

PATHWAY AGREEMENT

THIS PATHWAY AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of January, 2025 (“**Effective Date**”), by and between the Caldwell Joint School District No. 132 (the “**School District**”) and the City of Caldwell, an Idaho municipal corporation (“**City**”), and Zion Ventures, LLC, an Idaho limited liability company (“**Zion**”). The School District the City, and Zion are occasionally referred to herein each a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. The School District is the owner of that certain real property commonly known as 3401 S Indiana Avenue, more particularly described on **Exhibit “A”** attached hereto (“**School District Property**”).

B. Zion Ventures, LLC, (“**Zion**”) owns that certain real property located in Canyon County, Idaho which is more particularly described on **Exhibit “B”** attached hereto (“**Jayhawk Subdivision**”).

C. The City of Caldwell owns and operates that certain real property commonly known as Brothers Park, located at 3719 S. Indiana Ave, Caldwell (“**Brother’s Park**”).

D. Whereas Idaho Code 67-2322 authorizes the conveyance or transfer of real property by a local unit of government (the District) to another governmental body (the City), with or without consideration and that such conveyance or transfer of real property may be without consideration when it is in the best interest of the public in the judgment of the governing body of the governing unity (the District), and such before such conveyance a written agreement is required and notice must be published;

E. Whereas the District believes such conveyance of the subject property between the District and City is in the best overall interest of the public;

F. Whereas Idaho Code 67-2332 permits one or more public agencies of the state of Idaho to contract with any one or more other public agency to perform any governmental service, activity, or undertaking which each public agency entering into the Agreement is authorized by law to perform, including but not limited to joint contracting for services, supplies, and capital equipment, provided that such contract shall be authorized by the governing board of each public agency Party to the Agreement and that such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting Parties; and

G. The School District, the City, and Zion desire to memorialize their agreement regarding the Parties’ rights, responsibilities, and obligations associated with the conveyance, construction of, and maintenance of a pedestrian pathway through the Jayhawk Subdivision, School District Property and Brother’s Park.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals which are incorporated below, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Pathway Construction.

1.1 School Pathway. Zion shall, at its cost and expense, install a pathway along the southern boundary of the School District Property (the “**School Pathway**”) in the location graphically depicted on **Exhibit “C”** attached hereto. The School Pathway shall consist of (i) five (5’) feet of asphalt walkway; (ii) a total of five (5’) feet of desert-scape; and (iii) a six (6’) foot fence along the northern boundary of the School Pathway. The pathway shall meet all standards, ordinances and regulations of the city and county and shall in all respects be compliant with the standards required by the Americans with Disabilities Act.

1.2 Brothers Park Pathway Connection. Zion shall, at its cost and expense, install a five foot (5’) asphalt pathway (the “**Park Connection**”) in the location graphically depicted on Exhibit D.

Notwithstanding anything to the contrary herein, the School District and Zion acknowledge and agree that the exact location at which the School Pathway will stub to the Jayhawk Subdivision as depicted on Exhibit C may be moved east or west based on the Final Plat of the Jayhawk Subdivision (the “**Jayhawk Final Plat**”) so long as such pathway remains on the land that is conveyed between the District and the City and is not otherwise located on District property

2. Timing. Zion shall complete the construction of the School Pathway and Park Connection (together referred to herein as the “**Pathways**”) prior to recordation of the Jayhawk Final Plat.

3. Pathway Easement. Within thirty (30) days of the execution of this Agreement, the School District shall execute and record a quit claim deed in a form acceptable to the City of Caldwell, for the School Pathway. Such quit claim deed shall be prepared by the City of Caldwell and shall meet all terms and conditions outlined in Section 67-2322. The City shall reimburse to the District all costs associated with publishing notice of such conveyance by the District.

4. Construction License over School District Property. Within ninety (90) days of the execution of this Agreement, the School District and City shall grant Zion license, in the form of a Construction License Agreement, the form of which shall be reasonably agreed upon by Zion and the School District and Zion and the City, permitting Zion the right to access the School District Property for the purpose of constructing the School Pathway. Such license shall be prepared by the City of Caldwell or Zion.

5. Zion's Conditions Precedent. Zion's obligation to construct the Pathways as set forth in this Agreement are contingent upon (i) the City of Caldwell accepting the dedication of the quit claim deed and agreeing to the future maintenance of the Pathway Easement in accordance with Section 3 of this Agreement; (ii) the City of Caldwell granting Zion a license to enter onto Brothers Park for the purpose of constructing the Park Connection in accordance with section 4 of this Agreement; and (iii) The School District being in compliance with its obligations under this Agreement.

6. Baseball Fence. Zion shall fund the extension of the baseball net for the baseball situated in the southwestern most corner of the School District Property by one hundred (100') feet (the "**Baseball Fence Extension**"). Such continuation shall be consistent with the materials and installation of the existing fencing. Within ten (10) days of receiving approval of the Jayhawk Final Plat, Zion shall make a request to the School District for the School District to obtain two (2) bids for the Baseball Fence Extension. Promptly after receiving such bids, Zion and the School District shall reasonably agree upon the cost for the Baseball Fence Extension, whereupon Zion shall promptly deliver to the School District, via check or wire transfer, funds for such cost.

7. Default; Remedies. If any party materially breaches its obligations under this Agreement and such breach continues to exist for thirty (30) days after the other party's notice of default, the non-defaulting party may exercise any right or remedy available at law or equity (except termination), including self-help and specific performance; provided, however, no party will be deemed to be in default if such breach cannot be rectified within said thirty (30) day period and the defaulting party is using diligence to rectify the breach as soon as practical. In any action to enforce this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, including reasonable attorneys' fees and costs on appeal.

8. Notices. All notices and other communications shall be in writing and may be delivered (i) in person, with the date of notice being the date of personal delivery, (ii) by United States Mail, postage prepaid for certified or registered mail, return receipt requested, with the date of notice being the date of the postmark on the return receipt, (iii) by e-mail, with confirmation of the transmittal of the e-mail, with the date of notice being the date of the e-mail or (iv) by nationally recognized delivery service such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by the delivery service.

Address for notice to The School District:

Dr. Norma French
Superintendent of Schools
Caldwell School District # 132
1502 Filmore Street
Caldwell, Idaho 83605
208-455-3300
nfrench@caldwellschools.org

Address for notice to Zion:

Zion Ventures, LLC
839 S. Bridgeway Pl
Eagle ID, 83616
riley@markbottles.com

Address for notice to City:

Caldwell City Clerk
205 S 6th Ave
Caldwell, ID 83605

9. Binding on Owners of the Jayhawk Subdivision and The School District Property. This Agreement shall run with the land and shall be binding on Zion as the owner of the Jayhawk Subdivision, Zion's successors, and assigns, and all successor owners of the Jayhawk Subdivision; and The School District as the owner of the The School District Property, its successors and assigns, and all successor owners of the The School District Property.

10. Applicable Law. This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho and the parties hereto consent to the jurisdiction of the state courts of Canyon County in the state of Idaho, in the event of any dispute with respect to this Agreement.

12. Counterparts. This Agreement may be executed in one or more counterparts. All counterparts so executed shall constitute one contract, binding on all parties, even though all parties are not signatory to the same counterpart, or the signatures are not original signatures to the same agreement.

14. Amendment/Waiver. This Agreement cannot be amended, modified, or revised unless done in writing and signed by all Parties to the Agreement. No provisions may be waived except in writing, signed by all Parties to the Agreement. The failure by a party to enforce this Agreement; or to enforce any provision of this Agreement; or to require performance by the other party will not be construed to be a waiver, or in any way affect the right of either party to enforce such provision thereafter.

15. Entire Agreement. This Agreement, with Exhibits constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations, and agreements with respect to the subject matter of this Agreement.

16. Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required

under this Agreement, except as otherwise stated in the Agreement or as the same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; and (iv) Exhibits are an integral part of this Agreement and are incorporated by reference into this Agreement.

17. Interpretation. To the extent there is any issue with respect to any alleged, perceived, or actual ambiguity in this Agreement, the ambiguity shall not be resolved on the basis of who drafted the Agreement.

18. Governmental Entity/Public Record. Pursuant to Idaho Code 74-201, et. seq., the District and the City are governmental entities that must comply with the Idaho Public Writings Act and information or documents received to/from each/either of them may be open to public inspection and copying unless specifically exempt from disclosure by state or federal law.

19. Electronic Signature. The Parties agree that this Agreement may be signed by either party by electronic signature and that signature shall be fully binding.

20. Severability. If any provision of this Agreement is held invalid, illegal or unenforceable by a court or agency of competent jurisdiction, (a) the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way if the overall purpose of the Agreement is not rendered impossible and/or the original purpose, intent or consideration is not materially impaired; and (b) the parties shall negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be invalid, illegal or unenforceable) that is valid, legal and enforceable and carries out the parties' intentions to the greatest lawful extent. If any such action or determination renders the overall performance of this Agreement impossible or materially impairs the original purpose, intent or consideration of this Agreement, and the parties are, despite the good faith efforts of each, unable to amend this Agreement to retain the original purpose, intent, and consideration in compliance with that court or agency determination, either party may terminate this Agreement upon sixty (60) days' prior written notice to the other party.

21. Force Majeure. Neither party shall be liable or deemed to be in default for any Force Majeure delay in delivery or performance occasioned by unforeseen causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, quarantines, restrictions, strikes, freight embargoes, or unusually severe weather, war or escalation of hostilities, provided that in all cases the party seeking to exercise this section shall provide Notice promptly in writing of any cause for delay. The period of performance shall be extended for a period equivalent to the period of the Force Majeure delay if such delay is reasonably warranted under the circumstances.

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed as of the Effective Date.

Caldwell Joint School District No 132.

By: _____
Name: _____
Title: _____

STATE OF IDAHO)
)
COUNTY OF CANYON)

On this ____ day of _____, 2024 appeared _____,
the _____ of the Caldwell Joint School District No. 132.

Notary Public for Idaho
Residing at _____
My commission expires _____

Zion Ventures, LLC

By: _____

Name: _____

Its: _____

STATE OF IDAHO)

)

COUNTY OF CANYON)

On this _____ day of _____, 2024 appeared _____,
the _____ of Zion Ventures, LLC, an Idaho limited liability company.

Notary Public for Idaho

Residing at _____

My commission expires _____

City of Caldwell

By: _____

Name: _____

Its: _____

SEAL

City Clerk, or Deputy

EXHIBIT "A"

Legal Description of the School District Property

[Insert prior to Execution]

EXHIBIT “B”

Legal Description of the Jayhawk Subdivision

[Insert prior to Execution]

EXHIBIT C

Depiction of School Pathway and Park Connection

