to the City's storage tank and Eagle Water agreed to pay the City \$10,000.00 per month (or more as specified in the Agreement and noted above) following the date of connection and approval by the DEQ "so long as the Intertie connection is needed by E[agle Water] in its sole discretion."

70. Eagle Water agreed to increase the amount of the monthly payments by 5% every 18 months.

71. The Agreement is a binding contract.

72. The City allowed Eagle Water to connect its System to the storage tank.

73. Eagle Water breached the Agreement by failing to pay the required monthly payments after April 2009.

74. The breach of contract by Eagle Water proximately caused damage to the City.

75. The City has been damaged due to the breach of contract by Eagle Water in the amount of \$1,389,632.26, or such other and additional amount as will be established at trial.

COUNT III

BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

76. The City hereby realleges and incorporates by reference all factual allegations contained in the preceding Paragraphs as if fully set forth herein.

77. Implied in the Agreement between the City and Eagle Water is the covenant of good faith and fair dealing.

78. By its conduct set forth above, including, but not limited to, the failure to notify the City that Eagle Water had received a bona fide offer from a third party and the failure to pay the City the required monthly payments, Eagle Water violated, nullified, and significantly impaired the benefit of the Agreement, thus breaching the covenant of good faith and fair dealing.

79. The breach of the covenant of good faith and fair dealing by Eagle Water proximately resulted in damage to the City in an amount as will be established at trial.

COUNT IV

DECLARATORY JUDGMENT

80. The City hereby realleges and incorporates by reference all factual allegations contained in the preceding Paragraphs as if fully set forth herein.

81. The rights and obligations of the City and Eagle Water under the Agreement are governed by the laws of the State of Idaho.

82. There is an existing controversy between the City and Eagle Water concerning Eagle Water's obligation and duty to provide the City with notice under the permanent Right of First Refusal.

83. There is an existing controversy between the City and Eagle Water concerning Eagle Water's obligation and duty to pay the required monthly payments.

84. Without resolution by this Court, the City is subject to uncertainty and insecurity regarding its permanent Right of First Refusal and right to collect the required monthly payments under the Agreement.

85. Under Idaho Code §§ 10-1201 and 10-1202, the City is entitled to a declaratory judgment declaring that: (a) the City's permanent Right of First Refusal is valid and enforceable; (b) Eagle Water received a bona fide offer from H2O in 2018; (c) Eagle Water is contractually-obligated to provide the City with Notice of the amount and terms of H2O's bona fide offer before making any agreement to sell its System; (d) Eagle Water did not provide the City with the contractually-required Notice of the amount and terms of H2O's bona fide offer; and (e) Eagle Water's agreements to sell its System breach the Agreement.

86. Under Idaho Code §§ 10-1201 and 10-1202, the City is entitled to a declaratory judgment declaring that: (a) the City's right to collect monthly payments from Eagle Water is valid and enforceable; (b) Eagle Water did not terminate the Agreement; (c) Eagle Water is contractually obligated to pay the City the missed payments continuing into the future until the Agreement is terminated in accordance with the Agreement; (d) Eagle Water's failure to pay the contractually-required monthly payments beginning after April 2009 constitutes a default under the Agreement; and (e) Eagle Water's failure to pay the contractually required monthly payments beginning after April 2009 breaches the Agreement.

ATTORNEY FEES

The City has been required to retain counsel, Holland & Hart LLP, to bring this Complaint and the City is entitled to recover its costs and reasonable attorney fees incurred in bringing this suit, pursuant to the provisions of Idaho Code §§ 12-120(3) and 12-121 and pursuant to Idaho Rule of Civil Procedure 54, together with such additional rules and/or statutes as may be applicable, and also pursuant to the Agreement. In the event that a default is entered on this Complaint, the City requests attorney fees and costs in the amount of \$10,000.

RELIEF REQUESTED

The City respectfully requests that relief be entered against Eagle Water as follows:

1. That judgment be entered against Eagle Water for breach of contract concerning the Right of First Refusal in an amount to be proved at the time of trial;
2. That judgment be entered against Eagle Water for breach of contract concerning the required monthly payments under the Agreement in the amount of \$1,389,632.26;
3. That judgment be entered against Eagle Water for breach of the implied covenant of good faith and fair dealing in an amount to be proven at the time of trial;
4. Adjudge and declare that the Right of First Refusal is valid and enforceable by the City of Eagle;
5. Adjudge and declare that there was made to Eagle Water a bona fide offer for a purchase of any part or all of the Eagle Water System;
6. Adjudge and declare that Eagle Water was therefore required to provide notice of this bona fide offer to the City before making an agreement to sell in response to the bona fide offer;

7. Adjudge and declare that Eagle Water did not provide the contractually required notice to the City;

8. Adjudge and declare that therefore Eagle Water's agreement(s) to sell any or all of its System to a third party other than the City is/are in breach of the Agreement.

9. Adjudge and declare that the City's right to collect the monthly amount due from Eagle Water is valid and enforceable;

10. Adjudge and declare that Eagle Water did not terminate the Agreement;

11. Adjudge and declare that Eagle Water is contractually obligated to pay the City the missed payments continuing into the future until the Agreement is terminated;

12. Adjudge and declare that Eagle Water's failure to pay the contractually-required monthly payments from May 2009 to the present constitutes a default under the Agreement;

13. Adjudge and declare that therefore Eagle Water's failure to pay the contractually-required monthly payments from May 2009 to the present is in breach of the Agreement;

14. That the Court award to the City its costs and expenses, together with its reasonable attorney fees in pursuing these claims, pursuant to Idaho Code §§ 12-120(3) and 12-121 and Idaho Rule of Civil Procedure 54, together with any other applicable rule or statute, and pursuant to the Agreement; and

15. That the Court award such other and additional relief as the Court may deem just and appropriate under the circumstances.

DATED February 26, 2019.

HOLLAND & HART LLP

By /s/ B. Newal Squyres

B. Newal Squyres
Murray D. Feldman
Sara M. Berry

Attorneys for Plaintiff

12039969_7

INTERTIE AGREEMENT

This Intertie Agreement ("**Agreement**"), dated as of July 12, 2008, is between Eagle Water Company, Inc., an Idaho corporation ("**EWC**") and the City of Eagle, Idaho, an Idaho municipal corporation ("**City**").

Recitals

- A. City recently constructed and owns an approximate one million gallon water storage tank (the "**Storage Tank**").
- B. EWC owns and conducts a water utility supply and distribution business ("**Water System**") in and around Eagle, Idaho. EWC has water distribution lines in the vicinity of the Storage Tank and desires to temporarily connect such distribution lines to the Storage Tank in order to satisfy certain regulatory requirements for fire protection service to its customers.
- C. EWC intends to use the Intertie as a temporary measure until it completes a new well and DEQ determines the Intertie is no longer needed to meet regulatory requirements.

The parties agree as follows:

Agreement

1. **Water Storage Connection.** City hereby agrees that immediately upon the execution of this Agreement, City will allow EWC to construct, at EWC's sole expense, a connection and two manually-controlled gate valves with a meter spool for a future meter ("**Intertie**") between EWC's existing main distribution lines and the Storage Tank based upon engineering plans previously submitted by the City to and approved by the Idaho Department of Environmental Quality ("**DEQ**"). City shall have the right to approve the location and manner of constructing such Intertie and shall do so no later than 24 hours after EWC identifies its preferred location for the intertie. EWC shall ensure that all work is performed in a workmanlike manner and in compliance with all applicable codes and regulations. City makes no representations or warranties, express or implied, concerning the Intertie or any benefits to be derived by EWC therefrom. The City shall own the Intertie infrastructure save and except for the 12-inch Intertie tee and the attached 12-inch gate valve.
2. **Limitations On Use.** The parties agree that the sole purpose of the Intertie is to provide redundant fire flow protection capacity to EWC and is not intended to be a source of water for EWC's normal operating requirements.
3. **Payment.** In consideration of the City entering into this Agreement and allowing EWC to connect to the Storage Tank, EWC agrees to compensate the City as follows:

3.1. **Lease of Water Rights.** EWC agrees to grant the City the permanent Right of First Refusal to lease up to ten (10) cubic feet of water per second of certain municipal water rights currently owned by EWC, provided such water rights are not necessary to maintain the integrity of EWC's Water System, including compliance with all regulatory requirements and EWC engineering plans. This Right of First Refusal shall be permanent and shall survive any termination or other modification of this Agreement, save and except for a termination by the City other than for a non-cured default by EWC per Section 7, below.

3.2. **Cash Payment.** In addition, EWC shall pay City a fee for the connection to the Storage Tank of \$10,000.00 per month commencing on the date the interconnection is completed and approved by the Idaho Department of Environmental Quality (DEQ).

4. **Duration.** This Agreement shall commence upon acceptance by the City of Eagle and completion of the Intertie that is the subject of this Agreement ("Commencement"), and the Intertie Lease shall continue month-to-month so long as the Intertie connection is needed by EWC in its sole discretion. If the Intertie continues past 18 months from the Commencement date, the Intertie Lease Cash Payment shall increase five percent (5%) and every 18 months thereafter. The parties may mutually agree, in writing, to extend or modify this Agreement.

5. **Moratorium.** At EWC's reasonable request, City agrees to cooperate with EWC to assist EWC in its efforts to satisfy the conditions set forth in the current DEQ Consent Order establishing a moratorium on new connections in EWC's service territory and to cause the moratorium to be terminated. This Section 5 shall not require City to expend any funds or take any actions that it is not lawfully permitted to take. EWC shall reimburse the City for any costs incurred by the City related to this Section 5, provided the same have been pre-approved by EWC in writing.

6. **Right of First Refusal.** If EWC determines to sell or convey all or any part of its Water System, which shall be deemed to include, but not be limited to, water rights, wells and other infrastructure, and receives a bona fide offer for this Water System, before making any agreement to sell all or any portion of the Water System, EWC shall give notice to City stating EWC's desire to sell and the amount and terms of such offer in detail. City shall have the exclusive right for 30 days after receiving such notice to provide Notice of Intent to Purchase the Water System or portion thereof to which such bona fide offer refers at the amount of said offer; provided, that if the third party offer is for a consideration other than cash, the City shall have the right to pay the fair market value of such consideration in cash. Upon delivery of the Notice of Intent to Purchase, the City shall hold a revenue bond election for the purpose of securing voter approval of the purchase at the next available election date and/or utilize City funds directly available in a capital account, enterprise fund, general fund, or other readily available City fund or account to complete the purchase. For the purpose of this Section 6, "Next Available Election Date" shall mean the earliest possible election date based on the time required by law for legal notice of such an election and for the conduct of any required public hearings. If the bond is approved at said election, the City shall proceed in good faith to secure bonds to pay the purchase price ("Finance") as expeditiously as possible. Closing of the transaction between the City and EWC that is the subject of this Section 6 shall not extend more than 180 days from the date of the revenue bond election, or if the election is challenged in a legal proceeding, the

Closing shall occur no more than 90 days after final resolution of any such legal challenge. In the event that a revenue bond election is not required because the City has the necessary funds directly available in a capital account, enterprise fund, general fund, or other readily available City fund or account to finance the transaction in lieu of holding a revenue bond election, then the Closing of the transaction between the City and EWC that is the subject of this Section 6 shall occur no later than 60 days after the City provides EWC with its Notice of Intent to Purchase. For purposes of this Section 6, this Right of First Refusal applies solely to an "EWC Change of Control Transaction", which means one or a series of transactions in which (i) all or substantially all of EWC's Water System is sold to a third party, or (ii) there is a stock sale, merger, consolidation or similar transaction as a result of which said third party owns a majority of the outstanding voting and outstanding capital stock of EWC or any successor owner of EWC. This Right of First Refusal shall be permanent and shall survive any termination or other modification of this Agreement, save and except for a termination by the City other than for a non-cured default by EWC per Section 7, below.

7. **Termination.** EWC or the City shall have the right to terminate the Intertie connection upon 30 days prior written notice to the other party. In the event the City terminates the Intertie connection for any reason other than a non-cured default by EWC under Section 10 of this Agreement, then the Rights of First Refusal in Sections 3 and 6 of this Agreement shall likewise terminate.

8. **Authority.** Each individual executing this Agreement below on behalf of a party represents and warrants to the other party that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or municipal action by such party, that such individual is duly authorized to execute and deliver this Agreement on behalf of such party, and that this Agreement is a legal and valid obligation of such party, enforceable against such party in accordance with its terms.

9. **Force Majeure.** Except for obligations to make payment, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

10. **Default and Remedies.**

10.1. **Default.** Each of the following events shall constitute an event of default:

10.1.1. EWC fails to make, on or before the date which it is due, any payment to be made to the City pursuant to the provisions of this Agreement; or

10.1.2. Either party materially breaches this Agreement.

10.2. **Re remedies.** If any default shall occur, the non-defaulting party shall give the defaulting party notice of default. Such default must be cured within fifteen (15) days of the Notice of Default unless such default is curable but cannot be reasonably cured within ten (10) days after giving the Notice of Default and the defaulting party commences within such ten (10) day period to cure such default and prosecutes the same to conclusion with reasonable diligence.

The foregoing remedy shall be in addition to and shall not exclude any other remedy available to the parties under applicable law.

11. **Attorneys Fees.** In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorney fees to be fixed by the arbitrator, or court of applicable jurisdiction.

12. **Notices.** All notices or other communications required or permitted hereunder, including notices to Mortgagees, shall, unless otherwise provided herein, be in writing, shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested, and postage prepaid, addressed to the parties at the following addresses:

if to the City: City of Eagle
Office of the City Clerk
660 East Civic Lane
Eagle, ID 83616

If to Eagle Water: Eagle Water Company, Inc.
172 West State Street
Eagle, ID 83616

With a copy to: Molly O'Leary
Richardson & O'Leary, PLLC
P.O. Box 7218
Boise, Idaho 83707

Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notice of change of address shall be given by written notice in a manner detailed in this Section 12.

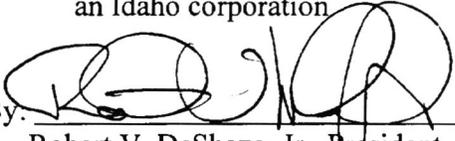
13. **Governing Law.** The parties intend that this contract shall be governed by and construed in accordance with the laws of the State of Idaho, without regard to choice of law rules.

14. **Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute part of the original document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

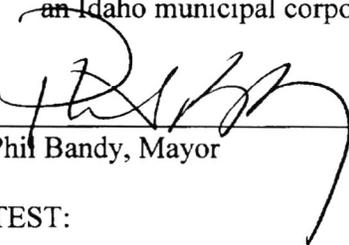
EWC:

EAGLE WATER COMPANY,
an Idaho corporation

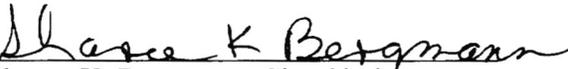
By: 
Robert V. DeShazo, Jr., President

City:

CITY OF EAGLE, IDAHO
an Idaho municipal corporation

By: 
Phil Bandy, Mayor

ATTEST:

By: 
Sharon K. Bergmann, City Clerk

