
The public is invited to observe City Council Work Sessions. However, the agenda for Work Sessions does not include an opportunity for public interaction. Seating in the Council Chambers may be limited. All seating is available on a first-come, first-serve basis. The public also may view this meeting via livestream on the City's website at <https://www.idahofallsidaho.gov/429/Live-Stream>.

This meeting may be canceled or recessed to a later time in accordance with law. If you need communication aids or services or other physical accommodations to participate or access this meeting of the City of Idaho Falls, you may contact City Clerk Corrin Wilde at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 not less than 48 hours prior to the meeting. They can help accommodate special needs.

CITY COUNCIL WORK SESSION

Times listed in parentheses are only estimates.

Call to Order and Roll Call

Mayor's Office and Public Works: **Update and Discussion:** Overview of Plans for Water Tower Celebration (10)
Action: Council Direction to Staff (or take other appropriate action)

Mayor's Office: **Discussion:** Economic Development Incentive Program (20)
Action: Council Direction to Staff (or take other appropriate action)

Legal Department and Idaho Falls Power: **Consideration and Discussion:** Memorandum of Understanding for Street Banner Pilot Project between City of Idaho Falls, Idaho, and Idaho Falls Arts Council. (30)
Action: Approve the Memorandum of Understanding for Street Banner Pilot Project between City of Idaho Falls, Idaho, and the Idaho Falls Arts Council and authorize the Mayor and City staff to execute the necessary documents.

Mayor and Council: **Mayor and Council Reports:** Calendars, Announcements Events, Reports, Updates, Concerns, Questions, and Discussion (20).
Action: Council Direction to Staff (or take other appropriate action)

Executive Session: **The Executive Session is being called pursuant to the provisions of Idaho Code Section 74-206 (1) (f):** *To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.* The Council will not reconvene in an open session after the executive session.

DATED this 3rd, day of July 2024


Corrin Wilde, City Clerk

FROM: Michael Kirkham, City Attorney
DATE: Tuesday, July 2, 2024
DEPARTMENT: City Attorney

Subject

Memorandum of Understanding for Street Banner Pilot Project between City of Idaho Falls, Idaho, and the Idaho Falls Arts Council

Council Action Desired

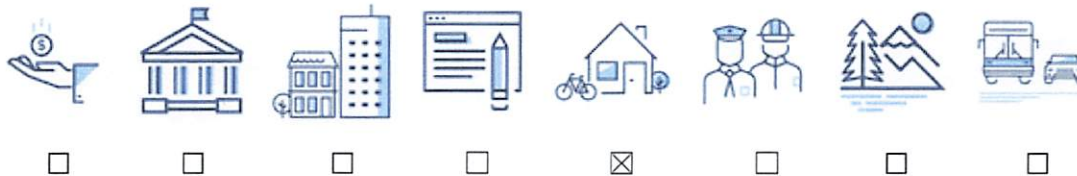
- ☐ Ordinance ☐ Resolution ☐ Public Hearing
☒ Other Action (Approval, Authorization, Ratification, etc.)

Approve the Memorandum of Understanding for Street Banner Pilot Project between City of Idaho Falls, Idaho, and the Idaho Falls Arts Council and authorize the Mayor and City staff to execute the necessary documents.

Description, Background Information & Purpose

This MOU sets the terms for an approximate one-year pilot project for the Idaho Falls Arts Council to begin a Street Banner program. The purpose of the Street Banner project will be to promote special community events, arts, performances, and other cultural activities that occur within the City of Idaho Falls. In addition, the Arts Council will be adding a decorative element to the City's streetscapes. In exchange for the exclusive use of the City owned poles designated in the MOU, the Arts Council will also promote Idaho Falls Power, Idaho Falls Fiber, and other City messaging. At the conclusion of the pilot project, the City and the Arts Council will meet and evaluate the pilot program.

Alignment with City & Department Planning Objectives



This pilot project promotes the livable community objective.

Interdepartmental Coordination

Idaho Falls Power

Fiscal Impact

No anticipated fiscal impact.

Legal Review

Legal prepared the proposed MOU.

**MEMORANDUM OF UNDERSTANDING FOR STREET BANNER
PILOT PROJECT BETWEEN CITY OF IDAHO FALLS, IDAHO AND
IDAHO FALLS ARTS COUNCIL**

THIS MEMORANDUM OF UNDERSTANDING FOR THE STREET BANNER PILOT PROJECT BETWEEN CITY OF IDAHO FALLS, IDAHO AND IDAHO FALLS ARTS COUNCIL (hereinafter "MOU") is entered into this day ____ of _____, 2024, by and between City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, whose address is P.O. Box 50220, Idaho Falls, Idaho 83405 (hereinafter "CITY"), and the Idaho Falls Arts Council, a 501 (c)(3) Idaho non-profit corporation, _____, Idaho Falls, Idaho, 83402 (hereinafter "IFAC").

WITNESSETH

WHEREAS, IFAC has, since its founding in 1990, worked to promote events, arts, and performances that take place in Idaho Falls to benefit and uplift the City and the broader community's residents; and

WHEREAS, the events, performances, and cultural institutions, including the historic Colonial Theater in Downtown Idaho Falls, the ARTitorium on Broadway, the Frontier Center for the Performing Arts, and the Willard Arts Center, that the IFAC promotes, manages, and provides results in over \$2.7 million of impact on the local economy and entertains, uplifts, and benefits thousands of individuals who partake in arts provided by IFAC; and

WHEREAS, the CITY desires to promote arts and culture in the community that are important to CITY's image, economic interest, and organizations serving the community's cultural interests; and

WHEREAS, CITY desires to add a decorative element to the streetscapes identified in this Agreement; and

WHEREAS, IFAC desires to develop, implement, and manage a Street Banner program on the CITY poles identified in this Agreement to promote arts and culture that take place in Idaho Falls; and

WHEREAS, CITY is willing to provide IFAC space on the identified poles to conduct a limited pilot project.

THEREFORE, in consideration of the mutual promises below, CITY and IFAC agree as follows:

SECTION 1: SCOPE OF AGREEMENT

1. General Description of the Street Banner Pilot Program:

In order to add decorative elements and promote arts and culture, including events, located within the geographic boundaries of CITY, IFAC desires to create a Street Banner Pilot Program. The intent of this program is to promote community events, such as art shows, concerts, festivals, major sports celebrations, parades, and other community gatherings that occur within the CITY. The parties agree that the placement of commercial advertising is not permitted as part of this pilot

project. Neither is the intent to create a forum for free expression by the public. Instead, the purpose of the program is to beautify CITY streetscapes and build awareness for community activities that are held within CITY.

Through this Agreement, IFAC agrees to provide the professional services to develop, implement, and maintain the Street Banner Pilot Program, pursuant to the conditions and limits contained herein.

2. IFAC's Right to place Banners on City Poles

IFAC's right to use CITY's poles shall be limited to the purposes of developing, implementing, and administering the Street Banner Pilot Program, pursuant to the terms and conditions contained in this Agreement. IFAC shall insure the banners comply with the following minimum requirements:

- a. Banners may only be placed on the Idaho Falls Power owned poles on the streets identified in Exhibit "A" of this Agreement. Upon mutual written agreement, CITY and IFAC may amend Exhibit "A."
- b. IFAC may place banners promoting its sponsored events and events held by others, provided that the banners must identify a cultural or sporting event that will be held within the City's geographic limits and is open to the public. The banner may not advertise any products or services.
- c. Banners should promote the event in an aesthetically pleasing way. Sponsor identification shall not be the predominant design element of the banner design.
- d. Banners shall not display any message which may interfere with or mislead pedestrian or vehicular traffic, for example the words "stop," "drive," "danger" or contain images of traffic signals or signs.
- e. Banner hardware may only be placed on poles located on streets identified in Exhibit "A." Banner hardware must be approved by the General Manager of Idaho Falls Power prior to being installed upon any pole. In addition, banner hardware should be left in place between displays of a banner.
- f. Banners shall be placed at least twelve feet (12') above the ground, unless the banner overhangs a roadway, in which case it must be at least fifteen (15') above the roadway;
- g. Banners shall not be illuminated, exceed eighty-two inches (82") in height and thirty inches (30") in length. In addition, banners shall be placed in a vertical position.

IFAC, under its sole discretion, shall have the exclusive right to install, maintain, and remove banners. IFAC may install banners for third parties, provided that IFAC installs, maintains, and removes all such banners. IFAC may adopt additional guidelines, restrictions, policies, or fees for third-party banners, so long as the minimum standards outlined in this Agreement are followed. Nothing in this Agreement shall be construed to permit any other party a right to place banners on CITY's poles.

IFAC shall, at its own cost, provide all materials, labor, and other necessary costs for the installation, maintenance, and removal of all street banners. IFAC shall ensure that all street banners under this agreement remain in good repair and shall promptly remove, repair, or replace damaged, faded, or dilapidated banners.

3. Reservation of the City's rights

City may require a banner be taken down if, in the sole determination of CITY, the banner interferes with the use of a public right-of-way or emergency equipment, including fire, police, medical, electrical, commercial vehicles, and truck or bus transportation.

4. Term

This Agreement shall begin upon the date both parties execute this Agreement and shall expire on October 1, 2026. Prior to the end of this Agreement, the parties shall meet and discuss and evaluate the pilot program.

SECTION II: RENTAL PAYMENT AND RELATIONSHIP

1. No Joint Powers or Partnership Created

There is not hereby created any separate legal or administrative entity, as might be provided by Idaho Code, including partnership or joint powers agreement. There shall be no joint or cooperative acquiring, holding and disposing of real or personal property, and each Party hereto shall be responsible for administering and financing its separate obligations hereunder.

The contracting parties warrant by their signature that no employer/employee relationship is established between IFAC and CITY by the terms of this Agreement. It is understood by the parties hereto that IFAC is an independent contractor and as such neither it nor its employees, if any, are employees of CITY for purposes of tax, retirement system, or social security (FICA) withholding.

2. Rental Payment.

In lieu of a rental payment, IFAC shall place, upon request by CITY's Mayor, with consultation with the Idaho Falls Power Manager, and at IFAC's sole cost, every fifth banner placed on the pole on the streets identified in Exhibit "A" a banner that promotes Idaho Falls Power, Idaho Falls Fiber, or another CITY message ("City Banners"). City Banners shall maintain aesthetic cohesion with other installed banners, such as, but not limited to, matching background colors, typeface, or other cohesive design elements.

SECTION III: GENERAL TERMS

1. Termination of Agreement.

Either party to this Agreement may be terminated, without cause and without further liability to the other party, upon thirty (30) days written notice to the other party. In the event of CITY's termination before the end of the term, City shall pay for reasonable wrap-up costs to remove any

existing banners. In the event of IFAC's termination before the end of the term or termination at the end of the term, IFAC shall remove all banners at IFAC's cost.

2. IFAC's Insurance.

IFAC shall procure and keep in force during the duration of this Agreement a Commercial General Liability Insurance policy that shall have a minimum limit of one million dollars (\$1,00,000) per claim and two million dollars (\$2,000,000) aggregate, and IFAC shall cause CITY to be named as an additional insured under said policy. In addition, IFAC shall maintain appropriate Automobile Insurance, Statutory Workmen's Compensation Insurance coverage, and Employer's Liability Insurance.

3. Indemnification.

IFAC agrees, to the fullest extent permitted by law, to indemnify and hold harmless CITY against damages, liabilities and costs arising from the negligent acts of IFAC in the performance of professional services under this Agreement, to the extent that IFAC is responsible for such damages, liabilities and costs on a comparative basis of fault and responsibility between IFAC and CITY. IFAC shall not be obligated to indemnify CITY for CITY's sole negligence.

In addition, IFAC agrees to and hold harmless CITY against damages, liabilities and costs arising from the installation and removal of banners and for any damaged caused by banners to property.

4. Costs and Attorney Fees.

In the event either party incurs legal expenses to enforce the terms and conditions of this Agreement, the prevailing party is entitled to recover reasonable attorney's fees and other costs and expenses, whether the same are incurred with or without suit.

5. Jurisdiction and Venue.

It is agreed that this Agreement shall be construed under and governed by the laws of the State of Idaho. In the event of litigation concerning it, it is agreed that proper venue shall be the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Bonneville.

6. Binding of Successors.

CITY and IFAC each bind themselves, their partners, successors, assigns, and legal representatives to the other parties to this Agreement and to the partner, successors, assigns, and legal representatives of such other parties with respect to all covenants of this Agreement.

7. Modification and Assignability of Agreement.

This Agreement contains the entire agreement between the parties concerning the Street Banner Pilot Project, and no statements, promises, or inducements made by either party, or agents of either party, are valid or binding unless contained herein. This Agreement may not be enlarged, modified, or altered except upon written agreement signed by the parties hereto. IFAC may not subcontract or assign its rights or duties arising hereunder without the prior written consent and express

authorization of CITY. Any such subcontractor or assignee shall be bound by all of the terms and conditions of this Agreement as if named specifically herein.

8. CITY's Representatives.

CITY's representative for this Agreement shall be the Mayor or the Mayor's designee. The Mayor or the Mayor's designee shall examine the documents of the work as necessary and shall render decisions related to this Agreement in a timely manner so as to avoid unreasonable delays. IFAC shall not be required to respond or take direction from any other City official, provided that the Idaho Falls City Council reserves the right to appoint another CITY representative by providing IFAC written notice of the appointment of an alternative CITY representative.

9. Ownership and Publication of Materials.

CITY and IFAC agree that CITY, with this Agreement, acquires the right to use all reports, information, data, and other materials prepared by IFAC and delivered to CITY pursuant to this Agreement and CITY shall have the authority to release, publish, or otherwise use them, in whole or in part.

10. Non-discrimination.

IFAC shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, creed, political ideals, sex, age, marital status, physical, or mental handicap, gender identity/expression, sexual orientation, or national origin.

11. Anti-Boycott Against Israel Act

Pursuant to Idaho Code section 67-2346, if payments under this Agreement exceed one hundred thousand dollars (\$100,000) and IFAC employs ten (10) or more persons, IFAC certifies that it is not currently engaged in, and will not for the duration of this Agreement engage in, a boycott of goods or services from Israel or territories under its control. The terms in this Paragraph that are defined in Idaho Code section 67-2346 shall have the meaning defined therein.

12. Certification of No Chinese Government Ownership

Pursuant to Idaho Code § 67-2359, IFAC certifies that IFAC is not currently owned or operated by the government of the People's Republic of China and will not, for the duration of this Agreement, be owned or operated by the government of the People's Republic China.

[Intentionally Blank - Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date indicated above.

ATTEST:

CITY OF IDAHO FALLS

Corrine Wilde, City Clerk

By: _____
Rebecca L. Noah Casper, Mayor

IFAC

By: _____
Brandi Newton, Executive Director

STATE OF IDAHO)
) SS.
County of Bonneville)

On the _____ day of _____, 2024, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Casper, known to me to be the Mayor of the City of Idaho Falls, Idaho, the municipal corporation that executed the foregoing document, and acknowledged to me that he is authorized to execute the same for and on behalf of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(Seal)

Notary Public for State of Idaho

Residing at Idaho Falls, Idaho
My Commission Expires: _____

STATE OF IDAHO)
) SS.
County of Bonneville)

On the _____ day of _____, 2024, before me, the undersigned, a notary public in and for said State, personally appeared Brandi Newton known or identified to me to be the Executive Director of the Idaho Falls Arts Council, the non-profit corporation that executed the foregoing document and acknowledged to me that she executed the same on behalf of the Idaho Falls Arts Council.

IN WITNESS WHEREOF, I have hereunto set me hand and affixed my official seal, the day and year in this certificate first above written.

(Seal)

Notary Public for State of Idaho

Residing at Idaho Falls, Idaho
My Commission Expires: _____

Exhibit “A”

The following streets may have banners placed on Idaho Falls Power-owned poles:

17th Street
Sunnyside
Holmes
Riverside
Yellowstone
Lindsay Boulevard