

CITY COUNCIL CHAMBERS
680 Park Avenue
Idaho Falls, Id 83402

*Thank you for your interest in City Government. If you wish to express your thoughts on a matter listed below, please contact Councilmembers by email or personally **before** the meeting as testimony on agenda items will not be taken unless a hearing is indicated. Be aware that an amendment to this Agenda may be made upon passage of a motion that states the reason for the amendment and the good faith reason that the Agenda item was not included in the original Agenda posting. City Council Meetings are live streamed at www.idahofallsidaho.gov, then archived on the city website. If you need communication aids or services or other physical accommodations to participate or access this meeting please contact City Clerk Kathy Hampton at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 as soon as possible and they will make an effort to accommodate your needs.*

1. **Call to Order.**

2. **Pledge of Allegiance.**

3. **Public Comment.** *Members of the public are invited to address the City Council regarding matters that are **not** on this Agenda or already noticed for a public hearing. When you address the Council, please state your name and address for the record and please limit your remarks to three (3) minutes. Please note that matters currently pending before the Planning Commission or Board of Adjustment which may be the subject of a pending enforcement action, or which are relative to a City personnel matter are not suitable for public comment.*

4. **Consent Agenda.** *Any item may be removed from the Consent Agenda at the request of any member of the Council for separate consideration.*

A. Item from the Mayor's Office:

- 1) Appointments/Reappointments to City Boards, Committees and Commissions

B. Item from Idaho Falls Airport:

- 1) Request for Council Ratification: Acceptance and Execution of Federal Aviation Administration (FAA) Grant Offer Land Acquisition North Parcel Project

C. Items from the City Clerk:

- 1) Approval of Expenditure Summary for the month of August, 2016.
- 2) Approval of Treasurer's Report for the month of August, 2016.
- 3) Approval of Minutes from the August 11, 2016 Council Meeting; August 18, 2016 Special Council Meeting; August 22, 2016 Council Work Session; and August 25, 2016 Council Meeting.
- 4) Approval of License Applications, all carrying the required approvals.

RECOMMENDED ACTION: To approve all items on the Consent Agenda according to the recommendations presented.

5. **Regular Agenda.**

A. Municipal Services

1) Bid Rejection, IF-16-26, Long Range Inspection Camera System: It is the recommendation of the Public Works and Municipal Services Departments to reject all bids received for the long range inspection camera system.

RECOMMENDED ACTION: To reject all bids received for the long range inspection camera system for the sewer division (or take other action deemed appropriate).

2) BID IF-16-J, Information Technology Networking Software and Equipment: It is the recommendation of the Municipal Services Department to piggyback the State of Idaho Contract #PADD118 with Compunet, Inc. to access pricing discounts offered on the State of Idaho contract.

RECOMMENDED ACTION: To piggyback the State of Idaho Contract #PADD118 with Compunet, Inc. in the amount of \$80,050.44 for networking software, licenses and equipment (or take other action deemed appropriate).

3) Renewal of Shore Tel Unified Communications Support and Maintenance Agreement: The Municipal Services Department respectfully requests authorization to renew the Shore Tel unified communications support and maintenance agreement with the City of Idaho Falls.

RECOMMENDED ACTION: To renew the Shore Tel Unified Communications Support and Maintenance Agreement for a 3-year renewal option for a total agreement amount of \$92,270.01, and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

4) RFP – #16-026, Comprehensive Annual Financial Audit Services: For consideration is the evaluation for Request for Proposals #16-026, Comprehensive Annual Financial Audit Services. The City received a total of four (4) proposals. Based on the totality of the scored proposals and interview responses it is the recommendation of the Municipal Services and Idaho Falls Power Departments to enter into a professional service contract with Moss Adams, LLC.

RECOMMENDED ACTION: To enter into a professional service contract with Moss Adams, LLC to provide comprehensive annual financial auditing services for a total contract award of \$104,925.00, and give authorization for the Mayor to execute the necessary documents (or take other action deemed appropriate).

B. Parks and Recreation

1) Festival of Lights Personal Services Agreement: The Parks and Recreation Department recommends approval of a professional services agreement between the City of Idaho Falls and Wilding Enterprises, LLC for set up and administration of a drive-through winter light display at Freeman Park.

RECOMMENDED ACTION: To approve of the Festival of Lights professional services agreement with Wilding Enterprises, LLC and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

2) Veterinary Services Independent Contractor Agreement: The Parks and Recreation Department recommends approval of a draft independent contractor agreement renewal between the City of Idaho Falls and Dr. Rhonda Aliah for the purposes of providing veterinary services at the Idaho Falls Zoo at Tautphaus Park from October 1, 2016 through September 30, 2017.

RECOMMENDED ACTION: To approve of the Veterinary Services Agreement with Dr. Rhonda Aliah from October 1, 2016 through September 30, 2017, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

3) Tautphaus Park Arcade Concession Agreement Renewal: The Parks and Recreation Department recommends approval of the Tautphaus Park Arcade Concession Agreement with LOML, LLC dba Funland.

RECOMMENDED ACTION: To approve the Tautphaus Park Arcade Concession Agreement with LOML, LLC dba Funland, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

4) Ice Arena Concession Agreement: The Parks and Recreation Department recommends approval of the one (1) year food and beverage Ice Arena Concession Agreement with the Idaho Falls Youth Hockey Association.

RECOMMENDED ACTION: To approve the Ice Arena Concession Agreement with the Idaho Falls Youth Hockey Association, and give authorization for the Mayor and City Clerk to execute the necessary documents (or take other action deemed appropriate).

C. Public Works

1) City Ordinance Revision – Title 8, Chapter 1 – Sewers: For consideration is a proposed revision prepared by the City Attorney to City Code Title 8, Chapter 1. The proposed revision reflects required changes due to utility customer reclassifications associated with the recently approved Fee Resolution.

RECOMMENDED ACTION: To approve the Ordinance amending City Code Title 8, Chapter 1, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary (or consider the Ordinance on the first reading and that it be read by title, or reject the Ordinance).

2) City Ordinance Revision – Title 8, Chapter 4 – Water Service: For consideration is a proposed revision prepared by the City Attorney to City Code Title 8, Chapter 4. The proposed revision reflects required changes due to utility customer reclassifications associated with the recently approved Fee Resolution.

RECOMMENDED ACTION: To approve the Ordinance amending City Code Title 8, Chapter 4, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary (or consider the Ordinance on the first reading and that it be read by title, or reject the Ordinance).

3) Easement Vacation Request – 845 South Milligan Road (Instrument No. 975506): As authorized by the Council on September 8, 2016, the City Attorney has prepared the documents to vacate the utility easement at 845 South Milligan Road.


RECOMMENDED ACTION: To approve the Ordinance vacating the utility easement at 845 South Milligan Road under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary (or consider the Ordinance on the first reading and that it be read by title, or reject the Ordinance).

6. Motion to Adjourn.

CONSENT AGENDA:

IDAHO FALLS

Memorandum

To: City Council
From: Rebecca Casper, Mayor 
Date: September 9, 2016
Re: Appointments/Reappointments to City Boards, Committees and Commissions

Please find attached the application for a volunteer I would like to appoint to serve on the following City of Idaho Falls Boards, Committees and Commissions.

| Name | Commission (City code citation) | Sponsoring Department | Term Expires | Status |
|----------------|---------------------------------|-----------------------|--------------|-----------|
| Monica Bitrick | Civil Service Commission | Human Resources | 1/1/2019 | New Appt. |

I have reviewed the application submitted by this individual. Upon review and reflection, I am confident that she will meet the criteria set forth in the city code. Furthermore, I believe she will make a positive contribution to the good work of the city.

I request your confirming vote to ratify this appointment at the regular Council Meeting on Thursday evening, September 22, 2016. Volunteer work improves the quality of community life in our city by a large measure.

If you have any questions or comments, please feel free to contact me.



2016 Citizen Review Committee Application

Thank you for your willingness to serve our community. Complete this form and attach a résumé prior to submitting. If you wish, you may also submit a cover letter explaining your interest in city service. You may return the completed form to: City of Idaho Falls, Office of Mayor, P.O. Box 50220, Idaho Falls, ID 83405 or electronically to mayor@idahofallsidaho.gov. **Application deadline: Jan. 11.**

| | | |
|--|---|--|
| Name: | Monica Bitrick | |
| Physical Address: | 5110 Eaglewood Dr. | |
| Mailing Address: | 5760 S. 55th W. | |
| City, State, Zip: | Idaho Falls, ID 83402 | |
| Email Address: | mbitrick@bitrickconsulting.com | |
| Daytime Phone: | 208-932-8436 | <input checked="" type="checkbox"/> Message? <input type="checkbox"/> Text? |
| Evening Phone: | 208-859-6297 | <input checked="" type="checkbox"/> Message? <input checked="" type="checkbox"/> Text? |
| Cell Phone: | 208-859-6297 | <input checked="" type="checkbox"/> Message? <input checked="" type="checkbox"/> Text? |
| 2016 Departments you are interested in: | | |
| <input checked="" type="checkbox"/> Human Resources | <input type="checkbox"/> Idaho Falls Fire Dept. | <input type="checkbox"/> City Attorney |
| *Note: All other city departments were evaluated in 2014 & 2015. | | |
| I am an Idaho Falls resident <input checked="" type="checkbox"/> I am the spouse of a current or former city employee <input type="checkbox"/> | | |
| I am a current or former employee of the city <input type="checkbox"/> | | |
| I have a family member or person in my household who works for the city <input type="checkbox"/> | | |

What is your motivation for service on this/these committee(s)?

To serve on a committee where my knowledge and experience can help our community.

How does your background training and experience lend itself to service on this/these committee(s)?

I have had over 15 years HR management experience alongside of my degree in HR management. I also own and operate an HR management firm in downtown Idaho Falls - this gives the city extensive experience if I were selected to serve.

Please list any relevant areas of expertise, education or training you possess that will be helpful for service.

My experience has included positions in all major areas of HR including recruiting, hiring, employee relations, disciplinary actions, compliance, compensation/benefits, workers' comp, + policies/procedures - this has been with major corporations and small businesses.

*Note: Any information supplied is subject to disclosure under the Idaho Public Records Law §§ 9-337 through 9-350. Those who stand to receive a direct financial benefit from a particular position, who are involved in litigation with a relevant city department, and who are not city residents may be declared ineligible to serve on a committee.

| | |
|--|--|
| FOR OFFICE USE ONLY: | |
| Date received by Mayor's Office: | Date appointed: |
| City Department(s) application forwarded to: | Board, Committee or Commission appointed to: |

MEMORANDUM

TO: Honorable Mayor and City Council

FROM: Craig H. Davis, Airport Director

DATE: September 22, 2016

SUBJECT: **Request for Council Ratification:
Acceptance and Execution of FAA Grant Offer
Land Acquisition North Parcel Project
FAA AIP Project No. 3-16-0018-042-2016**

The Airport Department respectfully requests Council ratification of the acceptance and execution of Federal Aviation Administration (FAA) Grant Offer AIP No. 3-16-0018-042-2016 in the amount of \$583,424.00 for the Land Acquisition North Parcel project.

This grant represents 93.75% of FAA eligible costs, with the remaining costs funded by Airport budgeted resources.

Respectfully submitted,



Craig H. Davis
Airport Director

c: City Clerk



U.S. Department
of Transportation
Federal Aviation
Administration

Instrument # 1534394

IDAHO FALLS, BONNEVILLE, IDAHO
9-13-2016 10:52:21 AM No. of Pages: 25
Recorded for : CITY OF IDAHO FALLS
PENNY MANNING Fee: 0.00
Ex-Officio Recorder Deputy
Index to: AGREEMENT

GRANT AGREEMENT

PART I – OFFER

Date of Offer September 8, 2016

Airport/Planning Area Idaho Falls Regional

AIP Grant Number 3-16-0018-042-2016 (DOT-FA16NM-2070)

DUNS Number 092027010

TO: City of Idaho Falls, Idaho
(herein called the "Sponsor")

FROM: **The United States of America** (acting through the Federal Aviation Administration, herein called the "FAA")

WHEREAS, the Sponsor has submitted to the FAA a Project Application dated **February 24, 2016**, for a grant of Federal funds for a project at or associated with the Idaho Falls Regional Airport, Idaho Falls, Idaho, which is included as part of this Grant Agreement; and

WHEREAS, the FAA has approved a project for the Idaho Falls Regional Airport (herein called the "Project") consisting of the following:

Acquire land for approach protection (parcel 78 - 5.2 acres, parcel 81 - 65.2 acres, parcel 85 - 1.9 acres)

which is more fully described in the Project Application.

NOW THEREFORE, According to the applicable provisions of the former Federal Aviation Act of 1958, as amended and recodified, 49 U.S.C. 40101, et seq., and the former Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. 47101, et seq., (herein the AAIA grant statute is referred to as "the Act"), the representations contained in the Project Application, and in consideration of (a) the Sponsor's adoption and ratification of the Grant Assurances dated March 2014, and the Sponsor's acceptance of this Offer, and (b) the benefits to accrue to the United States and the public from the accomplishment of the Project and compliance with the Grant Assurances and conditions as herein provided,

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay 93.75 percent of the allowable costs incurred accomplishing the Project as the United States share of the Project.

This Offer is made on and **SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

CONDITIONS

1. **Maximum Obligation.** The maximum obligation of the United States payable under this Offer is **\$583,424.00**.

The following amounts represent a breakdown of the maximum obligation for the purpose of establishing allowable amounts for any future grant amendment, which may increase the foregoing maximum obligation of the United States under the provisions of 49 U.S.C. § 47108(b):

\$0 for planning

\$0 for airport development or noise program implementation

\$583,424.00 for land acquisition.

2. **Period of Performance.** The period of performance begins on the date the Sponsor formally accepts this agreement. Unless explicitly stated otherwise in an amendment from the FAA, the end date of the project period of performance is 4 years (1,460 calendar days) from the date of formal grant acceptance by the Sponsor.

The Sponsor may only charge allowable costs for obligations incurred prior to the end date of the period of performance (2 CFR § 200.309). Unless the FAA authorizes a written extension, the sponsor must submit all project closeout documentation and liquidate (pay off) all obligations incurred under this award no later than 90 calendar days after the end date of the period of performance (2 CFR § 200.343).

The period of performance end date does not relieve or reduce Sponsor obligations and assurances that extend beyond the closeout of a grant agreement.

3. **Ineligible or Unallowable Costs.** The Sponsor must not include any costs in the project that the FAA has determined to be ineligible or unallowable.
4. **Determining the Final Federal Share of Costs.** The United States' share of allowable project costs will be made in accordance with the regulations, policies and procedures of the Secretary. Final determination of the United States' share will be based upon the final audit of the total amount of allowable project costs and settlement will be made for any upward or downward adjustments to the Federal share of costs.
5. **Completing the Project Without Delay and in Conformance with Requirements.** The Sponsor must carry out and complete the project without undue delays and in accordance with this agreement, and the regulations, policies and procedures of the Secretary. The Sponsor also agrees to comply with the assurances which are part of this agreement.
6. **Amendments or Withdrawals before Grant Acceptance.** The FAA reserves the right to amend or withdraw this offer at any time prior to its acceptance by the Sponsor.
7. **Offer Expiration Date.** This offer will expire and the United States will not be obligated to pay any part of the costs of the project unless this offer has been accepted by the Sponsor on or before **September 13, 2016**, or such subsequent date as may be prescribed in writing by the FAA.
8. **Improper Use of Federal Funds.** The Sponsor must take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any other manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or dispersed by the Sponsor that were originally paid pursuant to this or any other Federal grant agreement. The Sponsor must obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. The Sponsor must return the recovered Federal share, including funds recovered by settlement, order, or judgment, to the Secretary. The Sponsor must furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the Sponsor, in court or otherwise, involving the recovery of such Federal share

require advance approval by the Secretary.

9. **United States Not Liable for Damage or Injury.** The United States is not responsible or liable for damage to property or injury to persons which may arise from, or be incident to, compliance with this grant agreement.

10. **System for Award Management (SAM) Registration And Universal Identifier.**

- A. Requirement for System for Award Management (SAM): Unless the Sponsor is exempted from this requirement under 2 CFR 25.110, the Sponsor must maintain the currency of its information in the SAM until the Sponsor submits the final financial report required under this grant, or receives the final payment, whichever is later. This requires that the Sponsor review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term. Additional information about registration procedures may be found at the SAM website (currently at <http://www.sam.gov>).
- B. Requirement for Data Universal Numbering System (DUNS) Numbers
1. The Sponsor must notify potential subrecipient that it cannot receive a contract unless it has provided its DUNS number to the Sponsor. A subrecipient means a consultant, contractor, or other entity that enters into an agreement with the Sponsor to provide services or other work to further this project, and is accountable to the Sponsor for the use of the Federal funds provided by the agreement, which may be provided through any legal agreement, including a contract.
 2. The Sponsor may not make an award to a subrecipient unless the subrecipient has provided its DUNS number to the Sponsor.
 3. Data Universal Numbering System: DUNS number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866-705-5771) or on the web (currently at <http://fedgov.dnb.com/webform>).

11. **Electronic Grant Payment(s).** Unless otherwise directed by the FAA, the Sponsor must make each payment request under this agreement electronically via the Delphi eInvoicing System for Department of Transportation (DOT) Financial Assistance Awardees.

12. **Informal Letter Amendment of AIP Projects.** If, during the life of the project, the FAA determines that the maximum grant obligation of the United States exceeds the expected needs of the Sponsor by \$25,000 or five percent (5%), whichever is greater, the FAA can issue a letter amendment to the Sponsor unilaterally reducing the maximum obligation.

The FAA can also issue a letter to the Sponsor increasing the maximum obligation if there is an overrun in the total actual eligible and allowable project costs to cover the amount of the overrun provided it will not exceed the statutory limitations for grant amendments. The FAA's authority to increase the maximum obligation does not apply to the "planning" component of condition No. 1.

The FAA can also issue an informal letter amendment that modifies the grant description to correct administrative errors or to delete work items if the FAA finds it advantageous and in the best interests of the United States.

An informal letter amendment has the same force and effect as a formal grant amendment.

13. **Air and Water Quality.** The Sponsor is required to comply with all applicable air and water quality standards for all projects in this grant. If the Sponsor fails to comply with this requirement, the FAA may suspend, cancel, or terminate this grant.

- 14. Financial Reporting and Payment Requirements.** The Sponsor will comply with all federal financial reporting requirements and payment requirements, including submittal of timely and accurate reports.
- 15. Buy American.** Unless otherwise approved in advance by the FAA, the Sponsor will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for which funds are provided under this grant. The Sponsor will include a provision implementing Buy American in every contract.
- 16. Maximum Obligation Increase For Primary Airports.** In accordance with 49 U.S.C. § 47108(b), as amended, the maximum obligation of the United States, as stated in Condition No. 1 of this Grant Offer:
- A. May not be increased for a planning project;
 - B. May be increased by not more than 15 percent for development projects;
 - C. May be increased by not more than 15 percent for land project.
- 17. Audits for Public Sponsors.** The Sponsor must provide for a Single Audit in accordance with 2 CFR Part 200. The Sponsor must submit the Single Audit reporting package to the Federal Audit Clearinghouse on the Federal Audit Clearinghouse's Internet Data Entry System at <http://harvester.census.gov/facweb/>. The Sponsor must also provide one copy of the completed 2 CFR Part 200 audit to the Airports District Office.
- 18. Suspension or Debarment.** When entering into a "covered transaction" as defined by 2 CFR § 180.200, the Sponsor must:
- A. Verify the non-federal entity is eligible to participate in this Federal program by:
 - 1. Checking the excluded parties list system (EPLS) as maintained within the System for Award Management (SAM) to determine if non-federal entity is excluded or disqualified; or
 - 2. Collecting a certification statement from the non-federal entity attesting they are not excluded or disqualified from participating; or
 - 3. Adding a clause or condition to covered transactions attesting individual or firm are not excluded or disqualified from participating.
 - B. Require prime contractors to comply with 2 CFR § 180.330 when entering into lower-tier transactions (e.g. Sub-contracts).
 - C. Immediately disclose to the FAA whenever the Sponsor: (1) learns they have entered into a covered transaction with an ineligible entity or (2) suspends or debar a contractor, person, or entity.
- 19. Ban on Texting While Driving.**
- A. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the Sponsor is encouraged to:
 - 1. Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving when performing any work for, or on behalf of, the Federal government, including work relating to a grant or subgrant.
 - 2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as:
 - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

- B. The Sponsor must insert the substance of this clause on banning texting while driving in all subgrants, contracts and subcontracts.

20. Trafficking in Persons.

- A. Prohibitions: The prohibitions against trafficking in persons (Prohibitions) apply to any entity other than a State, local government, Indian tribe, or foreign public entity. This includes private Sponsors, public Sponsor employees, subrecipients of private or public Sponsors (private entity). Prohibitions include:
 - 1. Engaging in severe forms of trafficking in persons during the period of time that the agreement is in effect;
 - 2. Procuring a commercial sex act during the period of time that the agreement is in effect; or
 - 3. Using forced labor in the performance of the agreement, including subcontracts or subagreements under the agreement.
- B. In addition to all other remedies for noncompliance that are available to the FAA, Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), allows the FAA to unilaterally terminate this agreement, without penalty, if a private entity –
 - 1. Is determined to have violated the Prohibitions; or
 - 2. Has an employee who the FAA determines has violated the Prohibitions through conduct that is either:
 - a. Associated with performance under this agreement; or
 - b. Imputed to the Sponsor or subrecipient using 2 CFR part 180, “OMB Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement),” as implemented by the FAA at 2 CFR part 1200.

21. AIP Funded Work Included in a PFC Application.

Within 90 days of acceptance of this award, Sponsor must submit to the Federal Aviation Administration an amendment to any approved Passenger Facility Charge (PFC) application that contains an approved PFC project also covered under this grant award. The airport sponsor may not make any expenditure under this award until project work addressed under this award is removed from an approved PFC application by amendment.

- 22. **Exhibit “A” Property Map.** The Exhibit “A” Property Map dated **October 2010**, is incorporated herein by reference or is submitted with the project application and made part of this grant agreement.
- 23. **Update Approved Exhibit “A” Property Map for Land in Project.** The Sponsor understands and agrees to update the Exhibit “A” Property Map to standards satisfactory to the FAA and submit it in final form to the FAA. It is further mutually agreed that the reasonable cost of developing said Exhibit “A” Property Map is an allowable cost within the scope of this project.
- 24. **Uniform Relocation Act.** The Sponsor understands and agrees that all acquisition of real property under this project will be in accordance with the 49 Code of Federal Regulations Part 24, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.
- 25. **Land Acquisition.** The Sponsor agrees that no payments will be made on the grant until the Sponsor has presented evidence to the FAA that it has recorded the grant agreement, including the grant assurances in the public land records of the county courthouse. The Sponsor understands and agrees that recording the grant agreement legally enforces these requirements, encumbrances and restrictions on the obligated land.

- 26. Acquisition of Property Interest Satisfactory to the Administrator.** It is understood and agreed that the Sponsor will acquire property interest satisfactory to the Administrator in Parcels 78, 81, and 85, as identified in this agreement, within three hundred (300) calendar days of the date of this agreement. Should satisfactory property interest not be acquired within three hundred (300) calendar days, or any time the Sponsor and FAA mutually agree that satisfactory interest in the property will not be obtained within the three hundred (300) calendar day period, the FAA will close the grant.

The Sponsor understands and agrees that no reimbursement will be made on this grant until the Sponsor has acquired interest in the property satisfactory to the Administrator.

- 27. Financial Reporting Requirements.** The Sponsor agrees to submit a Federal Financial Report (FAA Form SF-425) for all open grants to the Airports District Office within 90 days following the end of each Federal fiscal year and with each Final Project Closeout Report.

The Sponsor further agrees to submit an **Outlay Report and Request for Reimbursement** (FAA Form SF-271 for construction projects) or **Request for Advance or Reimbursement** (FAA Form SF-270 for non-construction projects) to the Airports District Office within 90 days following the end of each Federal fiscal year and with each Final Project Closeout Report.

- 28. Final Payment.** The Sponsor understands and agrees that in accordance with 49 USC 47111, no payments totaling more than 90 percent of United States Government's share of the project's estimated allowable cost may be made before the project is determined to be satisfactorily completed.

If the project is determined to be satisfactorily complete and proper documentation is submitted by the Sponsor to the Airports District Office (ADO), then the ADO may approve payments up to 97.5 percent of United States Government's share of the project's estimated allowable cost. "Satisfactorily complete" means the following: (1) The project results in a complete, usable unit of work as defined in the grant agreement; and (2) The sponsor submits necessary documents showing that the project is substantially complete per the contract requirements, or has a plan (that FAA agrees with) that addresses all elements contained on the punch list.

29. Sponsor Performance Report.

- a. **For non-construction projects** – the Sponsor understands and agrees that in accordance with 2 CFR §200.328 the Sponsor shall submit a Quarterly Performance Report to the Airports District Office (ADO) within 30 calendar days from the end of the quarter, beginning in the quarter in which the project begins, and for each following quarter until the project is substantially complete. If a major project or schedule change occurs between Quarterly Performance Reports, the sponsor must submit an out of cycle performance report to the ADO. The performance report for non-construction projects shall include the following as a minimum:
 1. A comparison of proposed objectives to actual accomplishments.
 2. Reasons for any slippage or lack of accomplishment in a given area.
 3. Impacts on other AIP-funded projects.
 4. Impacts to projects funded by PFC, other FAA programs, or the sponsor.
 5. Identification and explanation of any anticipated cost overruns.
- b. **For construction projects** – FAA Form 5370-1 Construction Progress and Inspection Report satisfies the performance reporting requirement. The sponsor must submit FAA Form 5370-1 to the ADO on a **weekly basis** during construction and at least quarterly when the project is in winter shutdown, until the project is substantially complete. Form 5370-1 requires the following information:
 1. Estimated percent completion to date of construction phases.
 2. Work completed or in progress during the period.

3. Brief Weather Summary during the period including approximate rainfall and period of below freezing temperature.
4. Contract time: Number of days charged to date and last working day charged.
5. Summary of laboratory and field testing during the period.
6. Work anticipated by the contractor for the next period.
7. Problem areas and other comments.

30. Grant Approval Based Upon Certification. The FAA and the Sponsor agree that the FAA approval of this grant is based on FAA acceptance of the Sponsor's certification to carry out the project in accordance with FAA policies, standards, and specifications. The Sponsor Certifications received from the Sponsor for the work included in this grant are hereby incorporated into this grant agreement. The Sponsor understands that:

- A. The Sponsor's certification does not relieve the Sponsor of the requirement to obtain prior FAA approval for modifications to any AIP standards or to notify the FAA of any limitations to competition within the project;
- B. The FAA's acceptance of a Sponsor's certification does not limit the FAA from reviewing appropriate project documentation for the purpose of validating the certification statements;
- C. If the FAA determines that the Sponsor has not complied with their certification statements, the FAA will review the associated project costs to determine whether such costs are allowable under AIP.

The Sponsor's acceptance of this Offer and ratification and adoption of the Project Application incorporated herein shall be evidenced by execution of this instrument by the Sponsor, as hereinafter provided, and this Offer and Acceptance shall comprise a Grant Agreement, as provided by the Act, constituting the contractual obligations and rights of the United States and the Sponsor with respect to the accomplishment of the Project and compliance with the assurances and conditions as provided herein. Such Grant Agreement shall become effective upon the Sponsor's acceptance of this Offer.

ACKNOWLEDGEMENT

STATE OF Montana

COUNTY OF Lewis & Clark

On 9/8/16 before me, a Notary Public, personally appeared David Stelling, who proved to me through satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the foregoing instrument in their authorized capacity by their signature on the instrument.

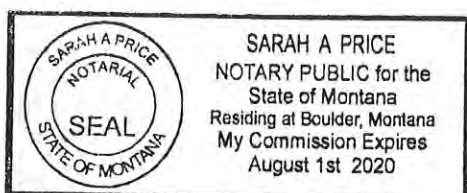
**UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

David S Stelling
(Signature)

David S. Stelling
(Typed Name)

Manager, Helena Airports District Office
(Title of FAA Official)

Sarah A Price



PART II - ACCEPTANCE

The Sponsor does hereby ratify and adopt all assurances, statements, representations, warranties, covenants, and agreements contained in the Project Application and incorporated materials referred to in the foregoing Offer, and does hereby accept this Offer and by such acceptance agrees to comply with all of the terms and conditions in this Offer and in the Project Application.

I declare under penalty of perjury that the foregoing is true and correct.¹

Executed this 9th day of September, 2016.

ACKNOWLEDGEMENT
STATE OF IDAHO
COUNTY OF BONNEVILLE
On SEPT 9, 2016, before me, a Notary Public, personally appeared REBECCA L. NOAH CASPER who proved to me through satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that HE executed the foregoing instrument in their authorized capacity by their signature on the instrument.

Kathy Hampton
Randall Dixon



City of Idaho Falls, Idaho
(Name of Sponsor)
By: [Signature]
(Signature of Sponsor's Authorized Official)
(Typed Name of Sponsor's Authorized Official)
Mayor
(Title of Sponsor's Authorized Official)

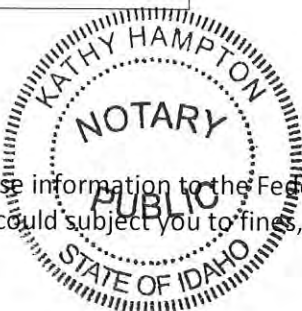
I, Randall Dixon, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Idaho. Further, I have examined the foregoing Grant Agreement and the actions taken by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the Act. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.

Dated at Idaho Falls, Idaho (location) this 9th day of September, 2016.

ACKNOWLEDGEMENT
STATE OF IDAHO
COUNTY OF BONNEVILLE
On SEPT 9, 2016, before me, a Notary Public, personally appeared RANDALL DIXON who proved to me through satisfactory evidence to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that HE executed the foregoing instrument in their authorized capacity by their signature on the instrument.

Kathy Hampton



By: [Signature]
(Signature of Sponsor's Attorney)

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment, or both.

ASSURANCES

AIRPORT SPONSORS

A. General.

- a. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
- b. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
- c. Upon acceptance of this grant offer by the sponsor, these assurances are incorporated in and become part of this grant agreement.

B. Duration and Applicability.

1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor.

The terms, conditions and assurances of this grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.

2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor.

The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.

3. Airport Planning Undertaken by a Sponsor.

Unless otherwise specified in this grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 25, 30, 32, 33, and 34 in Section C apply to planning projects. The terms, conditions, and assurances of this grant agreement shall remain in full force and effect during the life of the project; there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport.

C. Sponsor Certification.

The sponsor hereby assures and certifies, with respect to this grant that:

1. General Federal Requirements.

It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

FEDERAL LEGISLATION

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act – 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹
- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- o. Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 et seq.), prohibits discrimination on the basis of disability).
- p. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- q. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- r. Architectural Barriers Act of 1968 -42 U.S.C. 4151, et seq.¹
- s. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- u. Copeland Anti-kickback Act - 18 U.S.C. 874.1
- v. National Environmental Policy Act of 1969 - 42 U.S.C. 4321, et seq.¹
- w. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- x. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- y. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.
- z. The Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282, as amended by section 6202 of Pub. L. 110-252).

EXECUTIVE ORDERS

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 – Flood Plain Management

- d. Executive Order 12372 - Intergovernmental Review of Federal Programs
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

FEDERAL REGULATIONS

- a. 2 CFR Part 180 - OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).
- b. 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. [OMB Circular A-87 Cost Principles Applicable to Grants and Contracts with State and Local Governments, and OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations].^{4, 5, 6}
- c. 2 CFR Part 1200 – Nonprocurement Suspension and Debarment
- d. 14 CFR Part 13 - Investigative and Enforcement Procedures14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- e. 14 CFR Part 150 - Airport noise compatibility planning.
- f. 28 CFR Part 35- Discrimination on the Basis of Disability in State and Local Government Services.
- g. 28 CFR § 50.3 - U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964.
- h. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- i. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- j. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- k. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- l. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- m. 49 CFR Part 20 - New restrictions on lobbying.
- n. 49 CFR Part 21 – Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- o. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- p. 49 CFR Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.^{1, 2}
- q. 49 CFR Part 26 – Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.
- r. 49 CFR Part 27 – Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.¹

- s. 49 CFR Part 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities conducted by the Department of Transportation.
- t. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- u. 49 CFR Part 32 – Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)
- v. 49 CFR Part 37 – Transportation Services for Individuals with Disabilities (ADA).
- w. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.

SPECIFIC ASSURANCES

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in this grant agreement.

FOOTNOTES TO ASSURANCE C.1.

- ¹ These laws do not apply to airport planning sponsors.
- ² These laws do not apply to private sponsors.
- ³ 49 CFR Part 18 and 2 CFR Part 200 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.
- ⁴ On December 26, 2013 at 78 FR 78590, the Office of Management and Budget (OMB) issued the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR Part 200. 2 CFR Part 200 replaces and combines the former Uniform Administrative Requirements for Grants (OMB Circular A-102 and Circular A-110 or 2 CFR Part 215 or Circular) as well as the Cost Principles (Circulars A-21 or 2 CFR part 220; Circular A-87 or 2 CFR part 225; and A-122, 2 CFR part 230). Additionally it replaces Circular A-133 guidance on the Single Annual Audit. In accordance with 2 CFR section 200.110, the standards set forth in Part 200 which affect administration of Federal awards issued by Federal agencies become effective once implemented by Federal agencies or when any future amendment to this Part becomes final. Federal agencies, including the Department of Transportation, must implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014 unless different provisions are required by statute or approved by OMB.
- ⁵ Cost principles established in 2 CFR part 200 subpart E must be used as guidelines for determining the eligibility of specific types of expenses.
- ⁶ Audit requirements established in 2 CFR part 200 subpart F are the guidelines for audits.

2. Responsibility and Authority of the Sponsor.

a. Public Agency Sponsor:

It has legal authority to apply for this grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

b. Private Sponsor:

It has legal authority to apply for this grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.

3. Sponsor Fund Availability.

It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under this grant agreement which it will own or control.

4. Good Title.

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in this grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in this grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of this grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.

- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in this grant agreement and shall insure that such arrangement also requires compliance therewith.
- g. Sponsors of commercial service airports will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport. Sponsors of general aviation airports entering into any arrangement that results in permission for the owner of residential real property adjacent to or near the airport must comply with the requirements of Sec. 136 of Public Law 112-95 and the sponsor assurances.

6. Consistency with Local Plans.

The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.

7. Consideration of Local Interest.

It has given fair consideration to the interest of communities in or near where the project may be located.

8. Consultation with Users.

In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.

9. Public Hearings.

In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.

10. Metropolitan Planning Organization.

In projects involving the location of an airport, an airport runway, or a major runway extension at a medium or large hub airport, the sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy

of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted.

11. Pavement Preventive Maintenance.

With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.

12. Terminal Development Prerequisites.

For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.

13. Accounting System, Audit, and Record Keeping Requirements.

- a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of this grant, the total cost of the project in connection with which this grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.
- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to this grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which this grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.

14. Minimum Wage Rates.

It shall include, in all contracts in excess of \$2,000 for work on any projects funded under this grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

15. Veteran's Preference.

It shall include in all contracts for work on any project funded under this grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Vietnam era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns owned and controlled by disabled veterans as defined in Section 47112 of Title

49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.

16. Conformity to Plans and Specifications.

It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into this grant agreement.

17. Construction Inspection and Approval.

It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.

18. Planning Projects.

In carrying out planning projects:

- a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
- b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
- c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.
- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be

required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- 1) Operating the airport's aeronautical facilities whenever required;
 - 2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - 3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation.

It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use.

It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-
 - 1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - 2) charge reasonable, and not unjustly discriminatory, prices for each unit or service,

provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

- a.) Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- b.) Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- c.) Each air carrier using such airport (whether as a tenant, non-tenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or non-tenants and signatory carriers and non-signatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- d.) It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- e.) In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- f.) The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.
- g.) The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.

23. Exclusive Rights.

It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:

- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
- b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport. It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft

rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. Fee and Rental Structure.

It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. Airport Revenues.

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. The following exceptions apply to this paragraph:
 - 1) If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
 - 2) If the Secretary approves the sale of a privately owned airport to a public sponsor and provides funding for any portion of the public sponsor's acquisition of land, this limitation on the use of all revenues generated by the sale shall not apply to certain proceeds from the sale. This is conditioned on repayment to the Secretary by the private owner of an amount equal to the remaining unamortized portion (amortized over a 20-year period) of any airport improvement grant made to the private owner for any purpose other than land acquisition on or after October 1, 1996, plus an amount equal to the federal share of the current fair market value of any land acquired with an airport improvement grant made to that airport on or after October 1, 1996.
 - 3) Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Sec. 813 of Public Law 112-95.
 - a.) As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a

manner consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

- b.) Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections.

It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of this grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - 1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - 2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft.

It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that –

- a. by gross weights of such aircraft) is in excess of five million pounds Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied.

28. Land for Federal Facilities.

It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at

Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an airport layout plan of the airport showing:
 - 1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto;
 - 2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities;
 - 3) the location of all existing and proposed nonaviation areas and of all existing improvements thereon; and
 - 4) all proposed and existing access points used to taxi aircraft across the airport's property boundary. Such airport layout plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the airport layout plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the airport layout plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- a.) If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the airport layout plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities except in the case of a relocation or replacement of an existing airport facility due to a change in the Secretary's design standards beyond the control of the airport sponsor.

30. Civil Rights.

It will promptly take any measures necessary to ensure that no person in the United States shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

- a. Using the definitions of activity, facility and program as found and defined in §§ 21.23 (b) and 21.23 (e) of 49 CFR § 21, the sponsor will facilitate all programs, operate all facilities, or conduct all programs in compliance with all non-discrimination requirements imposed by, or pursuant to these assurances.
- b. Applicability
 - 1) Programs and Activities. If the sponsor has received a grant (or other federal assistance) for any of the sponsor's program or activities, these requirements extend to all of the

sponsor's programs and activities.

- 2) Facilities. Where it receives a grant or other federal financial assistance to construct, expand, renovate, remodel, alter or acquire a facility, or part of a facility, the assurance extends to the entire facility and facilities operated in connection therewith.
- 3) Real Property. Where the sponsor receives a grant or other Federal financial assistance in the form of, or for the acquisition of real property or an interest in real property, the assurance will extend to rights to space on, over, or under such property.

c. Duration.

The sponsor agrees that it is obligated to this assurance for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the assurance obligates the sponsor, or any transferee for the longer of the following periods:

- 1) So long as the airport is used as an airport, or for another purpose involving the provision of similar services or benefits; or
- 2) So long as the sponsor retains ownership or possession of the property.

d. Required Solicitation Language. It will include the following notification in all solicitations for bids, Requests For Proposals for work, or material under this grant agreement and in all proposals for agreements, including airport concessions, regardless of funding source:

"The **(Name of Sponsor)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises and airport concession disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

e. Required Contract Provisions.

- 1) It will insert the non-discrimination contract clauses requiring compliance with the acts and regulations relative to non-discrimination in Federally-assisted programs of the DOT, and incorporating the acts and regulations into the contracts by reference in every contract or agreement subject to the non-discrimination in Federally-assisted programs of the DOT acts and regulations.
- 2) It will include a list of the pertinent non-discrimination authorities in every contract that is subject to the non-discrimination acts and regulations.
- 3) It will insert non-discrimination contract clauses as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a sponsor.
- 4) It will insert non-discrimination contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap as a covenant running with the land, in any future deeds, leases, license, permits, or similar instruments entered into by the sponsor with other parties:
 - a.) For the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and

- b.) For the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
- f. It will provide for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the acts, the regulations, and this assurance.
- g. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the acts, the regulations, and this assurance.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, including land serving as a noise buffer, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will be, at the discretion of the Secretary, (1) reinvested in another project at the airport, or (2) transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order, (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund. If land acquired under a grant for noise compatibility purposes is leased at fair market value and consistent with noise buffering purposes, the lease will not be considered a disposal of the land. Revenues derived from such a lease may be used for an approved airport development project that would otherwise be eligible for grant funding or any permitted use of airport revenue.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (1) upon application to the Secretary, be reinvested or transferred to another eligible airport as prescribed by the Secretary. The Secretary shall give preference to the following, in descending order: (1) reinvestment in an approved noise compatibility project, (2) reinvestment in an approved project that is eligible for grant funding under Section 47117(e) of title 49 United States Code, (3) reinvestment in an approved airport development project that is eligible for grant funding under Sections 47114, 47115, or 47117 of title 49 United States Code, (4) transferred to an eligible sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport, and (5) paid to the Secretary for deposit in the Airport and Airway Trust Fund.
- c. Land shall be considered to be needed for airport purposes under this assurance if (1) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (2) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was

notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.

- d. Disposition of such land under (a) (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels associated with operation of the airport.

32. Engineering and Design Services.

It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.

33. Foreign Market Restrictions.

It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.

34. Policies, Standards, and Specifications.

It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including, but not limited to, the advisory circulars listed in the Current FAA Advisory Circulars for AIP projects, dated December 31, 2015 and included in this grant, and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

35. Relocation and Real Property Acquisition.

- a. It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B.
- b. It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24.
- c. It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.

36. Access By Intercity Buses.

The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.

37. Disadvantaged Business Enterprises.

The sponsor shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract covered by 49 CFR Part 26, or in the award and performance of any concession activity contract covered by 49 CFR Part 23. In addition, the sponsor shall not discriminate on the basis of race, color, national origin or sex in the administration of its DBE and ACDBE programs or the requirements of 49 CFR Parts 23 and 26. The sponsor shall take all necessary and reasonable steps under 49 CFR Parts 23 and 26 to ensure

nondiscrimination in the award and administration of DOT-assisted contracts, and/or concession contracts. The sponsor's DBE and ACDBE programs, as required by 49 CFR Parts 26 and 23, and as approved by DOT, are incorporated by reference in this agreement. Implementation of these programs is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under Parts 26 and 23 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1936 (31 U.S.C. 3801).

38. Hangar Construction.

If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

39. Competitive Access.

- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that-
 - 1) Describes the requests;
 - 2) Provides an explanation as to why the requests could not be accommodated; and
 - 3) Provides a time frame within which, if any, the airport will be able to accommodate the requests.
- b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

City of Idaho Falls
Expenditure Summary
From 8/01/2016 To 8/31/2016

| Fund | Total Expenditure |
|-------------------------|----------------------|
| General Fund | 1,053,336.13 |
| Street Fund | 76,626.22 |
| Recreation Fund | 22,367.33 |
| Library Fund | 33,509.62 |
| MERF Fund | 88,790.28 |
| EL Public Purpose Fund | 220,302.82 |
| Golf Fund | 34,937.79 |
| Self-Insurance Fund | 56,667.72 |
| Municipal Capital Imp F | 35,042.51 |
| Street Capital Imp Fund | 8,500.00 |
| Water Capital Imp Fund | 54,928.65 |
| Airport Fund | 131,473.23 |
| Water & Sewer Fund | 1,515,086.40 |
| Sanitation Fund | 2,147.94 |
| Ambulance Fund | 101,762.69 |
| Electric Light Fund | 3,753,585.33 |
| Payroll Liability Fund | 2,928,275.30 |
| | 10,117,339.96 |

AUGUST 2016

Dear Mayor and City Council Members.

Attached please find the City of Idaho Falls, Idaho, Monthly Treasurer's Report for the above referenced month, as required by Idaho Code Section 50-208.

This Report was filed in the City Clerk's office on or before the (10th) day from the end of the month of the Report.

OATH

I, Kenneth McOmber, the City of Idaho Falls Treasurer, do hereby affirm that this City of Idaho Falls, Idaho, Monthly Treasurer's Report is true and accurate to the best of my knowledge and that it shows the state of the City treasury as of the date of this Report and the balance of money in the City treasury, all as required by Idaho Code Section 50-208.


Kenneth McOmber

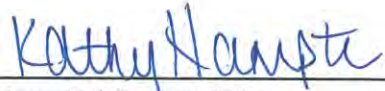
9-9-16
Date Signed

ACKNOWLEDGMENT

STATE OF IDAHO)
) ss.
County of Bonneville)

On this 9 day of SEPTEMBER, 2016, before me, the undersigned, a Notary Public for Idaho, personally appeared KENNETH MCOMBER known to me to be the Treasurer of the City of Idaho Falls, the municipal corporation that executed the foregoing document and acknowledged to that such city executed the same.




Notary Public for Idaho
Residing at Idaho Falls, Idaho
My commission expires: 01-03-2020

August 2016 Treasurer's Report.xls

| CITY OF IDAHO FALLS MONTHLY TREASURER'S REPORT | | | | | | | | | | | |
|--|----------------|-------------------|----------------|-------------------|---------------|----------------|---------------|-----------------|--------------|----------------|----------------|
| KENNETH MCOMBER TREASURER | | | | | | | | | | | |
| AUGUST, 2016 | | | | | | | | | | | |
| FUND | BEGINNING CASH | BEGINNING BALANCE | TOTAL RECEIPTS | MATURED INVESTMTS | JOURNAL DEBIT | TOTAL EXPENSES | NEW INVESTS | JOURNAL CREDITS | CASH ON HAND | INVESTED FUNDS | ENDING BALANCE |
| GENERAL | 235,062.08 | 19,330,062.08 | 934,053.37 | 3,500,000.00 | 1,460,692.92 | 4,040,966.58 | 2,500,000.00 | 543,450.98 | (954,609.19) | 18,095,000.00 | 17,140,390.81 |
| HEALTH & ACCIDENT INSUR. | 1,487,573.43 | 2,472,573.43 | - | 100,000.00 | - | - | - | - | 1,587,573.43 | 885,000.00 | 2,472,573.43 |
| STREET | (737,015.92) | (737,015.92) | 25,657.51 | - | - | 202,703.62 | - | 69,321.45 | (983,383.48) | - | (983,383.48) |
| RECREATION | 152,930.24 | 152,930.24 | 88,459.88 | - | - | 120,293.43 | - | 17,138.01 | 103,958.68 | - | 103,958.68 |
| LIBRARY | 242,317.70 | 1,442,317.70 | 440,490.59 | 200,000.00 | - | 162,782.58 | 500,000.00 | 4,826.15 | 215,199.56 | 1,500,000.00 | 1,715,199.56 |
| AIRPORT PFC FUND | 34,896.50 | 34,896.50 | 113,543.13 | - | - | - | - | 34,896.50 | 113,543.13 | - | 113,543.13 |
| MUNICIPAL EQUIP. REPLCMT. | 163,650.67 | 15,768,628.86 | 13,578.75 | 4,696,331.27 | 502,977.57 | 88,790.28 | 3,946,040.85 | - | 1,341,707.13 | 14,854,687.77 | 16,196,394.90 |
| EL. LT. WEATHERIZATION FD | 65,454.98 | 2,565,454.98 | 45,235.86 | 400,000.00 | - | 220,302.82 | 200,000.00 | - | 90,388.02 | 2,300,000.00 | 2,390,388.02 |
| BUSINESS IMPRV. DISTRICT | 112,153.99 | 112,153.99 | 1,116.00 | - | - | - | - | - | 113,269.99 | - | 113,269.99 |
| IFP RATE STABILIZATION FD | 40,295.83 | 13,823,986.06 | 46,371.61 | 7,337,000.00 | - | - | 6,300,000.00 | - | 1,123,667.44 | 19,482,579.13 | 20,606,246.57 |
| IFP CAPITAL IMPROVEMENT | 35,723.68 | 17,105,452.32 | - | - | - | - | - | - | 35,723.68 | 10,333,839.74 | 10,369,563.42 |
| GOLF | (242,303.59) | (242,303.59) | 343,910.98 | - | - | 155,991.71 | - | 42,874.13 | (97,258.45) | - | (97,258.45) |
| GOLF CAPITAL IMPROVEMENT | 187,739.56 | 187,739.56 | - | - | 5,782.41 | - | - | - | 193,521.97 | - | 193,521.97 |
| SELF-INSURANCE FD. | 212,015.94 | 2,012,015.94 | - | - | - | 56,667.72 | - | - | 155,348.22 | 1,800,000.00 | 1,955,348.22 |
| SANITARY SEWER CAP IMP. | 370,577.41 | 1,170,577.41 | 82,017.00 | - | - | - | - | - | 452,594.41 | 800,000.00 | 1,252,594.41 |
| MUNICIPAL CAPITAL IMP. | 301,608.58 | 1,101,608.58 | 1,971.49 | - | - | 35,042.51 | - | - | 268,537.56 | 800,000.00 | 1,068,537.56 |
| STREET CAPITAL IMPRV. | 195,483.08 | 195,483.08 | - | - | 595.00 | 8,500.00 | - | - | 187,578.08 | - | 187,578.08 |
| BRIDGE & ARTERIAL STREET | 277,885.44 | 277,885.44 | 4,571.25 | - | - | - | - | - | 282,456.69 | - | 282,456.69 |
| WATER CAPITAL IMPR. | 162,119.91 | 2,462,119.91 | 105,599.59 | 200,000.00 | - | 54,928.65 | - | - | 412,790.85 | 2,100,000.00 | 2,512,790.85 |
| SURFACE DRAINAGE | 95,097.91 | 95,097.91 | 1,466.54 | - | - | - | - | - | 96,564.45 | - | 96,564.45 |
| TRAFFIC LIGHT CAPITAL IMPRV | 266,993.43 | 1,366,993.43 | 503.70 | 200,000.00 | 34,096.00 | - | - | - | 501,593.13 | 900,000.00 | 1,401,593.13 |
| PARKS CAPITAL IMPROVEMENT | 170,145.26 | 170,145.26 | 13,704.00 | - | - | - | - | - | 183,849.26 | - | 183,849.26 |
| AIRPORT | 145,274.27 | 2,045,274.27 | 1,485,257.86 | 700,000.00 | - | 211,385.04 | 1,500,000.00 | 29,181.83 | 589,965.26 | 2,700,000.00 | 3,289,965.26 |
| WATER & SEWER | 396,674.67 | 29,175,674.67 | 1,763,165.20 | 8,400,000.00 | - | 1,832,675.52 | 7,400,000.00 | 313,841.10 | 1,013,323.25 | 27,779,000.00 | 28,792,323.25 |
| W & S EQUIPMENT REPLACE | 409,108.93 | 1,004,108.93 | - | - | - | - | - | - | 409,108.93 | 595,000.00 | 1,004,108.93 |
| W & S SANITARY INTERCPT | 238,061.30 | 738,061.30 | - | - | - | - | - | - | 238,061.30 | 500,000.00 | 738,061.30 |
| SANITATION | 409,041.29 | 1,309,041.29 | 376,328.17 | 200,000.00 | - | 145,962.31 | - | 110,425.08 | 728,982.07 | 700,000.00 | 1,428,982.07 |
| AMBULANCE | (190,992.46) | (190,992.46) | 400,654.42 | - | - | 512,771.23 | - | 87,771.09 | (390,880.36) | - | (390,880.36) |
| ELECTRIC LIGHT | 539,358.24 | 10,778,801.27 | 4,251,990.39 | 1,406,568.03 | - | 4,393,050.81 | 399,568.03 | 617,329.85 | 787,967.97 | 9,232,443.03 | 10,020,411.00 |
| PAYROLL FUND | 701,089.31 | 701,089.31 | 5,049,753.34 | - | - | 5,116,079.50 | - | 133,087.73 | 501,675.42 | - | 501,675.42 |
| CLAIMS FUND | - | - | 4,243,189.64 | - | - | 4,243,189.64 | - | - | - | - | - |
| TOTAL ALL FUNDS | 6,478,021.66 | 126,429,861.75 | 19,832,590.27 | 27,339,899.30 | 2,004,143.90 | 21,602,083.95 | 22,745,608.88 | 2,004,143.90 | 9,302,818.40 | 115,357,549.67 | 124,660,368.07 |

August 2016 Treasurer's Report.xls

CITY OF IDAHO FALLS MONTHLY TREASURER'S REPORT

CASH AND INVESTMENT REPORT

Aug-16

| DISTRIBUTION OF CASH CASH AND TRUST ACCOUNTS | | INVESTMENTS | | | | | |
|---|----------------|------------------------|------------------|-----------------|----------------|-----------------|------------------|
| INSTITUTION | AMOUNT | INVESTMENT TYPE | TIME TO MATURITY | | | | TOTAL |
| | | | 1-30 DAYS | 31-90 DAYS | 91-180 DAYS | OVER 180 DAYS | |
| BPA Loan Imprest (BICLI) | \$113,129.85 | Certificate of Deposit | 2,225,000.00 | 3,225,000.00 | 2,745,000.00 | 8,515,000.00 | \$16,710,000.00 |
| El. Lt. Imprest (BIELI) | \$101,495.83 | | | | | | |
| Refund Acct. (BIRFD) | \$102,548.12 | U.S. Securities | \$5,348,000.00 | - | - | \$3,000,000.00 | \$8,348,000.00 |
| Wells Fargo Bank | \$3,337,238.87 | | | | | | |
| Petty Cash | \$14,740.00 | Commercial Paper | 9,969,645.00 | 33,906,622.78 | - | - | \$43,876,267.78 |
| US Bank (US) | \$4,052,032.03 | | | | | | |
| US Bank Payroll (USPAY) | \$598,649.98 | Corporate Bonds | 2,045,000.00 | 1,500,000.00 | 4,534,000.00 | 38,344,281.89 | \$46,423,281.89 |
| Wells Fargo Bank (WELLS) | \$975,315.63 | | | | | | |
| Key Bank | \$7,668.09 | | | | | | |
| | | TOTAL | \$19,587,645.00 | \$38,631,622.78 | \$7,279,000.00 | \$49,859,281.89 | \$115,357,549.67 |
| | | | | | | | |
| TOTAL | \$9,302,818.40 | | | | | | |

August 11, 2016

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, August 11, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember Ed Marohn
Councilmember Michelle Ziel-Dingman
Councilmember Barbara Ehardt
Councilmember Thomas Hally
Councilmember John B. Radford
Councilmember David M. Smith (by phone)

Also present:

Randy Fife, City Attorney
Kathy Hampton, City Clerk
All available Department Directors

Mayor Casper invited Tim Downs, Idaho Falls Police Department officer, to come forward and lead those present in the Pledge of Allegiance.

Mayor Casper postponed public comment until the conclusion of Regular Agenda Item 5.A.1. Public Hearing – 2016/2017 Preliminary Fiscal Year Budget.

Consent Agenda Items:

The Mayor's Office requested appointment of Ryan Tew to Human Resources Director.

Idaho Falls Power requested approval of Coffey Dam Design for the Upper Plant Sedimentation Removal Project.

Idaho Falls Power requested Ratification of Award of Upper Plant Boat Ramp Replacement Project.

The City Clerk requested approval of Expenditure Summary for the month of July, 2016.

| <u>FUND</u> | <u>TOTAL EXPENDITURE</u> |
|---|--------------------------|
| General Fund | \$1,136,475.60 |
| Street Fund | 165,016.94 |
| Recreation Fund | 25,879.24 |
| Library Fund | 204,302.61 |
| Municipal Equipment Replacement Fund (MERF) | 182,016.57 |
| Electric Light Public Purpose Fund | 33,961.65 |
| Golf Fund | 49,259.99 |
| Self-Insurance Fund | 57,628.58 |
| Street Capital Improvement Fund | 10,793.16 |
| Traffic Light Capital Improvement Fund | 76,337.83 |
| Airport Fund | 779,779.52 |
| Water and Sewer Fund | 514,588.93 |
| Sanitation Fund | 3,721.08 |
| Ambulance Fund | 413,982.53 |
| Electric Light Fund | 2,494,979.50 |
| Payroll Liability Fund | 4,458,394.24 |
| TOTAL | \$10,607,117.97 |

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The City Clerk requested approval of Treasurer's Report for the month of July, 2016.

The City Clerk requested approval of Minutes from the June 30, and July 28, 2016, Idaho Falls Power Board Meetings; and, July 6, 7, and 8, 2016, Council Budget Sessions.

The City Clerk requested approval of License Applications, all carrying the required approvals.

It was moved by Councilmember Marohn, seconded by Councilmember Ehardt, to approve all items on the Consent Agenda according to the recommendations presented. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

Regular Agenda Items:

Municipal Services Department submitted the following items for Council consideration:

Subject: Public Hearing – 2016/2017 Preliminary Fiscal Year Budget

Mayor Casper stated under the laws of the State of Idaho it is a primary responsibility of the City Council to adopt a budget on an annual basis. She believes the current Councilmembers have seriously and diligently pursued the role of the budget process. She stated City staff responsibility is to facilitate the Council's budget development process as the budget is a planning document for the upcoming fiscal year. She indicated the budget is comprehensive and governed by state statute. Mayor Casper reviewed the timeline of the budget process, which began in February, 2016, and stated numerous hours of conversations have occurred with and between City staff, the elected officials, City residents, and community members. She stated the tentative approval of the budget is a ceiling amount which cannot be increased. She indicated the public hearing for proposed fee increases will occur at a special meeting scheduled for August 18, 2016, with final approval of budget and fee schedule occurring at the August 22, 2016, Work Session.

Mayor Casper stated she believes the collective decisions related to the budget have been achieved by good, solid efforts on behalf of the Councilmembers. She expressed her appreciation to the Department Directors for their management, staffing, planning, and engineering professionalism. She stated a professional operation cannot be run with a coupon-clipping attitude as government services cost money. However, she indicated the City can achieve reduced costs for services through wise and strategic planning. She believes City employees take great pride in their work and is proud of the services delivered. Mayor Casper stated the executive team has clear vision with individuals of integrity and professionalism. She believes Idaho Falls is a leader among peers within the State; our City has a lot to preserve, a lot to protect, and a lot of people to lead. She stated monies included in the budget are received from taxpayers, ratepayers, and the State and it is the City's responsibility to maximize the value for spending.

Mayor Casper invited Municipal Services Director Pamela Alexander for brief presentation of the budget. Director Alexander expressed her appreciation to Mayor Casper and the Councilmembers for their guidance, direction, and patience during the budget journey. She also expressed her appreciation to the Finance Team consisting of Mark Hagedorn, Controller; Kenny McOmber, Treasurer; and Derick Sorensen, Accounting Intern, and well as to the Department Directors. Director Alexander reviewed the 2016/17 Budget Plan which includes: total budget increase of \$3.5 million, or 1.85% from fiscal year 2015/16; revenue earned from annexation and new construction growth from last year (2014/15); proposed 3% property tax levy dedicated to Streets; and cash reserve contribution of \$5.6 million. 2016/17 budget finding highlights include: 1.75% employee inflation wage adjustment; 6% plan cost increase to the employee PPO (Preferred Provider Organization) and HSA (Health Savings Account) health insurance plans; funding of \$1.5 million in general fund requests from Municipal Services, Community Development, Human Resources, Police Department, Fire Department, and Parks and Recreation; funding of \$3 million for Streets Maintenance and \$1.8 million for Street Capital Improvement Program requests; and funding of \$481,350 for Airport and Ambulance Enterprise fund requests. She stated

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2016/17 Proposed Budget totals \$195,194,467. She briefly reviewed graphs indicating total expenditures by department, total revenues and other sources, total general fund expenditures, total general fund revenues, and total property tax allocation.

Councilmember Marohn stated the Enterprise Fund monies are received from fees for service whereas General Fund monies are based on levy amounts, sales tax, and fees related to other taxes which are allocated by the State.

Mayor Casper requested appropriate civility and decorum be observed for the public hearing and indicated the Council is interested in any ideas or solutions shared by the community.

Mayor Casper opened the public hearing.

Micki Schwartz, Idaho Falls, appeared. She stated she loves living in Idaho Falls as the community is a nice place for families. She has been a resident of Idaho Falls for 15 years. She expressed her concern as parent regarding the number of facilities and fields. She's involved with Lacrosse Club and would like to see the club continue but believes the facilities are stretched and the use of fields is going away. She stated the program is willing to raise funds or become a partnership and indicated through conversation with other parents, other sports programs are experiencing similar issues. Ms. Schwartz would like to see solutions in a 1-2 year timeframe. She is proposing to set aside a fund, similar to the Capital fund, to develop areas and facilities.

Fred Hughes, President of Fluor Idaho, appeared. Mr. Hughes expressed his appreciation for the support of the Arts community and indicated this was a strong point when Fluor was putting together their proposal. He believes a vibrant arts community is essential to attract new talent to a company, adds to the quality of life and provides experience to all ages, and provides contribution to economic development of this community. Mr. Hughes stated Fluor Idaho appreciates the leadership that the City of Idaho Falls has taken to support the arts.

Jill Kirkham, Idaho Falls, appeared. Ms. Kirkham believes the best investments are to improve the exterior of a home and the same is true for a City as the Parks are the exterior of our City. She is proud of the Parks & Recreation Department and Director Greg Weitzel for his ability to create revenue. She believes urban planning and green space is important. Ms. Kirkham encouraged the City Councilmembers to complete Connecting Our Community plan. She is proud to live in Idaho Falls.

Timothy Downs, resident and Idaho Falls City employee for 22 years, appeared. Mr. Downs indicated for the first time in 22 years he will take a pay cut. He stated due to his current pay structure it will not affect him a whole lot, but it's still a pay cut. He believes if he's paying additional taxes and losing money from his pocket he is unsure what he's getting for his dollar. He stated there is no information on the website to cover the budget, specifically the additional \$4 million to the Council budget. He believes the budget should be more transparent.

Brandi Newton, representative of the Idaho Falls Arts Council (IFAC), appeared. Ms. Newton expressed her gratitude for actions of the Councilmembers to continuously be looking forward. She also expressed her gratitude for the steps taken in this past year to prioritize the Civic Auditorium long-term availability for the community. She indicated the IFAC appreciates the Councils funding support for the arts programs and activities.

Sharon Price, Chair of IFAC and past president of the Idaho Falls Symphony. Ms. Price believes strong arts culture makes living in Idaho Falls attractive for businesses as well as citizens and is important for growth and success. She believes people are drawn to the community for the Colonial Theatre, the Symphony, the art galleries, and exhibits at the Museum of Idaho. She appreciates past support provided by community grants. She stated the arts organizations depend on the partnership between the City and local organizations for their success. Ms. Price is urging Councils continued support of the community grants for the arts.

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Brian Stutzman, Lincoln Road, appeared. Ms. Stutzman stated he owns several rental properties in Idaho Falls and is concerned for assessments indicating values are going up and levy rates are going up. He stated this is the third time in a row the City is spending more money from the rainy day account and believes that is wrong. He stated fees seem to be increasing, and this is not good government. Good government is spending less, keeping taxes even, and keeping fees in line. Mr. Stutzman believes the officials are setting themselves up for one-time election due to yearly tax increases. He appreciates the work but believes the budget should not be approved.

Lindsay Dexter, Senior Director of Policy at the Idaho Freedom Foundation, appeared. Ms. Dexter stated the Idaho Freedom Foundation is available to provide information to Idahoans. She is requesting a delay of passage of budget as it is not fully transparent and she believes there is no substance in budget. She indicated the public has not had time to review the budget and therefore she cannot comment on specific items.

Mayor Casper expressed her appreciation for the public comments. She closed the public hearing.

Councilmember Hally stated he personally reviewed the economic activity in the area and sees rapid growth of City facilities, programs, and road usage. He believes it's important to forecast the future growth to provide adequate services.

Mayor Casper requested any public comment not related to items on the agenda. No one appeared.

Subject: Recommendation to Reject IF-16-06, Two Backhoe Loaders for Public Works

The City issued a bid for two (2) backhoes, one for the Water Division and one for the Street Division. The bid was written to combine the backhoes in a single bid anticipating a better purchase price. However, during the bid evaluation process, it was determined that the bid's discretionary options portion did not adequately address the individual needs of the divisions. It is therefore the recommendation of the Public Works and Municipal Services Departments to reject all bids to reevaluate the divisions' needs and reissue the bids at a later date.

It was moved by Councilmember Marohn, seconded by Councilmember Radford, to reject all bids to reevaluate the divisions' needs and reissue the bids at a later date. Roll call as follows: Aye – Councilmembers Smith, Hally, Radford, Dingman, Ehardt, Marohn. Nay – none. Motion carried.

Subject: Bid IF-16-25, Entry Door Upgrade Project

It is the recommendation of Public Works and Municipal Services Departments to accept the lowest responsive, responsible bid from River's West Construction, Inc. in the amount of \$67,038.00. This project will install upgraded security entry doors with Schlage brand hardware at eighteen (18) locations. The funding source for this project will be from the 2015/16 Water Division budget.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to accept the lowest responsive, responsible bid from River's West Construction, Inc. in the amount of \$67,038.00, for installation of upgraded security entry doors and authorize the Mayor to sign contract documents. Roll call as follows: Aye – Councilmembers Dingman, Smith, Marohn, Ehardt, Hally, Radford. Nay – none. Motion carried.

Idaho Falls Power (IFP) submitted the following item for Council consideration:

Subject: Approve Pole Attachment License Agreement with Crown Castle LLC

Idaho Falls Power has received a request from Crown Castle LLC to attach communication infrastructure to power poles. Crown Castle LLC is the nation's largest provider of shared wireless infrastructure, and they collaborate with wireless carriers, communities, governments, and property owners to provide access to needed

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infrastructure. For consideration is Idaho Falls Power's standard Pole Attachment License Agreement. This document was developed by the American Public Power Association and has been reviewed by the City Attorney.

Idaho Falls Power Director Jackie Flowers indicated requests are being submitted to IFP for pole attachments. These agreements will set standards as well as a fee formula per FCC (Federal Communications Commission) guidelines.

It was moved by Councilmember Hally, seconded by Councilmember Marohn, to approve the Pole Attachment License Agreement with Crown Castle LLC and authorize the Mayor to sign the documents. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

Public Works submitted the following items for Council consideration:

Subject: Professional Services Agreement for Construction Materials Testing on the Grandview Drive; Skyline Drive to Saturn Avenue Project

For consideration is a Professional Services Agreement with Strata, Inc., to conduct fill material, concrete and asphalt mix testing. Under the agreement, Strata, Inc. will perform testing services on the Grandview Drive, Skyline Drive to Saturn Avenue project, for a not-to-exceed amount of \$50,000.00. The City will be responsible for 7.34% of this amount. This agreement has been reviewed by the City Attorney.

It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to approve of the professional services agreement with Strata, Inc., and give authorization for the Mayor to sign the necessary documents. Roll call as follows: Aye – Councilmembers Smith, Hally, Dingman, Radford, Ehardt, Marohn. Nay – none. Motion carried.

Subject: Engineering Services Agreement – Task Order No. 03, HDR Engineering, Wastewater Treatment Plant National Pollutant Discharge Elimination System Permit Reapplication

For consideration is proposed Task Order No. 03 for an Engineering Services Agreement with HDR Engineering in an amount of \$33,496.78. This Task Order provides for professional services to prepare and submit a reapplication for the National Pollutant Discharge Elimination System (NPDES) permit for the Wastewater Treatment Plant.

Public Works Director Chris Fredericksen believes the previous renewal of this agreement occurred in 2010. He stated the change of the allowable amount allowed into the river has dramatic financial impacts to the plan and the ability to meet the NPDES permit.

It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to approve of Task Order No. 03 with HDR Engineering and, give authorization for the Mayor to sign the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Marohn, Radford, Dingman, Smith, Ehardt. Nay – none. Motion carried.

Subject: Bid Award - Bel Aire Concrete Improvements – 2016

On August 3, 2016, bids were received and opened for the Bel Aire Concrete Improvements – 2016 project. Public Works recommends approval of the plans and specifications, award to the lowest responsive, responsible bidder, 3H Construction, LLC, in an amount of \$47,840.00.

Councilmember Ehardt stated this is the final planned project for the Community Development Block Grant (CDBG) Funds for this particular neighborhood.

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It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to approve of the plans and specifications and award to the lowest responsive, responsible bidder, 3H Construction, LLC, an amount of \$47,840.00, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Ehardt, Radford, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

Subject: Water Line Easement Vacation – Lot 29, Block 64 of the Highland Park Addition, 1080 Elmore Avenue

As earlier authorized, the City Attorney has prepared the documents to vacate the water line easement at Lot 29, Block 64 of the Highland Park Addition, 1080 Elmore Avenue.

It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to approve the Vacation Ordinance for water line easement at Lot 29, Block 64 of the Highland Park Addition, 1080 Elmore Avenue, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Hally, Smith, Marohn, Dingman. Nay – none. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3081

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE VACATION OF A WATER LINE EASEMENT LOCATED WITHIN THE CITY OF IDAHO FALLS AND LEGALLY DESCRIBED IN SECTION 1 OF THIS ORDINANCE; PROVIDING THAT TITLE TO SAID VACATED EASEMENTS SHALL VEST AS SPECIFIED IN SECTION 3 OF THIS ORDINANCE; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

Subject: Right-Of-Way Use Agreement – Crown Castle

For consideration is a proposed Right-of-Way Use Agreement for Crown Castle to install fiber optics in public right-of-way. The Agreement was prepared by the City Attorney and has been reviewed by Idaho Falls Power.

It was moved by Councilmember Ehardt, seconded by Councilmember Dingman, to approve the Right-of-Way Use Agreement with Crown Castle and, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

Mayor Casper stated this year the Councilmembers made great effort to direct staff to prepare a budget that was transparent. She indicated the non-departmental account, which previously existed for miscellaneous expenses, was eliminated and all funds have been reallocated to the appropriate departments, including the Mayor and Council budgets. The reallocation was a first step in moving to a Priority-Based Budgeting process. Councilmember Radford suggested a notation for this explanation.

There being no further business, it was moved by Councilmember Hally, seconded by Councilmember Marohn, that the meeting adjourn at 8:50 p.m. which motion passed following a unanimous vote.

CITY CLERK

MAYOR

August 18, 2016

The City Council of the City of Idaho Falls met in Special Council Meeting (Public Hearing/Meeting), Thursday, August 18, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember Michelle Ziel-Dingman
Councilmember John B. Radford
Councilmember David M. Smith
Councilmember Thomas Hally
Councilmember Barbara Ehardt

Absent:

Councilmember Ed Marohn

Also present:

Michael Kirkham, Assistant City Attorney
Pam Alexander, Municipal Services Director
Mark Hagedorn, Controller
Kathy Hampton, City Clerk
All available Department Directors

Mayor Casper invited Chris Fredericksen, Public Works Director, to come forward and lead those present in the Pledge of Allegiance.

Opening Remarks/Announcements:

Mayor Casper believes the three (3) goals related to fees are: 1-the user fee should reflect the cost of the service, 2-fees should keep costs down, 3-great service should be offered in exchange for fees. She stated the change of fees for the upcoming year are due to increased costs or a fee restructure based on new/better data.

Mayor Casper opened the public hearing and invited any public comment.

Steven Besse, Idaho Falls, appeared. Mr. Besse stated a business license should be issued for new and current businesses with an annual fee. He believes a business license would prevent businesses to operate in incorrect zoning areas and would assist with public safety personnel. The fees generated from these business licenses could be used for future City planning. He does not believe \$75,000 should be allocated to non-profit organizations as this is not a function of City. Those funds could be used for Fire or Police Departments.

Lindsay Dexter, Senior Director of Policy at the Idaho Freedom Foundation, and resident of Idaho Falls, appeared. Ms. Dexter believes there is misinformation and confusion with the proposed budget and fees. She indicated a budget should not be approved without line-by-line items. She believes each new fee increase should be accompanied by a statement of purpose indicating where fees will be distributed. She expressed her concern about decisions made by the Mayor and Council for the community and believes the passage of the budget should be delayed for a week to allow public comments on a line-by-line budget and correlating fee schedule. She applauds the City efforts to rejuvenate the Idaho Falls downtown area, however, she indicated the new fee schedule increases parking tickets by 300% (\$5.00 to \$20.00) and believes this is a severe hindrance to downtown businesses as this limits the amount of time someone can be in the downtown area.

Kristine Staten, representing Idaho Falls Downtown Development Corporation (IFDDC) appeared. Ms. Staten commended Police Chief Mark McBride for the proposed parking ticket fee and stated the IFDDC board is very supportive of the fee increase. She indicated there are several parking lots located in the downtown area for

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downtown employees with minimal monthly charges. She believes the current \$5.00 parking ticket is not a deterrent for downtown employees thereby freeing up downtown parking spaces for public commerce use.

Mayor Casper closed the public hearing. She stated the proposed fee schedule will be adopted at the Monday, August 22, 2016, Council Work Session, along with the adoption of the proposed budget.

Follow-up Discussion:

Mayor Casper stated Mr. AJ Argyle, American Insurance Representative, re-negotiated the insurance fee which decreased from 6% to 3%. She indicated the proposed budget included passing the entire 6% benefit increase to City employees, which amount has now been reduced to approximately \$285,000. Director Alexander indicated the decrease was due to 3rd quarter cost savings.

Director Alexander indicated Council requested further discussion for the Library levy, insurance benefits, community support, and the property tax levy.

Mr. Hagedorn briefly reviewed the Recreation fund stating \$148,783, approved in the tentative budget has been placed as Unassigned pending Council's approval of the recreation levy. He reviewed the Provision for Wage Adjustment, stating Recreation, Library, and Golf wage adjustments are included in the 1.75% Wage Inflation Adjustment. The amount of \$467,800 has been reduced from the original placeholder of \$800,000, which also includes Teledoc, and PPO (Preferred Provider Organization)/HSA (Health Savings Account) Change Provision.

Mr. Hagedorn reviewed current costs of Health Insurance which is estimated based on number of employees. He indicated Council requested additional options of City/employee contribution based on the 3% insurance increase. Currently, there are 92 employees on HSA and 507 employees on PPO. Additional options were reviewed as follows:

Option 2b – City would absorb half, in the amount of \$128,848.60, PPO absorbs half, and a decrease to HSA contribution by \$100. This option would not affect most employees. Brief discussion followed regarding HSA. Mr. Hagedorn stated it would not be a significant readjustment to keep the HSA contribution at \$1750. He indicated it is not economical for all employees to be enrolled in HSA plan.

Option 2c – PPO assumes 86%, HSA assumes 14%, and the HSA contribution has no change. Mr. Hagedorn stated in the current enrollment period, two (2) employees have changed to HSA. This is the option Council preferred from previous discussion.

Option 2d – PPO assumes 100% of the insurance increase, HSA contribution has no change.

Option 2e – City absorbs half, PPO absorbs 85% of the remaining half and HSA absorbs 15% of the remaining half. HSA contribution has no change.

Mayor Casper stated over the course of the previous two (2) years there has been a dramatic change in insurance. She prefers to see no increase of costs to HSA and no change in contribution. Councilmember Smith prefers the City cost sharing percentage to decrease stating the real cost driver is PPO. General discussion followed.

It was moved by Councilmember Smith, seconded by Councilmember Ehardt, for Option 2d. Roll call as follows: Aye – Councilmembers Smith, Ehardt. Nay – Councilmembers Hally, Radford, Dingman. Motion failed.

It was then moved by Councilmember Radford, seconded by Councilmember Dingman, for Option 2b and keeping HSA contribution at \$1750. Roll call as follows: Aye – Councilmembers Radford, Dingman. Nay – Councilmembers Ehardt, Smith, Hally. Motion failed.

It was then moved by Councilmember Hally, for Option 2c. Motion died for lack of a second.

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It was again moved by Councilmember Ehardt, seconded by Councilmember Smith, for Option 2d. Roll call as follows: Aye – Councilmembers Ehardt, Smith. Nay – Councilmembers Radford, Hally, Dingman. Motion failed.

Further discussion followed regarding the savings incurred by the employees.

It was again moved by Councilmember Radford, seconded by Councilmember Dingman, for Option 2b and keeping HSA contribution at \$1750. Roll call as follows: Aye – Councilmembers Dingman, Hally, Radford. Nay – Councilmembers Ehardt, Smith. Motion carried.

Mayor Casper requested discussion regarding the additional \$138,048.60 that was approved for Health Insurance cost. She indicated there are limitations for allocation of said monies and believes the allocation needs to be decided prior to approval of the budget scheduled for the August 22, Work Session. Discussion followed regarding the budget spending process.

It was moved by Councilmember Hally, seconded by Councilmember Radford, to take costs associated with Health Insurance from funds allocated for Police Feasibility Study. Roll call as follows: Aye – Councilmembers Radford, Hally. Nay – Councilmembers Ehardt, Smith, Dingman. Motion failed.

After further brief discussion, it was again moved by Councilmember Radford, seconded by Councilmember Dingman, to allocate \$138,048.60 from the capital requests from the Police Department for the \$150,000 Feasibility Study. It was then moved by Councilmember Ehardt to amend the motion to allocate \$80,000 from the Swallow Study (wage and benefits study) and \$58,048 in overtime costs from the Fire Department to allocate to the \$138,048.60 for the Health Insurance. Motion died for lack of a second. Councilmember Hally believes the newly proposed fees generated from the Police Department will assist with the capital request. Roll call as follows: Aye – Councilmembers Hally, Smith, Dingman, Radford. Nay – Councilmembers Ehardt. Motion carried.

It was moved by Councilmember Hally, seconded by Councilmember Radford, to assign \$148,783 levy for the Recreation Fund. Roll call as follows: Aye – Councilmembers Smith, Hally, Radford, Dingman. Nay – Councilmembers Ehardt. Motion carried.

Mayor Casper indicated additional Airshow discussion will occur at the August 22 Work Session, with additional Community Support discussion at the September 6 Work Session.

There being no further business, it was moved by Councilmember Radford, seconded by Councilmember Hally, that the meeting adjourn at 9:35 p.m. which motion passed following a unanimous vote.

CITY CLERK

MAYOR

August 22, 2016

The City Council of the City of Idaho Falls met in Special Council Meeting (Council Work Session), Monday, August 22, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 3:00 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember Thomas Hally
Councilmember David M. Smith
Councilmember Michelle Ziel-Dingman
Councilmember Barbara Ehardt
Councilmember Ed Marohn
Councilmember John B. Radford

Also present:

Pamela Alexander, Municipal Services Director
Mark Hagedorn, Controller
Kenny McOmber, Treasurer
Craig Davis, Idaho Falls Airport Director
Mark McBride, Police Chief
Greg Weitzel, Parks and Recreation Director
Jackie Flowers, Idaho Falls Power Director
Dana Briggs, Economic Development Coordinator
Brad Cramer, Community Development Services Director
Richard Malloy, Compliance and Engineering Manager
Chris Fredericksen, Public Works Director
Kent Fugal, City Engineer
Michael Kirkham, Assistant City Attorney
Randy Fife, City Attorney
Kathy Hampton, City Clerk

Mayor Casper called the meeting to order at 3:02 with the following agenda items:

Mayor's Report and Action Items:

Mayor Casper indicated efforts are in place to control the Black Creek Fire and there is no concern at this time for any structures. She stated officials from many different entities are involved.

Announcements and Calendar Items:

August 23, City Benefits Fair at Ice Arena, followed by City picnic
August 24, Civic Auditorium Committee meeting, Museum of Idaho is sponsoring a tour of the new exhibit for elected officials
August 25, PST (Partnership for Science and Technology) Up and Atom breakfast at EIL (Energy Innovation Laboratory) Building
August 26, Regular Council Meeting
August 30, Idaho Water Resources Board will be holding a public meeting in the Council Chambers
Press conference regarding Idaho Falls Zoo at Tautphaus Park will be held in the near future

Mayor Casper stated due to holidays in September and October, the first work sessions of each month will occur on a Tuesday. She indicated the Sister Cities Youth Delegation has recently returned from Japan. The City will be hosting the Sister Cities Adult Delegation October 3-11 with various events scheduled. Mayor Casper recently

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attended a Senior Citizens Center fund-raiser lunch and has requested Council commitment to volunteer in the future.

City Council Reports:

Councilmember Hally had no items to report.

Councilmember Marohn had no items to report.

Councilmember Radford stated Idaho Falls Airport is hosting Flying Legends of Victory Tour August 23-28, rides can be scheduled.

Councilmember Ehardt also attended the Senior Citizen fund-raising event and indicated she is willing to volunteer.

Councilmember Dingman had no items to report.

Councilmember Smith had no items to report.

Approval of FY2016/2017 Fee Resolution:

Mayor Casper briefly reviewed the State requirements for passage of fees. She indicated the Fee Resolution includes all fees, not just those fees that may be increasing. It was moved by Councilmember Radford, seconded by Councilmember Marohn, to approve the FY2016/2017 Fee Resolution. Councilmember Ehardt expressed her appreciation for clarification of fees. She indicated she supports some of, but not all fees. She prefers to possibly separate fees by departments in the future. Councilmember Hally stated no increase of fees can put undue pressure on the General Fund, he trusts the Department Directors for their direction. He indicated Parks and Recreation Department fees pay for approximately 48% of programs offered. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

RESOLUTION NO. 2016-26

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ADOPTING A SCHEDULE OF REVISED FEES FOR SERVICES PROVIDED AND REGULARLY CHARGED AS SPECIFIED BY CITY CODE; AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

Approval of FY2016/2017 Appropriation Ordinance:

Mayor Casper stated setting the budget is important, vital, and difficult as resources are life blood of any City. She indicated the Department Directors present their budgets and it is the Councils role to approve the budget although, by State Code, the Mayor has the right to weigh in. She indicated it is a privilege to work for people who care.

Councilmember Marohn expressed his appreciation to the Council for their diligence in the budget process. He believes this process has evolved to a more transparent level but believes the budget is always in transition. As a legislative body, the Councilmembers have an important decision to spend or not to spend. He stated the Councilmembers work for the citizens, but are also citizens who expect infrastructure, safety, and security. He believes property levy is one of the more fair taxes and is necessary as an investment. He briefly reviewed foregone of previous years. Councilmember Marohn read a portion of Municipal Services Citizen Review Committee (CRC) evaluation from 2014, as follows: "By not increasing the property tax in prior years, the City has deferred problems to future administrations and the next generation of voters. Presently a fully responsible budget tax levy will solve some of the City problems, increase capacity, and while may not create economic growth, it will not prevent it". He stated the FY2016/2017 proposed budget includes 3% levy, growth monies, and reserves from General Fund for street fund. The 3% levy will be used to help maintain reserves. Association of Idaho Cities (AIC) recommend reserves be no less than 17%. He stated if the City chooses not to take the 3%

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levy, little revenue will be received. He believes the City should support its investments as it's important for economic growth.

Councilmember Hally stated the budget is not just about streets. He believes the City is going to see inflation and tax dollar expenditures create economic growth. He indicated the partnership with state and federal government is education, including the arts.

Councilmember Smith stated he generally votes in a manner which he believes is best for the City, the residents, and the taxpayers. He stated this is his second budget process and believes the department presentations and process were much more informative and helpful than the previous year. He stated the State Legislature increased the homeowner's exemption last year which cost the City approximately \$700,000. If the City does not increase the levy to offset the tax shift, the increased homeowner's exemption would not be a progressive shift of tax as the legislation intends. It would take an approximate 2.5% increase in the property tax levy to absorb the homeowner's exemption. He stated he wanted to propose a \$190 million budget and not fund \$3 million to street repair but believes the backlog needs addressed. He commented that some individuals will say this budget is a typical tax and spend disregard of the taxpayers, but they are wrong. He stated the City is funding many sources, not extravagant items. Priorities have been established and there is effort towards achieving those priorities within the limited funds and available resources. He stated he could not vote no on the budget if he could not specifically identify the dollars that should not be spent.

Councilmember Dingman stated this first year has been an interesting process to learn about the budget and find a way to reconcile her personal views on government and its function within the City and the desire to find quality services for the residents. She indicated she has thoroughly reviewed the budget to ensure her support of the proposed budget. She expressed her appreciation to Councilmember Marohn, the Finance Team, and fellow Councilmembers. She believes supporting the budget will result in progress in many areas of the City. She indicated many residents will see a tax decrease and believes the budget is sound and justified.

Councilmember Ehardt expressed her appreciation to the Mayor, Department Directors, the Finance Team and Councilmembers with this budget process and stated she's more confident in this third process. In the future she would prefer the budget process begin with Council. She believes the immediate needs should be addressed first and wants should be secondary. With this process, items which may be important to each Councilmember would be placed before colleagues for discussion. She indicated this is ultimately the Council's budget and she would like to see increases trimmed that may be passed onto citizens and businesses. Her main concern is for business owners and does not like the continual tax increase. She again expressed her appreciation to staff and fellow Councilmembers.

Councilmember Radford expressed his appreciation to the Finance Team for the budget process and also to his liaisons for keeping him informed during the process. In the future he would prefer a priority list of Capital expenditures at different funding levels.

It was moved by Councilmember Marohn, seconded by Councilmember Hally, to approve the FY2016/2017 Appropriation Ordinance under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Smith, Hally, Radford, Dingman, Marohn. Nay – Councilmember Ehardt. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE 3082

THE ANNUAL APPROPRIATION ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, FOR THE PERIOD COMMENCING OCTOBER 1, 2016 AND ENDING SEPTEMBER 30, 2017, APPROPRIATING

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AND APPORTIONING THE MONIES OF SAID CITY TO AND AMONG THE SEVERAL FUNDS OF SAID CITY AND DESIGNATING THE PURPOSE FOR WHICH SAID MONIES MAY BE EXPENDED; SPECIFYING THE AMOUNT OF MONEY PAID BY PROPERTY TAX TO BE APPROPRIATED TO SAID FUNDS; AND PROVIDING WHEN THE ORDINANCE SHALL BECOME EFFECTIVE.

Airshow Agreement Discussion:

Mayor Casper indicated there is no signed agreement with the Airshow Board to clarify terms. She stated the Airshow Board determined the Airshow could not happen without support of the City. She indicated City leaders declined formal participation for the 2010 Airshow but did participate by use of City safety resources. She stated there are significant benefits by hosting an Airshow although these benefits do not directly benefit the City coffers. Due to Council approval of support, she believes terms of the agreement need to be determined including; what the level of \$80,000 sponsorship entails, an escape hatch if Airshow can find reduced or free services elsewhere, the ability to break the agreement with reimbursement for any reasonable costs already incurred, and consideration of reimbursement requirement to the City for some services in the event of excess revenues. Director Davis stated he also believes there should be an agreement between the Airshow Board and the City.

Russell Johnson, Airshow Board Chair, reviewed the 2010 Airshow issues and stated Police and Fire Department services were needed due to Interstate-15 being closed for multiple hours. He stated the Airshow Board is requesting use of facilities, equipment, personnel, and services from various City departments, they are not requesting money. The Airshow Committee is also obtaining volunteers and other sponsors. Councilmember Ehardt stated she is in full support of the Airshow but believes if the Airshow is successful, the City should be reimbursed. Mr. Johnson stated the Airshow Board unanimously agreed not to reimburse the City. Nick Gailey, Airshow Board Member, stated the Airshow is a one-time event, not a yearly event similar to Community Support. Brief discussion followed regarding other community events/support. He stated the City is not considered a sponsor, the City would be a partner. He indicated profits from the previous Airshow were contributed to Mayor's Scholarship Fund as the Airshow Board by-laws require profits be contributed for educational purposes. Councilmember Radford stated no one is receiving any profit as the Airshow Board is considered a non-profit organization. He believes the City should move forward with an agreement. Councilmember Marohn stated the Fire and Police Departments, as part of their duties, are required to support any public safety issues. He also believes the City should move forward with an agreement. Mayor Casper indicated the money being used for the Airshow is being allocated from the community support dollars. She stated following the 2010 Airshow, she believes the City should have established a special event fund for available resources for such events with an annual contribution to prevent a similar situation in the future. Mr. Fife stated an agreement is not necessary if the City is only going to provide support services, although a commitment in next years' budget to pay for services rendered would be required. He stated if there is no agreement it would be considered a trust relationship, not a contractual relationship. Councilmember Smith stated a partnership has legal terms including liability and believes the agreement should be updated to establish the City as a participant, not a partner. After further brief discussion, there was consensus for a written agreement including changing the wording from partnership and determining terms of in-kind support of services. Mr. Fife and Mr. Gailey will draft an updated agreement for a future consent agenda item.

Economic Development Update:

Ms. Briggs stated she has categorized Economic Development tools as follows:

- Attraction
- Retention
- Development (Entrepreneurial Activities)
- Talent Pipeline Needs
- Business Friendly City Processes
- Tourism

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She briefly reviewed projects within each category and indicated she is currently assisting with several projects, including the 2017 solar eclipse events. She stated she just completed a project with the Northwest Cosmetic Labs including approval of the Bonneville County Resolution allowing Property Tax Exemption Award at 50% for five (5) years. Northwest Cosmetic Labs is estimated to create in excess of 500 jobs with an estimated Capital Expenditure of \$13 million. Ms. Briggs is currently working with REDI (Regional Economic Development Eastern Idaho) for a standard matrix to be used by Bonneville County for decision making of projects.

Ms. Briggs reviewed Idaho Falls Economic Development Metrics as follows: Tax Base – \$59,184 for 2015; City of Idaho Falls Labor Force – 28,510 for 2015; Average Annual Wage (MSA, which includes Bonneville, Jefferson, and Butte Counties) – \$42,820 for 2015; State-wide requests for information from Idaho Department of Commerce – approximately 16 over the course of the previous year; Business Openings/Closings; Employment Effects of Business Openings/Closing; Real Estate (Bonneville County) – approximately 1914 listings for 2015; and Tourism (Bonneville County) – approximately \$251.8 million Total Direct Spending for 2014, and 3,100 Total Direct Employment for 2014.

Ms. Briggs reviewed the REDI Budget breakdown for FY2016/2017 per previous request from Councilmembers, indicating Idaho Falls' estimated contribution = \$53,699.48. Brief discussion followed. Mayor Casper believes the City should be flexible on funding and participation if the Council believes REDI should be supported. Ms. Briggs stated the Department of Labor/Department of Commerce has been performing State-wide presentations regarding development of economies. She will schedule a joint meeting with the Bonneville County Commissioners for this presentation.

Ms. Briggs stated several developers have inquired regarding the criteria for infill, greenfield, or redevelopment project waivers. She indicated Director Cramer and Mr. Malloy developed a matrix for qualifications of community development. Director Cramer defined the following:

Infill: Development sited on vacant or undeveloped land that is enclosed or surrounded by other development and is not on the urban fringe.

Greenfield: Previously undeveloped sites.

Redevelopment: Sites which have or have had development including buildings or infrastructure. Also areas included in an urban renewal district or identified by the City Council as a redevelopment area.

Director Cramer reviewed infill or greenfield matrix requirements with appropriate waiver options. Mr. Malloy stated the only economic incentive at this time is for fee waiver of electric line extension. Discussion followed regarding current policy for small business owners as well as developer and taxpayer/ratepayer costs. Mr. Malloy stated approximately \$400,000 has been collected for line extension fees for new commercial and residential development. After further discussion, it was decided staff will proceed to update the ordinance with clarifying language to incentivize infill.

Director Cramer briefly reviewed the new TRAKiT software system, which was purchased in the previous year, for permitting and project management. He stated TRAKiT reports allow permit review, tracking of code enforcement cases, as well as infill, greenfield, and redevelopment projects. Advanced reports for specific requests can also be created. Director Cramer will distribute a sample of monthly reviews of site plans, permits, and applications for Council review.

Review of City Service Delivery Account Write-off Policy:

Director Alexander stated there has not been a memorialized process for account write-offs. This draft policy has been coordinated with Public Works and Idaho Falls Power and establishes the uncollectable criteria. Mr. Fife

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indicated this policy will allow city employees to understand their role for collection of monies. Director Alexander indicated the first year of policy write-offs will be presented at the August 25, 2016, Council Meeting.

Traffic Signal Removal Study Discussion:

Director Fredericksen stated approximately every five (5) years the City re-times traffic signals. During this re-timing process traffic signals are evaluated to keep in place or remove from service. He indicated 12 proposed intersections were studied for possible removal. It was determined four (4) intersections did not meet the warrants and the signals were removed from service. Additional evaluation occurred on six (6) intersections for possible traffic signal removal. Mr. Kent Fugal reviewed recommendations on the following intersections with general discussion throughout:

- Broadway and Lindsay Boulevard – remove traffic signal and marked crosswalks across Broadway, install stop sign on Lindsay approach.
- Broadway and Shoup Avenue – remove traffic signal and marked crosswalks across Broadway, install stop sign on Shoup approach.
- Yellowstone Avenue and A Street/Yellowstone Avenue and B Street – remove signal at A Street, remove signal equipment for minor street approaches at B Street, convert signal equipment controlling Yellowstone traffic at B Street to HAWK signal, remove marked crosswalks across Yellowstone at A Street, install stop signs on minor approaches at both intersections.
- 17th Street and June Avenue – remove traffic signal and marked crosswalks across 17th Street, install stop signs on the June Avenue and ShopKo parking lot approaches.
- 17th Street and Ponderosa Drive – remove traffic signal and marked crosswalks across 17th Street, install stop signs on the Ponderosa Drive approaches, mitigate sight distance obstruction due to parked cars on the southwest corner of the intersection.

Councilmember Dingman expressed her concern for the two (2) schools within this area. Mayor Casper stated coordination with the school district may be needed for this intersection. Director Fredericksen reviewed an alternative route for residents by using St. Clair Road. He stated money approved in FY2016/2017 budget is being allocated to update the intersection at St. Clair and 17th Street. Mayor Casper believes current traffic signals may have been installed due to commercial development, however, good design and engineering are necessary for appropriate planning. Mr. Fugal indicated the recommendations of traffic signals removal are based on overall perspective of engineering. This item will be placed on the August 25, Council Meeting.

There being no further business, it was moved by Councilmember Radford, seconded by Councilmember Marohn, to adjourn the meeting at 6:46 p.m. and move into Executive Session which has been called pursuant to the provision of Idaho Code Section 74-206(1)(c) to acquire an interest in real property which is not owned by a public agency, and not reconvene into Work Session at the conclusion of the Executive Session. Roll call as follow: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

The City Council of the City of Idaho Falls met in Special Council Meeting (Executive Session), Monday, August 22, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 6:48 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember David M. Smith
Councilmember Barbara Ehardt
Councilmember John B. Radford
Councilmember Ed Marohn
Councilmember Thomas Hally

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Absent:

Councilmember Michelle Ziel-Dingman

Also present:

Pamela Alexander, Municipal Services Director

Randy Fife, City Attorney

The Executive Session has been called pursuant to the provision of Idaho Code Section 74-206(1)(c) to acquire an interest in real property which is not owned by a public agency.

There being to further business, it was moved by Councilmember Smith, seconded by Councilmember Ehardt, that the meeting adjourn at 6:57 p.m. which motion passed following a unanimous vote.

CITY CLERK

MAYOR

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The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, August 25, 2016, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 7:30 p.m.

There were present:

Mayor Rebecca L. Noah Casper
Councilmember David M. Smith
Councilmember Thomas Hally
Councilmember Michelle Ziel-Dingman
Councilmember John B. Radford
Councilmember Barbara Ehardt
Councilmember Ed Marohn

Also present:

Randy Fife, City Attorney
Kathy Hampton, City Clerk
All available Department Directors

Mayor Casper invited Finn Marsden, a student at Mountain Valley Elementary School, to come forward and lead those present in the Pledge of Allegiance.

Mayor Casper requested any public comment not related to items on the agenda.

Elizabeth Marsden, Idaho Falls, appeared. Ms. Marsden stated there is a lack of items for children in our community. She believes the lack of water activities in Idaho Falls is a sad commentary. She would like the City to improve the existing facility or construct a new facility to serve the children of Idaho Falls.

Malcolm Carnes, Idaho Falls, appeared. Mr. Carnes believes there is an illegal use of residence in an R-1 zone. Mr. Fife stated it would be inappropriate for Council to hear an item that is pending a current enforcement action. Mayor Casper recommended alternative methods pending a legal action such as speaking directly with the appropriate Department Director or Legal Services. She believes staff is possibly recommending changes in the ordinance but Mr. Carnes should refrain from communication with Councilmembers.

Jerry Jayne, 1568 Lola Street, Idaho Falls, appeared. Mr. Jayne stated he has concerns regarding the Airshow as there has been no public hearing. Mayor Casper indicated specific questions should be addressed to the Mayor's Office or directly to the Councilmembers. Mr. Jayne believes public comment should be allowed. He is not in favor of the Airshow for various reasons and would prefer additional dialogue.

Consent Agenda Items:

The Police Department requested renewal of Idaho Falls School District #91 School Resource Officer (SRO) Agreement.

Idaho Falls Power requested permission to Negotiate a Professional Services Contract with Guy Lund, PE.

The City Clerk requested approval of Minutes from the July 11, 2016 Council Work Session; July 14, 2016 Council Meeting; July 18 and July 19, 2016 Council Budget Sessions.

The City Clerk requested approval of License Applications, all carrying the required approvals.

It was moved by Councilmember Marohn, seconded by Councilmember Radford, to approve all items on the Consent Agenda according to the recommendations presented. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Hally, Smith, Marohn, Dingman. Nay – none. Motion carried.

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Regular Agenda Items:

Municipal Services submitted the following items for Council consideration:

Subject: Bid IF-16-L, Integrated Security System

It is the recommendation of the Public Works and Municipal Services Departments to piggyback the General Services Administration (GSA) Contract #GS-35F-0284U with Compunet, Inc. in the amount of \$61,873.35. The vendor will furnish the required software and hardware required for the integrated security system upgrade project for eighteen (18) city facility locations. The funding source for this project will be from the 2015/2016 General Buildings and Water Division budgets.

Councilmember Marohn stated this is the third and final phase of the security system upgrade project.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to piggyback the GSA Contract #GS-35F-0284U with Compunet, Inc. in the amount of \$61,873.35, for the integrated security system upgrade. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

Subject: Bid Award IF-16-23, New Cab and Chassis for Public Works

It is the recommendation of the Municipal Services and Public Works Departments to accept the lowest responsive, responsible bid from Cobalt Truck Equipment of Nampa, Idaho. The total bid award amount is \$285,665.00, including trade-in value for unit #33 of \$8,000. Unit #33 will be replaced with a 2017 Peterbilt cab and chassis along with a Henke Salt/Sand Spreader, Klein Water/Tank Flusher Unit and Swaploader Hook lift. The funding source for this replacement equipment will be from the 2015/16 Municipal Equipment Replacement fund.

Councilmember Marohn indicated Unit #33 is a 1986 GMC flusher truck and registers more than 190,000 miles, although the odometer is no longer operable. The 2017 Peterbilt will be used as a water vehicle as well as a sand spreader during the winter months.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to accept the lowest responsive, responsible bid from Cobalt Truck Equipment of Nampa, Idaho, in an amount of \$285,665.00, for a 2017 Peterbilt cab and chassis and related equipment. Roll call as follows: Aye – Councilmembers Ehardt, Marohn, Hally, Radford, Smith, Dingman. Nay – none. Motion carried.

Subject: Write-Off of Unpaid Conservation Loans and Utility Accounts

Municipal Services, Idaho Falls Power and Public Works respectfully request authorization to write off as uncollectible all conservation loan and utility accounts determined as uncollectable identified below:

- Conservation Loan Balances for years 2002,2008, 2011 - \$13,207.69
- Utility Account Balances for 2011 - \$325,138.35

Councilmember Marohn stated the predominate criteria for write-offs has been an account within a four-year/five-year period which can no longer be collected, the City's contracted collections agency determines that the account is uncollectable, and/or the account is in the name of a deceased person with no known estate.

This recommendation is in accordance with the City Service Delivery Account Write-Off Policy as developed by Municipal Services, Idaho Falls Power, Public Works, and Legal Services. This policy embodies best practices for requesting City Council review and approval for writing off uncollectible accounts.

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It was moved by Councilmember Marohn, seconded by Councilmember Smith, to authorize to write off uncollectable Conservation Loan Balances in the amount of \$13,207.69, and, Utility Account Balances in the amount of \$325,138.35. Municipal Director Pamela Alexander stated there is one (1) account from 2002. Councilmember Marohn believes the new computer software will catch these older accounts. City Treasurer Kenny McOmber stated this amount for write-offs represents one-half percent of the total collection rate, which is currently at 99.5%. Roll call as follows: Aye – Councilmembers Dingman, Radford, Marohn, Smith, Hally, Ehardt. Nay – none. Motion carried.

Subject: Bid Award IF-16-27, Aquatic Center Pump House

It is the recommendation of Municipal Services and the Parks and Recreation Departments to accept the lowest, responsive, responsible bid from Alan Clark Construction, LLC of Idaho Falls, Idaho for a total bid award of \$61,700.00. The aquatic center pump house is part of a multi-phase project to replace the 15-year old hot tub that has exceeded its useful life. This phase of the project will install an aquatic pump house to ensure hot tub maintenance is within safety maintenance requirements and electrical code. The funding source for this equipment will be from the 2015/16 Recreation Fund.

It was moved by Councilmember Marohn, seconded by Councilmember Smith, to accept the lowest, responsive, responsible bid from Alan Clark Construction, LLC, in an amount of \$61,700.00, for Aquatic Center Pump House. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

Community Development Services submitted the following items for Council consideration:

Subject: Final Plat and Reasoned Statement of Relevant Criteria and Standards, George Washington Estates, Division No. 7, 1st Amended

For consideration is the application for Final Plat and Reasoned Statement of Relevant Criteria and Standards, George Washington Estates, Division No. 7, 1st Amended. The Planning and Zoning Commission considered this application at its July 19, 2016, meeting and recommended approval by unanimous vote. Staff concurs with this recommendation. This item is now being submitted to the Mayor and Council for consideration.

Councilmember Dingman stated the property was previously annexed in 2008 and platted into a single lot subdivision. The lot is now being divided into two (2) lots.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to accept the Final Plat for George Washington Estates, Division No. 7, 1st Amended, and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows: Aye – Councilmembers Hally, Smith, Dingman, Ehardt, Marohn, Radford. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for George Washington Estates, Division No. 7, 1st Amended, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Smith, Hally, Radford, Dingman, Ehardt, Marohn. Nay – none. Motion carried.

Subject: Public Hearing – Planned Unit Development and Reasoned Statement of Relevant Criteria and Standards, Saturn Park Townhomes (recessed from a prior agenda)

For consideration is the application for a Planned Unit Development (PUD) and Reasoned Statement of Relevant Criteria and Standards, Saturn Park Townhomes. The Planning and Zoning Commission reviewed this application at its June 7, 2016, meeting and recommended approval by unanimous vote. Staff concurs with this recommendation.

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Mayor Casper opened the public hearing. She ordered all information presented be entered into the record.

Community Development Services Assistant Director Kerry Beutler appeared with the following:

Slide 1-Property under consideration in current zoning designations

Slide 2- Aerial photo of property under consideration

Slide 3- Additional aerial photo of property under consideration

Slide 4-Proposed layout for PUD

Assistant Director Beutler stated the PUD has been planned for 54 units. He indicated one of the trade-offs with the PUD is to allow 25% open space. At least one (1) amenity is required for occupants. He stated a proposal to be varied is a setback adjacent to the street to match the entire length of property. He indicated the applicant is intending to plat each unit as separate lots to allow ownership.

Slide 5-Elevation drawings

Slide 6-Photo looking across the property

Slide 7-Photo looking down Saturn Avenue

Slide 8-Photo looking down Teton View Lane

Slide 9-Photo looking south along Saturn Avenue at current development

Assistant Director Beutler stated a retention pond will be developed as a park for neighborhood. He indicated there will be two (2) access points and he is not currently aware of any plans to connect/finish the road.

Mayor Casper requested any public comments.

Steve Ellsworth, Ellsworth Associates, appeared. Mr. Ellsworth indicated Assistant Director Beutler has reviewed all information. Mr. Ellsworth stated at the time of development he was unaware of plans for a park.

Jerry Jayne, 1568 Lola Street, appeared. Mr. Jayne stated he frequently walks along Saturn Avenue and is hoping sidewalks will be available. He has suggested a location for a park to Parks and Recreation Director Greg Weitzel and is hopeful the developments could be compatible. He expressed his concern for the safety of the neighborhood children.

Assistant Director Beutler stated a sidewalk is required for construction.

Mayor Casper closed the public hearing.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Planned Unit Development for Saturn Park Townhomes. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the Planned Unit Development for Saturn Park Townhomes, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Smith, Hally, Dingman, Radford, Ehardt, Marohn. Nay – none. Motion carried.

Subject: Development Agreement, Final Plat and Reasoned Statement of Relevant Criteria and Standards, Saturn Park Townhomes (recessed from a prior agenda)

For consideration is the application for a Development Agreement, Final Plat, and Reasoned Statement of Relevant Criteria and Standards, Saturn Park Townhomes. The Planning and Zoning Commission reviewed this application at its June 7, 2016, meeting and recommended approval by unanimous vote. Staff concurs with this recommendation.

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It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Development Agreement for Saturn Park Townhomes, and give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows: Aye – Councilmembers Hally, Marohn, Radford, Dingman, Smith, Ehardt. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Final Plat for Saturn Park Townhomes, and give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Hally, Smith, Marohn, Dingman. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the Final Plat for Saturn Park Townhomes, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

Subject: Public Hearing – Annexation, Annexation Ordinance, Initial Zoning of RP-A, Zoning Ordinance, and Reasoned Statements of Relevant Criteria and Standards, M&B: 11.146 acres for Castlerock Development

For consideration is the application for Annexation, Annexation Ordinance, Initial Zoning of RP-A, Zoning Ordinance and Reasoned Statements of Relevant Criteria and Standards, M&B: 11.146 acres for Castlerock development. The Planning and Zoning Commission reviewed this application at its July 19, 2016, meeting and recommended approval by unanimous vote. Staff concurs with these recommendations.

Mayor Casper opened the public hearing. She ordered all information presented be entered into the record.

Assistant Director Beutler appeared with the following:

- Slide 1-Property under consideration in current zoning designations
- Slide 2-Aerial photo of property under consideration
- Slide 3-Additional aerial photo of property under consideration
- Slide 4-Comprehensive Plan Future Land Use Map
- Slide 5-Photo looking south across property
- Slide 6-Photo looking north along Rhonda Avenue

Assistant Director Beutler stated a typical curb is not required due to the large lot size. The intent after annexation is to plat the property into larger residential lots.

Mayor Casper requested any public comments.

Wendy Schreave, Franklin Road in Nampa, Idaho, appeared. She stated the applicant is proposing RP-A zoning from the R-1 zoning due to the larger lot sizes.

Mayor Casper closed the public hearing.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Ordinance annexing Castlerock development, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Dingman, Radford, Marohn, Smith, Hally, Ehardt. Nay – none. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

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ORDINANCE NO. 3083

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS; DESCRIBING SUCH LANDS; AMENDING THE CITY MAP; ASSIGNING A COMPREHENSIVE PLAN MAP DESIGNATION OF LOW DENSITY RESIDENTIAL; AMENDING THE LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the annexation for Castlerock development, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Ordinance assigning a Comprehensive Plan Designation of Low Density Residential and establishing the initial zoning for Castlerock development as RP-A (Residence Park Zone), under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary, that the Comprehensive Plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning, and amendment to the Comprehensive Plan on the Comprehensive Plan and Zoning Maps located in the Planning Office. Roll call as follows: Aye – Councilmembers Hally, Smith, Dingman, Ehardt, Marohn, Radford. Nay – none. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3084

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE INITIAL ZONING OF APPROXIMATELY 11.146 ACRES DESCRIBED IN EXHIBITS A AND B OF THIS ORDINANCE AS RP-A ZONE; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the Initial Zoning of RP-A Zone for Castlerock development, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Smith, Hally, Radford, Dingman, Ehardt, Marohn. Nay – none. Motion carried.

Subject: Public Hearing – Rezone from C-1 to CC-1, Zoning Ordinance, and Reasoned Statement of Relevant Criteria and Standards, Lot 2, Block 1, Eagle Ridge Division No. 2

For consideration is the application for Rezone from C-1 to CC-1, Zoning Ordinance, and Reasoned Statement of Relevant Criteria and Standards, Lot 2, Block 1, Eagle Ridge Division No. 2. The Planning and Zoning Commission considered this application at its July 19, 2016, meeting and recommended approval by a 4-1 vote. Staff concurs with this recommendation but does agree with concerns raised by the dissenting voter.

Mayor Casper opened the public hearing. She ordered all information presented be entered into the record.

Assistant Director Beutler appeared with the following:

Slide 1-Property under consideration in current zoning

Slide 2- Aerial photo of property under consideration

Slide 3- Additional aerial photo of property under consideration, including the current structure

August 25, 2016

Assistant Director Beutler stated the request for the zoning change is to allow an auto body shop. He indicated the current building would assist the property owners with the intended use as the CC-1 zone is less restrictive.

Slide 4- Comprehensive Plan Future Land Use Map

Assistant Director Beutler stated landscaping is not required for CC-1 zone, although the applicant indicated landscaping may occur. Due to the change of use the parking lot standards will require some landscaping.

Kevin Young, co-owner of Young Auto Body, appeared. Mr. Young stated he did not want to move forward in the current industrial zone. He indicated the property has been vacant for approximate three (3) years and he would like to make use of vacant property. He stated there are current issues with the property which have been addressed with City staff. Mr. Fife stated landscaping is irrelevant and should not be considered with council deliberations.

Mayor Casper closed the public hearing.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Rezoning Ordinance, Lot 2, Block 1, Eagle Ridge Division No. 2, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Dingman, Smith, Marohn, Ehardt, Hally. Nay – Councilmember Radford. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3085

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE REZONING OF LOT 2, BLOCK 1, EAGLE RIDGE DIVISION NO. 2 AS DESCRIBED IN SECTION 1 OF THIS ORDINANCE FROM C-1 ZONE TO CC-1 ZONE; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the rezoning of Lot 2, Block 1, Eagle Ridge Division No. 2, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Smith. Nay – Councilmember Radford. Motion carried.

Subject: Public Hearing – Annexation, Annexation Ordinance, Initial Zoning of R-1 and R-2, Zoning Ordinance, and Reasoned Statements of Relevant Criteria and Standards, M&B: 38.851 acres for Linden Trails Development

For consideration is the application for Annexation, Annexation Ordinance, Initial Zoning of R-1 and R-2, Zoning Ordinance, and Reasoned Statements of Relevant Criteria and Standards, M&B: 38.851 acres for Linden Trails development. The Planning and Zoning Commission considered this application at its July 19, 2016 meeting and recommended approval by unanimous vote. Staff concurs with this recommendation.

Mayor Casper opened the public hearing. She ordered all information presented be entered into the record.

Assistant Director Beutler appeared with the following:

Slide 1-Property under consideration in current zoning

Slide 2-Aerial photo of property under consideration

Slide 3-Additional aerial photo of property under consideration indicating two (2) zone requests

Assistant Director Beutler stated the applicant is requesting two (2) zones to allow mixed housing; R-1 on the east side of property adjacent to County/State properties and R-2 on the west side adjacent to commercial office-type buildings and high density townhomes.

Slide 4-Additional aerial photo of property under consideration

August 25, 2016

Slide 5- Comprehensive Plan Future Land Use Map

Slide 6- Photo looking north of property

Slide 7- Photo looking west toward multi-family and commercial development

Slide 8- Photo looking down Pancheri Right-of-Way

Slide 9- Photo looking at existing tree line along the east property line

Mayor Casper requested any public comments.

Blake Jolley, Connect Engineering, appeared. Mr. Jolley stated Assistant Director Beutler presented all information and reiterated the multi-zone requests.

Mayor Casper closed the public hearing.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Ordinance annexing Linden Trails development, under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary. Roll call as follows: Aye – Councilmembers Hally, Marohn, Radford, Dingman, Smith, Ehardt. Nay – none. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3086

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS; DESCRIBING SUCH LANDS; AMENDING THE CITY MAP; ASSIGNING A COMPREHENSIVE PLAN MAP DESIGNATION OF LOW DENSITY RESIDENTIAL; AMENDING THE LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the annexation for Linden Trails development, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Ehardt, Radford, Smith, Marohn, Dingman, Hally. Nay – none. Motion carried.

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Ordinance assigning a Comprehensive Plan Designation of Low Density Residential and establishing the initial zoning for Linden Trails development as R-1 and R-2 Zones (Residence Zones), under the suspension of the rules requiring three complete and separate readings and that it be read by title and published by summary, that the Comprehensive Plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning, and amendment to the Comprehensive Plan on the Comprehensive Plan and Zoning Maps located in the Planning Office. Roll call as follows: Aye – Councilmembers Radford, Ehardt, Hally, Smith, Marohn, Dingman. Nay – none. Motion carried.

At the request of Mayor Casper, the City Clerk read the ordinance by title only:

ORDINANCE NO. 3087

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO; PROVIDING FOR THE INITIAL ZONING OF APPROXIMATELY 39.415 ACRES DESCRIBED IN EXHIBITS A AND B OF THIS ORDINANCE AS R-1 AND R-2 ZONES; AND PROVIDING SEVERABILITY, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

August 25, 2016

It was moved by Councilmember Dingman, seconded by Councilmember Smith, to approve the Reasoned Statement of Relevant Criteria and Standards for the Initial Zoning of R-1 and R-2 Residence Zones for Linden Trails development, and give authorization for the Mayor to execute the necessary documents. Roll call as follows: Aye – Councilmembers Marohn, Dingman, Ehardt, Hally, Radford, Smith. Nay – none. Motion carried.

There being no further business, it was moved by Councilmember Hally, seconded by Councilmember Marohn, that the meeting adjourn at 8:55 p.m. which motion passed following a unanimous vote.

CITY CLERK

MAYOR

REGULAR AGENDA:



MEMORANDUM

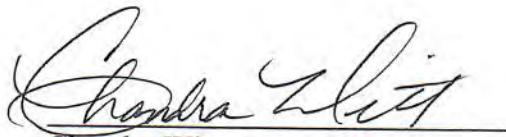
TO: Mayor and City Council
FROM: Municipal Services Department
DATE: September 14, 2016
RE: Bid Rejection, IF-16-26, Long Range Inspection Camera System

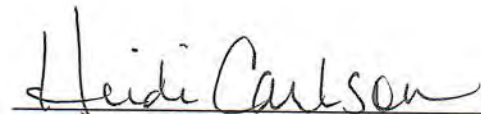
It is the recommendation of the Public Works and Municipal Services Departments to reject all bids received for the long range inspection camera system. The sewer division currently has one 2001 camera system in operation for the inspection of sewer mains. A request for bid was issued to add a new long range inspection camera system to augment the current inspection processes.

After evaluating each bid received, there were technology related discrepancies noted between the request for bid specifications and the vendor bid responses. Therefore, the Public Works department will need to re-evaluate the technology requirements for a new long range inspection camera system that will meet the current inspection needs of the of Sewer Division's crews and resubmit a bid at a later date.

Respectfully,


Pamela Alexander
Municipal Services Director


Chandra Witt
General Services Administrator


Heidi Carlson
Purchasing Agent



MEMORANDUM

TO: Mayor and City Council
FROM: Municipal Services Department
DATE: September 13, 2016
RE: BID IF-16-J, Information Technology Networking Software and Equipment

It is the recommendation of the Municipal Services Department to piggyback the State of Idaho Contract #PADD118 with Compunet, Inc. in the amount of \$80,050.44 to access pricing discounts offered on the State of Idaho contract. Purchases will include:

- Two (2) Cisco 3850 routers and associated software to perform planned upgrades and operating efficiencies to the City's fiber ring for a total of \$35,575.44.
- Wi-Fi access points, associated software and licenses to performed planned upgrades and operating efficiencies to the City's aging Wi-Fi infrastructure for a total of \$44,475.00.

The funding source for the networking software, licenses and equipment will be from the 2015/2016 Municipal Services, Information Technology budget.

Respectfully,

Pamela Alexander
Municipal Services Director

Chandra Witt
General Services Administrator

Heidi Carlson
Purchasing Agent

City of Idaho Falls
Quote #16-049

| Vendor | Quantity | 1.) Compunet, Inc. Boise, ID | 2.) Century Link Boise, ID | 3.) Presidio Boise, ID |
|--|----------|---------------------------------|-------------------------------|---------------------------|
| ITEM 1 - SWITCHES, CISCO CATALYST 3850, ITEM #WS-C3850-12X48U-E | | | | |
| Price Per Each | 2 | \$ 11,650.00 | \$ 15,356.82 | \$ 14,868.00 |
| TOTAL | | \$ 23,300.00 | \$ 30,713.64 | \$ 29,736.00 |
| ITEM 2 - SWITCHES, CISCO CATALYST 3850, ITEM #C3850-NM-4-10GIG | | | | |
| Price Per Each | 2 | \$ 2,320.00 | \$ 2,636.36 | \$ 2,360.00 |
| TOTAL | | \$ 4,640.00 | \$ 5,272.72 | \$ 4,720.00 |
| ITEM 3 - SECONDARY POWER SUPPLY, ITEM #PWR-C1-1100W AC/2 | | | | |
| Price Per Each | 2 | \$ 1,102.00 | \$ 1,252.27 | \$ - |
| TOTAL | | \$ 2,204.00 | \$ 2,504.54 | Included in Line #1 |
| ITEM 4 - SMALL FORM PLUGGABLES, ITEM #SFP-10G-SR | | | | |
| Price Per Each | 5 | \$ 577.10 | \$ 655.80 | \$ 587.05 |
| TOTAL | | \$ 2,885.50 | \$ 3,279.00 | \$ 2,935.25 |
| ITEM 5 - MULTI MODE FIBER PATCH CABLES, ITEM #H2-FOJIM303 | | | | |
| Price Per Each | 2 | \$ 12.92 | \$ 59.32 | \$ 20.00 |
| TOTAL | | \$ 25.84 | \$ 118.64 | \$ 40.00 |

City of Idaho Falls
Quote #16-049

| Vendor | 1.) Compunet, Inc. Boise, ID | 2.) Century Link Boise, ID | 3.) Presidio Boise, ID |
|--|---------------------------------|-------------------------------|---------------------------|
| ITEM 6 -MULTI MODE FIBER PATCH CABLE, ITEM #H2-FOJIM302 | | | |
| Price Per Each | 2 \$ 12.25 \$ | 59.32 \$ | 18.89 |
| TOTAL | \$ 24.50 \$ | \$ 118.64 \$ | 37.78 |
| ITEM 7 - SUPPORT FOR CISCO CATALYST 3850 SWITCHES | | | |
| Price Per Year | 2 \$ 1,247.80 \$ | 1,284.50 \$ | 1,247.80 |
| TOTAL | \$ 2,495.60 \$ | \$ 2,569.00 \$ | 2,495.60 |
| Total for Switches | \$ 35,575.44 \$ | \$ 44,576.18 \$ | 39,964.63 |
| ITEM 1 - VIRTUAL WIRELESS CONTROLLER, ITEM #L-AIR-CTVM-5-K9 | | | |
| Price Per Each | 1 \$ 360.00 \$ | 494.32 \$ | 442.50 |
| TOTAL | \$ 360.00 \$ | \$ 494.32 \$ | 442.50 |
| ITEM 2 - LICENSE FOR THE VIRTUAL CONTROLLER, ITEM #L-LIC-CTVM-5A | | | |
| Price Per Each | 4 \$ 360.00 \$ | 494.32 \$ | 442.50 |
| TOTAL | \$ 1,440.00 \$ | \$ 1,977.28 \$ | 1,770.00 |
| ITEM 3 - LICENSE FOR THE VIRTUAL CONTROLLER, ITEM #L-LIC-CTVM-25A | | | |
| Price Per Each | 1 \$ 1,800.00 \$ | 2,471.59 \$ | 2,212.50 |
| TOTAL | \$ 1,800.00 \$ | \$ 2,471.59 \$ | 2,212.50 |

City of Idaho Falls
Quote #16-049

| Vendor | 1.) Compunet, Inc. Boise, ID | 2.) Century Link Boise, ID | 3.) Presidio Boise, ID |
|---|---------------------------------|-------------------------------|---------------------------|
| ITEM 4 - SUPPORT, CISCO VIRTUAL WIRELESS, ITEM #CON-SAU-CTVM5K9 | | | |
| Price Per Each | 1 \$ 127.50 \$ | 131.25 \$ | 127.50 |
| TOTAL | \$ 127.50 \$ | \$ 131.25 \$ | 127.50 |
| ITEM 5 - SUPPORT, 5 AP ADDER LICENSE, ITEM #CON-SAU-CTVM5A | | | |
| Price Per Each | 4 \$ 127.50 \$ | 131.25 \$ | 127.50 |
| TOTAL | \$ 510.00 \$ | \$ 525.00 \$ | 510.00 |
| ITEM 6 - SUPPORT, 25 AP ADDER LICENSE, ITEM #CON-SAU-CTVM25A | | | |
| Price Per Each | 1 \$ 637.50 \$ | 656.25 \$ | 637.50 |
| TOTAL | \$ 637.50 \$ | \$ 656.25 \$ | 637.50 |
| ITEM 7 - WIRELESS ACCESS POINT, CISCO AIRONET, ITEM #AIR-AP38021-BK910 | | | |
| Price Per Each | 5 \$ 7,920.00 \$ | 10,875.00 \$ | 8,250.00 |
| TOTAL | \$ 39,600.00 \$ | \$ 54,375.00 \$ | 41,250.00 |
| Total Access Points | \$ 44,475.00 \$ | \$ 60,630.69 \$ | 46,950.00 |
| Lump Sum Total | \$ 80,050.44 \$ | \$ 105,206.87 \$ | 86,914.63 |



MEMORANDUM

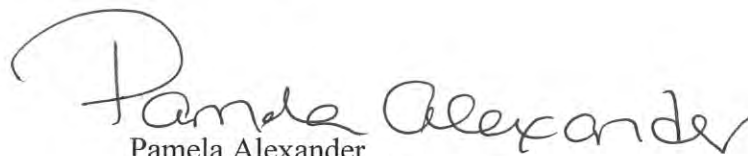
TO: Mayor and City Council
FROM: Municipal Services Department
DATE: September 6, 2016
RE: Renewal of Shore Tel Unified Communications Support and Maintenance Agreement

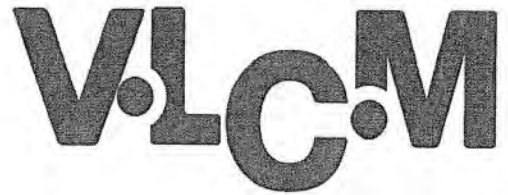
The Municipal Services Department respectfully request authorization to renew the Shore Tel unified communications support and maintenance agreement with the City of Idaho Falls. The information technology group has reviewed the renewal options for support and maintenance services and is recommending a 3-year renewal option of \$30,756.67 per year for a total agreement amount of \$92,270.01. The 3-year renewal option includes the following maintenance services:

- Extended warranty protection and replacement of Shore Tel hardware;
- Software updates;
- Access to Shore Tel customer service department for assistance and troubleshooting issues;
- In-Stock replacement of Shore Tel equipment as needed

Funding for the support and maintenance agreement is in the Municipal Services operating budget for 2016/17.

Respectfully,


Pamela Alexander
Municipal Services Director



April 7, 2016

City of Idaho Falls
PO Box 50220
Idaho Falls, ID 83405

Please find below pricing for the renewal of your ShoreTel unified communications support and maintenance agreement. With the maintenance agreement you will receive the following:

- Extended warranty protection with advanced replacement on your ShoreTel hardware (labor not included)
- Software updates to the current version of ShoreTel (labor not included)
- Continued access to ShoreTel's customer service department (labor not included)
- In-stock replacement equipment from VLCM

VLCM appreciates your business and looks forward to serving you and your business as needed.

1 Year Renewal

\$35,784 (no phones)

3 Year Renewal

\$92,270 (no phones)

5 Year Renewal

\$145,240 (no phones)

In addition to the standard ShoreTel maintenance agreement described above, VLCM can customize an agreement to meet your specific needs.

Please feel free to call with any questions at (801) 299-8484.

- ☐ I would like to select the one-year maintenance agreement and authorize VLCM to bill me the appropriate amount.
- ☐ I would like to select the three-year maintenance agreement and authorize VLCM to bill me the appropriate amount.
- ☐ I would like to select the five-year maintenance agreement and authorize VLCM to bill me the appropriate amount.
- ☐ I would like to decline the maintenance agreement understanding that there will be a reinstatement fee charged by ShoreTel if I elect to be covered under support and maintenance with ShoreTel in the future.

Signature

Date

Quote valid through 09/30/16



MEMORANDUM

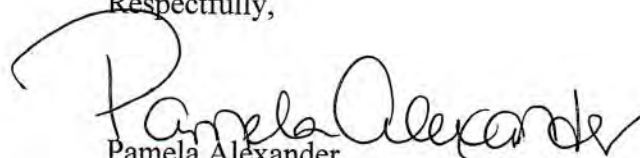
TO: Mayor and City Council
FROM: Municipal Services Department
DATE: September 12, 2016
RE: RFP – #16-026, Comprehensive Annual Financial Audit Services

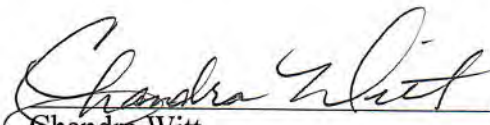
Please find attached the evaluation for Request for Proposals #16-026, Comprehensive Annual Financial Audit Services. The purpose for this submittal was to find a qualified firm to provide certified public accounting (CPA) annual financial auditing services to the City of Idaho Falls, Idaho for the year ending September 30, 2016. The City received a total of four (4) proposals that were evaluated based on the following proposal criteria:

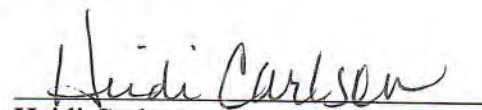
- Company Experience and Qualifications
- Key Personnel and Resources Available
- Project Understanding
- Project Understanding
- Overall Completeness, clarity and Quality of Proposal
- Cost of Services

An evaluation panel consisting of Municipal Services and Idaho Falls Power representatives reviewed the proposals and scored each proposal based on the evaluation criteria identified in the request for proposal. Following the criteria evaluation, consultant interviews were scheduled with the top two scored vendors. Based on the totality of the scored proposals and interview responses it is the recommendation of the Municipal Services and Idaho Falls Power Departments to enter into a professional service contract with Moss Adams, LLC for a total contract award of \$104,925.00. The project is budgeted in the Municipal Services Department 2016/2017 budget.

Respectfully,


Pamela Alexander
Municipal Services Director


Chandra Witt
General Services Administrator


Heidi Carlson
Purchasing Agent

| OF PAGE, E | CRITERION 1 COMPANY EXPERIENCE AND QUALIFICATIONS | | | | CRITERION 2 KEY PERSONNEL AND RESOURCES | | | | CRITERION 3 PROJECT UNDERSTANDING | | | | CRITERION 4 OVERALL COMPLETENESS, CLARITY AND QUALITY OF PROPOSAL | | | | CRITERION 5 COST OF SERVICE | | | |
|---------------|---|----|----|----|---|----|----|----|--------------------------------------|----|------|----|--|----|----|----|--------------------------------|----|--|--|
| | #4 | #1 | #2 | #3 | #4 | #1 | #2 | #3 | #4 | #1 | #2 | #3 | #4 | #1 | #2 | #3 | #4 | | | |
| 5 | 16 | 20 | 20 | 16 | 16 | 20 | 20 | 16 | 16 | 25 | 25 | 20 | 20 | 16 | 20 | 12 | 20 | 16 | | |
| 3 | 20 | 20 | 20 | 20 | 16 | 20 | 20 | 20 | 16 | 25 | 22.5 | 25 | 25 | 16 | 16 | 12 | 16 | 12 | | |
| 3 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 12 | 15 | 15 | 15 | 20 | 12 | 8 | 16 | 16 | 20 | | |
| 3 | 8 | 12 | 12 | 12 | 8 | 12 | 12 | 12 | 8 | 10 | 20 | 15 | 10 | 16 | 12 | 16 | 16 | 16 | | |

| #4 | Average | Lump Sum |
|----|---------|----------|
| 89 | 95 | 379 |
| 88 | 95 | 381.5 |
| 83 | 75 | 299 |
| 61 | 70 | 278 |

2
1
3
4



MEMORANDUM

To: Honorable Mayor and City Council

From: Greg A. Weitzel, Director, Parks and Recreation Department

Date: September 22, 2016

Subject: **FESTIVAL OF LIGHTS PERSONAL SERVICES AGREEMENT**

Mayor and Council:

Attached for your consideration is the Personal Services Agreement between the City of Idaho Falls and Wilding Enterprises, LLC for set up and administration of a drive through winter light display at Freeman Park. This agreement has been reviewed and approved by the City attorney.

The Parks and Recreation Department respectfully requests approval and authorization for the Mayor and City Clerk to sign and execute said agreement.

Respectfully,

Greg A. Weitzel
Department of Parks and Recreation

laj

Attachment

cc: Mayor
City Clerk
File

PERSONAL SERVICES AGREEMENT BETWEEN
CITY OF IDAHO FALLS, IDAHO, AND BRYCE WILDING
(FESTIVAL OF LIGHTS)

This Personal Services Agreement (hereinafter called "AGREEMENT"), made this _____ day of _____, 2016, by and between the CITY OF IDAHO FALLS, IDAHO, a municipal corporation of the State of Idaho, (hereinafter called "CITY"), whose mailing address is P.O. Box 50220, Idaho Falls, Idaho 83405, and WILDING ENTERPRISES, LLC, (hereinafter called "WILDING ENTERPRISES, LLC"), whose mailing address is 1096 Aspen, Brigham City, UT 84302.

WITNESSETH

WHEREAS, the 2016 holiday season is an important one for festivities, family activities, and enjoyment of the beautiful winter in the community; and

WHEREAS, WILDING ENTERPRISES, LLC, is the sole owner of WILDING ENTERPRISES, LLC, animated light park company, which includes establishing and operating light displays, stands, ornaments, connectors, chords, and other accessories that allow for family entertainment and attractions; and

WHEREAS, WILDING ENTERPRISES, LLC, is willing to provide certain entertainment services and attractions for the 2016 Festival of Lights ("Project"); and

WHEREAS, CITY wishes to engage in the services of WILDING ENTERPRISES, LLC, for the Project.

NOW THEREFORE, in the consideration of the covenants and conditions set forth herein, the parties agree as follows:

SECTION I:

A. SCOPE OF WORK

1. WILDING ENTERPRISES, LLC, shall do the following:

- a. More than fifty-five (55) still and animated light displays to be illuminated in various ways (e.g. multi-colored LED, auto-fade between colors, and spotlighted ornaments, etc.) to be displayed at Freeman Park in Idaho Falls, Idaho.
- b. A Santa's Hut, open every night but Sundays, will open on Friday, November 25, 2016, and continue through December 24, 2016.

- c. Optional horse and wagon rides will be made available along with broadcasted Christmas music, including the Mayor's message.
- d. WILDING ENTERPRISES, LLC, agrees to operate entrance gates and collect all revenue during the operation of the light park season.
- e. CITY agrees to provide electrical power that may be used to run lighted displays, audio systems, or other accessories essential to the park's operation for the duration of this and any future seasons through the existing electrical outlets present at Freeman Park's restrooms, band shelter, and pavilions. The cost of electrical power consumed from these existing outlets shall be borne by CITY Parks and Recreation Department.
- f. CITY agrees to provide snow removal services for the travel lanes throughout the light park during the operating season.
- g. WILDING ENTERPRISES, LLC, and CITY may negotiate for closure due to inclement weather during the season.
- h. WILDING ENTERPRISES, LLC, shall be responsible for the rental, use, and payment for any generators required to produce power in support of the display.

SECTION II:

A. CONTRACTUAL REQUIREMENTS:

- 1. The display should be open to the public from Friday, November 25, 2016, through December 24, 2016. The display will operate from 6 p.m. to 10:00 p.m. seven (7) days a week.
- 2. WILDING ENTERPRISES, LLC, is responsible for setting up, lighting trees, troubleshooting, operating, maintaining, tearing down, removing tree decorations, and storing all light displays and other attractions associated with the holiday light park.
- 3. The parties may make a separate agreement regarding food and drink concessions.
- 4. Entrance fees shall be as follows:
 - a. Ten dollars (\$10) family-sized privately-owned vehicle (no limit of number of occupants)
 - b. Fifteen dollars (\$15) over-sized or commercial-sized vehicles
 - c. Twenty-five dollars (\$25) per bus

- d. Active military discount of five dollars (\$5) per car with a military ID (excluding Wednesdays)
 - e. One dollar (\$1) off for at least one (1) community-wide promotion
 - f. Five dollars (\$5) discount per vehicle on Wednesdays
5. If the Project is successful, CITY and WILDING ENTERPRISES, LLC, agree to discuss a possible long-term contract for future years under terms and conditions similar to those contained within this Agreement.

B. Fees and Conditions for Professional Services.

- 1. Payment for all services described in this Agreement is provided in accordance with the pricing schedule described in Section II.B.2. of this Agreement.
- 2. CITY to receive fifteen percent (15%) of all gross gate revenue for the entire display operating time period.
- 3. WILDING ENTERPRISES, LLC, shall pay for any additional electrical infrastructure, expansion of electrical service, or installation of additional electrical outlets necessary to run lighted displays, audio systems, or other accessories essential to the park's operation that are not already existing. If additional electrical infrastructure is built, the infrastructure shall become the property of CITY at the expiration of this Agreement.
- 4. If WILDING ENTERPRISES, LLC, constructs or expands any additional electrical infrastructure at Freeman Park, under II.B.3 of this Agreement, WILDING ENTERPRISES, LLC, shall pay for the cost of the energy.
- 5. If WILDING ENTERPRISES, LLC, requires electric power through electric generators, WILDING ENTERPRISES, LLC, shall be responsible for purchase of such power at WILDING ENTERPRISES, LLC, 's own expense and risk.

SECTION III:

A. Independent Contractor.

The contracting parties warrant by their signature that no employer/employee relationship is established between and CITY by the terms of this Agreement. It is understood by the parties hereto that WILDING ENTERPRISES, LLC, 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.

B. Termination of Agreement.

This Agreement may be terminated by WILDING ENTERPRISES, LLC, upon thirty (30) days written notice, should CITY fail to substantially perform in accordance with its terms through no fault of WILDING ENTERPRISES, LLC, CITY may terminate this Agreement

with thirty (30) days' notice without cause and without further liability to WILDING ENTERPRISES, LLC, except as designated by this Section. In the event of termination, WILDING ENTERPRISES, LLC, shall be paid for services performed to termination date, based upon the work completed. All work, including reports, shall become the property of, and shall be surrendered to, CITY.

C. Extent of Agreement.

This Agreement may be amended only by written instrument signed by both parties hereto.

D. Termination of Project.

If any portion of Project covered by this Agreement shall be suspended, abated, abandoned, or terminated, CITY shall pay WILDING ENTERPRISES, LLC, for the services rendered to the date of such suspended, abated, abandoned, or terminated work; the payment to be based, insofar as possible, on the amounts established in this Agreement or, where the Agreement cannot be applied, the payment shall be based upon a reasonable estimate as mutually agreed upon between the two (2) parties as to the percentage of the work completed.

E. Insurance.

WILDING ENTERPRISES, LLC, agrees to provide full insurance coverage, including general commercial liability coverage with limits of not less than five hundred thousand dollars (\$500,000) for claims made and for all action performed under this Agreement, and workers compensation coverage, consistent with Idaho State Law.

F. Indemnification.

WILDING ENTERPRISES, LLC, 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 WILDING ENTERPRISES, LLC, in the performance of professional services under this Agreement, to the extent that WILDING ENTERPRISES, LLC, is responsible for such damages, liabilities, and costs on a comparative basis of fault and responsibility between WILDING ENTERPRISES, LLC, and CITY. WILDING ENTERPRISES, LLC, shall not be obligated to indemnify CITY for CITY's sole negligence.

G. 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.

H. 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 this Agreement, 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.

I. Binding of Successors.

CITY and WILDING ENTERPRISES, LLC, 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.

J. Modification and Assignability of Agreement.

This Agreement contains the entire agreement between the parties concerning 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. WILDING ENTERPRISES, LLC, may not subcontract or assign its rights (including the right to compensation) 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.

K. CITY'S Representatives.

CITY shall designate a representative authorized to act in behalf of CITY. The authorized representative shall examine the documents of the work as necessary, and shall render decisions related thereto in a timely manner so as to avoid unreasonable delays.

L. Conflict of Interest.

WILDING ENTERPRISES, LLC, covenants that he presently has no interest and will not acquire any interest, direct or indirect, in Project which would conflict in any manner or degree with the performance of services hereunder. WILDING ENTERPRISES, LLC, further covenants that, in performing this Agreement, they will employ no person who has any such interest.

M. Ownership and Publication of Materials.

All reports, information, data, and other materials prepared by WILDING ENTERPRISES, LLC, pursuant to this Agreement shall be the property of CITY, which shall have the exclusive and unrestricted authority to release, publish, or otherwise use them, in whole or in part. All such materials developed under this Agreement shall not be subject to copyright or patent in the United States or in any other country without the prior written approval and express authorization of CITY. All reports, information, data, and other materials shall be subject to disclosure pursuant to Idaho Public Records Law, Chapter 1 of Title 74 of the Idaho Code.

N. Non-discrimination.

WILDING ENTERPRISES, LLC, 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.

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

ATTEST:

“CITY”

City of Idaho Falls, Idaho

By _____

Kathy Hampton, City Clerk

By _____

Rebecca L. Noah Casper, Mayor

“WILDING ENTERPRISES, LLC”

By _____

Bryce Wilding

STATE OF IDAHO)

) ss.

County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah 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.

Notary Public of Idaho

Residing at: _____

My Commission Expires: _____

(Seal)

STATE OF IDAHO)

) ss:

County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public, in and for said State, personally appeared Bryce Wilding, whose name is subscribed to the within instrument and acknowledged to me that he is authorized to execute the same.

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

Notary Public of Idaho

Residing at: _____

My Commission Expires: _____

(Seal)



MEMORANDUM

To: Honorable Mayor and City Council

From: Greg A. Weitzel, Director, Parks and Recreation Department

Date: September 22, 2016

Subject: **VETERINARY SERVICES INDEPENDENT CONTRACTOR AGREEMENT**

Mayor and Council:

Attached for your consideration is an independent contractor agreement renewal between the City of Idaho Falls and Dr. Rhonda Aliah for the purposes of providing veterinary services at the Idaho Falls Zoo at Tautphaus Park from October 1, 2016 through September 30, 2017. The agreement has been reviewed and approved by the City Attorney.

The Department of Parks and Recreation respectfully requests the approval and authorization for Mayor and City Clerk to execute the documents.

Respectfully,

Greg A. Weitzel, MS, CPRP
Department of Parks and Recreation

laj

Attachments

c: Mayor
City Clerk
File

**VETERINARY SERVICES INDEPENDENT CONTRACTOR AGREEMENT
BETWEEN CITY OF IDAHO FALLS, IDAHO
AND RHONDA ALIAH, D.V.M.**

THIS VETERINARY SERVICES INDEPENDENT CONTRACTOR AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO AND RHONDA ALIAH, D.V.M. (hereafter "Agreement"), is made this _____ day of _____ 2016, by and between the City of Idaho Falls, Idaho, a municipal corporation, whose address is P.O. Box 50220, Idaho Falls, Idaho 83405 (hereinafter "CITY"), and Rhonda Aliah, D.V.M., whose address is 2561 Genevieve Way, Idaho Falls, Idaho 83402 (hereinafter "CONTRACTOR").

RECITALS:

WHEREAS, CITY is the owner and operator of Idaho Falls Zoo at Tautphaus Park and is in need of veterinary services for the animals in the Zoo (hereinafter referred to as the "Animals in the Collection");

WHEREAS, CONTRACTOR is a veterinarian licensed to practice veterinary medicine in the state of Idaho; and

WHEREAS, CITY desires that CONTRACTOR provide veterinary services at the Idaho Falls Zoo at Tautphaus Park as an independent CONTRACTOR and CONTRACTOR desires to provide CITY with said veterinary services for the animals at the Idaho Falls Zoo at Tautphaus Park as an independent CONTRACTOR on the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties, in consideration of the mutual promises herein contained, hereby agree as follows:

1. Services. CITY hereby engages CONTRACTOR to perform veterinary services as described herein, and CONTRACTOR accepts such engagement commencing October 1, 2016, and terminating on September 30, 2017.

2. Description of Work. CITY hereby engages CONTRACTOR for the practice of veterinary services as an independent CONTRACTOR. The CONTRACTOR's duties under this Agreement are as follows:

- A. CONTRACTOR shall tour the Zoo a minimum of once (1x) per week and shall evaluate the health of the animals in the collection.

- B. CONTRACTOR shall review Zookeeper daily reports concerning health matters, treatments, illnesses, or injuries of the animals in the collection.
- C. CONTRACTOR shall provide any and all necessary medical treatment and care to the animals in the collection.
- D. CONTRACTOR shall, in accordance with federal law governing controlled substance, hold, supervise the administering of, and assume all legal responsibility for the use of any controlled substance or medication used at the Zoo in the care and treatment of the animals in the collection.
- E. CONTRACTOR, or an in-house staff veterinarian, shall perform regular rounds at the Zoo and perform routine veterinary services when needed or appropriate. CONTRACTOR or such staff veterinarian, shall also respond to emergency calls at the Zoo and treat sick or injured animals at the Zoo or at any other facility where CONTRACTOR has privileges, whenever CITY or CONTRACTOR deems necessary.
- F. CONTRACTOR, and such staff veterinarian, shall at all times keep and maintain a cell phone or pager on their persons and shall keep the Zoo Superintendent apprised of CONTRACTOR's cell phone/pager number and the name and cell phone/pager number of such staff veterinarian, one of whom will at all times be available to respond to calls from CITY. The on-call veterinarian will be familiar with any and all current medical concerns or on-going treatments of the animal collection at the Zoo.
- G. CONTRACTOR shall assist the Zoo Superintendent and the General Curator in planning routine and preventative medical protocols for the animal collection.
- H. CONTRACTOR shall, in accordance with the United States Department of Agriculture laws and regulations governing licensed exhibitors, assume responsibility as the attending veterinarian and provide all services and information required by U.S.D.A. regulations of the attending Veterinarian.
- I. CONTRACTOR shall be a member in good standing of the American Association of Zoo Veterinarians.
- J. CONTRACTOR shall provide at least six (6) articles per year regarding the veterinary care of the animal collection for publication in CITY materials, the Tautphaus Park Zoological Society materials, and/or professional (veterinarian or zoological) publications.

- K. CONTRACTOR shall, along with the City Parks and Recreation Director and the Zoo Superintendent, approve all animal acquisitions and dispositions by initializing animal transaction forms.
- L. CONTRACTOR shall have access to the Zoo grounds, the Zoo hospital and administrative offices. Keys will be issued to CONTRACTOR, as necessary to facilitate performance of CONTRACTOR's duties. Such keys shall be promptly returned upon termination of this Agreement.

CONTRACTOR shall perform all services pursuant to this Agreement in a competent and efficient manner and in strict accordance with the currently accepted methods and practices of the profession described herein in compliance with any applicable code of ethics.

CONTRACTOR shall not disclose any information concerning CITY, CITY's employees, or the business which CONTRACTOR may learn as a result of the relationship created by this Agreement.

3. Independent Contractor. The parties to this Agreement agree that CONTRACTOR is a professional person, that CONTRACTOR is self-employed, and that the relationship created by this Agreement is that of a CITY contracting with an independent contractor and is not that of employer-employee. CITY is interested only in the results to be achieved, and the time spent, manner, details, conduct, and control of the work will lie solely with CONTRACTOR. CITY will not provide CONTRACTOR with any training. CONTRACTOR agrees that CONTRACTOR is solely responsible for the quality of CONTRACTOR's work, and CONTRACTOR agrees to indemnify and hold CITY and the employees of CITY harmless from any professional liability, including defense costs, which may be imposed upon CITY or the employees of CITY as a result of a professional act or omission of CONTRACTOR. CONTRACTOR may generally set CONTRACTOR's own hours, and is not required to work a set number of hours or days. The CONTRACTOR is not an agent or employee of CITY for any purpose, and is not authorized to incur any obligations or charges on behalf of the CITY. It is further understood that CONTRACTOR is free to contract with others during the term of this Agreement.

CONTRACTOR agrees to carry Worker's Compensation and to pay all Old Age Benefit, Self-Employment, Unemployment Compensation, and any other taxes required to be paid by self-employed persons by the United States Government, the State of Idaho, Bonneville County and CITY. CITY shall issue a Form 1099 to CONTRACTOR at the end of each calendar year during the term of this Agreement.

CONTRACTOR shall have no authority to enter into any contract or other agreement or commitment binding upon CITY. CONTRACTOR shall not have any interest in CITY's tangible or intangible assets.

4. Expenses.

4.1 CONTRACTOR shall maintain, at CONTRACTOR's sole cost and expense, professional liability coverage with limits of not less than two hundred fifty thousand dollars (\$250,000) for claims made and for all actions performed by CONTRACTOR during the term of this Agreement, whether or not a claim is actually made following the termination of this Agreement.

Upon execution of this Agreement CONTRACTOR shall provide CITY with proof of coverage.

4.2 CONTRACTOR shall pay for all of CONTRACTOR's dues pertaining to professional societies and shall pay for all of CONTRACTOR's professional education expenses. Any use by CONTRACTOR of CONTRACTOR's own vehicle in connection with the Business shall be without reimbursement by CITY.

5. Payment for Services. CITY's payment to CONTRACTOR for services rendered to CITY pursuant to this Agreement shall be as follows:

5.1 CITY shall pay to CONTRACTOR during the term of this Agreement, three thousand one hundred fifty dollars (\$3,150) per month. Such amount shall be due and payable in arrears at the end of each month during the term hereof.

5.2 CITY shall pay to CONTRACTOR the sum of twenty-five dollars (\$25) per article in excess of the six (6) articles per year which are set forth in Section 2 above, which are authored by CONTRACTOR and published in the CITY publications, the Zoological Society's publications and/or other professional publications. Payment shall be made for the published articles identified herein within forty-five (45) days of the date of publication. CONTRACTOR shall have the duty to bring any and all publications of any such articles to the attention of CITY, and shall provide CITY with a copy of said published article, identifying the title, publisher, date of publication, page numbers upon which article appears and any further identifying information.

5.3 In addition to the above payments, CITY will also reimburse CONTRACTOR for direct, out-of-pocket expenses incurred by CONTRACTOR for independent outside consultations, medications, specialized surgical equipment, supplies or outside veterinary services beyond CONTRACTOR's expertise required for the care of the Zoo animals, regardless of the time when rendered.

CONTRACTOR shall provide CITY with a billing statement within five (5) days after the end of each month for services provided hereunder, which billing statement shall list the services rendered during each such month in each of the categories listed in Section 5.1 through 5.4 above. CITY

shall pay CONTRACTOR the amount determined above and as set forth in CONTRACTOR's billing statement for the prior month on or before the 10th day of the month following the month in which CONTRACTOR rendered the services. If this Agreement terminates for any reason while the total payments made to CONTRACTOR exceed CONTRACTOR's earned payment (as determined in the manner set forth above), CONTRACTOR shall promptly repay any such excess to the CITY.

CONTRACTOR is not entitled to participate in any retirement plan or other deferred compensation plan which may be provided by CITY. CONTRACTOR is not entitled to participate in any of CITY's employee plans or benefits, including, but not limited to, accident and health insurance, sick leave, group life insurance, medical expense reimbursement, and disability income or wage continuation plans.

6. Right to Second Opinions. CITY reserves the right to seek second opinions from qualified professionals regarding any diagnosis of disease, disorder, ailment, malady, physical condition and treatment relating to animals in the collection. Upon being directed to do so by CITY, CONTRACTOR shall abide by CITY's instructions regarding diagnosis for disease, disorder, ailment, malady, physical condition and treatment relating to animals in the collection.

7. Indemnification. CONTRACTOR shall indemnify CITY against all liability or loss, and against all claims or actions based upon or arising out of damage or injury (including death) to animals, persons or property caused by or sustained in connection with the performance of this Agreement or by conditions created thereby, or based upon any violation of any statute, ordinance, building code or regulation, and the defense of any such claim or actions.

8. Termination of Agreement.

8.1 This Agreement may be terminated by either party for any reason whatsoever upon the giving of thirty (30) days written notice to the other party. Upon termination of this Agreement, all animals for whom CONTRACTOR provided services shall remain animals of CITY, and all records of all such animals for whom CONTRACTOR provided services shall remain the sole property of CITY, and CONTRACTOR shall have no right to copy such records.

8.2 This Agreement may be terminated in the sole discretion of CITY upon the occurrence of any of the following:

- (a) CONTRACTOR engages in fraud, dishonesty, misappropriation of funds, embezzlement, or other act of misconduct in the rendering of services pursuant to this Agreement;

(b) CONTRACTOR continues to engage in personal or professional misconduct or to violate rules of professional ethics after written notice thereof from CITY;

(c) CONTRACTOR fails or refuses, after written notice, to faithfully or diligently perform any of the duties, terms, conditions, or provisions of this Agreement;

(d) CONTRACTOR makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or is involuntarily adjudicated bankrupt;

(e) CONTRACTOR becomes disabled for a period of thirty (30) days. CONTRACTOR shall be considered disabled if, CONTRACTOR is unable to personally perform the services required of CONTRACTOR under the terms of this Agreement, or, if under the terms of a disability income policy insuring CONTRACTOR, the insurance company which writes the insurance shall determine CONTRACTOR is disabled. If a disability income policy is not in force, CONTRACTOR shall be considered disabled on the certificate of a physician licensed to practice medicine in the state of Idaho. CITY shall choose the examining physician and may require CONTRACTOR's attendance and exam with such physician provided CITY has reasonable grounds to believe CONTRACTOR is incapable of meeting his professional duties required hereunder. CONTRACTOR shall pay for the cost of such examination;

(f) CONTRACTOR ceases to be licensed to practice veterinary medicine, the profession called for by this Agreement, by the State of Idaho or any governing body of such profession in charge of licensing veterinarians in the State of Idaho.

8.3 Upon termination of this Agreement under the provisions of this paragraph 8, or expiration of this Agreement, CONTRACTOR shall purchase a "tail" professional liability insurance policy with limits of not less than two hundred fifty thousand dollars (\$250,000) at CONTRACTOR's sole cost and expense.

9. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or if mailed first class, postage prepaid.

If to City: City of Idaho Falls
P.O. Box 50220
Idaho Falls, Idaho 83405

If to Contractor: Dr. Rhonda Aliah
2561 Genevieve Way Idaho
Falls, Idaho 83402

10. Controlling Law. This Agreement shall be construed and the legal relations between the parties determined in accordance with the laws of the State of Idaho.

11. Miscellaneous.

11.1 Counterparts. This Agreement may be executed in several counterparts, each of which shall be considered an original.

11.2 Integration. This Agreement supersedes all prior agreements or understandings, written or oral, of the parties hereto and incorporates the entire understanding of the parties with respect to the transactions contemplated hereby. This Agreement may not be modified without the prior written agreement of both parties to this Agreement.

11.3 Attorney Fees. Should either party default in the performance of any of the covenants or agreements contained herein, such defaulting party shall pay to the other or prevailing party all costs and expenses, including, but not limited to, a reasonable attorney fee, including such fees on appeal, which the offended party may incur in enforcing this Agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.

11.4 Severability. If any term or provision of this Agreement or application to any circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.5 Waiver. All waivers to any of the terms or conditions of this Agreement shall be in writing, signed by the party waiving the performance of such term or condition. The waiver by either party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

11.6 No Assignment. This Agreement shall not be assigned by CONTRACTOR or CITY or by operation of law without the prior written consent of all parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below:

ATTEST:

CITY OF IDAHO FALLS

Kathy Hampton, City Clerk

By: _____
Rebecca L. Noah Casper, Mayor

(Seal)

By: _____
Rhonda Aliah, DVM

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah 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.

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

(Seal)

STATE OF IDAHO)
) ss:
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public, in and for said State, personally appeared Rhonda Aliah, whose name is subscribed to the within instrument and acknowledged to me that she is authorized to execute the same.

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

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

(Seal)



MEMORANDUM

To: Honorable Mayor and City Council

From: Greg A. Weitzel, Director, Parks and Recreation Department

Date: September 22, 2016

Subject: **TAUTPHAUS PARK ARCADE CONCESSION AGREEMENT
RENEWAL**

Mayor and Council:

Attached for your consideration is the Tautphaus Park Arcade Concession Agreement. This one (1) year agreement has been reviewed and approved by the City attorney.

The Parks and Recreation Department respectfully requests approval and authorization for the Mayor and City Clerk to sign and execute said agreement with LOML, L.L.C d/b/a Funland.

Respectfully,

Greg A Weitzel
Department of Parks and Recreation

laj

Attachment

cc: Mayor
City Clerk
File

**TAUTPHAUS PARK ARCADE CONCESSION AGREEMENT BETWEEN
CITY OF IDAHO FALLS, IDAHO AND LOML, L.L.C.**

THIS TAUTPHAUS PARK ARCADE CONCESSION AGREEMENT BETWEEN CITY OF IDAHO FALLS, IDAHO AND LOML, L.L.C. (hereinafter "Agreement"), is made and entered into this _____ day of _____, 2016, by and between the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, P.O. Box 50220, Idaho Falls, Idaho 83405 (hereinafter "CITY"), and LOML, L.L.C. d/b/a Funland, a limited liability company, 1680 Lindsey Blvd., Idaho Falls, Idaho (hereinafter "COMPANY").

WITNESSETH:

For and in consideration of the mutual promises, covenants and conditions set forth herein, the parties agree as follows:

1. Grant of Right or License. CITY hereby grants and conveys to COMPANY the right or license to operate an outdoor amusement park and concession facility within the area shown on Exhibit "A" attached hereto and by this reference made a part hereof. COMPANY shall also have the exclusive right to operate outdoor amusement devices and equipment and other appurtenant machinery, and to sell and purvey food, soft drinks, and confections within such area. Nothing herein shall be construed or deemed to allow COMPANY to conduct any other business or activity without prior written permission of the CITY.
2. Term. The term of this Agreement is for one (1) year commencing on February 1, 2017, and terminating on January 31, 2018.
3. Hours of Operation. COMPANY shall operate its business during the following hours and season.
 - a. Pre-season: COMPANY agrees to operate the amusement park and log building concessions on the weekends beginning the first full weekend in May through Memorial weekend from 12:00 p.m. until 7:00 p.m., each day. COMPANY agrees to open during the week by reservation only.
 - b. Regular Season: COMPANY agrees to operate the amusement park and log building concessions beginning Memorial Day weekend through Labor Day weekend from 11:30 a.m. until 7:00 p.m. Monday through Saturday and 12:00 p.m. until 7:00 p.m. on Sunday.

- c. Post Season: COMPANY agrees to operate the amusement park and log building concessions on the weekends beginning Labor Day weekend through the last weekend in September from 12:00 pm. until 7:00 p.m. local time each day. COMPANY agrees to open during the week by reservation only.
 - d. Inclement Weather: Due to inclement weather or other unforeseen emergency, or related circumstances, and in the application of best business practices, COMPANY may decide to close operations temporarily or for the day, at any time during the season. In the event such a decision is made by COMPANY, COMPANY shall contact Parks and Recreation Division at (208) 612-8480 to inform CITY of COMPANY's decision.
4. Operation of Business. COMPANY agrees to operate its business in a lawful and courteous manner, keep its equipment in a safe and good operating condition, and keep the premises in a clean, orderly and sanitary condition. Without in any way limiting the foregoing, COMPANY shall:
- a. Keep the entire premises free of unsecured trash, debris and graffiti at all times during operating hours.
 - b. Ensure the chain-link and other fencing surrounding the premises is properly maintained and kept free of rust, tears, rips and cracks. All fabric, top rails, top caps, hinges and gates shall be kept in good working condition and not allowed to become unsightly
 - c. Ensure the interior and exterior of all structures upon the premises are regularly painted and kept free of flaked, peeling or chipped paint, loose boards, protruding screws or nails.
 - d. Keep the miniature golf course and appurtenant score boards free of debris, trash, trip hazards, tears, rips in putting services, flaked, peeling or chipped paint, loose boards, protruding screws or nails, shall be promptly repaired.
 - e. Keep all walking paths or areas open to the public free of trash, debris, and other clutter.
 - f. Regularly maintain all amusement rides, equipment or machinery used in conjunction therewith and ensure their safe operating condition and neat and attractive appearance.

- g. Keep the roof, exterior walls, lighting and interior improvements of the half- dome train storage building clean and in a good state of repair, free from flaked, peeling or chipped paint, loose board, rotting wood, protruding screws and nails.

All of such work shall be completed prior to the commencement of the Pre-season and shall be continued thereafter, as necessary, throughout the remainder of the operating season (including the Post Season).

5. Covenant Against Competition: Amusements. CITY agrees that it does not permit or allow any other private commercial enterprise or non-profit organization to install, construct, or operate any other mechanical outdoor amusement devices or equipment of a kind substantially similar to the outdoor amusement devices now utilized by COMPANY, within the public park known as Tautphaus Park. Nothing herein shall be deemed to prevent or prohibit CITY from installing or permitting others to install any playground equipment or amusement devise for use by the general public without charge.
6. Covenant Against Competition: Food and Drink Concessions. With the exceptions noted below, CITY agrees that it will not permit nor allow any other private commercial enterprise or non-profit organization to construct or operate any food, beverage, or confection concession-stand or facility within the area shown in Exhibit "A" (excluding the Ice Rink/Picnic Shelter and Zoo) from the first Saturday in April through the last Sunday in September of each year during the term of this Agreement.

Nothing herein shall preclude or prohibit any baseball team, athletic organization, religious, benevolent or charitable entity, civic organization, or other youth or business group or organization from catering or selling food, beverages, drinks, or confections to persons affiliated with, employed by, or directly associated with the business, group, or organization sponsoring an event within Tautphaus Park, including sport tournaments within the area shown in Exhibit "A," nor shall anything herein preclude the charging of a fee for general admission to such events.

Nothing herein shall preclude the sale or dispensing of food, beverages or confections to persons attending or participating in any special event approved by CITY Director of Parks and Recreation and sponsored by or for the benefit of any religious, charitable, benevolent organization, youth group or civic organization or public entity or association, including CITY, provided such event does not exceed a period of three (3) consecutive days.

7. Rules and Regulations, and Compliance With Law. COMPANY agrees to abide by all reasonable rules and regulations promulgated by the Director of Parks and Recreation, all ordinances of the CITY, and all applicable state or federal statutes, regulations or laws, including best practices provided by ASTM, IAPA and ANSI standards. COMPANY shall not permit nor allow any illegal action, practice or enterprise to be conducted on the premises. COMPANY further agrees to abide by all laws and ordinances of CITY and the State regulating the sale of alcoholic beverages within CITY, as the same now exist or as

may be lawfully adopted hereafter. Nothing herein shall be deemed to grant the COMPANY a CITY license under such laws or ordinances.

8. Rent. COMPANY agrees to pay CITY as a use fee or compensation for the rights granted herein the sum of five percent (5%) of the gross receipts derived by COMPANY from the conduct of its business and use of the rights granted herein. For the purposes hereof, the term "gross receipts" shall mean all revenues and receipts from all sources of any kind and nature except for the state sales tax. All rent shall be due and payable on the 10th day of the month following the month in which the gross receipts are received by COMPANY. All rent shall be paid to the offices of the City Treasurer, P.O. Box 50220, Idaho Falls, Idaho, 83405. Simultaneously with the delivery of such rent payment, COMPANY shall deliver a copy of reports filed with the Idaho State Tax Commission reflecting the daily gross receipts collected and derived from the operation of the business for each operating day during the month for which such rent is payable.
9. Installation of New Devices. COMPANY agrees that it shall not install, replace, or remove any ride, amusement device or equipment without prior written approval of CITY Director of Parks and Recreation.
10. Record Keeping.
 - a. COMPANY shall keep records for all attractions as follows:
 1. Any maintenance or rehabbing of the attractions or facilities, plus all documentation of daily preventive maintenance checks preformed;
 2. Any medical injuries (whether the injury is considered a minor to major injury);
 3. All health codes are being followed and being maintained in the concessions operations;
 4. Calendar of events and groups to assist in coordinating park traffic needs.
 - b. CITY reserves the right to hire a third party organization to inspect COMPANY facilities, records and equipment during operating season. COMPANY will participate in costs associated with inspection and pay up to fifty percent (50%) of associated costs. CITY further reserves the right to require no less than two (2) inspections per operating season.
11. Examination of Books and Records. CITY shall have at all reasonable times and places, the right to examine all financial records of the COMPANY reflecting COMPANY's daily gross receipts or otherwise containing supporting data upon which the report submitted to the Idaho State Tax Commission is based.

12. Company Staff.

- a. COMPANY shall provide and supervise an adequate number of trained employees to render good service and perform necessary maintenance on attractions and on the operations. COMPANY shall provide and supervise an adequate number of trained employees to clean, mop, sanitize, stock, empty trash cans and place trash can liners in cans at the park seating area located on agreed upon the property. COMPANY agrees that it shall not hire or retain any employee who has been convicted of any crime of violence, or crime involving theft, or any felony, within the ten (10) previous years.
- b. COMPANY shall designate one (1) member of their staff as the Facility Manager with whom CITY may communicate with on a daily basis. The Facility Manager shall devote substantial time and attention to the operation and be directly involved in all operations. In addition, the Facility Manager shall be fully acquainted with all operations and be familiar with the terms and conditions of this Agreement.
- c. COMPANY shall furnish courteous, efficient and quality service to meet the reasonable demands of CITY and all COMPANY customers. COMPANY shall control, and is responsible for, the conduct, demeanor and appearance of its officers, agents, employees, representatives, guests, contractors and others while doing business as provided herein.
- d. CITY may at any time give COMPANY written or verbal notice to the effect that the conduct or action of any designated employee of COMPANY is, in the reasonable belief of CITY, detrimental to the interest of the public patronizing. COMPANY will meet with CITY to consider the appropriate course of action with respect to such matter, and COMPANY shall take reasonable measures to assure CITY that the conduct and activities of COMPANY employees will not be detrimental to the interest of the public.
- e. COMPANY shall provide an alcohol, smoking and drug free zone, which includes employees being alcohol, smoking and drug free at all times.

13. City Staff.

- a. CITY will support COMPANY where practicably providing courteous and professional assistance when requested. CITY will communicate with COMPANY regarding birthday parties, group events and after-hour events at the park, where practicable.
- b. CITY will attempt to address any issues presented to CITY by COMPANY regarding needs and will work with COMPANY to resolve issues in a timely manner.

- c. CITY will endeavor to meet with COMPANY on a bi-monthly basis to discuss general COMPANY related items, events, parties and review operations.
- 14. Health Inspections. CITY may contact the Bonneville County Health Department and request an inspection of the log concessions building at any time or for any reason.
- 15. Insurance and Indemnification.
 - a. CITY shall be responsible for the following:
 - 1. CITY may, at its sole discretion, maintain fire and property damage insurance for the log concession hut exclusive of the contents.
 - 2. CITY shall have no obligation to maintain any property damage, fire or hazard insurance of any kind on any ride, amusement device or other equipment owned or operated by COMPANY.
 - b. COMPANY shall be responsible for the following:
 - 1. COMPANY may, at its sole discretion, maintain fire and property damage insurance for the contents of the log concession hut and for the concession-stand and its contents.
 - 2. COMPANY shall secure and maintain throughout the term hereof public liability insurance with a reliable insurance company authorized to do business within the State of Idaho, in an amount of not less than one million dollars (\$1,000,000) single limit liability for personal injury, death and property damage. CITY shall be named as an additional insured under such policy. COMPANY further agrees to indemnify, save and hold harmless CITY from any and all claims, actions, suits, attorney fees, costs and expenses arising from or in any way connected with the COMPANY's operation of its business or use of the premises. COMPANY shall deliver to CITY a copy of a certificate of liability evidencing such insurance coverage prior to April 1 of each contract year during the term hereof. Notwithstanding the foregoing, nothing herein shall require COMPANY to indemnify or hold CITY harmless from any claim, action or suit arising from or in any way related to any act or omission of CITY or its agents, officers or employees.
 - c. Indemnification:
 - 1. CITY, and its respective elected and appointed boards, officials, officers, agents, employees, and volunteers shall have no liability to COMPANY, or any other person or entity, and COMPANY shall indemnify, defend, protect, and hold harmless CITY from and against, any and all liabilities, claims,

actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including reasonable attorney's fees and disbursements (collectively "Claims"), which CITY may suffer or incur or to which CITY may become subject by reason of, or arising out of, any injury to or death of any person(s), damage to property, loss of use of property, economic loss, or otherwise occurring as a result of, or allegedly caused by, COMPANY's performance of, or failure to perform, any services under this Agreement, or by the neglect or willful acts or omissions of COMPANY, its agents, officers, directors, or employees, committed in performing any of the services under this Agreement.

2. If any action or proceeding is brought against CITY by reason of any of the matters against which COMPANY has agreed to indemnify CITY as provided above, COMPANY, upon notice from CITY, shall defend CITY at its expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. CITY need not have first paid for any of the matters to which CITY are entitled to indemnification in order to be so indemnified. The limits of the insurance required to be maintained by COMPANY in this Agreement shall not limit the liability of COMPANY hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.
 3. The provisions of this section do not apply to Claims occurring as a result of CITY's active negligence or acts of omission.
16. Utilities. CITY shall furnish all exterior security lighting for the premises; provided, however, COMPANY shall pay for all other electrical, gas, water, sewer, telephone, garbage or other utilities associated with the use by COMPANY of the premises and equipment thereon.
17. Pest Control. COMPANY shall maintain a valid contract from a certified pest control vendor to provide adequate pest control service for the inside of the log concession hut during the term of this Agreement. A copy of the pest control services agreement will be delivered to CITY on or before April 1 of each contract year.
18. Maintenance of the Premises and Improvements.
- a. CITY shall be responsible for the following:
 1. CITY shall be responsible for the maintenance of the roof, exterior walls, heating and cooling system and the ventilation hood on the fryer of the log concession hut located on the premises during off-season, pre-season and post-season.

2. Performance of adequate pest control on the outside of the log concession hut during the term of this agreement
3. Maintenance of the existing asphalt located within the boundaries of the COMPANY's chain link fence and along the perimeter of the log concession building. This does not preclude CITY from developing and implementing a landscaping plan outside of COMPANY's amusement park boundaries.
4. Maintenance of the roof, exterior walls, lighting, and other interior improvements of the log storage building located just west of the log concession building.
5. Watering and care of all trees adjacent to and within the perimeter of the amusement park. CITY will coordinate all tree trimming with COMPANY in order to minimize or avoid interruption to COMPANY's operations.
6. Maintenance of all access roads and sidewalks entering and exiting the immediate vicinity of the amusement park area.
7. Maintenance and repair of the overhead lighting.
8. Regularly maintain all picnic tables and benches free from broken boards, flaked, peeling or chipped paint and all bolts securely fastened.

b. COMPANY shall be responsible for the following:

1. COMPANY shall be responsible for maintenance of the roof, exterior walls, lighting, plumbing and other interior improvements of the concession hut during regular season.
2. Removal of all debris, waste, garbage generated from COMPANY's operations.
3. Maintenance of the roof, exterior walls, lighting, and other interior improvements of the half-dome miniature train storage building located just east of the log concession building.
4. COMPANY shall perform maintenance of any rides, amusements or other equipment owned or operated by the COMPANY. No deficient ride, amusement, or equipment shall be used prior to correction or repair if such use is reasonably likely to cause injury to any person.

19. CITY Maintenance Inspections. CITY may conduct inspections of the amusement park premises at any time and shall provide COMPANY a copy of each inspection report within forty-eight (48) hours after the completion of the inspection. Such inspection report shall be in substantially the same form as Exhibit "B" attached hereto.
20. Vendors/Supplies. COMPANY shall be responsible for selecting COMPANY's own vendors. All such COMPANY-selected vendors shall be reputable and shall be selected not only because of price but also for quality and overall customer service. COMPANY shall provide CITY with a vendor list that includes contact information, once agreements with the vendors are signed.
21. Non-Exclusive Agreement. This Agreement is not an exclusive contract for such services between CITY and COMPANY. CITY may, at its sole option, contract with other entities for similar services at other CITY venues.
22. Signs, Advertisements and Marketing.
 - a. COMPANY shall not erect, install, operate nor cause or permit to be erected, installed or operated in or upon property, any sign or other similar advertising device without having first obtained prior written consent from CITY. COMPANY, at its own expense, shall install a new design type or style of signage that shall be mutually agreed upon by COMPANY and CITY. Any such sign or similar advertising device erected, installed, or operated during the term of this Agreement must be removed, at the sole cost of COMPANY, immediately upon termination or expiration of this Agreement. COMPANY will not advertise offsite businesses without prior, written approval of CITY.
 - b. COMPANY will develop a marketing campaign that references Tautphaus Park with CITY'S prior written consent.
 - c. With the exception of park and food or beverage carts located in the areas shown in Exhibit "A," COMPANY shall not display or sell merchandise outside of the defined exterior walls and permanent doorways of the areas shown in Exhibit "A." COMPANY shall not install any exterior lighting, amplifiers, or similar devices or use in or about the areas shown in Exhibit "A," any advertising medium which may be heard or seen outside the areas shown in Exhibit "A," such as flashing lights, searchlights, loudspeakers, phonographs, or radio broadcasts. COMPANY shall not install any window displays in the areas shown in Exhibit "A," without prior approval of CITY.
23. Quality of Products and Services.
 - a. In the course of discharging its responsibilities under the terms of this Agreement, COMPANY shall at all times ensure maintenance of the highest standards of

quality in both the products offered for sale and in the service provided.

- b. COMPANY shall offer for sale only foods and beverages of such quality as judged acceptable by CITY. All products shall be appealing in appearance. CITY shall have the right, at all times when employees or representatives of COMPANY are present, and whether facility is in operation or not, to inspect products to be sold by COMPANY, and approve or reject them if they do not meet the requirements of this Agreement.
 - c. COMPANY shall furnish prompt, courteous, efficient, inoffensive, and quality service to meet the reasonable demands of CITY, and the public and patrons visiting facility. COMPANY shall furnish all authorized and/or required services on a fair, equal and non-discriminatory basis to all patrons.
 - d. COMPANY shall conduct its business in an orderly, cooperative and proper manner so as not to annoy, disturb, disrupt, offend or otherwise interfere with the on-going operation of the park and/or CITY's patrons and employees.
24. Non-Exclusive Agreement. This Agreement is not an exclusive contract for such services between CITY and COMPANY. CITY may, at its sole option, contract with other entities for similar services at other CITY venues.
25. Uniforms. COMPANY employees shall be in uniform, or other clothing or markings, that adequately identifies COMPANY employees at all times during operating hours. COMPANY shall consult with, and obtain prior approval from, CITY regarding any proposed uniform.
26. Subcontracting, Delegation and Assignment.
- a. COMPANY shall not delegate, subcontract or assign its duties or rights hereunder, either in whole or in part, without the prior written consent of CITY; provided, however, that claims for money due or to become due to COMPANY from CITY under this Agreement may be assigned to a bank, trust company or other financial institution without such approval. Any proposed delegation, assignment or subcontract shall provide a description of the services covered, identification of the proposed assignee, delegee or subcontractor, and an explanation of why and how the same was selected, including the degree of competition involved. Any proposed agreement with an assignee, delegee or subcontractor shall include the following:
 - 1. The amount involved, together with COMPANY's analysis of such cost or price;
 - 2. A provision requiring that any subsequent modification or amendment shall be subject to the prior written consent of CITY; and
 - 3. The requirement to hire only those persons authorized by federal law to

work in the United States.

- b. Any assignment, delegation or subcontract shall be made in the name of COMPANY and shall not bind or purport to bind CITY and shall not release COMPANY from any obligations under this Agreement including, but not limited to, the duty to properly supervise and coordinate the work of employees, assignees, delegees and subcontractors. No such assignment, delegation or subcontract shall result in any increase in the amount of total compensation payable to COMPANY under this Agreement.
27. Right of First Refusal. During the term of this Agreement, CITY shall have a Right of First Refusal for the purchase of the amusement devices and concession equipment utilized by COMPANY on the licensed premises. If COMPANY receives a *bona fide* offer from a third party for the purchase of all or any portion of the amusement devices or concession equipment, within ten (10) days of receiving said offer, COMPANY shall give CITY written notice thereof and will send to CITY a copy of the offer and proposed purchase agreement outlining the terms of sale to said third party. COMPANY further agrees that it will not accept such offer without full and complete compliance with the terms and conditions of this section.
CITY shall have ten (10) days following the date COMPANY first physically delivers such proposed purchase agreement to decide whether to purchase the amusement devices and concession equipment from COMPANY at the same price and on the same terms as contained in the proposed purchase agreement.

If CITY desires to purchase such devices and equipment in accordance with the terms and conditions of such offer, CITY shall, within said ten (10) day period deliver to COMPANY written notice of its intend to exercise this Right of First Refusal. Within thirty (30) days after delivery of such notice, the parties shall mutually execute a written agreement memorializing the terms and conditions of such agreement. If CITY fails to so exercise this Right of First Refusal, COMPANY shall be at liberty to enter into a contract for the sale of the amusement devices and concession equipment with the original offering party on the same terms and conditions set forth in the offer delivered to CITY.
28. Termination. In the event COMPANY shall file a petition for bankruptcy or have filed against it any such petition, undertake any reorganization of creditors, or fail to substantially conduct business upon the leased premises for ten (10) or more consecutive days during the summer season (April through September, inclusive), excluding CITY authorized closures or closures due to weather or other circumstances not in COMPANY's control, this Agreement may be terminated by CITY upon three (3) days written notice delivered to COMPANY.
29. Removal of Personal Property Upon Termination. In the event this Agreement is terminated by CITY or upon the expiration of the original term of this Agreement,

COMPANY shall promptly surrender possession of the premises to CITY on or before midnight of the day of such termination and shall, within one hundred twenty (120) days after such termination date, remove all personal property, equipment and appurtenant machinery owned by COMPANY.

30. Default. If COMPANY fails to abide by contract and/or line items identified in this Agreement, COMPANY will be considered to have defaulted on this Agreement. CITY will communicate with twenty-four (24) hours of notice of any default. COMPANY will have forty-eight (48) hours to comply by curing the breach of this Agreement.
31. Assignment Prohibited. COMPANY shall not sell, convey, lease, sub-lease, encumber or transfer this Concession Agreement, or any of the rights granted herein, to any other party or entity without the express written consent of CITY, which consent shall not be unreasonably withheld. Nothing herein shall be construed as or deemed to be consent on the part of CITY to the filing of any lien or encumbrance by any third party against the premises which are the subject of this Agreement.
32. Relationship between the Parties. Nothing herein shall be construed as or be deemed to create any partnership, joint enterprise or undertaking between the parties and the parties shall be deemed to be independent contractors with respect to each other. Neither party shall have any right or authority to act as an agent or representative of the other.
33. Notices. All notices required or permitted by this Agreement shall be mailed to the parties at the following addresses:

City of Idaho Falls
Attn: Parks & Recreation Director
P.O. Box 50220
Idaho Falls, Idaho 83405

LOML, L.L.C. d/b/a Funland
Ann: Anne Jurnigan
1680 Lindsey Blvd.
Idaho Falls, Idaho 83402

All notices shall be deemed delivered upon the deposit thereof in the U.S. Mail, certified mail return receipt requested, postage prepaid, addressed to the receiving party at the address set forth above or such other address which has been given in writing to the sending party.

34. Attorney Fees. In the event it becomes necessary to enforce the terms and provisions hereof, the defaulting party agrees to pay the reasonable attorney's fees and costs of the prevailing party.
35. Complete Agreement. This writing evidences the complete and final agreement between the parties, and no other representation, covenant, promise or statement of the parties shall be binding except as expressly set forth herein.

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

ATTEST:

“CITY”

City of Idaho Falls, Idaho

By _____
Kathy Hampton, City Clerk

By _____
Rebecca L. Noah Casper, Mayor

“COMPANY”

LOML, L.L.C. d/b/a Funland

By _____
Anne Jurnigan, Owner

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah Casper, known or identified 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 she 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.

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

(Seal)

STATE OF IDAHO)
) ss:
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public, in and for said State, personally appeared Anne Jurnigan, known or identified to me to be the Owner of LOML, L.L.C. d/b/a Funland, an Idaho company, and whose name is subscribed to the within instrument and acknowledged to me that she is authorized to execute the same for and on behalf of said _____.

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

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

(Seal)



MEMORANDUM

To: Honorable Mayor and City Council

From: Greg A. Weitzel, Director, Parks and Recreation Department

Date: September 22, 2016

Subject: **ICE ARENA CONCESSION AGREEMENT**

Mayor and Council:

Attached for your consideration is the Ice Arena Concession Agreement. This food and beverage concessions agreement has a one (1) year term and has been reviewed and approved by the City attorney.

The Parks and Recreation Department respectfully requests approval and authorization for the Mayor and City Clerk to sign and execute said agreement with the Idaho Falls Youth Hockey Association.

Respectfully,

Greg A. Weitzel
Department of Parks and Recreation

laj

Attachment

cc: Mayor
City Clerk
File

ICE ARENA CONCESSION AGREEMENT

THIS ICE ARENA CONCESSION AGREEMENT (hereinafter "AGREEMENT"), is made this _____ day of _____, 2016, by and between the City of Idaho Falls, Idaho, a municipal corporation of the State of Idaho, whose mailing address is P.O. Box 50220, Idaho Falls, Idaho 83402 (hereinafter "CITY"), and Idaho Falls Youth Hockey IFYHA, Inc., an Idaho corporation, whose mailing address is P.O. Box 1592, Idaho Falls, Idaho 83403-1592 (hereinafter "IFYHA").

WITNESSETH:

For and in consideration of the mutual promises, covenants, conditions and obligations set forth herein, the parties agree as follows:

1) Grant of Right or License. CITY hereby grants and conveys to IFYHA the right or license to operate a food, beverage, confections and ice arena pro-shop concession facility within the Joe Marmo & Wayne Lehto Ice Arena ("Arena") at the location shown on Exhibit "A" attached hereto and by this reference made a part hereof. All concession rights granted to IFYHA herein may be exercised only during each Concession Season, as defined herein below. Nothing herein shall be construed or deemed to allow IFYHA to conduct any other business or activity, or to operate outside the Concession Season, without the prior written permission of CITY.

2) Term. The term of this Concession Agreement shall be for one (1) year and shall commence on October 1, 2016, and shall terminate on September 30, 2017. During such term, IFYHA shall have the right to exercise the rights granted herein for one (1) Concession Season (hereafter referred to as "Concession Season").

3) Exclusive Concession Rights. During the Concession Season, CITY agrees that

it will not permit or allow any other private and or commercial food service enterprise to operate any other food, beverage, confection or pro-shop concessions within the location shown on Exhibit “A” within the Arena. Nothing in the paragraph shall prevent the CITY from operating or contracting with other entities for the operation of food and beverage vending machines.

4) Maintenance of the Building and Structures. During a Concession Season, CITY shall be responsible for the repairs and maintenance of the concession area to include, without limitation, the electrical, plumbing, HVAC or any parts of the walls, floor, ceiling, doors, windows, window gates and cabinets within the Arena. IFYHA shall maintain, at its cost, CITY kitchen equipment. IFYHA may provide additional kitchen equipment, as approved by CITY. All items of equipment owned by IFYHA, shall be the responsibility of the IFYHA.

5) Rules and Regulations and Compliance With Law. IFYHA agrees to abide by all rules and regulations promulgated by the City Director of Parks and Recreation, with respect to the operation of concessions at the Arena. CITY reserves the right to unilaterally create, amend, and promulgate such Rules and Regulations at any time, in its sole discretion.

IFYHA further agrees to abide by all ordinances of CITY and all applicable state or federal statutes or laws. IFYHA shall obtain and maintain all required permits, public health or restaurant or concession licenses for CITY and State of Idaho and shall abide by all rules and regulations applicable thereto. IFYHA agrees to pay all taxes required by any agency regulating its operation.

6) Rent and Franchise Fee. The IFYHA agrees to pay CITY as compensation for the rights granted herein, five percent (5%) of the gross season receipts as derived by the IFYHA from the conduct of its concessions business within the Arena during the Concession Season. For the purposes hereof, the term “gross receipts” shall mean all revenues and receipts from all

sources of any kind and nature derived from the operation of the concession facility as contemplated herein or from the grant of the rights and privileges hereunder, except monies collected for state sales tax. All compensation shall be payable on a monthly basis and shall be due on the 30th day of the month following the month in which the gross receipts are received by IFYHA. In the event that IFYHA fails to pay said compensation in full on or before the due date, IFYHA shall also pay a late payment of fifty dollars (\$50). Interest shall accrue at a rate of eighteen percent (18%) per annum on any amounts not paid when due. All fees shall be paid to the office of the City Treasurer, P.O. Box 50220, Idaho Falls, Idaho 83405-0220.

7) Operational Parameters.

- a) Hours: IFYHA shall operate its concessions business during the following hours of operation, from October 2016 through March 2017 and as mutually agreed upon by the parties in advance for special events:
1. Weekdays, between 4:30pm to 9:30pm,
 2. Saturdays during public skate times of 2:30-4:30pm and 7:30 - 9pm,
 3. Sunday public skate times of 2:30pm-4pm.

IFYHA shall also operate concessions business for all weekend tournaments and figure skating competitions (Approximately 15 weekends), except as otherwise approved by the Director of Parks and Recreation and/or the Recreation Superintendent, and, as mutually agreed upon.

IFYHA shall post its hours of operation for the concession at several places on the premises and maintain the same during all hours during which the concession is open to the public. In the event of a non-operational day or early closure, the Proposer must place a conspicuous notice indicating its closure.

A two hundred and fifty (\$250) dollars per day penalty will be charged to

IFYHA for each and every day that the hours in this paragraph are not observed October through March. IFYHA will have the option to suspend operations or close the concession area during periods of low attendance upon approval of the Manager of Ice Rink.

(b) General Operation:

1. IFYHA shall provide competent personnel required for a contract concessions operation. IFYHA will be responsible to respond to all guest complains or concerns about the quality of food, customer relations and the timeliness of service.
2. While employees of the IFYHA are NOT employees of CITY, their presence working at the Arena does hold them to CITY's standards of high quality customer service. If CITY receives complaints about the performance of any of IFYHA of the complaint in writing and IFYHA will promptly investigate the complaint and exert its best efforts to resolve the problem.
3. Prior to the commencement of the Concession Season, IFYHA will provide the Arena Manager with a primary contact number that can be reached in the event of an emergency. CITY shall provide the similar contact information.
4. Prior to the commencement of the Concession Season, IFYHA shall provide the Arena Manager with a plan to address guest complaints about food quality and customer service.
5. IFYHA shall provide foods and beverages. IFYHA shall not provide any food or beverages which would violate CITY's agreement with Pepsi. CITY shall provide IFYHA a copy of CITY'S agreement with Pepsi.
6. CITY reserves the right to designate where IFYHA's marketing materials may be displayed on CITY property.
7. IFYHA shall make arrangement to accept credit/debit cards from customers.
8. IFYHA shall supply uniforms or work clothing for all concession workers that identify them as its employees.
9. IFYHA shall be solely responsible for the purchase of all food, beverages, paper products, and Supplies, including office supplies to be used in its operations.

10. IFYHA may not display or sell merchandise outside of the defined exterior walls and permanent doorways of the Premises. IFYHA shall not install any exterior lighting, amplifiers, or similar devices or use in or about the premises any advertising medium which may be heard or seen outside the premises, such as flashing lights, searchlights, loudspeakers, phonographs, or radio broadcasts IFYHA shall not install any window displays without prior approval of the Manager of the ice Rink.
11. IFYHA shall provide daily housekeeping, cleaning, preventative maintenance and sanitation service and will provided all necessary commercial equipment and supplies for the designated food service area. In addition, IFYHA will maintain trash removal, wiping down tables, cleaning up spills and keeping the area neat, clean and free of clutter and debris. Housekeeping, cleaning and maintenance duties shall include, but not be limited to production and serving areas and refrigerators. IFYHA shall also maintain the flooring in the concession for the life of the lease as directed by the CITY.

10) Beer and Alcoholic Beverages Prohibited. During each Concession Season, the IFYHA agrees that it will not sell, distribute or offer for sale beer, wine or other alcoholic beverage within the Arena.

11) Examination of Books and Records. IFYHA shall keep complete, accurate and up-to-date financial records, in accordance with generally accepted accounting practices, reflecting all revenues derived and costs expended in the operation of the concession during each Concession Season. CITY shall have the right to examine all such books and financial records at reasonable times and places, during regular business hours.

12) Insurance. Prior to the commencement of the Concession Season during the term hereof, IFYHA agrees to furnish CITY with a current Certificate of Insurance evidencing General Liability Insurance coverage for not less than the following limits of liability:

| | |
|---|-----------|
| Bodily Injury by Accident | \$500,000 |
| Bodily Injury by Disease, each employee | \$500,000 |

| | |
|---|-----------|
| Bodily Injury by Disease, each policy limit | \$500,000 |
|---|-----------|

The City of Idaho Falls, Idaho shall be added as an Additional Named Insured on IFYHA's General Liability policy. IFYHA shall keep and maintain such insurance at full force and effect during each Concession Season during the term hereof.

13) Utilities. During the Concession Season, CITY shall provide at its own cost and expense all water, sewer, refuse control and electrical power utility services used at the Arena. Should IFYHA desire a telephone line, IFYHA shall be responsible for the costs of installation, maintenance, and service of a telephone line. CITY shall provide and pay for the legal collection and disposal of all garbage and refuse generated by the operation. IFYHA must take the garbage out of the arena building and place it in the garbage receptacle provided by CITY.

14) Insurance of the Premises. IFYHA shall have no obligation to maintain property damage, fire, and hazard insurance for the concession facility or Arena, nor shall CITY have any obligation to provide insurance for loss or damage to IFYHA's personal property stored, kept or maintained at the Arena.

15) Facility Improvements. IFYHA agrees that it shall not install, replace, or remove any fixture within the concession area, without prior written approval of CITY's Director of Parks and Recreation. If IFYHA installs permanent, fixed improvements to the concessions area, those improvements shall become the property of CITY, upon termination or expiration of the terms of this Concession Agreement.

16) Removal of Debris and Trash. During each Concession Season, CITY will remove, at its own expense, trash deposited in CITY approved waste containers located in the Arena. IFYHA shall be responsible for transporting and depositing all of its packaging as it

relates to the resupply of the Arena concession area, in the large waste containers located on the south side of the Arena.

17) Termination. In the event IFYHA fails to adhere to all of the terms of this Concession Agreement in any material way, this Concession Agreement may be terminated by CITY provided that CITY has first given ten (10) days' notice to IFYHA to cure any perceived violation of this Concession Agreement.

Notwithstanding the above, the CITY may, on at least thirty (30) days advanced notice to IFYHA, may terminate this Concession Agreement for any reason without incurring any penalty, expense, or liability to IFYHA. In the event of any termination of this Concession Agreement, whether under this paragraph or otherwise, or upon the expiration thereof, IFYHA agrees to restore the concession area to the same condition as existed upon the commencement of this Concession Agreement, except for reasonable wear and tear in the normal course of business.

18) Default. In the event IFYHA fails to fully keep and perform all of its covenants and obligations set forth herein, and fails to remedy and breach hereof within thirty (30) days after written notice has been delivered to IFYHA, then CITY may terminate this Concession Agreement, and IFYHA shall immediately vacate the concession area. Such remedy shall be deemed to be cumulative and CITY may pursue any other remedies at law to which it may be entitled.

19) Notices. All notices required or permitted by this Concession Agreement shall be mailed to the parties at the following addresses:

City of Idaho Falls
P.O. Box 50220
Idaho Falls, Idaho 83405

IFYHA
P.O. Box 1592
Idaho Falls, Idaho 83403-1592

All notices shall be deemed delivered upon the deposit thereof in the U.S. Mail, certified mail, return receipt requested, postage paid, addressed to the receiving party at the address set forth above or such other address which has been given in writing to the sending party.

20) Attorney's Fees. In the event it becomes necessary to enforce the terms and provisions hereof by legal action or suit, the defaulting party agrees to pay the reasonable attorney's fees and costs of the prevailing party.

21) Indemnification. To the fullest extent permitted by law, for any loss not covered by insurance under this contract, IFYHA shall indemnify, defend and hold harmless CITY, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result, in whole or in part, from any actor omission, which is in any way connected or associated with this contract, by IFYHA or anyone acting on IFYHA's behalf under this contract. IFYHA shall not be responsible to indemnify CITY for losses or damages caused by or resulting from CITY'S sole negligence.

22) Assignments. IFYHA agrees not to assign any part of this Agreement without the written consent of CITY. Any unauthorized assignment may subject the Vendor(s) to immediate termination.

23) Independent Contractor. This Concession Agreement shall in no way be construed as creating an employer-employee relationship between City and IFYHA or those hired by IFYHA.

24) Venue and Jurisdiction. This Concession Agreement shall be governed by the internal laws of the State of Idaho, without reference to conflicts of law principles. The venue for any action arising out of this Concession Agreement shall be exclusively in the District Court of the Seventh Judicial of the State of Idaho, Bonneville County or in the United States District

Court for the District of Idaho.

25) Complete Agreement. This writing evidences the complete and final agreement between the parties regarding this subject matter, and no other representation, covenant, promise or statement of the parties shall be binding except as expressly set forth herein.

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year first above written.

ATTEST:

“CITY”
City of Idaho Falls, Idaho

By _____
Rosemarie Anderson, City Clerk

By _____
Rebecca L. Noah Casper, Mayor

“IFYHA”
Idaho Falls Youth Hockey Association, Inc.

By _____

STATE OF IDAHO)
) ss.
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public for Idaho, personally appeared Rebecca L. Noah 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 she 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.

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

(Seal)

STATE OF IDAHO)
) ss:
County of Bonneville)

On this _____ day of _____, 2016, before me, the undersigned, a notary public, in and for said State, personally appeared _____, known or identified to me to be the President of Idaho Falls Youth Hockey Association, Inc., a corporation, whose name is subscribed to the within instrument and acknowledged to me that she is authorized to execute the same for and on behalf of said corporation.

Notary Public of Idaho
Residing at: _____
My Commission Expires: _____

(Seal)



MEMORANDUM

To: Honorable Mayor & City Council

From: Chris H Fredericksen, Public Works Director

Date: September 19, 2016

Subject: **CITY ORDINANCE REVISION – TITLE 8, CHAPTER 1 – SEWERS**

Attached is a proposed revision prepared by the City Attorney to the city ordinance addressing Sewers. The proposed revision reflects required changes due to utility customer reclassifications associated with the recently approved Fee Resolution.

Public Works recommends approval of this ordinance; and, authorization for Mayor and City Clerk to sign the necessary documents.

Respectfully,

Chris H Fredericksen, P.E.
Public Works Director

CF:jk

Attachment

c: Mayor
Council
Smith

2016-100

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 8, CHAPTER 1; ADDING DEFINITIONS AND CLARIFICATIONS IN SUPPORT OF RESTRUCTURED FEES RELATED TO THE CITY'S WASTEWATER SERVICES, SEWER SYSTEM, AND PUBLICALLY OWNED TREATMENT WORKS; AND PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, the City Council approved a Water Facility Plan on August 13, 2015; and

WHEREAS, the Water Facility Plan recommends changes to the City's structure for the billing of water services; and

WHEREAS, proposed changes to the City's billing of water services has direct impact the City's billing for wastewater services; and

WHEREAS, changes to the City's billing for wastewater services necessitate amendment of the City Code for Sewer and wastewater service.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, THAT:

SECTION 1. Title 8, Chapter 1, of the City Code of the City of Idaho Falls, Idaho is hereby amended as follows:

...

8-1-2: DEFINITION OF TERMS: Certain terms used in this Chapter shall have the meanings herein given to them:

ACT: The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq.

APARTMENT: Any building or portion thereof which is designed, built, rented or leased, let, or hired out to be occupied or which is occupied as the home or residence of four (4) or more families living independently of each other and doing their own cooking within the premises.

APPLICABLE PRETREATMENT STANDARDS: For any specified pollutant, City prohibitive standards, City specific pretreatment standards, State of Idaho pretreatment standards, or EPA's Categorical Pretreatment Standards, whichever standard is appropriate or most stringent.

APPROVAL AUTHORITY: The Regional Administrator of the United States Environmental Protection Agency (EPA), Region 10.

AUTHORIZED REPRESENTATIVE OF THE USER:

(A) If the User is a corporation:

- (1) The president, secretary, treasurer, or a vice-president treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
- (2) The manager of one or more manufacturing, production, or operation facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with appropriate corporate procedures;

(B) If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively;

(C) If the User is a Federal, State, or local governmental facility: a director or the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or his/her/their designee.

(D) The individuals described in paragraphs 1 through 3 above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

BAR: A business whose principal activity is serving alcoholic beverages, but not prepared meals, on site.

BEST MANAGEMENT PRACTICES (BMP): Means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices ~~to implement the prohibitions listed in Section 8-1-9 of this Chapter.~~ BMP also include treatment requirements, operating

procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

BIG BOX RETAIL: A very large retail store with more than ten thousand (10,000) gross square footage.

BIOCHEMICAL OXYGEN DEMAND (BOD): The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees Celsius, usually expressed as a concentration (milligrams per liter (mg/l)).

BUILDING DRAIN: That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the buildings and conveys it to the side sewer which begins two feet (2') outside the outer face of the building wall or foundation.

CAR SALES: A business conducting the sale of automobiles where the building contains a wash bay; or a business involving the repair also includes auto body repair shops.

CATEGORICAL PRETREATMENT STANDARD OR CATEGORICAL STANDARD: Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which apply to a specific category of Users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

CATEGORICAL USER: A User regulated by one of EPA's Categorical Pretreatment Standards.

CHURCH: A building used for public religious worship.

~~CITY: The City of Idaho Falls, Idaho.~~

CLEAN WATER ACT: The Clean Water Act of 1977, as codified in 33 USC Section 1251 et seq.

CODE OF FEDERAL REGULATIONS OR C.F.R.: The United States Code of Federal Regulations.

COLOR: The optical density at the visual wave length of maximum absorption, relative to distilled water. One-hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

COMBINED SEWER: A sewer receiving both surface runoff and sanitary wastewater.

COMPOSITE SAMPLE: The sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

CONVENIENCE STORE: An automobile service station consisting of a building small retail floor area and which has fuel dispensing pumps.

COOLING WATER/NON-CONTACT COOLING WATER: Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product. Cooling water may be generated from any use, such as air conditioning, heat exchangers, cooling or refrigeration to which the only pollutant added is heat.

DAY CARE: A place or facility providing care and supervision for compensation of children not related by blood or marriage to the person or persons providing the care in a place other than the child's or adult's own home or homes.

DIRECTOR: The Director of the Public Works Department of the City or ~~his~~their duly authorized deputy, agent, or representative.

DISCHARGE: The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.

DOMESTIC USER: Any person who contributes, causes, or allows the contribution of wastewater into the POTW that is of a similar volume and/or chemical make-up as that of a residential dwelling unit. Discharges from a residential dwelling unit typically include up to one hundred (100) gallons per capita per day, 0.2 pounds of BOD per capita per day, and 0.17 pounds of TSS per capita per day.

DUPLEX/TRIPLEX: A dwelling unit which is physically attached to or shares a common party wall with up to two (2) additional dwelling units and which has open space on at least two (2) sides.

DWELLING UNIT: A building or structure or portion thereof that is constructed and used primarily for residential purposes, or any building or structure which has been constructed or altered to provide for two (2) or more families or households or which has been constructed or altered to accommodate travelers or transients.

EFFECTIVE DATE: The effective date of the ordinance adopting this Chapter.

ENVIRONMENTAL PROTECTION AGENCY: The United States Environmental Protection Agency or, where appropriate the Director of the Region 10 Office of Water and Watersheds or other duly authorized official of said agency.

EXISTING SOURCE: A categorical industrial User, the construction or operation of whose facility commenced prior to the publication by EPA of proposed categorical pretreatment

standards, which would be applicable to such source if and when the standard is thereafter promulgated in accordance with Section 307 of the Act.

EXISTING USER: Any non-categorical User which was discharging wastewater prior to January 5, 1984, the effective date of this Chapter.

FAST FOOD RESTAURANT: A restaurant which possesses all three (3) of the following characteristics: 1) all food orders are placed at a counter, 2) drive-thru window service, and 3) meals are served in paper, plastic, or other types of disposable materials.

GARBAGE: The residue from the preparation, cooking, and dispensing of food, and from the handling, storage, and sale of food products and produce.

GRAB SAMPLE: A sample which is taken from a wastestream on a one-time basis without regard to the flow in the wastestream and without consideration of time.

GYM: A business where physical exercises, dance, martial arts, or other physical activities are performed inside.

HALL: a large room or theater for meetings, concerts, or other events.

HOTEL: Any building used, rented, or hired out to be occupied on a daily or weekly basis for sleeping purposes by guests.

INDIRECT DISCHARGE: The introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c), or (d) of the Act. The discharge into the POTW is normally by means of pipes, conduits, pumping stations, force mains, constructed drainage ditches, surface water intercepting ditches, and all constructed devices and appliances appurtenant thereto.

INDUSTRIAL USER: A source of indirect discharge. The source shall not include “Domestic User” as defined in this Chapter.

INTERFERENCE: A discharge which alone or in conjunction with a discharge or discharges from other sources, either: (1) inhibits or disrupts the POTW, its treatment processes or operations; (2) inhibits or disrupts its sludge processes, use or disposal; or (3) is a cause of a violation of the City’s NPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

MAXIMUM ALLOWABLE DISCHARGE LIMIT: The maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

MEDICAL OFFICE: An institution providing health or veterinary service or medical, surgical, or custodial care of the sick or injured.

MEDICAL WASTES: Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

NEW SOURCE:

(A) Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that sSection, provided that:

- (1) The building, structure, facility, or installation is constructed at a site at which no other source is located; or
- (2) The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- (3) The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(B) Construction on a site at which an existing source is located that results in a modification rather than a new source, if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section ~~(A)(1)(b) or (e)~~ above, but otherwise alters, replaces or adds to existing process or production equipment.

(C) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- (1) Begun, or caused to begin as part of a continuous on-site construction program:

- (a) any placement, assembly or installation of facilities or equipment; or
 - (b) Significant site preparation work including clearing, excavation or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or
- (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under this paragraph.

NEW USER: A “New User” is a User that is not regulated under federal categorical pretreatment standards but that applies to the City for a new building permit or who occupies an existing building and plans to commence discharge of wastewater to the City’s collection system after the Effective Date of this Chapter. Any person that buys an existing facility that is discharging non-domestic wastewater will be considered an “existing User” if no significant changes are made in the manufacturing operation.

OFFICE: A room, set of rooms, or building used for providing a service or as a place for commercial, professional, or bureaucratic work.

PASS THROUGH: A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or dischargers from other sources, is a cause of a violation of any requirement of the City's NPDES permit (including an increase in the magnitude or duration of a violation).

PERMITTEE: A person or User issued a wastewater discharge permit.

PERSON: Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all Federal, State, or local governmental entities.

pH: A measure of the acidity or alkalinity of a substance, expressed in standard units.

POLLUTANT: Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, agricultural and industrial wastes,

and the characteristics of the wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, Chemical Oxygen Demand (COD), toxicity or odor.

PRETREATMENT: The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR 403.6 (e).

PRETREATMENT REQUIREMENTS: Any substantive or procedural requirement related to pretreatment imposed on a User, other than a pretreatment standard.

PRETREATMENT STANDARDS: Pretreatment prohibited discharge standards, categorical pretreatment standards, and local limits and best management practices (“BMP’s”) as established by the City.

PRIVATE SEWER: All sewers and sewer service lines except public sewers.

PROHIBITED DISCHARGE STANDARDS OR PROHIBITED DISCHARGES: Absolute prohibitions against the discharge of certain substances, ~~which appear~~ listed in Section 8-1-9 (A) and (B) of this Chapter.

PUBLICLY OWNED TREATMENT WORKS (POTW): A “treatment works,” as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned by the City. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature and any conveyances which convey wastewater to a treatment plant. The term also means the City.

PUBLIC SEWER: The sewer main line which discharges directly or indirectly into the POTW and which is owned by the City and located on public property or within a publicly-owned easement.

RCRA: The Resource Conservation and Recovery Act as adopted by the United States as the same exists on the date hereof or as may be amended hereafter.

REST HOME: A building for the care and lodging of elderly or incapacitated persons.

RESTAURANT: A food service establishment where people pay to sit and eat meals that are prepared, cooked, and served on the premises.

RETAIL: A building or unit providing the sale of goods to the public in relatively small quantities for use or consumption rather than for resale.

SALON: An establishment where a hairdresser or beautician conducts business.

SANITARY SEWAGE: Wastes that are derived principally from dwellings, business buildings, institutions and other places of habitation or occupation exclusive of storm and surface water.

SANITARY SEWER: A sewer that conveys, or which is intended to convey, sanitary sewage, or industrial wastes, or a combination of the two.

SCHOOL: An institution dedicated to the education of children, teens, and adults differentiated as follows:

- Elementary School: Grades K through 6;
- Junior High School: Grades 7 through 8;
- High School: Grades 9 through 12;
- College or University: Post High School education

SEPTIC TANK WASTE: Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

SERVICE CHARGE: The charge assessed by the City for use of the POTW.

SEWAGE: Human excrement and gray water (household showers, dishwashing operations, etc.).

SEWER: Any pipe, conduit ditch, or other device used to collect and transport sewage from the generating source.

SEWER SERVICE LINE: A pipe or conduit for conveying wastewater.

SEWER SERVICE LINE: The pipe extension from the building drain to the public sewer, including the tap into the main line and that part of the pipe extension located in the public right-of-way.

SHALL, MAY: “Shall” is mandatory, “may” is permissive.

SHOP: A building or unit where things are manufactured or repaired, typically consisting of a small office accompanied by a larger work space.

SIGNIFICANT INDUSTRIAL USER (SIU):

(A) A User subject to Categorical Pretreatment Standards; or,

(B) A User that:

(1) Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater into the POTW (excluding sanitary, non- contact cooling and boiler blowdown wastewater); or

(2) Contributes a process wastestream which makes up five (5%) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(3) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(C) Upon finding that a User meeting the criteria in Subsection two (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any applicable pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from a User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a significant industrial User.

SINGLE-FAMILY DWELLING: A detached dwelling unit, including manufactured or mobile homes, designed for or occupied exclusively by one (1) household.

SLUG LOAD: Any discharge at a flow rate or concentration which could cause a violation of the discharge standards in Sections 8-1-9 through 8-1-12 of this Chapter or any discharge of a non-routine, episodic nature, including but not limited to, an accidental spill or a non-customary batch discharge.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE: A classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

STORM DRAIN: A pipe or conduit conveying Storm Water, surface and ground water drainage and which does not convey sanitary sewage or industrial wastes.

STORM WATER: Any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

TREATMENT PLANT EFFLUENT: The discharge from the POTW into waters of the United States.

TOTAL SUSPENDED SOLIDS (TSS): The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

TOXIC POLLUTANT: One (1) of one hundred twenty-six (126) pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by EPA under Section 307 of the Act (33 U.S.C. 1317) ~~of the Act~~.

~~TREATMENT WORKS: Those devices and systems defined in Section 35.905-23 of the Federal Register, Vol. 39, Number 29, Pt. III, published February 11, 1974.~~

UNPOLLUTED WATER: Any water or liquid containing none of the following substances: free or emulsified grease or oil; acids or alkalis; substances that may impart taste or color characteristics; toxic or poisonous substances in suspension, colloidal state or solution; odorous or otherwise obnoxious gases.

UPSET: An exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the standards set forth in this Chapter due to factors beyond the reasonable control of the discharger, and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation thereof.

USER: Any person who discharges wastewater into the POTW.

WAREHOUSE: A building or unit where materials, manufactured goods, or possessions are stored.

WASTEWATER: Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities and institutions, whether treated or untreated, which are contributed to the POTW.

WASTEWATER DISCHARGE PERMIT: An authorization or equivalent control document issued by the City to Users discharging wastewater to the POTW. The permit may contain appropriate pretreatment standards and requirements as set forth in this Chapter.

WASTEWATER TREATMENT PLANT: That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

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8-1-7: STORM WATER NOT PERMITTED IN SANITARY SEWER: No person shall discharge or cause to be discharged any storm water, ground water, roof runoff, sub-surface

drainage, cooling water, or unpolluted water from any source other than the City water system, into the POTW.

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8-1-11: STATE REQUIREMENTS: State requirements and limitations on discharges to the POTW shall be met by all Users which are subject to such standards in any instance in which they are more stringent than ~~f~~Federal requirements and limitations, or those in this Chapter or any other applicable Chapter of ~~the City~~ this Code.

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8-1-13: RIGHT OF REVISION: ~~The~~City reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.

8-1-14: DILUTION: No User shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with an applicable pretreatment standard or requirement unless expressly authorized by an applicable pretreatment standard or requirement. The Director may impose mass limitations on Users which ~~he~~they believes may be using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.

8-1-15: SPECIAL AGREEMENTS: ~~The~~City reserves the right to enter into special agreements with Users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with a categorical pretreatment standard or federal pretreatment requirement. However, the User may request a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15. They may also request a variance from the categorical pretreatment standard from the approval authority in accordance with 40 CFR 403.13.

8-1-16: APPROVAL REQUIRED FOR WASTEWATER: No User shall discharge wastewater into the POTW without having first filed an application with the Director and having obtained a permit to discharge wastewater into the POTW. At the time of such application, the applicant shall provide sufficient information concerning the nature, concentration and quantity of ~~his~~their waste or such other information as may be reasonably necessary for the Director to assure compliance with this Chapter. Upon receipt of said application, the Director shall review the same and if necessary, inspect the property and facilities of the applicant to determine if said facilities are in compliance with the provisions of this Chapter. Upon making such determination, the Director shall forthwith issue a permit to the applicant authorizing discharge of waste to the public sewer. All significant industrial Users shall in addition comply with the provisions of Sections 8-1-33 through 8-1-46 of this Chapter. Such permit may be issued upon conditions reasonably necessary to assure compliance with this Chapter, including, but not limited to, the following:

- (A) Limits on the average and maximum wastewater constituents and characteristics;
- (B) Limits on average and maximum rate and time of discharge or requirements for flow regulations and equalization;
- (C) Requirements for installation and maintenance of inspection and sampling facilities;
- (D) Conditions concerning sampling locations, frequency of sampling, number, types and standards for tests and a reporting schedule therefor;
- (E) Compliance schedules;
- (F) Periodic submission of technical reports or other discharge reports necessary to determine compliance with this Chapter, and the frequency of monitoring of the discharge;
- (G) Any other condition reasonably necessary to assure compliance with this Chapter.

8-1-17: **PRETREATMENT FACILITIES:** Users shall provide necessary wastewater treatment as required to comply with this Chapter and shall achieve compliance with all applicable pretreatment standards and requirements set out in this Chapter within the time limitations specified by the EPA, the State, or the Director, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to ~~the~~ City shall be provided, operated, and maintained at the User's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to ~~the~~ City for review, and shall be acceptable to ~~the~~ City before construction of the facility. The review of such plans and operating procedures will in no way relieve the User from the Responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Chapter.

8-1-18: **DEADLINES FOR COMPLIANCE WITH APPLICABLE PRETREATMENT REQUIREMENTS:** Compliance by existing Users covered by categorical pretreatment standards shall be accomplished within three (3) years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate Standard. The City shall establish a final compliance deadline date for any existing User not covered by categorical pretreatment standards or for any categorical User when the local limits for said User are more restrictive than the ~~f~~Federal Categorical Pretreatment Standards.

New Source Dischargers and New Users are required to comply with applicable pretreatment standards within the shortest feasible time not to exceed ninety (90) days from the beginning of

discharge. New Sources and New Users shall install and have in operating condition, and shall start-up all pollution control equipment required to meet applicable pretreatment standards before beginning to discharge.

Any wastewater discharge permit issued to a Categorical User shall not contain a compliance date beyond any deadline date established in EPA's Categorical Pretreatment Standards. Any other existing User or a categorical User that must comply with a more stringent local limit, which is in non-compliance with any local limits shall be provided with a compliance schedule placed in an industrial wastewater permit to ensure compliance within the shortest time feasible.

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8-1-20: ACCIDENTAL SPILL PREVENTION PLANS: The Director may require any User to develop and implement an accidental spill prevention plan (ASPP) or slug control plan. Where deemed necessary by ~~the~~ City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the User's cost and expense. An accidental spill prevention plan or slug control plan showing facilities and operating procedures to provide this protection shall be submitted to ~~the~~ City for review and approval before implementation. ~~The~~ City shall determine which User is required to develop a plan and require said plan to be submitted within thirty (30) days after notification by ~~the~~ City. Each User shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by ~~the~~ City. Review and approval of such plans and operating procedures by ~~the~~ City shall not relieve the User from the responsibility to modify its facility as necessary to meet the requirements of this Chapter.

...

(B) Users shall notify the City Wastewater Treatment Plant immediately after the occurrence of a slug or accidental discharge of substances regulated by this Chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected User shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on the City on account thereof under ~~s~~State or ~~f~~Federal law.

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8-1-21: CONNECTION TO SANITARY SEWER REQUIRED: Every building or structure located within the City and from which any wastewater is discharged shall be connected to the public sanitary sewer if such sewer is within two hundred feet (200') of such building or structure. All connections to the sewer shall be made at the expense of the owner or person having control thereof. Any person who fails to make such connection within ninety (90) days after receiving a notice from ~~the~~ City advising ~~him~~ them of the availability of the sewer, shall be guilty of a misdemeanor.

8-1-22: SEWER SERVICE LINE: A separate and independent sewer service line shall be installed for every building using or required to use the POTW. Separate sewer service lines are not required for each space in a travel trailer court nor for any dwelling unit having a total living area of five hundred square feet (500') or less.

8-1-23: SEWER SERVICE CONNECTION FEES:

(A) Permits Required: No person shall install or alter any sanitary sewer within the City, or tap onto or connect to any sanitary sewer line, whether lateral, main or interceptor, without first obtaining a permit from ~~the~~ City.

(B) Sewer Connection Fees: Before any permit is issued for the installation or alteration of any sanitary sewer or before any connection is made to any sanitary sewer line, whether lateral, main or interceptor, the applicant shall pay to ~~the~~ City a sewer connection fee in an amount set from time to time by Resolution of the Council, for the following:

Single Family Dwelling;
Mobile Home Courts or Mobile Home Subdivisions;
Motels, Hotels, Boarding Houses, Travel Trailer Courts;
Trailer Courts;
Apartment Houses, Duplexes, Triplexes, Condominiums and similar living units; and
Commercial Buildings

A separate sewer connection permit must be obtained for each building or trailer court or cabin court using the sanitary sewer system of ~~the~~ City, and except as otherwise provided herein, the service connection fee must be paid whenever a plumbing permit is required by ~~the~~ City. Once the required sewer service connection fee has been paid for any building connected to the POTW, no further connection fee shall be charged for the connection of any sewer serving any building constructed or reconstructed at the same place, or so near the same place that no substantial extension of the original side sewer is necessary to serve it. If a connection permit was issued after January 1, 1958, the connection fee is deemed to have been paid; ~~In~~ all other cases, proof of payment of the fee shall be furnished by the applicant, and in the absence of such proof, a connection fee shall be charged.

(C) Sewer Main Connection Charge. Before connecting to any sewer main constructed in whole or in part at City expense, all persons desiring such connection shall pay a sewer main connection fee in an amount set from time to time by Resolution of the Council per front foot of property owned by such person and fronting upon a street or public right of way within which a sewer main is located. Despite the foregoing, if any person requests annexation to the City and as part of such annexation also requests connection to such sewer main, then the fee shall be due in full at the time such property is annexed to ~~the~~ City. If any such property is located upon a corner or is bounded by two or more streets in which a sewer main is located, the calculation

for the fee shall be based upon the frontage of the longest street in which a sewer main is located. All sewer mains within ~~the~~ City shall be deemed to have been constructed in whole or in part at City expense, unless the applicant presents written evidence conclusively demonstrating such main was constructed entirely from private monies or was constructed entirely with funds from a state or federal grant. If any person constructs a sewer main entirely at ~~his or her~~ their expense, ~~the~~ City may, by written agreement, pay over to such person all sewer main connection fees collected by ~~the~~ City from any other person who subsequently connects to such sewer main.

(D) Sanitary Sewer Capital Improvement Fund: There is hereby established a Sanitary Sewer Capital Improvement Fund to be supervised and managed by ~~the~~ City Treasurer. All sewer service connection fees and sewer main fees collected under this Chapter shall be deposited into said Fund and shall be distributed only for the purposes set forth below.

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8-1-24: SEWER SERVICE REPAIR: When any sewer service line or private sewer connected to the public sewer becomes obstructed, broken, or out of order, the owner, agent, or tenant of such premises shall repair the same at his own expense.

8-1-25: PERMIT REQUIRED TO WORK ON PUBLIC SEWER: No person shall uncover, disturb, construct, repair, or extend any part of the public sewer or any private sewer located within a public row without first obtaining a sewer service excavation permit. No person shall extend any private sewer or sewer service beyond the limits of the building or property for which a permit has been given without obtaining a permit for the desired extension. The issuance of a sewer service permit shall not be construed to permit any work for which a public right of way excavation permit is required by this Code.

8-1-26: NOTICE OF INSPECTION: No person shall make a new connection to any public sewer without first giving advance notice to the Director at least five (5) hours prior to the time of making such connection, provided however if such connection is located within a public ~~right~~ right-of-way, no further notice shall be required beyond the requirements of Section 8-7-~~26~~ of this Code. Notices given on any Saturday or legal holiday will not be accepted. All connections must be made in accordance with the City Standard Drawings and Specifications and shall be inspected by ~~the~~ City before the trench is filled.

...

8-1-30: INJURY TO SEWERAGE SYSTEM UNLAWFUL: No person shall willfully or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, appurtenance or equipment, or other part of the POTW. No person shall deposit into the POTW any substance which will likely obstruct the flow of wastewater in the POTW.

...

8-1-32: ACCIDENTAL DISCHARGES/SLUG CONTROL PLANS:

(A) The Director may require any User to develop and implement an accidental discharge/slugs control plan (“ASPP”). Where deemed necessary by ~~the~~ City, facilities to prevent accidental discharge or slug discharges of pollutants shall be provided and maintained at the User’s cost and expense. An accidental spill prevention plan/slugs control plan showing facilities and operating procedures to provide this protection shall be submitted to ~~the~~ City for review and approval before implementation. ~~The~~ City shall determine which User is required to develop a plan and require said plan to be submitted within thirty (30) days after written notification by ~~the~~ City that an ASPP is required. Each User shall implement its ASPP as submitted or as modified after such plan has been reviewed and approved by ~~the~~ City. Review and approval of such plans and operating procedures by ~~the~~ City shall not relieve the User from the responsibility to modify its facility as necessary to meet the requirements of this Chapter.

...

(C) Users shall notify the Director immediately upon the occurrence of a “slug” or “accidental discharge” of substances regulated by this Chapter. The notification shall include location of discharge, date and time thereof, type of waste, concentration and volume, and corrective actions. Any affected User shall be liable for any expense, loss, or damage to the POTW, including the amount of any fines imposed on the City on account thereof under ~~s~~State or ~~f~~Federal law.

...

8-1-33: WASTEWATER DISCHARGE PERMIT REQUIREMENTS: No significant industrial User shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the Director. Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this Chapter and subjects the wastewater discharge permittee to the sanctions set forth in this Chapter. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of Federal, State, and local law. The Director may require other Users, including liquid waste haulers, to obtain wastewater discharge permits (as necessary) to carry out the purposes of this Chapter.

8-1-34: WASTEWATER DISCHARGE PERMITS—EXISTING SIU’S: Any SIU that was discharging wastewater into the POTW prior to the Effective Date and that wishes to continue such discharges in the future shall submit, within sixty (60) days after notification by the Director a permit application to ~~the~~ City in accordance with Section 8-1-37 of this Chapter. The City’s notification to SIU’s covered by categorical pretreatment standards will be in ample time to ensure that the SIU’s comply with the one hundred eighty (180-) day submittal deadline date established in 40 CFR § 403.12(b).

8-1-35: WASTEWATER DISCHARGE PERMITS—NEW SOURCES AND NEW USERS: At least ninety (90) days prior to the anticipated start-up, any New Source, which is a source that becomes a User subsequent to the proposal of an applicable categorical pretreatment standard that is later promulgated, and any New User considered by ~~the~~ City to fit the definition of a SIU, shall apply for a wastewater discharge permit and will be required to submit to ~~the~~ City at least the information listed in paragraphs (A) through (E) of Section 8-1-37 of this Chapter. A New Source or New User cannot discharge without first receiving a wastewater discharge permit from ~~the~~ City. New Sources and New Users shall be required to include in their application information on the method of pretreatment the User intends to use to meet applicable pretreatment standards. New Sources and New Users shall give estimates of the information requested in paragraphs (D) and (E) of Section 8-1-37.

8-1-36: WASTEWATER DISCHARGE PERMITS; EXTRA-JURISDICTIONAL USERS: Any Existing User who is located beyond ~~the~~ City limits and who is required to obtain a wastewater discharge permit shall submit a wastewater discharge permit application as outlined in Section 8-1-37. New Source and New Users located beyond ~~the~~ City limits are also required to obtain a wastewater discharge permit in accordance with Section 8-1-37 of this Chapter.

8-1-37: WASTEWATER DISCHARGE PERMIT APPLICATION CONTENTS: All Users required to obtain a wastewater discharge permit must submit, at a minimum, the following information. The Director shall approve a form to be used as a permit application. Categorical Users submitting the following information shall be deemed to have complied with 40 CFR 403.12(b).

(A) Identifying Information. The User shall submit the name and address of the facility, including the names of the operator and owners;

...

(D) Flow Measurement.

...

(2) Non-Categorical User. The User shall submit information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:

(a) Total process flow, wastewater treatment plant flow, total plant flow or individual manufacturing process flow as required by the Director.

~~The~~ City may allow for verifiable estimates of these flows where justified by cost or feasibility considerations.

(E) Measurements of Pollutants.

(1) Categorical User:

- (a) The User shall identify the applicable pretreatment standards for each regulated or manufacturing process.
- (b) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by the Categorical Pretreatment Standard or as required by ~~the~~ City) of regulated pollutants (including standards contained in Sections 8-1-9 through 8-1-12 of this Chapter, as appropriate) in the discharge from each regulated or manufacturing process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Sections 8-1-58 through 8-1-60 of this Chapter.
- (c) The User shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this paragraph.
- (d) Where an alternate concentration or mass limit has been calculated in accordance with 40 CRF 403.6(e) for a categorical User covered by a categorical pretreatment standard, this adjusted limit along with supporting data shall be submitted as part of the application.

(2) Non-Categorical User.

- (a) The User shall identify the applicable pretreatment standards for its wastewater discharge.
- (b) In addition, the User shall submit the results of sampling and analysis identifying the nature and concentration (or mass where required by ~~the~~ City) of regulated pollutants contained in Sections 8-1-9 through 8-1-12 of this Chapter, as appropriate in the discharge. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations and shall conform to sampling and analytical procedures outlined in Sections 8-1-58 through 8-1-60 of this Chapter.

(c) The User shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of this ~~s~~Subsection.

(d) Where the Director has developed alternate concentration or mass limits because of dilution, this adjusted limit along with supporting data shall be submitted as part of the application.

...

8-1-39 WASTEWATER DISCHARGE PERMIT DECISIONS: The Director will evaluate the data furnished by the User and may require additional information. Within thirty (30) days of receipt of a complete wastewater discharge permit application, the Director will determine whether or not to issue a wastewater discharge permit. Upon a determination to issue, the permit shall be issued within thirty (30) days of full evaluation and acceptance of the data furnished. The Director may deny any application for a wastewater discharge permit if the application fails to conform to this Chapter in any respect.

8-1-40: WASTEWATER DISCHARGE PERMIT CONTENTS:

(A) Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Director to prevent pass-through or interference, protect the quality of the body of water receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(B) Wastewater discharge permits must contain the following conditions:

...

(2) A statement that the wastewater discharge permit is non-transferable without prior notification to and approval from ~~the~~ City, and provision for furnishing the new owner or operator with a copy of the existing wastewater discharge permit;

...

(4) Self-monitoring, sampling, reporting, notification, submittal of technical reports, compliance schedules, and record-keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on Federal, State and local law; and

(5) Requirement for immediate notification to ~~the~~ City where self-monitoring results indicate non-compliance;

...

- (7) Requirement to report immediately to ~~the~~City all discharges, including slug loadings that could cause problems to the POTW:
- (8) Requirement for the SIU who reports non-compliance to repeat the sampling and analysis and submit results to ~~the~~City within thirty (30) days after becoming aware of the violation.
- (9) A statement of applicable civil, criminal, and administrative penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule.

...

(C) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

...

- (8) Any special agreements the Director chooses to continue or develop between ~~the~~City and User;
- (9) Other conditions as deemed appropriate by the Director to ensure compliance with this Chapter and ~~s~~State and ~~f~~Federal laws, rules and regulations.

8-1-41: WASTEWATER DISCHARGE PERMIT APPEALS:

(A) Any person, including the User, may petition ~~the~~City to reconsider the terms of a wastewater discharge permit within ~~twenty~~twenty-eight (28) days of its issuance.

...

(E) If ~~the~~City fails to act within ~~twenty~~twenty-eight (28) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit, or not to modify a wastewater discharge permit, shall be considered final administrative actions for purposes of judicial review.

8-1-42: WASTEWATER DISCHARGE PERMIT DURATION: Wastewater discharge permits shall be issued for a specified time period, not to exceed five (5) years. Each wastewater discharge permit will indicate a specific date upon which it will expire.

8-1-43: WASTEWATER DISCHARGE PERMIT MODIFICATION: The Director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

(A) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;

...

(D) Information indicating that the permitted discharge poses a threat to the POTW, City personnel, or the receiving waters;

...

8-1-45: WASTEWATER DISCHARGE PERMIT REVOCATION: Wastewater discharge permits may be revoked for, but not limited to, the following reasons:

...

(F) Refusing to allow the Director or ~~his or her~~their nominee timely access to the facility premises and records, provided proper identification is displayed at the time access is requested;

8-1-46: WASTEWATER DISCHARGE PERMIT REISSUANCE: A User who is required to have a wastewater discharge permit shall apply for the reissuance of a wastewater discharge permit by submitting a complete wastewater discharge permit application, in accordance with Section 8-1-37 of this Chapter, a minimum of sixty (60) days prior to the expiration of the User's existing wastewater discharge permit. A User whose existing wastewater discharge permit has expired and who has submitted its re-application in the time period specified herein shall be deemed to have an effective wastewater discharge permit until ~~the~~ City issues or denies the new wastewater discharge permit. A User whose existing wastewater discharge permit has expired and who failed to submit its re-application in the time period specified herein will be deemed to be discharging without a wastewater discharge permit.

8-1-47: FINAL COMPLIANCE REPORTS:

(A) Within ninety (90) days following the date for final compliance of an existing Significant Industrial User with applicable pretreatment standards and requirements set forth in this Chapter, in Federal Categorical Standards, or in a waste-water discharge permit, or in the case of a New Source or a New User considered by ~~the~~ City to fit the definition of an SIU, within ninety (90) days following commencement of the introduction of wastewater into the POTW, the affected User shall submit to the Director a report containing the information outlined in paragraphs (D) through (F) of Section 8-1-37 of this Chapter.

(B) For Users subject to equivalent mass or concentration limits established by ~~the City~~ in accordance with procedures established in 40 CFR 403.6 (c), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to Categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period.

8-1-48: PERIODIC COMPLIANCE REPORT:

(A) Any User that is required to have an industrial waste discharge permit and performs self-monitoring shall submit to ~~the City~~ during the months of June and December, unless required on other dates or more frequently by ~~the City~~, a report indicating the nature of the effluent over the previous reporting period. The frequency of monitoring shall be as prescribed within the industrial waste discharge permit. At a minimum, Users shall sample their discharge at least twice per year.

(B) The report shall include a record of the concentrations (and mass if specified in the wastewater discharge permit) of the pollutants listed in the wastewater discharge permit that were measured and a record of all flow measurements (average and maximum) taken at the designated sampling locations, and shall also include any additional information required by this Chapter or the wastewater discharge permit. Production data shall be reported if required by the wastewater discharge permit. Both daily maximum and average concentration (or mass, where required) shall be reported. If a User sampled and analyzed more frequently than what was required by ~~the City~~ or by this Chapter using methodologies in 40 CFR Part 136, it must submit all results of sampling and analysis of the discharge during the reporting period.

(C) Any User subject to equivalent mass or concentration limits established by ~~the City~~ or by unit production limits specified in the applicable categorical standards, shall report production data as outlined in Section 8-1-47(B) of this Chapter.

(D) If ~~the City~~ calculated limits to factor out dilution flows or non-regulated flows, the User will be responsible for providing flows from the regulated process flows, dilution flows, and non-regulated flows.

(E) Flows shall be reported on the basis of actual measurement, provided, however, ~~the City~~ may accept reports of average and maximum flows estimated by verifiable techniques if ~~the City~~ determines that an actual measurement is not feasible.

...

(G) ~~The City~~ may require reporting by Users that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge,

determine the treatability of the effluent or determine any other factor which is related to the operation and maintenance of the sewer system.

(H) ~~The~~ City may require self-monitoring by the User or, if requested by the User, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Section. If ~~the~~ City agrees to perform such periodic compliance monitoring, it may charge the User for such monitoring, based upon the costs incurred by ~~the~~ City for the sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the User's sewer billing statement. ~~The~~ City shall be under no obligation to perform periodic compliance monitoring for a User.

8-1-49 COMPLIANCE SCHEDULES FOR APPLICABLE PRETREATMENT STANDARDS:

...

(B) No increment referred to in paragraph (A) of this ~~s~~Section shall exceed nine (9) months.

(C) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the User shall submit a progress report to ~~the~~ City including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the User to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports.

8-1-50: NOTIFICATION OF SIGNIFICANT PRODUCTION CHANGES: Any User operating under a wastewater discharge permit incorporating equivalent mass or concentration limits shall notify ~~the~~ City within two (2) business days after the User has a reasonable basis to know that its production level will significantly change within the next calendar month. Any User not providing a notice of such anticipated change will be required to comply with the existing limits contained in its wastewater discharge permit.

8-1-51: HAZARDOUS WASTE NOTIFICATION:

(A) Any User that is discharging more than fifteen (15) kilograms of hazardous wastes as defined in 40 CFR 261 (listed or characteristic wastes) in a calendar month or any facility discharging any amount of acutely hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) is required to provide a one-time notification in writing to ~~the~~ City, the EPA Region 10, Office of Air, Waste and Toxic Chemicals and, to the extent required by law and, the Idaho Department of Health and Welfare Division. Any existing User exempt from this notification, shall comply with the requirements contained herein within thirty (30) days of becoming aware of

a discharge of fifteen (15) kilograms or greater of hazardous wastes in a calendar month or the discharge of acutely hazardous wastes to the City sewer system. Such notification shall include:

...

- (4) If an industrial User discharges more than one hundred (100) kilograms of such waste per calendar per month to the sewer system, the notification shall also contain the following information to the extent it is known or readily available to the Industrial User:

...

(C) Whenever the EPA publishes final rules identifying additional hazardous wastes or new characteristics of hazardous waste, a User shall notify ~~the~~ City of the discharge of such a substance within ninety (90) days of the effective date of such regulations.

8-1-52: NOTICE OF POTENTIAL PROBLEMS, INCLUDING ACCIDENTAL SPILLS, SLUG LOADINGS: Any User shall notify ~~the~~ City immediately of all discharges that could cause problems to the POTW, including any slug loads, as defined in ~~Section 8-1-2~~ this Chapter. The notification shall also include the concentration and volume of the discharge, corrective action being taken or proposed to be taken, and steps being taken to reduce any adverse impact on the POTW. Any User who discharges a slug load of pollutants shall be liable for any expense, loss, or damage to the POTW, in addition to the amount of any fines imposed on ~~the~~ City under State or Federal law.

8-1-53: NON-COMPLIANCE REPORTING: If sampling performed by a User indicates a violation, the User shall notify ~~the~~ City within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling within five (5) days and submit the results of the repeat analysis to ~~the~~ City within thirty (30) days after becoming aware of the violation. Where ~~the~~ City has performed the sampling and analysis in lieu of the Industrial User, ~~the~~ City must perform the repeat sampling and analysis unless it notifies the User of the violation and requires the User to perform the repeat analysis. Resampling is not required if:

(A) ~~The~~ City performs sampling at the Industrial User's location at a frequency of at least once per month; or

(B) ~~The~~ City performs sampling at the Industrial User's location between the time when the initial sampling was conducted and the time when the User receives the results of this sampling.

8-1-54: NOTIFICATION OF CHANGED DISCHARGE: All Users shall promptly notify ~~the~~ City in advance of any substantial change in the volume or character of pollutants in their discharge, including significant manufacturing process changes, pretreatment modifications, and

the listed or characteristic hazardous wastes for which the User has submitted initial notification under 40 CFR 403.12 (p).

...

8-1-56: REPORTS FROM UNPERMITTED USERS: All Users not required to obtain a wastewater discharge permit shall provide appropriate reports to ~~the~~ City as the Director may require.

...

8-1-58: SAMPLING REQUIREMENTS FOR USERS:

(A) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds. For all other pollutants, twenty-four (24)-hour composite samples must be obtained through flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the Director. The samples must be representative of the Discharge and the decision to allow the alternative sampling must be documented in the Industrial User file for that facility or facilities. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during the twenty-four (24) hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory. Composite samples for other parameters unaffected by compositing procedures as documented in approved EPA methodologies may be authorized by the Control Authority, as appropriate.

...

(C) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated or manufacturing process if no pretreatment exists or as determined by ~~the~~ City and contained in the User's wastewater discharge permit. For categorical Users, if other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the applicable Categorical Pretreatment Standards. For other SIUs, for which the City has adjusted its local limits to factor out dilution flows, the User should measure the flows and concentrations necessary to evaluate compliance with the adjusted pretreatment standards. In cases where the Standard requires compliance with a Best Management Practice or pollution prevention alternative, the User shall submit documentation as required by ~~the~~ City or the applicable Standard to determine compliance with the Standard.

...

8-1-60: MONITORING OF USER'S WASTEWATER: ~~The~~City will follow the same procedures as outlined in Sections 8-1-58 and 8-1-59 of this Chapter whenever it deems City monitoring is appropriate to ensure compliance with this Chapter.

8-1-61: INSPECTION AND SAMPLING: ~~The~~City shall have the right to enter the facilities of any User to ascertain whether the purposes of this Chapter, and any wastewater discharge permit or order issued hereunder, are being met and whether the User is complying with all requirements thereof. Users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

...

8-1-62: MONITORING FACILITIES:

(A) Each User shall provide and operate at its own expense a monitoring facility to allow inspection, sampling, and flow measurements of each sewer discharge to ~~the~~City. Each monitoring facility shall be situated on the User's premises, except where such a location would be impractical or cause undue hardship on the User and ~~the~~City approves such alternate location in writing.

...

8-1-64: CONFIDENTIAL INFORMATION: Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from City inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of ~~the~~City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable ~~s~~State law. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

8-1-65: PUBLICATION OF USERS IN SIGNIFICANT NON-COMPLIANCE: ~~The~~City shall publish annually, in the Official Newspaper, a list of the Users which, during the previous twelve (12) months, were in significant non-compliance with applicable pretreatment standards and requirements. For the purposes of this Chapter, a Significant Industrial User (or any Industrial User which violates ~~s~~Subsections (C), (D), or (H) of this ~~s~~Section) is in significant noncompliance if its violation meets one (1) or more of the following criteria;

...

8-1-66: NOTIFICATION OF VIOLATION: When the Director finds that a User has violated or continues to violate any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the Director may serve upon that User a written Notice of Violation. Such Notice shall be conclusively deemed served upon its deposit in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the address specified in the User's application, or such other address which has been delivered to ~~the~~ City in writing. Within thirty (30) days after service of this notice, User shall similarly serve upon the Director an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions. Submission of this plan in no way relieves the User of liability for any violation occurring before or after receipt of the Notice of Violation. Nothing in this ~~s~~Section shall limit the authority of ~~the~~ City to take any action, including emergency actions or any other enforcement action, without first issuing a Notice of Violation.

...

8-1-71: ADMINISTRATIVE FINES; ATTORNEYS FEES AND COSTS:

...

(C) Users desiring to dispute such fines must file a written request for the Director to reconsider the fine along with full payment of the fine amount within fifteen (15) days of being notified of the fine. Upon receipt of such request, the Director shall convene a hearing on the matter within fifteen (15) days thereafter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. ~~The~~ City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

...

(E) To the fullest extent permitted by law, ~~the~~ City shall be entitled to recover its reasonable attorney fees, court costs, and other expenses associated with enforcement of this Chapter, including without limitation, sampling and monitoring expenses and all other damages sustained by ~~the~~ City as a direct result of a User's violation of the provisions of this Chapter.

8-1-72: EMERGENCY SUSPENSIONS: The Director may immediately suspend a User's discharge, after informal notice to the User, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or which causes an imminent or substantial endangerment to the health or welfare of persons. The Director may also immediately suspend a User's discharge, after notice and opportunity to respond, that threatens to

interfere with the operation of the POTW, or which presents or may present an endangerment to the environment.

(A) Any User notified of a suspension of its discharge shall immediately stop or eliminate its discharge into the POTW. In the event of a User's failure to immediately comply voluntarily with the suspension order, the Director shall take steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The Director shall allow the User to recommence its discharge when the User has demonstrated to the satisfaction of ~~the~~ City that the period of endangerment has passed, unless termination proceedings under Section 8-1-73 of this Chapter are initiated against the User.

(B) A User that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit to the Director a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, prior to the date of any show cause or termination hearing under Sections 8-1-68 and 8-1-73 of this Chapter.

Nothing in the ~~s~~Section shall be interpreted as requiring a hearing prior to an emergency suspension under this ~~s~~Section.

8-1-73: TERMINATION OF DISCHARGE (NON-EMERGENCY): In addition to the provisions in Section 8-1-45 of this Chapter, any User that violates any of the following conditions is subject to discharge termination:

...

(E) Violation of the pretreatment standards in Sections 8-1-9 through 8-1-20~~1~~ this Chapter.

Such User will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under Section 8-1-68 of this Chapter why the proposed action should not be taken. Exercise of this option by ~~the~~ City shall not be a bar to, or a prerequisite for, taking any other action against the User.

8-1-74: INJUNCTIVE RELIEF: When the Director finds that a User has violated, or continues to violate, any provision of this Chapter, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, ~~the~~ City may petition the Seventh Judicial District of the State of Idaho, Bonneville County, through the City Attorney, for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Chapter on activities of the User. ~~The~~ City may also seek such other action as is appropriate for legal or equitable relief, including a requirement for the User to conduct environmental

remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a User.

8-1-75: CIVIL PENALTIES:

(A) A User which has violated or continues to violate any provision of this Chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to ~~the~~ City for a maximum civil penalty in an amount set from time to time by Resolution of the Council. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(B) To the fullest extent permitted by State law, the Director may recover reasonable attorney fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses and the cost of any actual damages incurred by the City.

...

8-1-77: REMEDIES NON-EXCLUSIVE: The provisions in Sections 8-1-65 through 8-1-83 of this Chapter are not exclusive remedies. ~~The~~ City reserves the right to take any, all, or any combination of these actions against a non-compliant User. Enforcement in response to pretreatment violations will generally be in accordance with ~~the~~ City's enforcement response plan. However, ~~the~~ City reserves the right to take other action against any User when the circumstances warrant. Further, ~~the~~ City may take more than one enforcement action against any non-compliant User. These actions may be taken concurrently.

8-1-78: PERFORMANCE BONDS: The Director may decline to issue or reissue a wastewater discharge permit to any User which has failed to comply with any provision of this Chapter, a previous wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement unless such User first files a satisfactory bond, payable to ~~the~~ City, in a sum not to exceed a value determined by the Director to be necessary to achieve consistent compliance.

...

8-1-81: PUBLIC NUISANCES: A violation of any provision of this Chapter, a wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the Director. Any person(s) creating a public nuisance shall be subject to the provisions of ~~the~~ City this Code or sState law governing such nuisances, including reimbursing ~~the~~ City for any costs incurred in removing, abating, or remedying said nuisance.

8-1-82: INFORMANT REWARDS: ~~The~~ City may, ~~upon Resolution by the Council,~~ pay a reward in an amount set from time to time by Resolution of Council for information leading to

the discovery of non-compliance by a User. In the event that the information provided results in an administrative fine or civil penalty levied against the User, ~~the~~ City may, upon similar Resolution, authorize the disbursement of up to ten percent (10%) of the collected fine or penalty to the informant, provided however, a single reward payment may not exceed in an amount set from time to time by Resolution of the Council.

8-1-83: CONTRACTOR LISTING: Users which are not compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to ~~the~~ City. Existing contracts for the executory sale of goods or services to ~~the~~ City held by a User found to be in significant non-compliance with pretreatment standards or requirements may be terminated at the discretion of ~~the~~ City.

8-1-84: AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS: The following affirmative defenses may be established by a User against whom any enforcement action or remedy is sought.

(A) Upset:

- (1) For the purposes of this sSection, “upset” means an exceptional incident in which there is unintentional and temporary non-compliance with applicable pretreatment standards because of factors beyond the reasonable control of the User. An upset does not include non-compliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

...

(B) Prohibited Discharge Standards. A User shall have an affirmative defense to an enforcement action brought against it for non-compliance with the prohibitions in Section 8-1-9 of this Chapter if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either: (a) a local limit exists for each pollutant discharged and the User was in compliance with each limit directly prior to, and during, the pass through or interference; or (b) no local limit exists, but the discharge did not change substantially in nature or constituents from the User's prior discharge when ~~the~~ City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(C) Bypass.

- (1) For the purposes of this ~~s~~Section:
 - (a) "Bypass" means the intentional diversion of wastestreams from any portion of a User's treatment facility.
 - ...
- (3)
 - (b) A User shall submit oral notice to ~~the~~ City of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the bypass. The POTW may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (4)
 - (a) Bypass is prohibited, and the POTW may take an enforcement action against a User for a bypass, unless:
 - ...
 - (iii) The User submitted notices as required under paragraph three (3) of this ~~s~~Section.
 - (b) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three (3) conditions listed in paragraph (4)(a) of this Section.

8-1-85: SEWER USER SERVICE CHARGE: A monthly service charge for sewer service shall be charged to all Users. All charges to Users, shall be calculated in a manner that ensures each User will pay a fair share of the costs of operation, maintenance, and capital equipment replacement based upon proportional usage of the sewer system and POTW. ~~Charges may be based upon actual usage of waste treatment services or upon reasonable classifications of Users.~~ The rates established shall generate sufficient revenue to defray the costs of operating and prudently managing the sewerage system, including but not limited to: (a) capital costs; (b)

operation and maintenance costs; (c) replacement costs and reserves, and (d) debt service on bonded indebtedness.

~~Sewer rates shall be established consistent with generally accepted rate making principles and shall be reviewed periodically and adjusted if necessary to ensure all Users equitably share in the costs of operating the sewer system and POTW. User rates shall be established by resolution of the City Council, which resolution shall be kept on file in the office of the City Clerk. (Ord. 2357, 12-22-99)~~

City shall establish monthly rates for sewer service supplied by City in an amount set from time to time by Resolution of the Council for the following:

(A) Monthly Non-Metered Residential Wastewater Rates (Inside City):

1. Single-family dwellings and mobile homes (excluding separate apartment units within such dwelling) – Per dwelling or unit;
2. Duplex/Triplex – Per dwelling or unit;
3. Apartment unit (tenant pays bill) – Per unit.

(B) Monthly Non-Metered Commercial Wastewater Rates (Inside City):

1. Category 1 (Commercial Apartment Building where single bill for all tenants is paid by landlord or manager) – Per unit;
2. Category 2 (Bar, Church, Gym, Office Space, Retail, Salon, Shop, and Warehouse) – Per business;
3. Category 3 (Big Box Retail, Car Sales, Convenience Store, Day Care, Fast Food, Medical Office) – Per business;
4. Category 4 (Hall, Restaurant) – Per business;
5. Category 5 (Hotel or Rest Home with twenty (20) rooms or less) – Per business;
6. Category 6 (Hotel or Rest Home with more than twenty (20) rooms) – Per business.

(C) Monthly Non-metered School Wastewater Rate (Inside City): Elementary School, Junior High School, High School, College and University – Per fifty (50) students or fraction thereof.

(D) All other non-classified businesses shall be placed into a monthly non-metered commercial wastewater category by the Water Division Superintendent based on anticipated interior water consumption.

(E) Monthly Metered Wastewater Rates (Inside City). The wastewater for customers receiving metered water service shall be a monthly base metered wastewater plus a monthly volumetric rate per each one thousand (1,000) gallons of water used; in an amount set from time to time by Resolution of the Council.

- (e)1. Installations where a water meter is found to register both landscape irrigation as well as interior uses, an average monthly metered wastewater shall be

calculated each September for the following year. The average monthly metered wastewater shall be determined by averaging the monthly metered water volumes for the four (4) months of December through March immediately prior, preventing landscape irrigation from inflating the monthly sewer bill. New installations without sufficient metered data shall be charged a non-metered commercial wastewater as defined above until such time that sufficient metered data is available.

2. Installations where a water meter registers landscape irrigation only shall not be billed a monthly metered wastewater.

...

8-1-87: TRANSITION RATES FOR INDUSTRIAL USERS: Transition rates for industrial Users may be established by annual resolution of the City-Council, based upon the cost-of-service rate methodology set forth in the 1998 Rate Study prepared by CH2M Hill. Such rates shall be designed to transition over a period of not to exceed four (4) years, beginning in the year 2000. Transition to cost-of-service rates may occur at a different pace for each industrial User, depending upon the hardship associated with necessary adjustments towards cost-of-service based rates.

...

8-1-89: WOODRUFF AVENUE INTERCEPTOR: In addition to the unit charges established pursuant to Sections 8-1-85 through 8-1-87 of this Chapter, any future industry located such that industrial waste is discharged into the Woodruff Avenue Interceptor at a point north of the intersection of Ninth Street and St. Clair Road, will be required to repay their share of the EPA grant for the Woodruff Avenue Interceptor. The required pay back shall be in accordance with ~~public law 92-500 of the Laws of the United States of America and all~~ Federal regulations, laws, and guidelines pertaining thereto.

8-1-90: GREASE INTERCEPTOR: Whenever a building is used as a food service establishment or commercial kitchen, the owner or occupant shall provide a grease interceptor or a grease trap through which all waste containing fats, oils, or grease shall be drained. Such interceptor or trap shall be designed and sized as outlined in ~~Appendix H-Chapter 10 Section 1014~~ of the currently adopted edition of the ~~Uniform~~ Idaho State Plumbing Code, and shall only allow wastewater, which complies with this Chapter to be drained into the sanitary sewer system.

EXCEPTION: The requirements of ~~Appendix H-Chapter 10 Section 1014~~ shall not apply when, in the judgment of the Director, or ~~his~~ their nominee, the kitchen discharge does not contain or exceed the fats, oils, and grease limitations as outlined in the Local Limits, Section 8-1-12 of this Chapter.

...

8-1-97: PRETREATMENT CHARGES AND FEES: ~~The~~ City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's pretreatment program which may include:

...

(E) Other fees as ~~the~~ City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by ~~the~~ City.

...

8-1-99: FALSIFYING INFORMATION: Nothing herein is intended to create any private duty to any customer or discharger or create any private right of action on account of any failure by ~~the~~ City, or its officers, employees, or agents to perform any duty or obligation set forth herein.

SECTION 2. Title 8, Chapter 1, of the Idaho Falls City Code shall be changed from “Sewers” to “Wastewater”.

SECTION 3. Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

SECTION 4. Codification Clause. The City Clerk is instructed to immediately forward this Ordinance to the codifier of the official municipal code for proper revision of the Code.

SECTION 5. Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Idaho Falls, Idaho, this ____ day of _____, 2016.

CITY OF IDAHO FALLS, IDAHO

REBECCA L. NOAH CASPER, MAYOR

ATTEST:

KATHY HAMPTON, CITY CLERK

(SEAL)

STATE OF IDAHO)
) ss:
County of Bonneville)

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO,
DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance entitled, "AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING TITLE 8, CHAPTER 1; ADDING DEFINITIONS AND CLARIFICATIONS IN SUPPORT OF RESTRUCTURED FEES RELAED TO THE CITY'S WASTEWATER SERVICES, SEWER SYSTEM, AND PUBLICALLY OWNED TREAMENT WORKS; AND PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE."

(SEAL)

KATHY HAMPTON, CITY CLERK



MEMORANDUM

To: Honorable Mayor & City Council

From: Chris H Fredericksen, Public Works Director

Date: September 19, 2016

Subject: **CITY ORDINANCE REVISION – TITLE 8, CHAPTER 4 – WATER SERVICE**

Attached is a proposed revision prepared by the City Attorney to the city ordinance addressing Water Service. The proposed revision reflects required changes due to utility customer reclassifications associated with the recently approved Fee Resolution.

Public Works recommends approval of this ordinance; and, authorization for Mayor and City Clerk to sign the necessary documents.

Respectfully,

Chris H Fredericksen, P.E.
Public Works Director

CF:jk

Attachment

c: Mayor
Council
Richards

2016-101

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, AMENDING SECTION 8, TITLE 4, ADDING DEFINITIONS AND CLARIFICATIONS IN SUPPORT OF RESTRUCTURED FEES RELATED TO THE CITY'S WATER SERVICES; PROVIDING SEVERABILITY, CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING EFFECTIVE DATE.

WHEREAS, the City Council approved a Water Facility Plan on August 13, 2015; and

WHEREAS, the Water Facility Plan recommends changes to the City's structure for the billing of water services; and

WHEREAS, proposed changes to the City's billing of water services necessitate amendment of the City Code for water service.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, THAT:

SECTION 1. Section 8, Title 4, of the City Code of the City of Idaho Falls, Idaho, is hereby amended as follows:

8-4-2: DEFINITIONS: Certain terms used in this Chapter shall have the meanings ascribed below:

APARTMENT: Any building or portion thereof which is designed, built, rented or leased, let, or hired out to be occupied or which is occupied as the home or residence of four (4) or more families living independently of each other and doing their own cooking within the premises.

~~APARTMENT: A structure in which two or more separate units are constructed and designed so the occupants share common dining or restroom facilities and for which the occupants pay rent or other consideration.~~

BACKFLOW: The flow, other than in the intended direction of flow, of any non-potable waters, foreign liquids, gases or harmful or offensive substances into the City water supply as a result of reduced, negative, or ~~reversed-back~~ pressure.

BACKFLOW PREVENTION ASSEMBLY: A testable apparatus which prevents backflow.

BACKFLOW PREVENTION DEVICE: A non-testable device which, ~~when properly installed between the City water supply system and the terminus of the customer's water line or point of ultimate use, will~~ prevents backflow.

BAR: A business whose principal activity is serving alcoholic beverages, but not prepared meals, on site.

BIG BOX RETAIL: A very large retail store with more than ten thousand (10,000) gross square footage.

CAR SALES: A business conducting the sale of automobiles where the building contains a wash bay; or a business involving the repair also includes auto body repair shops.

CHURCH: A building used for public religious worship.

CITY: The City of Idaho Falls, Idaho.

CITY WATER SUPPLY: Potable water provided by the City to its customers through the various components of the City Water System.

CITY WATER SYSTEM: All components that are owned and maintained by the City through which potable water is supplied to City customers, including, but not limited to, wells, pumps, water main, water services, valves, and fire hydrants.

CONVENIENCE STORE: An automobile service station consisting of a building small retail floor area and which has fuel dispensing pumps.

CROSS-CONNECTION: Any existing or potential physical arrangement whereby the City water system is connected with any other water supply system, sewer, drain, conduit, pool, storage reservoir or any other source of water supply which contains or may contain contaminated -water, chemicals, sewage or other waste or liquids which may be harmful to human health or which may deleteriously affect the City water supply.

CURB STOP: The service line valve owned by the City and located near the customer's property line.

CUSTOMER: Any individual, partnership, business entity, or corporation desiring to receive potable water (in any amount) from the City water system.

CUSTOMER LINE: The pipe, valves, and fittings leading from the curb stop or any water meter pit to or into the premises or property served, including the water meter attached thereto.

DAY CARE: A place or facility providing care and supervision for compensation of children not related by blood or marriage to the person or persons providing the care in a place other than the child's or adult's own home or homes.

DUPLEX/TRIPLEX: A dwelling unit which is physically attached to or shares a common party wall with up to two (2) additional dwelling units and which has open space on at least two sides.

FAST FOOD RESTAURANT: A restaurant which possesses all three of the following characteristics: 1) all food orders are placed at a counter-ordering, 2) drive-thru window service, and 3) meals are served in paper, plastic, or other types of disposable materials.

GYM: A business where physical exercises, dance, martial arts, or other physical activities are performed inside.

HALL: a large room or theater for meetings, concerts, or other events.

HOTEL: Any building used, rented, or hired out to be occupied on a daily or weekly basis for sleeping purposes by guests.

MEDICAL OFFICE: An institution providing health or veterinary service or medical, surgical or custodial care of the sick or injured.

METER: A water meter and its enclosure, valve(s), and related appurtenances.

OFFICE: A room, set of rooms, or building used for providing a service or as a place for commercial, professional, or bureaucratic work.

OPEN HOSE: The use of water through a hose or pipe without a nozzle, sprinkler, or other pressure-flow limiting device.

REST HOME: A building for the care and lodging of elderly or incapacitated persons.

RESTAURANT: A food service establishment where people pay to sit and eat meals that are prepared, cooked and served on the premises.

RETAIL: A building or unit providing the sale of goods to the public in relatively small quantities for use or consumption rather than for resale.

SALON: An establishment where a hairdresser or beautician conducts business.

SCHOOL: An institution dedicated to the education of children, teens, and adults differentiated as follows:

- Elementary School: Grades K through 6;
- Junior High School: Grades 7 through 8;
- High School: Grades 9 through 12;
- College or University: Post High School education

SERVICE LINE: The water pipe, valve(s), and fittings laid from the water main up to and including the curb stop and any water meter pit.

SHOP: A building or unit where things are manufactured or repaired, typically consisting of a small office accompanied by a larger work space.

SINGLE-FAMILY DWELLING: A detached dwelling unit, including manufactured or mobile homes, designed for or occupied exclusively by one (1) household.

~~SINGLE FAMILY DWELLING: All structures, except hotels, motels, rooming houses and apartments, which contain sleeping, restroom, cooking and dining facilities.~~

WAREHOUSE: A building or unit where materials, manufactured goods, or possessions are stored.

WATER MAIN: The publicly-owned water pipe ~~laid~~ in a street, road, alley, or public utility easement.

WATER SERVICE: Supply of water through the City water system to a structure, unit, parcel, or lot for the end use of a customer.

8-4-3: EXCLUSIVE MANAGEMENT AND CONTROL: ~~The~~ City shall have exclusive control and management of ~~the~~ City water system and shall have exclusive management and control of the supply and distribution of water to the inhabitants thereof. ~~The~~ City may make such rules and regulations as are necessary for the complete management, control, distribution, and supply of water within and without the City.

8-4-4: GRANTING OF FRANCHISE PROHIBITED: No person shall be granted any franchise or permit to furnish or supply any inhabitant within the City any water for domestic or culinary use or for sprinkling of lawns and gardens within any portion thereof where the water mains have been extended or may hereafter be extended so as to supply said property with water.

8-4-5: CITY NOT LIABLE FOR DAMAGES: ~~The~~ City shall not be liable for damages caused by interruptions of water supply, scarcity of water, accidents to water works or mains, or during the time of alterations, additions or repairs or for any other unavoidable causes.- Nothing herein is intended to create any private duty to any customer or create a private right of action against ~~the~~ City, on account of any failure by ~~the~~ City or its officers, agents, or employees, to provide water service or comply with the provisions of this Chapter.

8-4-6: DUTIES OF SUPERINTENDENT: The Superintendent of the Water Division under the direction of the Director of Public Works shall supervise and manage the Water Division including all supply and distribution lines with associated appurtenances, wells, pumps, tanks, and fire hydrant facilities.

8-4-7: RIGHT TO TURN OFF WATER: The Superintendent of the Water Division may turn off water within the City water system when deemed necessary to maintain, protect, or repair the water system, for non-payment, or when ordered to do so by the Mayor or Council.

8-4-8: WASTE PROHIBITED: It shall be unlawful for any water user to waste water or allow it to be wasted by improper use or by faulty facilities. Irrigation by open hoses is prohibited.

8-4-9: MAYOR MAY LIMIT USE OF WATER: In times of, or in anticipation of, scarcity of water, or when the Water Division is unable to furnish a sufficient supply of water, the Mayor may, by public proclamation limit the use of water to such extent as may be necessary for the public good. Such proclamation shall be published in two (2) consecutive issues of the official newspaper, and after such publication, the proclamation shall have the same force and effect as a City ordinance.

8-4-10: INSPECTION OF PREMISES: Free access for inspection shall, upon such reasonable notice as the circumstances permit, be allowed to the Superintendent of the Water Division or to any other authorized person to all places supplied with water from ~~the~~ City water system.

8-4-11: PERMITS AND SERVICE CONNECTION FEES: It shall be unlawful to install, alter or connect any ~~water service~~ customer line within ~~the~~ City to any water line within ~~the~~ City without first obtaining a permit from ~~the~~ City and paying the service connection fees set forth in this Chapter.

8-4-12: EXTENSION OF WATER MAINS WITHIN CITY: The Water Division or the Council may extend water mains within ~~the~~ City at City's expense whenever, in their sole discretion, such extension is necessary for the health, welfare, or safety of the residents of ~~the~~ City, provided however nothing herein shall require that such extension be made at City expense. ~~The~~ City may require any customer desiring water service to install at the customer's expense a water main along the entire frontage of such customer's property. ~~The~~ City may also require the customer to submit design drawings and specifications prior to the commencement of the construction of such extension.

8-4-13: EXTENSION OF WATER MAINS OUTSIDE CITY: Water mains shall not, without the approval of the Council be extended outside the corporate limits of ~~the~~ City, unless adequate excess water is available for such service. Such agreements shall specifically reserve the right to terminate such service without cause at any time upon at least thirty (30) days advance written notice.

8-4-14: WATER SYSTEM ~~CONNECTION~~ FEES:

(A) ~~____~~ ~~(A)~~ Purpose. The purpose of this Section is to establish an equitable system of charging new customers for the impact or burden created whenever they enlarge an existing water service or connect a new water service to the existing wells, storage tanks, pumps, outbuildings, and appurtenances of ~~the~~ City water system, all of which were funded from revenues of ~~the~~ City water system or paid with revenues derived from ad valorem taxes. ~~The~~ City recognizes the inherent inequity of requiring existing customers or taxpayers to bear the entire cost of acquiring or building new facilities, or of utilizing excess capacity with existing facilities, in order to meet the needs of such new development. The Council hereby finds and

recognizes the relationship between the nature of the uses of property and the impact thereof upon the City water system. The Council also finds that customers who connect to a water main located adjacent to their property receive a direct benefit from such water mains, which benefit is directly proportional to the frontage of the water main along their property. The Council further finds that it is fair and equitable to charge a water main connection fee ~~installation charge~~ for customers who connect to such mains in order to fund a portion of the cost incurred by ~~the~~ City in installing such mains.

(B) ~~(B)~~ Water System Service Connection Fees. A water system service connection fee shall be collected from any person requesting connection to the water system for any new building, ~~or structure, irrigated surface, or water feature,~~ or for any existing building ~~or use~~ for which a change in occupancy or use, as defined under ~~Section 3406.0 of the International Building Code, 2006 Edition~~ the current plumbing Building Code adopted by the City, is made and for which a new or larger water service line is installed. Notwithstanding the foregoing, no water system service connection fee shall be charged for connection of water service solely for fire protection services. Such water system service connection fee shall be in an amount set from time to time by Resolution of the Council.

(C) ~~(C)~~ Water Main Connection Installation Connection Charge. Before connecting to any water main constructed in whole or in part at City expense, all persons desiring such connection shall pay a water main ~~connection installation fee~~ connection charge in an amount set from time to time by Resolution of the Council per front foot of property owned by such person and fronting upon a street ~~or, public right-right-of-of-way, or public utility easement~~ within which a water main is located. Such ~~fee~~ charge shall be in addition to the water system service connection fees set forth above. Despite the foregoing, if any person requests annexation to the City and as part of such annexation also requests connection to such water main, then the fee shall be due in full at the time such property is annexed to ~~the~~ City. If any such property is located upon a corner or is bounded by two (2) or more streets in which a water main is located, the calculation for the fee shall be based upon the frontage of the longest street in which a water main is located. Location of a canal between such property and street, public utility easement, or public right-of-way shall not relieve property owner from paying a water main connection ~~fee~~ charge. All water mains within ~~the~~ City shall be deemed to have been constructed in whole or in part at City expense, unless the applicant presents written evidence conclusively demonstrating such main was constructed entirely from private monies or was constructed entirely with funds from a state or federal grant. If any person constructs a water main entirely at their ~~his or her~~ expense, the City may, by written agreement, pay over to such person all water main connection ~~fees~~ charges collected by ~~the~~ City from any other person who subsequently connects to such water main.

8-4-15: WATER LINE SYSTEM CAPITAL IMPROVEMENT FUND: A Water System Capital Improvement Fund is hereby established into which all revenues derived from water ~~connection-system~~ fees as set forth in this Chapter shall be deposited. Expenditures from this fund shall be made only for the purposes set forth in Section 8-4-16 of this Chapter when authorized by the City-Council.

8-4-16: DISBURSEMENTS OF WATER SYSTEM CAPITAL IMPROVEMENT FUNDS:

Disbursements may be made from the Water System Capital Improvement Fund for the following purposes only:

(A) ~~—(A)—~~Construction and installation of City water wells.

(B) ~~—(B)—~~Construction, installation, and extension of City water mains, including costs of construction of mains with extra capacity.

(C) ~~—(C)—~~Payment of principal and interest on any revenue bond or bonds issued by the City to defray the cost of construction, extension, or betterment of the City water or sewer systems.

(D) ~~—(D)—~~Reimbursement of water main ~~connection~~ installation ~~connection charges~~ fees to any developer who has constructed that portion of a water main for which a water main ~~connection fee~~ installation ~~connection charge~~ has been charged by the City.

~~8-4-17: INSTALLATION CHARGES: Water service lines between the main line and the curb stop may be installed by the City or by a private contractor hired by the customer. Whenever a water service line is installed by the City, a charge, in an amount set from time to time by Resolution of the Council, for labor and materials shall be made for the costs of installation. Additional fees, in an amount set from time to time by Resolution of the Council, may be included for the costs related to blasting or unusual rock removal. The necessary and reasonable costs for such services shall be added to the charge to the customer. (Ord. 2267, 3-12-98; Ord. 2964, 8-14-14)~~

~~8-4-18: LENGTH OF SERVICE: Where a water main is located in a public right of way, the maximum length of service line furnished and installed by the City for the standard installation fee set forth above shall be fifty feet (50'). Where the main is on private property, the maximum length of service line furnished and installed by the City for the standard installation fee shall be thirty feet (30'). If the length of the service line exceeds the maximums stated above, an additional charge shall be made, based on the actual cost to the City to furnish and install the extra pipe.~~

~~8-4-179: INSTALLATION AND MAINTENANCE: All service lines and connections from the water main to and including the curb stop any meter pit shall be installed by a private contractor hired by the customer in accordance with current City standards and specifications, and shall be inspected, maintained, owned, and exclusively controlled by the Water Division.~~

~~8-4-1820: ARRANGEMENT OF SERVICE PIPES: The service lines must be so arranged that the water supply to each building, place of business, dwelling unit, or tract of land (whether created lawfully or unlawfully) shall be controlled by a separate curb stop placed at or near the property line of the premises served, unless permission for a different arrangement is first authorized in writing by the Water Division.~~

8-4-2119: BRANCH SERVICE: No ~~service connection~~ customer line shall serveing more than one (1) ~~customer shall be made~~. Where an existing ~~water service~~ customer line provides service to several customers, ~~the~~ City may terminate water service until a separate ~~service~~ customer line (and, if necessary, service line) is provided at the owner's expense. If ~~the~~ City does not terminate service to such existing services, the established rate shall be charged for each customer receiving service from the existing line.

8-4-202: PERMIT REQUIRED: No person shall dig into the streets or under the sidewalk for the purpose of laying, removing or repairing any water line without first obtaining a permit issued in accordance with Chapter 7 of this title.

8-4-213: CUSTOMER LINE MAINTENANCE: All water users shall at their own expense keep their customer lines, connections, and other apparatus in good repair and in a condition that avoids waste of water. Customer water lines that become frozen are the responsibility of the customer, provided the City may ~~un~~thaw the same and charge the customer for the fair and reasonable costs therefor.

8-4-224: PERMIT TO DO PLUMBING: No plumber or other person shall make any connections to a City main or make alterations in any conduit, pipe, or other fixture connecting thereto, or connect pipes where they have been disconnected, or turn water off or on at the curb stop supplying any premises without first obtaining a plumbing permit from the City. If such work requires excavation within a public ~~right-right-of-of~~-way, such person shall also obtain a permit ~~under Chapter 7 of this title~~ pursuant to this Code.

8-4-235: SERVICE CALL CHARGE: The Water Division Superintendent may assess and collect a service charge, in an amount not to exceed the actual cost to ~~the~~ City, for service calls which are requested ~~on Saturday on weekends~~ or ~~a~~ legal holidays or during a time other than normal working hours and which are only for the convenience and benefit of the customer, or which are necessitated because of plumbing which does not meet the requirements of the ~~Uniform Plumbing Code~~ current Plumbing Code adopted by the City.

8-4-246: TAMPERING UNLAWFUL: It shall be unlawful to damage, adjust, or tamper with any portion of the City Water System or appurtenances, whether located upon public or private property, without having first obtained the express permission of ~~the~~ City. If any person damages the water system or in any way causes ~~the City~~ expenses to expend extraordinary costs as a result of such unlawful acts, ~~the~~ City may assess and collect the same from the person committing the same, or from the parent or guardian of any minor who commits such acts. Such amounts may be included upon the customer's regular monthly billing statement for water service, and upon the customer's failure or refusal to pay the same, water service may be terminated in accordance with the procedures set forth in this Chapter.

8-4-257: AUTHORITY TO PLACE METER: The Water Division Superintendent may, in ~~his~~ their sole discretion, place a meter on any service line and change the method of billing from a flat rate to a metered rate.

8-4-268: OWNERSHIP OF METERS: All water meters ~~installed by the City used by the City~~ for the billing of water consumption shall remain the property of ~~the~~ City and may be removed or replaced by the Water Division at any time.

8-4-279: MAINTENANCE OF METERS: The Water Division shall maintain and repair all meters used by City for the billing of water consumption. Where replacement, repair, or adjustment of any meter is rendered necessary by the act, neglect or carelessness of the owner or occupant of any premises, any expense incurred by the Water Division thereby shall be charged against and collected from the customer, and water service may be discontinued until the meter is repaired, replaced, or adjusted.

8-4-2830: METERS; LOCATION AND ACCESS: Meters shall be located near the customer's property line or within the structure served. The customer shall keep the area adjacent to the meter free from trees, shrubbery, or other obstructions and shall allow the City access to the meter during normal working hours of any day of the week, except ~~Saturdays-weekends~~ and legal holidays.

8-4-2934: BILLING PERIODS: All regular billing periods shall be on a monthly basis. Premises occupied for any portion of a month shall be charged the established rate for the entire month.

8-4-302: BILLING, COLLECTION, AND TERMINATION OF UTILITY SERVICE: Billing, collection, and termination for utility service shall be processed pursuant to ~~the~~ City billing, collection, and termination policy established by Council Resolution.

8-4-313: WATER RATES, FEES: ~~The~~ City shall establish monthly rates for water service supplied by ~~the~~ City in an amount set from time to time by Resolution of the Council for the following:

(A) ~~(A)~~ Monthly Non-Metered Residential ~~Indoor~~ Water Rates (Inside City):

1. Single-family dwellings and mobile homes (excluding separate apartment units within such dwelling) – ~~P,~~ per dwelling or unit;
2. Duplex – Per dwelling or unit;
3. Apartment unit (tenant pays bill) – Per ~~per~~ unit,;

(B) Monthly Non-Metered Commercial ~~Indoor~~ Water Rates (Inside City):

1. Category 1 (Commercial Apartment Building ~~unit occupied where single bill for all tenants is paid by landlord or manager~~) – Per unit;
2. Category 2 (Bar, Church, Gym, Office Space, buildings, banks, bowling alleys, lodges, markets ~~Per one thousand (1,000) square feet of area~~ Retail, Salon, Shop, and Warehouse) – Per business;

3. Category 3 (Big Box Retail, Car Sales, Convenience Store, Day Care, Fast Food, Medical Office) – Per business;

4. Category 4 (Hall, Restaurant) – Per business;

5. Category 5 (Hotel or Rest Home with twenty (20) rooms or less) – Per business;

6. Category 6 (Hotel or Rest Home with more than twenty (20) rooms) – Per business.

(C) Monthly Non-metered School ~~Indoor~~ Water Rate (Inside City): ~~Laundromat – per machine; Travel trailer court; Plus per occupied space; Barber or beauty shop, each bowl; Hotel, motor hotel, motel or rooming house – per room; Restaurant and fast food establishment; Elementary Schools (Grades 1-6) – Per fifty (50) students or fraction thereof; Junior High School, High School, Secondary Schools (Grades 7-12) – Per fifty (50) students or fraction thereof; College and University – Per fifty (50) students or fraction thereof.~~

~~and All other non-metered nine (9) customers – per premises or building~~

(D) All other non-classified businesses shall be placed into a monthly non-metered commercial ~~indoor~~ water rate category by the Water Division Superintendent based on anticipated interior water consumption.

(E) Monthly Non-metered Residential Irrigation Water Rate:

1. Single-family dwellings and mobile homes (excluding separate apartment units within such dwelling) – Per dwelling or unit or separately owned landscape parcel;

2. Duplex – Per dwelling or unit;

3. Apartment unit (tenant pays bill) – Per unit.

(F) Monthly Non-metered Commercial Irrigation Water Rate (All Commercial Categories, Private Parks, Privately Maintained Common Areas or Parcels) – Per one hundred (100) square feet of landscape area.

~~(A)~~(G) Monthly Non-metered School Irrigation Water Rate – Per acre or fraction thereof.

~~(B)~~(H) Monthly Metered Water Rates (Inside City). The rate for customers receiving metered water service shall be a monthly base metered water rate (calculated on the size of the meter) plus a monthly volumetric rate per each one thousand (1,000) gallons of water used; in an amount set from time to time by Resolution of the Council.

(I) Monthly Idaho Department of Environmental Quality (IDEQ) Water Primacy Fee – Per dwelling, unit, business, or metered connection.

~~(B) Irrigation Service. In addition to the regular monthly charges for use of City water, the City shall establish annual rates, set from time to time by Resolution of the Council, for customers using City water for lawn sprinkling or irrigation for the following: Each customer, landlord, tenant, or agent; and Each non-metered, nonresidential property with lawn or cultivated area measuring more than 1/20th of an acre — per acre or fraction thereof. During the third quarter of each calendar year, the City Treasurer shall furnish each property owner, landlord, tenant, or agent a statement of the amount due for seasonal sprinkling or irrigation service.~~

~~—(C) Metered Rates (Inside City). The rate for customers receiving metered water service shall be in an amount set from time to time by Resolution of the Council, subject to a minimum monthly charge in an amount set from time to time by Resolution of the Council: For 5/8" meter; For 3/4" meter; For 1" meter; For 1 1/4" meter; For 1 1/2" meter; For 2" meter; For 3" meter; For 4" meter; For 6" meter; and For 8" meter.~~

~~(D) Testing Fee. In addition to the monthly rates, each customer shall pay an annual Environmental Quality Assessment Fee in an amount set from time to time by Resolution of the Council per connection to the City water system. Such fee shall be billed by the City Treasurer during the third quarter of each calendar year. (Ord. 3039, 11-24-2015)~~

~~8-4-324: WATER RATES OUTSIDE CITY: Monthly rates charged for water furnished by City to customers outside the City limits, whether metered or non-metered, shall be in an amount set from time to time by Resolution of the Council, whether metered or non-metered, shall be twice the rates two hundred percent (200%) charged for water furnished inside the City limits, including minimums.~~

~~8-4-335: METER RATES FOR MULTIPLE METERS: Where an individual consumer is supplied with water through more than one (1) metered service, charges shall be computed separately for each individual meter.~~

~~8-4-346: SERVICE OUTSIDE CITY: The Water Division Superintendent shall not provide any water service to any consumer whose residence or place of business is outside the corporate limits of the City unless a written service contract has been executed between the consumer and the City.~~

~~8-4-357: FIRE SERVICE CONNECTION:~~

~~(A) All fire service connections between water mains and property lines shall be installed by a private contractor hired by the customer, in accordance with current City standards and specifications, and shall be inspected, maintained, owned and exclusively controlled by the Water Division and maintained by the Water Division, at the expense of the owner or occupant of the premises served, and shall be the property of the City. At the time of making application for service, the applicant shall file with the Water Division detailed plans showing all piping installed or to be installed for fire protection, all fire gates, automatic sprinklers, and all other outlets, gates, or appurtenances. Each fire service connection shall have a gate valve with an adequate valve box installed between the main and the property line of the premises served. No fire service connection larger than six inches (6") shall be installed without special permission from the Council. Upon receipt of such application, the Water Superintendent shall determine the~~

~~cost for the installation of such service, taking into consideration the length and size of pipe, condition of street and sidewalk, all relative to the character of service, and such cost shall be paid by the applicant before such installation is made.~~ No customer receiving metered water service shall use a fire service connection for domestic purposes or any purpose other than for fire protection. If the ~~water~~ Water ~~superintendent~~ Division Superintendent finds a fire connection is being used for any purpose other than for fire protection upon the premises, the owner or occupant shall be notified and if such improper conditions are not corrected within ten (10) days, water service to the entire premises may be shut off until proper adjustments are made.

(B) All fire service connections shall conform to the requirements of this Section and Section ~~8-4-40~~ 38 ~~hereof of this Code~~. However, if a customer requests the use of one (1) service line for both the culinary and fire protection connections, ~~he or she~~ the customer shall submit drawings or specifications which identify ~~ies~~ the line sizes for each culinary or fire service connection to each site for which the connection is requested.

8-4-~~368~~ 368: FIRE HYDRANTS: All public fire hydrants shall be maintained by the Water Division. ~~Members~~ Employees of the Public Works, Police, and Fire Departments shall have free access to such hydrants. No other person shall draw or attempt to draw any water from a fire hydrant unless ~~he they~~ has have the written permission from one of the ~~d~~ Directors of such departments. The Water Division Superintendent may specify from which hydrants water may be drawn and may assess an equitable charge for the consumption or use of water drawn from a fire hydrant.

8-4-~~379~~ 379: UNLAWFUL CONTAMINATION OR CROSS-CONNECTIONS: It shall be unlawful for any person ~~the owner, tenant, occupant, lessee, or other user of City water~~ to introduce or permit the introduction of pollution or contamination of any kind into the City water supply system. It shall be unlawful for any person to install or maintain any cross-connection within ~~the~~ City.

8-4-~~3840~~ 3840: BACKFLOW PREVENTION DEVICES AND ASSEMBLIES:

(A) Backflow prevention devices and assemblies shall be installed by the proper owner, tenant, occupant, lessee, or other user of City water where the nature and extent of the activities conducted or the materials used or stored on the premises would present a hazard to the public health or be deleterious to the quality of the City water supply should a cross-connection occur. Even though cross-connections may not exist at the time, backflow prevention devices and assemblies shall be installed under circumstances including, but not limited to the following:

- (1) Premises having an auxiliary water supply;
- (2) Premises having internal cross-connections that are not correctable, or having intricate plumbing arrangements which make it impracticable to ascertain whether or not cross-connections exist;
- (3) Premises where entry is restricted so that inspections for cross-connections cannot reasonably be made;
- (4) Premises having a history of cross-connections being established or reestablished;

(5) Premises on which any substance is handled under pressure so as to permit the entry of substance into the public water supply;

(6) Premises having pumps or devices which may affect the pressure within any line connected to the City water supply.

(7) Whenever water is drawn from a public fire hydrant.

(B) All backflow prevention devices and assemblies shall be installed by the property owner at his expense, and shall be of a type commensurate with the degree of hazard which exists or which could exist. An air-gap separation or a reduced pressure principle backflow prevention device shall be installed where the public water supply may be contaminated with sewage, industrial waste of a toxic nature, or other contaminant which could cause a public health hazard. In all other cases where the contaminant may be objectionable but not hazardous to the public health, a double check valve assembly, an air-gap separation, or a reduced pressure principle backflow prevention device shall be installed. All backflow prevention devices and the installation thereof shall be approved by the ~~City~~ Water Division Superintendent or ~~his~~ their duly authorized representative.

(C) All backflow prevention ~~devices~~ assemblies installed pursuant to this Chapter, except atmospheric vacuum breakers, shall be inspected and tested by a certified tester at the time of initial installation and annually thereafter, or more often if deemed necessary by ~~the~~ City. Whenever a backflow prevention ~~device~~ assembly is found to be defective, it shall be repaired, overhauled, or replaced at the owner's expense. The ~~City~~ Water Division Superintendent shall retain adequate records of all inspections, tests, or repairs made pursuant to this Chapter.

(D) If a backflow prevention device or assembly is found to be necessary, the owner, tenant, occupant, or lessee of the property shall ~~apply in writing to the Clerk for~~ obtain an installation permit from the City, specifying the type and location of such device(s) or ~~devices~~ assembly(ies). It shall be unlawful to install, relocate, or remove a backflow prevention device or assembly without a permit.

8-4-~~394~~1: INSPECTION OF NEW CONSTRUCTION: No building, improvement, or other structure shall be connected to the City water supply unless such structure has been inspected by the ~~City~~ Water Division Superintendent or other authorized officer of the City and found free of any cross-connections or other conditions for which a backflow prevention device or assembly is required by this Chapter.

8-4-~~402~~2: INSPECTION OF EXISTING BUILDINGS, STRUCTURES, OR IMPROVEMENTS AND TERMINATION OF WATER SUPPLY: Inspections by ~~the~~ City or its authorized agent may be made of any existing buildings, structures, or improvements of any nature receiving water from the City supply. The ~~City~~ Water Division Superintendent or ~~his~~ their authorized agent shall make an inspection of any building, improvement, or structure of any nature receiving water from the City water supply if there is cause to believe that a cross-connection exists or that a backflow prevention device or assembly should be installed pursuant to this Chapter. Whenever a cross-connection or other source of contamination to the water supply is found, or it

is determined that a backflow prevention device or assembly is necessary, the City shall cease delivery of water to such premises and the water supply shall not be resumed until the cross-connection or source of contamination is eliminated or an appropriate backflow prevention device or assembly has been installed in accordance with this Chapter.

SECTION 3. Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

SECTION 4. Codification Clause. The City Clerk is instructed to immediately forward this Ordinance to the codifier of the official municipal code for proper revision of the Code.

SECTION 5. Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval, and publication.

PASSED by the City Council and APPROVED by the Mayor of the City of Idaho Falls, Idaho, this ____ day of _____, 2016.

CITY OF IDAHO FALLS, IDAHO

REBECCA L. NOAH CASPER, MAYOR

ATTEST:

KATHY HAMPTON, CITY CLERK

(SEAL)

STATE OF IDAHO)
) ss:
County of Bonneville)

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO,
DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance
entitled, “AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO,
AMENDING SECTION 8, TITLE 4, ADDING DEFINITIONS AND
CLARIFICATIONS IN SUPPORT OF RESTRUCTURED FEES RELATED TO
THE CITY’S WATER SERVICES; PROVIDING SEVERABILITY,
CODIFICATION, PUBLICATION BY SUMMARY, AND ESTABLISHING
EFFECTIVE DATE.”

(SEAL)

KATHY HAMPTON, CITY CLERK



MEMORANDUM

To: Honorable Mayor & City Council

From: Chris H Fredericksen, Public Works Director

Date: September 19, 2016

Subject: **EASEMENT VACATION REQUEST – 845 SOUTH MILLIGAN ROAD
(INSTRUMENT NO. 975506)**

As earlier authorized, the City Attorney has prepared the attached documents to vacate the utility easement at 845 South Milligan Road.

Public Works recommends approval of this vacation; and, authorization for Mayor and City Clerk to sign the necessary documents.

Respectfully,

Chris H Fredericksen, P. E.
Public Works Director

Attachments

CF:jk

c: Mayor
Council
Fugal
Cox

2-37-24-1

2016-102

ORDINANCE NO. 2016-

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR THE VACATION OF AN EASEMENT LOCATED WITHIN THE CITY OF IDAHO FALLS AND LEGALLY DESCRIBED IN SECTION 1 OF THIS ORDINANCE; PROVIDING THAT TITLE TO SAID VACATED EASEMENT SHALL VEST AS SPECIFIED IN SECTION 3 OF THIS ORDINANCE; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the City of Idaho Falls has been granted an underground utility easement as recorded in Instrument #975506 in Lot 1 of Block 1 in the Milligan Commercial Plaza; and

WHEREAS, the utilities no longer utilize that easement; and

WHEREAS, the owner would like to vacate said easement to enhance the use of the property.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, AS FOLLOWS:

SECTION 1. Vacation. The following portion of the property in the Milligan Commercial Plaza to the City of Idaho Falls, Bonneville County, Idaho, as also shown in Exhibit "A" attached hereto and incorporated herein as recorded in Instrument #975506.

SECTION 2. Exceptions from Vacation. Vacation of property described in Section 1 of this Ordinance shall not include other easements, or franchise rights and utilities, including public utilities, existing as of the effective date of this Ordinance.

SECTION 3. Right-of-Way Vacation. Council deems it expedient for the public good and to be in the best interests of the adjoining properties that the property described in Section 1 of this Ordinance be in the same is hereby vacated in its entirety, and shall revert to property owners as follows:

1. Vacation of property shown in Exhibit "B" attached hereto and incorporated herein as follows, shall be to T-N-T Land and Cattle, LLC, an Idaho limited liability company, whose mailing address is 3456 E. 17th Street, Idaho Falls, Idaho 83406.

SECTION 4. Savings and Severability Clause. The provisions and parts of this Ordinance are intended to be severable. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

SECTION 5. Publication. This Ordinance, or a summary thereof in compliance with Idaho Code, shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect from and after its passage, approval and publication.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR this _____ day of September, 2016.

Rebecca L. Noah Casper, Mayor

ATTEST:

Kathy Hampton, City Clerk

(SEAL)

STATE OF IDAHO)
 : ss.
County of Bonneville)

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO,
DO HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Ordinance entitled: "AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, PROVIDING FOR THE VACATION OF AN EASEMENT LOCATED WITHIN THE CITY OF IDAHO FALLS AND LEGALLY DESCRIBED IN SECTION 1 OF THIS ORDINANCE; PROVIDING THAT TITLE TO SAID VACATED EASEMENT SHALL VEST AS SPECIFIED IN SECTION 3 OF THIS ORDINANCE; PROVIDING THAT THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT FROM AND AFTER PASSAGE, APPROVAL AND PUBLICATION ACCORDING TO LAW"

Kathy Hampton
City Clerk

(SEAL)

EXHIBIT A

DEED OF EASEMENT

THIS INDENTURE, made and entered into this 19 day of AUGUST, 1998, by and between IDA-LEASE, AN IDAHO GENERAL PARTNERSHIP as party of the first part, and the CITY OF IDAHO FALLS, a municipal corporation of the State of Idaho, as party of the second part,

WITNESSETH:

That for and in consideration of the sum of One Dollar and other valuable consideration, and receipt whereof is hereby acknowledged, the party of the first part does hereby grant, sell, and convey unto the party of the second part a perpetual easement and right-of-way for the purposes of constructing, maintaining, and operating an underground utility. The easement being 10 feet in width is described as follows:

Beginning at the South most corner of Lot 8, Block 1 of Communications Addition, Division No. 2 to the City of Idaho Falls, Bonneville County, Idaho; running thence S.04°41'56"W. 131.41 feet to the intersection of the North line of Murray Street and the West bank of the Paper Canal; thence S.88°29'56"W. along said North line of Murray Street 10.34 feet to the TRUE POINT OF BEGINNING, said TRUE POINT OF BEGINNING being on the Western edge of an existing easement; running thence S.88°29'56"W. along said North line of Murray Street 172.44 feet; thence N.58°29'11"W. 97.85 feet; thence N.29°41'14"E. 64.78 feet; thence S.50°14'26"E. 10.00 feet; thence S.28°45'34"W. 54.11 feet; thence S.58°29'11"E. 85.30 feet; thence N.86°29'56"E. 170.55 feet; thence S.04°41'56"W. 20.86 feet to the TRUE POINT OF BEGINNING.

It is understood and agreed that first party may make any use of said premises which does not interfere with or injure the use thereof by second party for such purposes.

The party of the second part shall have full right of ingress and egress to said premises for the purpose of construction, maintenance, and repair of any improvements placed on the premises hereunder, and shall have the right to remove, cut, and trim any trees, brush or other obstructions on said premises which may injure or interfere with the second party's use thereof for such purposes.

IN WITNESS WHEREOF, the party of the first part has hereunto set its seal and executed these presents, the day and year first above written.

IDA-LEASE, AN IDAHO GENERAL PARTNERSHIP

Walter Johnson
Walter Johnson Partner

William L. Miller
William L. Miller Partner
Royce Chigardow
Royce Chigardow Partner

STATE OF IDAHO)
COUNTY OF Ada) ss.

I, Lincoln L. Taylor, a Notary Public, do hereby certify that on this 19 day of August, 1998, personally appeared before me, Walter Johnson, William L. Miller and Royce Chigardow, who, being first duly sworn, declared that they are partners of IDA-LEASE, an Idaho General Partnership, and that the statements therein are true.



| | |
|--|---------------------------------|
| INSTRUMENT NO. | 975506 |
| DATE | 8/19/98 |
| INSTR CODE | 913 |
| ICRHE NO. | 1232-03 |
| FEES | 300 |
| STATE OF IDAHO | |
| COUNTY OF BONNEVILLE | |
| I hereby certify that the within instrument was recorded | |
| Recorded in | Book 1232, Page 3 |
| By | <u>Lincoln L. Taylor</u> Deputy |
| Request of | <u>IDA-LEASE</u> |

Lincoln L. Taylor
Notary Public
Residing in Meridian, Idaho
My Commission Expires on 06/06/2001

BONNEVILLE COUNTY
RECORDED
AUG 24 PM 10 50

975506

EXHIBIT B

