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Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER**

**CITY OF SANDPOINT, a Municipal Corporation of the State of Idaho,** )  
)  
)  
*Plaintiff,* )  
)  
vs. )  
)  
**INDEPENDENT HIGHWAY DISTRICT, a political subdivision of the State of Idaho,** )  
)  
)  
*Defendant.* )  
\_\_\_\_\_ )

Case No. **BON CV 2013 1342**

**MEMORANDUM DECISION AND  
ORDER GRANTING PLAINTIFF CITY  
OF SANDPOINT'S MOTION FOR  
SUMMARY JUDGMENT**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court on the Motion for Summary Judgment filed by the plaintiff City of Sandpoint (City).

The Complaint filed on August 15, 2013, arises out of an alleged breach of contract claim initiated by City. Complaint and Request for Declaratory and Injunctive Relief, p. 7. Long before City filed its Complaint, on July 8, 2003, the parties entered into the contract, entitled Joint Powers Agreement (Agreement). *Id.*, p. 8. City claims the defendant Independent Highway District (IHD) breached the Agreement on July 11, 2013, when it refused to perform a material term of the Agreement by withholding funds from City. *Id.*, Exhibit D. In addition to withholding funds, IHD unilaterally gave notice of the termination of the Agreement in its entirety on July 25, 2013. *Id.*, Exhibit E.

The parties entered into the Agreement as part of a settlement that was reached on July 3, 2003, following protracted litigation. *See generally* Memorandum Decision

and Order Denying Defendant's Motion to Dismiss, pp. 1-4 (providing summary of previous litigation and circumstances surrounding entry into the Joint Powers Agreement). This Court summarized the Agreement as follows:

The Joint Powers Agreement was intended to be a permanent resolution as it stated, under the heading "Duration": "The duration of this agreement shall be perpetual or until such time as the District and the City jointly and together agree to amend or terminate the same." [Complaint, Exhibit B, p. 1]. The City would assume responsibility for all the streets within its limits. *Id.* The IHD promised to pay the City all ad valorem property tax funds from levies of properties with the City limits. *Id.*, p. 3. In return, the City, which had jointly petitioned for the IHD's dissolution election, would request the Bonner County Board of Commissioners to vacate the dissolution election and dismiss the action with prejudice. *Id.*, p. 5. The parties stipulated that the Joint Powers Agreement could only be terminated by mutual agreement of both parties. *Id.*, pp. 1, 4.

Memorandum Decision and Order Denying Defendant's Motion to Dismiss, pp. 3-4.

Funds are not currently being withheld due to the stipulated entry of a preliminary injunction on December 18, 2013. City of Sandpoint's Memorandum in Support of Summary Judgment, pp. 2-3.

On June 4, 2014, City filed the present motion for summary judgment, requesting that the Court declare the Agreement and the Memorandum of Understanding to be legal and enforceable, and for an Order requiring IHD to comply with all obligations of the Agreement in the form of a permanent injunction. City of Sandpoint's Motion for Summary Judgment, pp. 1-2. In support of their motion, City filed a supporting memorandum that expressly "[i]ncorporates the authority and argument made in its Response to the IHD's Motion to Dismiss, as well as the Court's reasoning set out in its Memorandum Decision and Order." *Id.*, p. 3. Additionally, City has requested an award of costs and attorney fees it incurred as a result of the present action. *Id.*, p. 2.

IHD responded in opposition to the motion for summary judgment on July 8, 2014, alleging that material issues of fact remain disputed in regards to the breach of

contract claim. See Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4. Accompanying their response memorandum are the following: "Affidavit of Marj Tilley;" "Second Affidavit of Marj Tilley;" and the "Affidavit of Julie Bishop." City filed its reply memorandum on July 15, 2014, entitled "City of Sandpoint's Reply in Support of Summary Judgment."

Hearing on City's motion for summary judgment was held on July 22, 2014, at the conclusion of which the Court took City's motion for summary judgment under advisement. Because this Court finds no genuine issues of material fact remain for trial, summary judgment must be granted in favor of City against IHD for the reasons set forth below.

## **II. STANDARD OF REVIEW.**

Summary judgment is proper "[i]f the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." See I.R.C.P. 56(c). The moving party carries the burden of proving the absence of genuine issues of material fact. *Rouse v. Household Finance Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). "The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial." *Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 707, 99 P.3d 1092, 1097 (2004) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)). Any facts in dispute are liberally construed in favor of the nonmoving party, with any inference reasonably drawn from the record done so in favor of the nonmoving party. *Kiebert v. Goss*, 144 Idaho 225, 227, 159 P.3d 862, 864 (2007) (citing *Lockheed Martin Corp. v. Idaho State Tax*

*Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006)).

The establishment of an absence of a genuine issue of material fact by the moving party shifts the burden to the nonmoving party to provide specific facts showing there is a genuine issue for trial. *Id.* at 228, 159 P.3d at 864 (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). “[I]f the nonmoving party fails to provide a sufficient showing to establish the essential elements of his or her case, judgment shall be granted to the moving party.” *Porter v. Bassett*, 146 Idaho 399, 403, 195 P.3d 1212, 1216 (citing *Atwood v. Smith*, 143 Idaho 110, 113, 138 P.3d 310, 313 (2006)). The nonmoving party may use circumstantial evidence to create a genuine issue of material fact. *Edged In Stone, Inc. v. Northwest Power Systems, LLC*, 156 Idaho 176, 321 P.3d 726, 730 (2014) (citing *ParkWest Homes, LLC v. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)). To create a genuine issue, “[h]owever, the [nonmoving] party may not rest on a mere scintilla of evidence.” *ParkWest Homes, LLC. V. Barnson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013) (citing *McCoy v. Lyons*, 120 Idaho 765, 769, 820 P.2d 360, 364 (1991)). The nonmoving party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. I.R.C.P. 56(e); see *Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). If reasonable people might reach conflicting inferences about the evidence, the motion for summary judgment must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 69, 593 P.2d 402, 404 (1979) (citing *Otts v. Brough*, 90 Idaho 124, 409 P.2d 95 (1965)).

If an action is being tried without a jury, “[t]he trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting

inferences.” *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007) (citing *Intermountain Forest Management v. Louisiana Pacific Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)). The fact finder is responsible for resolution of conflicts between the possible inferences. *Id.* (citing *Cameron v. Neal*, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997)). If the Idaho Supreme Court reviews the decision of a judge serving as fact finder, it “[e]xercises free review over the entire record that was before the district judge to determine whether either side was entitled to judgment as a matter of law and reviews the inferences drawn by the district judge to determine whether the record reasonably supports those inferences.” *Id.* (citing *Intermountain Forest Management*, 136 Idaho at 236, 31 P.3d at 924). City’s Complaint does not demand a jury trial. IHD has yet to file an Answer and has not at any time made a demand for a jury trial. Thus, the Court is able to make reasonable inferences.

### **III. ANALYSIS OF CITY’S MOTION FOR SUMMARY JUDGMENT.**

#### **A. All Provisions of the Joint Powers Agreement and Memorandum of Understanding are Legal, Valid, and Enforceable and IHD Materially Breached by Withholding Funds and Unilaterally Terminating the Agreement.**

City argues summary judgment is appropriate declaring the Agreement and Memorandum of Understanding to be legal, valid, and enforceable, because there are no genuine issues of material fact remaining for trial. City of Sandpoint’s Memorandum in Support of Summary Judgment, p. 3. It argues that all of IHD’s challenges to the Agreement involve the legal interpretation of Idaho law and the unambiguous terms of the Agreement itself. *Id.* Finally, City asserts that if the Agreement is legal, then it is also enforceable, and they are entitled to relief. *Id.*

In response, IHD claims material issues of fact remain which prevents summary

judgment on the breach of contract claim. Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4. Specifically, IHD claims that while City has asserted it is "[d]ue penalties and interest collected in relation to the ad valorem taxes owed under the Joint Powers Agreement," none of the evidence before the Court indicates City is entitled to receive anything other than the ad valorem taxes collected from City residents. *Id.* Further, IHD reasserts their arguments from the earlier motion to dismiss: that the termination clause is illusory, that proper consideration was not given for the agreement, and that a perpetual agreement runs counter to Idaho law. *Id.*, pp. 5-7. Finally, IHD claims that only highway districts may abandon or vacate a highway district road and that the alleged delegation of the authority to City is invalid and unenforceable. *Id.*, p. 6-7.

In this case, there are no genuine issues of material fact that would prevent this Court granting the motion for summary judgment. In support of this conclusion, the Court must address whether the Agreement obligated IHD to turn over all revenue collected from City residents including interest and penalties, whether the consideration given by City was sufficient, whether City may share the power to abandon or vacate a district road, and whether the relief requested is overly broad. Each of these will be discussed in turn below. This Court thoroughly and exhaustively addressed any other issue raised by IHD, including the legality of the contract previously in its Memorandum Decision and Order Denying Plaintiff's Motion to Dismiss. *See generally* Memorandum Decision and Order Denying Defendant's Motion to Dismiss. The Court's previous analysis includes a lengthy discussion of whether the Agreement is invalid due to its perpetual nature. *Id.* pp. 16-18. Thus, this memorandum will be limited specifically to the above-mentioned arguments advanced by IHD.

## **1. IHD is Obligated to Turn Over All Revenues From District Levies on Property Located Within City Limits.**

In the verified complaint, City seeks all tax revenues received by IHD that were allegedly withheld from City. Complaint and Request for Declaratory and Injunctive Relief, p. 11, ¶ 51(b). IHD disputes that City is entitled to penalties and interest from ad valorem taxes collected because during the course of performance of the Agreement the IHD has never paid those sources of revenue to City. Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4. IHD apparently claims that this discrepancy now creates an ambiguity in the Agreement. *Id.* In response, City argues that the issue of whether or not IHD has turned over interest in the past is irrelevant to the legal issue of whether City is entitled to those amounts. City of Sandpoint's Reply in Support of Summary Judgment, p. 4. City further asserts it is undisputed City has previously been paid delinquent taxes and that it makes no sense why the accompanying interest and penalties were not also turned over. *Id.*

In this case, a plain reading of the Agreement shows IHD was obligated to turn over to City all revenue from levies on property within city limits. See Joint Powers Agreement Between the City of Sandpoint and the Sandpoint Independent Highway District, p. 3. The interpretation of a clear and unambiguous contract is a question of law. *Lamprech v. Jordan, LLC*, 139 Idaho 182, 75 P.3d 743 (2003) (citing *Iron Eagle Dev't, L.L.C. v. Quality Design Systems, Inc.*, 138 Idaho 487, 491, 65 P.3d 509, 513 (2003)). Contracts that are unambiguous are given their plain meaning. *Id.* "The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered." *Id.* Intent of the parties is determined from the contract as a whole. *Id.* (citing *Daugharty v. Post Falls Highway Dist.*, 134 Idaho 731, 735, 9 P.3d 534, 538 (2000)). "If a contract is found ambiguous, its interpretation is a

question of fact.” *Id.* However, the determination that “[a] contract is ambiguous is a question of law.” *Id.* (citing *Boel v. Steward Title Guar. Co.*, 137 Idaho 9, 13, 43 P.3d 768, 772 (2002)). A contract that is reasonably subject to conflicting interpretations is ambiguous. *Id.* (citing *Lewis v. CEDU Educ. Serv., Inc.*, 135 Idaho 139, 144, 15 P.3d 1147, 1152 (2000)).

Here, the Agreement between City and IHD is not reasonably subject to conflicting interpretations. Under the relevant section of the Agreement detailing revenue distribution, the parties agreed to the following:

The District at the present time and in the future will levy and apply for ad valorem property taxes under the authority granted in Chapter 13, Title 40, Idaho Code. The District will pay over to the City **all property tax funds** from such District levies on all property located within the city limits.

On the basis of present tax rates this amount is presently approximately \$350,000 per year. District, upon receipt of tax revenues, forward to the City **all tax revenues** received by the District . . . .

Joint Powers Agreement Between the City of Sandpoint and the Sandpoint Independent Highway District, p. 3 (emphasis added). “All” is defined as “the whole number, quantity, or amount.” Webster’s Ninth New Collegiate Dictionary p. 71 (1983). The term “tax,” broadly, “embraces all governmental impositions on . . . property . . . .” Black’s Law Dictionary (9th ed. 2009). Revenue is defined as “[g]ross income or receipts.” *Id.* A definition of the plural form of “fund” is “available pecuniary resources.” Webster’s Ninth New Collegiate Dictionary p. 498 (1983). Thus, “all tax revenues” or “all property tax funds” would encompass the gross amount of money collected for IHD from City residents in relation to the ad valorem tax.

The gross amount of funds collected for the benefit of IHD includes interest and costs of delinquent taxes. Under I.C. § 40-805, which directs the county tax collector regarding highway district taxes, the county is to “[p]ay over all moneys then due to the

district, including all the district's proportionate amount of delinquent taxes, interest and costs on all tax sales and redemptions from them." I.C. § 40-805. If "all moneys" encompass interest and penalties, then so should too the largely synonymous "all tax revenues" or "all property tax funds" utilized in the Agreement.

Certainly, it must be taken into consideration that IHD has stated in an affidavit to have "[n]ever paid any penalties or interest collected on late payments of ad valorem taxes to the City of Sandpoint." Second Affidavit of Marj Tilley, p. 2. As such, they dispute that they should pay penalties and interest to City in the future. Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 4.

However, failure to distribute exact monies owed to a city by highway districts does not in itself imply an ambiguity because such distributions have previously been subject to simple human error and oversight. *See generally City of Rexburg v. Madison County*, 115 Idaho 88, 89 764 P.2d 838, 839 (1988) (county paid city 5% rather than statutory minimum of 50% of relevant ad valorem taxes for twenty-two (22) years before either party discovered the discrepancy but the Court held that despite this the district had a statutory duty to pay the 50% to the city). While neither party has briefed the total sum of interest and penalties owing as a result of delinquent taxes collected from City residents, it is reasonable to infer that the amount is proportionally less than the shortfall in *City of Rexburg*. If a city can go twenty-two years without noticing it is only being paid one-tenth of funds due, it is reasonable to infer that City here may not have taken notice of the discrepancy in the decade following the formation of the contract. This alone does not create an ambiguity in the contract. It merely shows oversight by City in failing to realize IHD failed to perform in accordance with the Agreement. The language of the Agreement is clear. IHD should have been paying City all revenue from ad valorem taxes, including interest and penalties. Thus, the failure to properly

apportion interest from delinquent taxes cannot imply ambiguity in the contract.

## **2. The Joint Powers Agreement is Supported by Adequate Consideration.**

The Agreement, as previously found by this Court, is supported by adequate consideration. Memorandum Decision and Order Denying Defendant's Motion to Dismiss, p. 20. IHD now argues City's agreement to not pursue dissolution of the highway district cannot serve as adequate consideration because "[n]o statute allows a city to play any role in determining whether the highway district would be dissolved." Memorandum in Response to City of Sandpoint's Motion for Summary Judgment, p. 5. City has previously stated in an incorporated briefing that "[a]s consideration for entering into the JPA, the City agreed to assist in withdrawing the petition to dissolve the District and agreed not to challenge future annexations to the District. The election did not occur." Plaintiff's Response to Defendant's Motion to Dismiss, p. 7. They further argue that the agreement to not pursue dissolution was part of a stipulated settlement approved by the District Court for Bonner County and therefore by forebearing from exercising their right adequate consideration was given. City of Sandpoint's Reply in Support of Summary Judgment, p. 5. Moreover, they claim additional consideration was given when "[t]he parties reached an appropriate cooperation for the maintenance of streets and payment of taxes." *Id.*, p. 6.

No statute prevents City from playing a role in the dissolution of the highway district. Idaho Code § 40-1802 requires that "All proceedings for the dissolution of highway districts shall be initiated by a petition of twenty-five (25) or more qualified electors of the district . . ." I.C. § 40-1802. Upon petition by the requisite number of electors, the "[highway district] commissioners shall proceed to consider the petition and all written objections to it, **and shall hear all persons in relation to it, and shall**

**hear or take testimony as may be offered . . . .”** I.C. § 40-1805 (emphasis added).

While the initial twenty-five (25) electors must be individuals serving in their individual capacity as voters, and thus excludes the City as a governmental entity since it has no capacity to cast a vote, nothing in the plain language of the above statute prevents the City from testifying or encouraging City residents to vote for dissolution once the necessary electors have been found.

City has previously demonstrated its ability to offer testimony in favor of the dissolution of the highway district. The Idaho Supreme Court, in a previous action involving the present parties, found the testimony of the Sandpoint City Treasurer to be illustrative when considering whether dissolution would be in the best interest of the district. *Sandpoint Independent Highway Dist. v. Board of County Com’rs of Bonner County*, 138 Idaho 887, 892, 71 P.3d 1034, 1039 (2003). In that case, the Idaho Supreme Court quoted the following testimony of the Sandpoint City Treasurer:

The net effect of the taxpayers in the City of Sandpoint will be slight. The savings in duplicated services and administrative costs will compensate for the decreased revenues available to the city Street Departments. Except for possible changes unrelated to this issue, county residents should see their tax bill for Bonner County and Bridge decrease.

*Id.* The reasonable inference to be drawn is that city residents would naturally look to city officials for guidance as to whether it was in their interest to support dissolution.

The Idaho Supreme Court itself looked to a city official to support its findings. It is disingenuous for IHD to argue City could play no role in the dissolution process simply because it is not immediately apparent from reading the relevant statute.

As the Court previously stated in its Memorandum Decision and Order Denying Defendant’s Motion to Dismiss, “[t]here is consideration in the present case because the IHD has agreed to pay money and the City has agreed to forebear its legal efforts to dissolve the IHD.” Memorandum Decision and Order Denying Defendant’s Motion to

Dismiss, p. 19. The City ceased its pursuit to legally dissolve the Highway District within Bonner County. *Id.* No statute prevents City from exercising its right to participate in the process for dissolution of a highway district. Thus, valid consideration existed.

### 3. City May Share in the Power to Vacate and Abandon IHD Streets.

IHD argues that summary judgment is not appropriate at this time because “[o]nly highway districts have the power and authority to abandon or vacate a highway district road.” Memorandum in Response to City of Sandpoint’s Motion for Summary Judgment, p. 6 (citing I.C. § 40-203). Further, IHD argues the power cannot be delegated. *Id.* (citing *Blaha v. Ada County Board of Commissioners*, 134 Idaho 770, 9 P.3d 1236 (2000)). The issue of whether the district may delegate authority to vacate streets was not previously addressed in the motion to dismiss. *Id.* In response, City argues that the Idaho Supreme Court has interpreted the statutory scheme differently. City of Sandpoint’s Reply in Support of Summary Judgment, p. 7. They further argue that the express terms of the Agreement and Memorandum of Understanding, as well as the entirety of the Idaho statutory scheme, are issues of law for this court to interpret. *Id.*, p. 8.

City, both of its own authority and sharing in that of IHD pursuant to the Agreement, may vacate or abandon district streets. The right of a city to vacate streets has been recognized under statutory law. Idaho Code § 40-1323 addresses the powers and duties of a city and its city council when included within a highway district. See I.C. § 40-1323. The relevant portion of that chapter reads as follows:

Each incorporated city, or portion of it, within a highway district, **shall constitute a separate division of the district.** The city council of each incorporated city within the territory of a highway district, so far as relates to their city, **shall have the powers and duties** as provided by this chapter and **as provided in chapter 3, title 50, Idaho Code**, in such case.

I.C. § 40-1323 (emphasis added). Under I.C. § 50-311, the chapter expressly referenced in the above statute, “[c]ities are empowered to: create, open, widen or extend any street, avenue, alley or lane, annul, **vacate or discontinue** the same whenever deemed expedient for the public good . . . .” I.C. § 50-311 (emphasis added). The term “highways” is defined by statute to “[m]ean roads, streets, alleys and bridges . . . .” I.C. § 40-109. Thus, the Idaho Legislature has recognized that a city may have the authority to vacate streets, including highways. Since cities constitute separate divisions of the highway district in which they are included, they still must adhere to any statutory requirements for vacation or abandonment. *Id.*

The Agreement and Memorandum of Understanding expressly require City to adhere to statutory requirements. Under the Memorandum of Understanding, City and IHD agreed to the following:

1. **The CITY shall have the right and power to vacate streets and rights-of-way within CITY limits subject to the provisions of this Agreement and Idaho Code.**
2. The CITY shall notify IHD in writing prior to any public hearing regarding the vacating of a right-of-way within CITY limits.
3. If no written objection to the request to vacate is received from IHD within thirty (30) days of said notice, the CITY may proceed with such vacation. The IHD shall also sign off as need be on any documents relinquishing title to the vacated way.
4. If written objection is received from IHD stating the reasons for the objection, the CITY shall deny the request to vacate.
5. IHD shall defend any claim related to a IHD objection to vacation request.
6. **The CITY shall, at its’ sole expense, take all legal steps required by law to vacate streets and rights-of-way within CITY limits including provisions for all required notices and public hearings.**

Memorandum of Understanding, pp. 1-2 (emphasis added). Thus, City obligated itself both contractually and statutorily to comply with the requirements of I.C. § 40-203 should it choose to abandon or vacate any street. That particular section of the Idaho Code does not expressly prohibit City from exercising such power. Rather, the

provision reads that “[a] board of county or highway district commissioners, **whichever shall have jurisdiction of the highway system**, shall use the following procedure to abandon and vacate any highway or public right-of-way . . . .” I.C. § 40-203(1) (emphasis added). As shown above, through exercise of the Agreement and the incorporated Memorandum of Understanding, IHD extended its jurisdictional authority to a division of the district that by itself may have already had the authority to vacate streets, that being the City of Sandpoint.

The authority cited by IHD is inapt because it only applies to actions taken by a city outside of its boundaries. The defendants cited to *Blaha v. Board of Ada County Com’rs*, 134 Idaho 770, 9 P.3d 1236 (200), for the proposition that a highway district could never delegate its authority to vacate streets to a city. That case, however, is inapposite to the facts before the Court because it dealt with the exercise of co-equal jurisdiction of a separate matter outside the corporate limits of a city. *Blaha*, 134 Idaho at 777, 9 P.3d at 1243. In that case, the Idaho Supreme Court recognized that there were constitutional limitations because the Court had previously held “[t]hat the power of cities and counties only exists within the sovereign boundaries of the cities and the counties respectively.” *Id.* (citing *Clydes Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798; *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977); *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983)). Thus, if City were exercising its authority to abandon or vacate highways outside of its corporate boundaries, there would be a very real issue.

Here, however, there is no accusation or question of fact that City is exercising authority outside of its corporate boundaries. Pursuant to the Memorandum of Understanding, it is made explicitly apparent that the authority of City is limited to its city

limits. Because of this recognized limitation and the absence of evidence that City has ever exercised authority outside of its boundaries, no question of material fact remains for trial.

#### **4. The Relief Requested is Not Overly Broad.**

IHD argues City is not entitled to “[a]n order enjoining the District from interfering with the City’s operation and maintenance of its streets under the Joint Powers Agreement.” Memorandum in Response to City of Sandpoint’s Motion for Summary Judgment, p. 7. They argue that, excepting the money being withheld from City, there are no facts in this case that suggest IHD has interfered with City inside the city limits. *Id.* City responded by asserting that none of IHD’s arguments prevent summary judgment in this case “[b]ecause the court fashions that remedy, and IHD’s claims do not defeat the underlying right to the relief.” City of Sandpoint’s Reply in Support of Summary Judgment, p. 9. They state that the Court determines the necessary scope of relief, and as such there is no genuine issue for trial. *Id.* Further, City argues that the preliminary injunction in this case needs to be permanent, ensuring that the Agreement is complied with. *Id.*

Here, there is not an overly broad request for relief. In its Complaint, City requested “[a]n order enjoining the District from interference with the City’s operation and maintenance of its streets **pursuant** to the Joint Powers Agreement . . . .” Complaint, p. 12. As this Court has already held, the Agreement is a legal and enforceable contract. The relief requested by City is only that which the IHD previously agreed to under the Agreement, with no additional stipulations. Because IHD unilaterally decided to cease complying with the Agreement previously, it is not unreasonable to grant relief to City that would prevent the same from happening again in the future.

**B. City is the Prevailing Party and Might Be Entitled to Attorneys' Fees and Costs.**

City requests “[a]n award of costs and attorney fees incurred in this action as allowed by law, I.C. § 12-121 and I.R.C.P. 54.” City of Sandpoint’s Motion for Summary Judgment, p. 2. In response, IHD argues City “[h]as advanced no argument or authority showing that IHD’s defense was frivolous. Further, given that a material issue of fact prevents entry of judgment in favor of the City, there are no grounds for an award of attorney fees under I.C. § 12-121.” Memorandum in Response to City of Sandpoint’s Motion for Summary Judgment, p. 8. In response, City has argued that there was no legitimate basis for IHD to cease compliance with the agreements, an action that forced City to file suit in order to recover the necessary funds to continue an important public service. City of Sandpoint’s Reply in Support of Summary Judgment, p. 9. Further, they argue IHD has failed to raise any genuine legal defense as to why payments under the Agreement were ceased. *Id.*

In this case, an award of attorney’s fees is likely appropriate. Idaho Code § 12-121 states that “[i]n any civil action, the judge may award reasonable attorney’s fees to the prevailing party or parties . . . .” I.C. § 12-121. The Idaho Supreme Court has interpreted that section such that “[a]n award of attorney fees under [I.C.] § 12-121 is not a matter of right to the prevailing party.” *Philips v. Blazier-Henry*, 154 Idaho 724, 731, 302 P.3d 349, 356 (2013) (quoting *Milchalk v. Milchalk*, 148 Idaho 224, 235, 220 P.3d 580, 591 (2009)). The Court “permits the award of attorneys fees to the prevailing party if the court determines the case was brought, pursued or defended frivolously, unreasonably or without foundation.” *Id.* (quoting *Commercial Ventures, Inc. v. Rex M. Lynn Lea Family Trust*, 145 Idaho 208, 218-19, 177 P.3d 955, 965-66 (2008)). Finally, the “entire course of the litigation must be taken into account and if there is at least one

legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation.” *Id.* (quoting *Milchalk*, 148 Idaho at 235, 220 P.3d at 591). Thus, under I.C. § 12-121, IHD is correct in saying there would need to be a showing that the case was defended frivolously. If, at a later time, City persists in requesting fees under I.C. § 12-121, the Court will make that analysis.

However, I.C. § 12-121 might not be the most applicable statute. In 2013, the Sixty-First Idaho Legislature adopted Idaho Senate Bill No. 1332, effective March 27, 2012, revising the language of I.C. § 12-117. Entitled, “Attorney’s fees, witness fees, and expenses awarded in certain instances”, the new language reads:

In any civil judicial proceeding involving as adverse parties a governmental entity and another governmental entity, the court shall award the prevailing party reasonable attorney’s fees, witness fees and other reasonable expenses. For purposes of this subsection, “governmental entity” means any state agency or political subdivision.”

I.C. § 12-117(4). That same Chapter defines “political subdivision” as “[meaning] a city, a county, any taxing district, or a health district . . . .” I.C. § 12-117(5)(b). The Idaho Supreme Court has held that “[a] highway district is a “taxing” district” within the meaning of I.C. § 12-117.” *Halvorson v. North Latah County Highway Dist.*, 151 Idaho 196, 209, 254 P.3d 497, 510 (2011) (citing I.C. § 63-3101; I.C. § 40-1308). Because the City of Sandpoint is a “city” and the Independent Highway district is a “taxing district,” I.C. § 12-117(4) applies to this case.

City did not claim fees under I.C. § 12-117(4) in any filings with this Court prior to the hearing on the instant motion. At that hearing, the Court inquired of counsel for the City why that was the case.

At this juncture, City’s reason is not relevant. The prevailing party is not required to state with specificity the specific code provision it seeks fees under until the Rule

54(e)(5) fee request. See I.R.C.P. 54(e)(5); see also *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 721, 117 P.3d 130, 135 (2005). Under I.C. § 12-117(4), the only factor is whether City was the prevailing party. There is no doubt in the Court's mind that City is in all aspects the prevailing party as compared to IHD. The Court so finds City to be the prevailing party in this litigation.

Thus, if City requests fees under I.C. § 12-117(4), City is entitled to those fees as the prevailing party and the only issue at the time of a motion under I.R.C.P. 54(e)(5) will be the amount of those fees. Should City request fees only under I.C. § 12-121, then the Court at that time will address the issue of whether IHD defended this case frivolously, unreasonably, or without foundation, and, if it concludes that issue in City's favor, then at that time the amount of fees will be determined.

#### **IV. CONCLUSION AND ORDER.**

For the reasons stated above,

IT IS HEREBY ORDERED plaintiff City's Motion for Summary Judgment is GRANTED in all aspects against defendant IHD.

IT IS FURTHER ORDERED plaintiff City is the prevailing party in this litigation.

IT IS FURTHER ORDERED counsel for plaintiff City shall prepare a judgment consistent with this memorandum decision and order.

Entered this 31<sup>st</sup> day of July, 2014.

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John T. Mitchell, District Judge

#### **Certificate of Service**

I certify that on the \_\_\_\_\_ day of July, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

| <u>Lawyer</u>    | <u>Fax #</u> | <u>Lawyer</u>       | <u>Fax #</u> |
|------------------|--------------|---------------------|--------------|
| Scot R. Campbell | 208 255 1368 | C. Matthew Andersen | 208 765-2121 |
| Susan Weeks      | 208 664-1684 | David E. Wynkoop    | 208 887-4865 |

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Linda Oppelt, Deputy Clerk