

Preston N. Carter, ISB No. 8462  
Morgan D. Goodin, ISB No. 11184  
GIVENS PURSLEY LLP  
601 West Bannock Street  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Office: (208) 388-1200  
Fax: (208) 388-1300  
prestoncarter@givenspursley.com  
morgangoodin@givenspursley.com  
16799709.3

*Attorneys for Veolia Water Idaho, Inc.*

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION  
OF VEOLIA WATER IDAHO, INC. FOR  
APPROVAL OF FIRE HYDRANT  
CONVEYANCE, INSTALLATION, AND  
OPERATION AGREEMENT

Case No. VEO-W-23-04  
  
APPLICATION FOR APPROVAL OF  
AGREEMENT WITH WHITNEY FIRE  
DISTRICT AND REQUEST FOR MODIFIED  
PROCEDURE

Veolia Water Idaho, Inc. (“Veolia” or “Company”) seeks the Idaho Public Utilities Commission’s (“Commission”) approval of the Fire Hydrant Conveyance, Installation, and Operation Agreement (“Agreement”) between Veolia and Whitney Fire Protection District (“Whitney Fire District” or “District”) (collectively, “Parties”).

**Background**

1. Veolia owns and operates a regulated public drinking water system within its certificated area in Ada County, Idaho.
2. Portions of Veolia’s water system are within the boundaries of the Whitney Fire District.
3. The Whitney Fire District is a fire protection district organized pursuant to Chapter 14, Title 31 of the Idaho Code.

4. The District is located generally in the area of southwest Boise. Portions of the District are within the limits of the City of Boise, and portions of the District are located within unincorporated Ada County.

5. The District owns a number of fire hydrants within its boundaries. These hydrants are connected to Veolia's public drinking water system.

6. Historically, the District has been in charge of maintaining and replacing the fire hydrants within its boundaries. In recent years, these responsibilities have proven more burdensome and have distracted from the District's core fire-protection functions. As a result, some hydrants within the boundaries of the District are in need of maintenance, and some may be non-functional.

7. In addition, the District tends to have a lower density of fire hydrants than newer systems, due in part to the District's financial inability to install new hydrants.

8. In other areas of its service territory, including most areas within the City of Boise, Veolia owns, operates, and maintains the fire hydrants connected to its system. Indeed, Veolia believes that this area is the only area within Veolia's service territory within which Veolia does not either own the hydrants or have an agreement under which ownership will be transferred to Veolia.

9. Owning the fire hydrants connected to Veolia's system provides benefits to customers. These benefits include: unified ownership of the water system and fire hydrants; sufficient financial resources to adequately maintain and replace hydrants within the Whitney Fire District boundary; ensuring that customers within the Whitney Fire District receive the benefits of a unified system similar to customers outside the District boundaries; and others.

10. In pursuit of their mutual interests, in the spring and early summer of 2023 the parties negotiated an agreement (“Agreement”) that, if approved by the Commission, would result in conveyance of certain hydrants to Veolia in accordance with the terms of the agreement.

### **The Agreement**

11. The Agreement, attached as Exhibit 1, sets forth terms and conditions under which certain fire hydrants currently owned by the District will be transferred to Veolia, beginning upon the effective date, which is defined in the Agreement as thirty days after approval by the Commission. *See* Agreement ¶4.

12. Approval by the Commission is a condition precedent to the Agreement. *Id.* ¶2.

13. Upon the effective date, the District will transfer ownership of the hydrants that it currently owns to Veolia over a five-year period. *Id.* ¶1. Before accepting ownership of a hydrant, Veolia will inspect it to ensure that it is operational. *Id.* Under the Agreement, Veolia will inspect 1/5 of the existing hydrants each year, with the expectation that ownership of approximately 1/5 of the existing hydrants will be transferred to Veolia per year for five years, until Veolia eventually owns all the hydrants.

14. Under the Agreement, Veolia will install new hydrants within the boundaries of the District. *Id.* ¶1.2. Veolia will own the hydrants that it installs. *Id.* Veolia will install up to ten new hydrants per calendar year, and the Agreement sets forth a procedure under which the District will identify to Veolia the hydrants that it believes are a top priority for replacement or installation in a particular calendar year. *Id.*

15. The new hydrants installed by Veolia will meet modern standards consistent with Veolia’s current practices. *Id.* ¶1.3.

### **Private Hydrants**

16. In addition to the hydrants owned by the Whitney Fire District, there are approximately 70 privately owned hydrants within the boundaries of the Whitney Fire District.

17. Upon approval of the Agreement, Veolia intends to begin billing the owners of these privately owned hydrants in accordance with its approved tariffs.

### **Request for Approval**

18. Approval of the Agreement will allow Veolia to assume ownership of fire hydrants that are connected to its public water system. This will consolidate ownership of the system, allow Veolia to control these components of the water system, and bring this area of Veolia's service territory in line with other areas.

19. In addition, the Agreement will provide a mechanism under which hydrants that have not been maintained, and which in some cases are non-functional, can be maintained or replaced as needed.

20. In addition, the Agreement will allow for the installation of new hydrants in an area where hydrants are spaced too far apart to meet current fire code requirements.

21. Veolia respectfully submits that approval of the Agreement is in the public interest, and that approval of the Agreement is fair, just, and reasonable.

### **Request for Modified Procedure**

22. Veolia does not believe that a hearing is necessary to consider the matters presented in this Application, and requests that the Application be processed by modified procedure under the Commission's rules.

### **Prayer for Relief**


23. Veolia respectfully requests that the Commission enter an order:

- a. Processing the Application by modified procedure;

- b. Approving the Agreement;
- c. Approving the application of Veolia’s private-hydrant tariff to the owners of private hydrants within the District’s boundaries; and
- d. Any other relief that is appropriate, just, and reasonable.

Dated: October 20, 2023.

GIVENS PURSLEY LLP

By   
\_\_\_\_\_  
Preston N. Carter  
Attorneys for Veolia Water Idaho, Inc.

**CERTIFICATE OF SERVICE**

I certify that on October 20, 2023, a true and correct copy of the foregoing was served upon all parties of record in this proceeding via electronic mail as indicated below:

**Commission Staff**

Jan Noriyuki, Commission Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd., Bldg. 8, Suite 201-A  
Boise, ID 83714

**Via Electronic Mail**

jan.noriyuki@puc.idaho.gov



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Preston N. Carter

**EXHIBIT 1**

**EXHIBIT 1**

## HYDRANT CONVEYANCE, INSTALLATION, AND OPERATION AGREEMENT

This Hydrant Agreement (“**Agreement**”) is made by and between Veolia Water Idaho, Inc., an Idaho corporation whose address is 8248 West Victory Road, Boise, ID 83709 (“**Veolia**”), and the Whitney Fire Protection District, an Idaho municipal corporation (“**Whitney**” or “**District**”). Veolia and Whitney may be referred to individually as a “**Party**” and collectively as the “**Parties**”, as warranted under the circumstances.

### RECITALS

A. Whitney is a fire protection district organized pursuant to Chapter 14, Title 31 of Idaho Code.

B. Whitney owns a number of fire hydrants within its district boundaries that connect to the water system owned and operated by Veolia (“**Existing Hydrants**”). A depiction of the district’s boundaries as of the Closing Date as defined below is included in Exhibit A of this Agreement, attached hereto and made a part hereof.

C. Veolia owns, operates, and maintains fire hydrants in Ada County and other Ada County municipalities.

D. Whitney and Veolia believe Veolia has the experience and resources to own, operate, install, and maintain fire hydrants within Whitney’s jurisdiction.

E. To improve fire protection within the District, and to utilize Veolia’s resources and experience, Whitney desires to transfer ownership of the Existing Hydrants to Veolia for Veolia to own, operate, and maintain the Existing Hydrants, as well as to install new hydrants, consistent with the terms of this Agreement.

F. Contingent upon requisite approval by the Idaho Public Utilities Commission (“**Commission**”) Veolia desires to assume ownership, operation, and maintenance of the Existing Hydrants beginning on the date of the close of this transaction as evidenced by the signing of a Bill of Sale (“**Closing Date**”) according to the terms of this Agreement; and to install new hydrants as set forth in this Agreement.

G. The Parties further desire to enter into this Agreement to set forth their respective rights and obligations concerning ownership, operation, and maintenance of the Existing Hydrants, installation of new hydrants, and other matters.

### AGREEMENT

In consideration of the above recitals and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. HYDRANT AGREEMENT.** Whitney agrees to transfer and convey the Existing Hydrants, and Veolia agrees to assume ownership and responsibility for the Existing Hydrants subject to and upon each of the following terms and conditions:

**1.1 Existing Hydrants Ownership.** All Existing Hydrants, including those that are operational and those that will be replaced, will become property of



Veolia within five (5) years of the Closing Date, to be owned, operated, and maintained by Veolia, under the following conditions:

- 1.1.1 Prior to accepting ownership of an Existing Hydrant, Veolia will inspect the Existing Hydrant and verify that it is in operational status.
  - 1.1.2 When an Existing Hydrant is determined to be operational, Veolia will add it to the list of Existing Hydrants to be transferred in that year (“**Transfer List**”).
  - 1.1.3 If an Existing Hydrant is not operational when inspected, it will go on a list of Existing Hydrants requiring replacement (“**Replacement List**”). Veolia will replace those hydrants on the Replacement List at Veolia’s cost, and once replaced, the hydrant will go on the Transfer List. When Veolia identifies an Existing Hydrant that is not operational, Veolia will provide notice to the District of the non-operational hydrant as soon as practicable.
  - 1.1.4 Veolia will inspect a minimum of one-fifth (1/5th) of the Existing Hydrants every year beginning on January 1 of the calendar year after the Effective Date of this Agreement.
  - 1.1.5 Ownership of the hydrants on the Transfer List shall be transferred by December 31 of that year, after which point the Transfer List shall be empty, and a new Transfer List shall begin for the next calendar year. This process shall continue until all Existing Hydrants have been transferred to Veolia.
- 1.2 Identification of New Hydrants to be Installed.** Veolia will target installation of up to 10 new hydrants per calendar year within the District’s boundaries (depicted in Exhibit A) as of the Closing Date, starting upon January 1 of the calendar year after the Effective Date of this Agreement, up to 200 total installed new hydrants. Veolia will focus installation of hydrants in the areas of greatest need, as identified by Whitney and to the extent practicable in Veolia’s judgment. By the end of the first week of January in each calendar year following the Effective Date of this Agreement, Whitney shall submit to Veolia a list of the ten (10) hydrants that, in Whitney’s judgment, are the top priority for installation in that calendar year. Veolia will focus its installation efforts on those ten (10) hydrants and will, to the extent practicable, install those hydrants by the end of the calendar year. All new hydrants will be property of Veolia.
- 1.3 Hydrant Specifications.** Hydrants installed by Veolia will meet the following standards.
- 1.3.1 Waterous Pacer Model No. WB67-250, red body, yellow nozzle cap, or equivalent successor model; or

- 1.3.2 Clow Medallion F-2545, red body, yellow nozzle cap, or equivalent successor model; or
  - 1.3.3 Mueller Super Centurion 250, red body, yellow nozzle cap, or equivalent successor model.
  - 1.3.4 Each hydrant shall be equipped with a Storz Permanent Hydrant Adapter and cap manufactured by Harrington, Inc. (model HPHA50-45NH/CAP) or manufactured by Red Head (adaptor model S37 and cap model SC50) or an equivalent hydrant adapter and cap approved by Whitney.
  - 1.3.5 These specifications shall also apply in areas annexed into the District's boundaries after the date of this Agreement.
  - 1.3.6 If new or altered standards become required by the Idaho Public Utilities Commission or other governmental authority, become standard business practice, or otherwise come into effect during the term of this Agreement, Veolia will provide notice of those new standards to Whitney and the Parties will work in good faith to agree, in writing, upon the standards that will apply to new hydrants from that date forward.
- 1.4 **Maintenance.** Veolia shall be responsible for maintenance of the Existing Hydrants as of the date they are transferred to Veolia pursuant to Section 1.1 above. Upon transfer, Veolia will maintain the Existing Hydrants, and any new hydrants installed under this Agreement, in accordance with AWWA Manual M17.
- 1.5 **Replacement.** Veolia shall replace any necessary Existing Hydrants at Veolia's sole discretion and schedule, pursuant to Section 1.1 above.
- 1.6 **No New Pipelines.** No new or upgraded pipelines shall be installed as part of this Agreement.
- 1.7 **Private Hydrants.** This Agreement shall not apply to any Private Hydrants, defined to include those hydrants a) greater than fifteen (15) feet from public right-of-way, b) located behind a locked gate, or c) owned by persons or entities other than the District.
- 1.8 **Liability.** Veolia shall have no legal liability for any Existing Hydrant not replaced or installed by Veolia, apart from the obligations, terms, and conditions set forth in this Agreement.

**2. COMMISSION APPROVAL AS CONDITION PRECEDENT.** Whitney and Veolia agree that consummation of the transaction contemplated by this Agreement is subject to Veolia obtaining an approval and order from the Idaho Public Utilities Commission ("**Commission**") on terms that are acceptable to Veolia, in its sole and absolute discretion, that

among other things: (a) Approves this Agreement; (b) approves Veolia's proposal for recovery of costs associated with ownership, operation, installation, and maintenance of all hydrants; and (c) approves the accounting treatment of the costs associated with ownership, operation, installation, and maintenance of all hydrants. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that the conditions precedent set forth in this Section 2 are paramount. If there is any portion of such decision by the Commission deemed by Veolia to be unacceptable, Veolia may, within twenty-one (21) calendar days after receipt of such Commission decision, provide the District with written notice that this Agreement is null and void. Upon provision of such notice, the Parties shall have no further obligations or liabilities under this Agreement. Notwithstanding the foregoing, if Veolia determines the Commission decision to be unacceptable, but would like to request reconsideration of the decision, Veolia shall provide notice of its intent to petition for reconsideration upon the District. If the Commission alters or amends a decision related to this Agreement upon a petition for reconsideration filed by any person, including Veolia, Veolia shall have twenty-one (21) calendar days to provide notice to the District as to whether the altered or amended decision is acceptable to Veolia, and if the decision is unacceptable such notice shall have the same effect as if it were given after an unacceptable initial decision.

2.1 If the Commission issues a decision related to this Agreement that is deemed acceptable by Veolia but requires modification of this Agreement, within thirty (30) calendar days of such decision the Parties shall, in good faith, amend this Agreement such that it is consistent with the Commission's decision. If the Parties fail to agree on such an amendment, Veolia shall provide notice to the District of the Parties' failure to reach agreement and the Parties shall have no further obligations or liabilities under this Agreement.

2.2 The parties agree to cooperate and will use their best efforts in the preparation of such further documents and instruments as are necessary to complete the transaction contemplated in this Agreement, including processing and prosecuting of the filing for approval by the Commission, and in connection therewith. The District will also support any future application of Veolia to recover costs associated with the ownership, replacement, or installation of hydrants within the District's boundaries.

### **3. REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

3.1 Whitney hereby represents, covenants, and warrants to Veolia that as of the date hereof and as of the Closing Date:

3.1.1 That Whitney is a duly organized governmental subdivision of the state of Idaho and a body politic and corporate, and has full power and authority to enter into this Agreement and carry out and consummate the transactions contemplated by this Agreement.

3.1.2 That the execution and delivery of this Agreement by the signatories hereto on behalf of Whitney and the performance of this Agreement

by Whitney have been duly authorized by Whitney. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which Whitney is a party or by which Whitney is bound; or (ii) violate any existing statute, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Whitney is subject.

**3.1.3** That, to the best of Whitney's knowledge, all Existing Hydrants were installed in accordance with standards applicable at the times, and no hydrants pose an unreasonable risk of harm to any person, property, or otherwise.

**3.2** Veolia hereby represents, covenants, and warrants to Whitney that as of the date hereof and as of the Closing Date:

**3.2.1** That Veolia is an Idaho corporation that has been duly organized and is validly existing and in good standing as a corporation under the laws of the State of Idaho, and has full power and authority to enter into this Agreement and carry out and consummate the transactions contemplated by this Agreement.

**3.2.2** That the execution and delivery of this Agreement by the signatories hereto on behalf of Veolia and the performance of this Agreement by Veolia have been duly authorized by Veolia. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which Veolia is a party or by which Veolia is bound; or (ii) violate any existing statute, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Veolia is subject.

**4. EFFECTIVE DATE AND TERM.** This Agreement shall become effective thirty (30) days after a final non-appealable Order of the Commission approving the Agreement ("**Effective Date**"), subject to Section 3 of this Agreement, and shall remain in force and effect until all hydrants have been installed or for a period of twenty (20) years. In the event that all new hydrants have been installed prior to the Agreement's natural expiration, Veolia shall have the right to terminate this Agreement after providing thirty (30) days' notice to Whitney.

**5. DISPUTE RESOLUTION.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party shall provide the other Party with written notice of the dispute or claim ("**Notice of Dispute**"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through

unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.

**6. NOTICES.** All notices required or desired to be given under this Agreement shall be in writing and delivered personally or sent via electronic mail or first class United States mail, postage prepaid, addressed as follows:

**If to Veolia:** Veolia Idaho Operations  
8248 W Victory Road  
Boise, ID 83709  
Attn: Catherine Cooper  
Email: [catherine.cooper@veolia.com](mailto:catherine.cooper@veolia.com)

**If to Whitney:** Whitney Fire Protection District  
PO Box 190270, Boise ID 83719  
Attn: Greg Womack, Chief  
Email: [gwomack@whitneyfiredistrict.org](mailto:gwomack@whitneyfiredistrict.org)

**With copies to:** Givens Pursley LLP  
601 W. Bannock Street  
Boise, ID 83702  
Attn: Preston Carter  
Email: [prestoncarter@givenspursley.com](mailto:prestoncarter@givenspursley.com)

or to such other address as either party may from time to time designate by written notice given to the other party in the manner provided herein. Any notice given in accordance with the foregoing shall be deemed to have been given (i) on the date upon which it shall have been delivered or (ii) three (3) days after being deposited in the United States mail, whichever is first. If sent by electronic mail, such notice shall be deemed to have been given and received on the date sent if sent before 5:00 PM in the local time zone, or on the next day, if sent after 5:00 PM in the local time zone.

**7. BINDING EFFECT; ASSIGNMENT.** This Agreement may not be assigned by any party without the consent of the other party hereto. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

**8. MISCELLANEOUS.** Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or legal holiday, such time for performance shall be extended to the next business day. This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement. The terms, provisions, covenants (to the extent applicable) and indemnities shall remain binding upon and for the parties hereto until fully observed, kept or performed. This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof. Whitney

and Veolia shall each pay any attorney fees they have respectively incurred for the preparation, negotiation and review of this Agreement. The captions at the beginning of the several paragraphs, respectively, are for the convenience in locating the context, but are not part of the text. In the event any term or provision of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect. This Agreement shall be governed by the laws of the State of Idaho. By virtue of this Agreement, Whitney does not, in any way or for any purpose, become a partner of Veolia in the conduct of its business, or otherwise, or become a joint venture or a member of a joint enterprise with Veolia. Time is of the essence in this Agreement. Any waivers hereunder must be in writing. No waiver of any right or remedy in the event of breach or default hereunder will constitute a waiver of such right or remedy in the event of any subsequent breach or default.

**9. ATTORNEYS' FEES.** In the event of any controversy, claim, or action being filed or instituted between the Parties to interpret or enforce the terms of this Agreement, or arising from the breach of any provision hereof, the prevailing party shall be entitled to receive from the non-prevailing party all costs, damages, and expenses, including without limitation reasonable attorneys' fees incurred by the prevailing party (prior to trial, at trial, on appeal, and during any post-judgment collection activities).

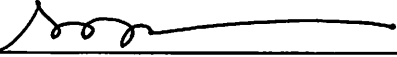
**10. COMPLIANCE WITH LAW.** Veolia agrees to comply in all respects with any and all federal, state, and local statutes, law, ordinances, codes, regulations, and rules and obtain any and all permits and approvals in connection with the terms of this Agreement.

*[ end of text; counterpart signature pages follow ]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the Effective Date.

**VEOLIA:**

VEOLIA WATER IDAHO, INC, an Idaho corporation

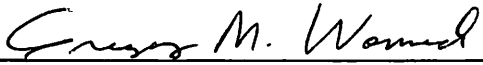
By:  \_\_\_\_\_

Name: Marshall Thompson

Title: Vice President & General Manager

**WHITNEY:**

WHITNEY FIRE PROTECTION DISTRICT, a governmental subdivision of the State of Idaho

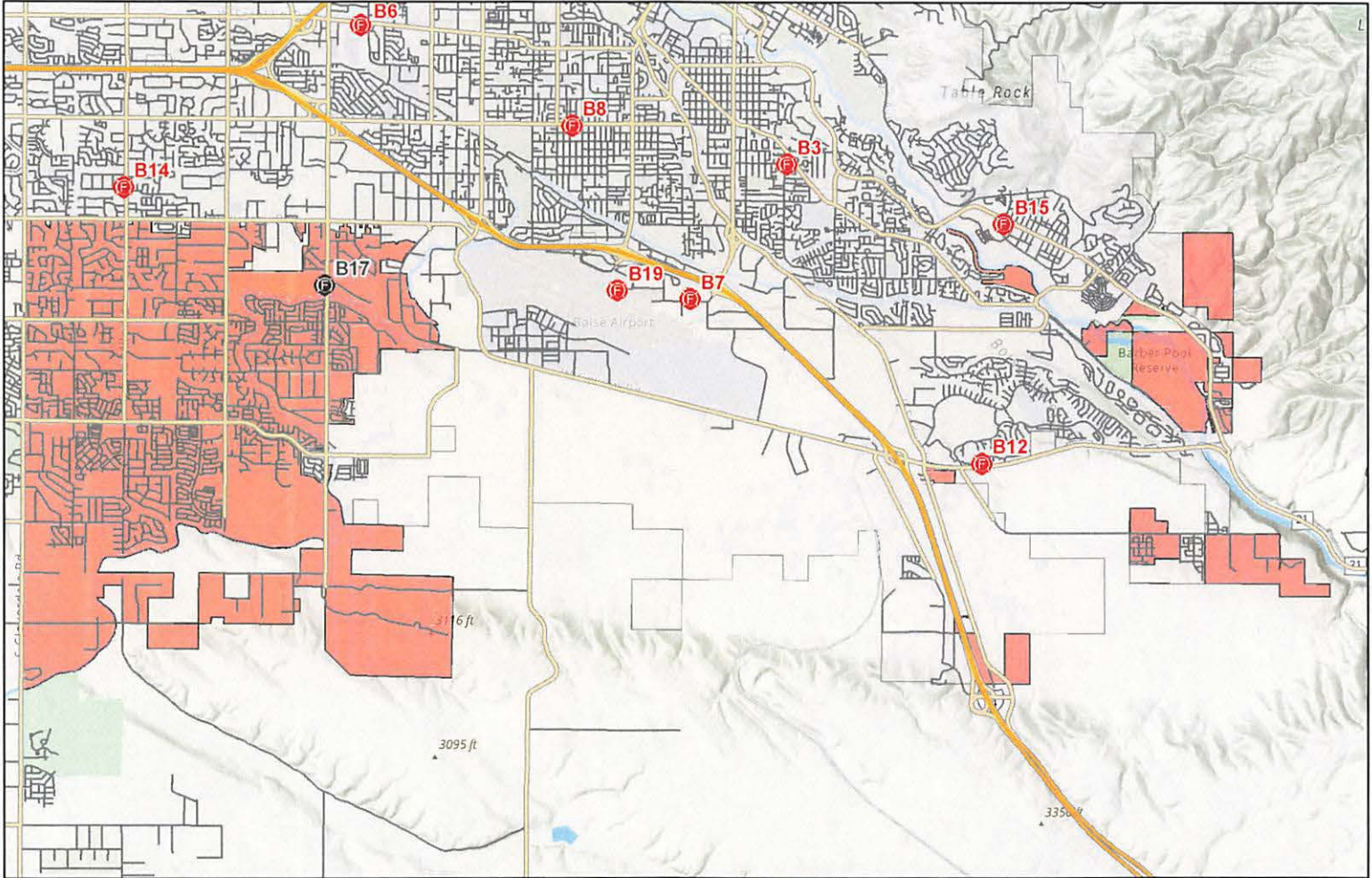
By:  \_\_\_\_\_

Name: GREGORY M. WOMACK





Title: FIRE CHIEF

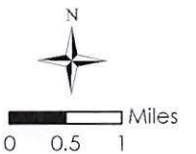
**EXHIBIT A**  
**Whitney Fire Protection District Boundaries**





# Whitney Fire District

-  Whitney Fire Station
-  Boise Fire Station
-  Whitney Fire District
-  Boise Fire District



Date Printed: 6/6/2023